

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT COURT OF THE DISTRICT OF COLUMBIA**

GOVERNMENT ACCOUNTABILITY)
PROJECT,)
1612 K. St. NW, Suite #1100)
Washington DC, 20006)
)
Plaintiff,)
)
v.)
)
UNITED STATES DEPARTMENT)
OF STATE,)
The Executive Office)
Office of the Legal Adviser)
600 19 th Street NW. Suite 5.600.)
Washington DC, 20522)
)
Defendant.)

COMPLAINT

1. Plaintiff GOVERNMENT ACCOUNTABILITY PROJECT brings this suit to overturn Defendant UNITED STATES DEPARTMENT OF STATE’s failure to produce records related to the J-1 Au Pair program.

PARTIES

2. Plaintiff GOVERNMENT ACCOUNTABILITY PROJECT is a non-profit organization serving the public by protecting government and corporate whistleblowers who expose wrongdoing.

3. Defendant UNITED STATES DEPARTMENT OF STATE is a federal agency subject to the Freedom of Information Act, 5 U.S.C. § 552.

JURISDICTION AND VENUE

4. This case is brought under 5 U.S.C. § 552(a)(6)(c)(i) and presents a federal question conferring jurisdiction on this Court.

5. Venue is proper under 5 U.S.C. § 552(a)(4)(B) because this District is always a permissible venue for federal FOIA suits.

GAP'S SEPTEMBER 16 FOIA REQUEST

6. On September 16, 2016, GAP requested all emails about the DEPT. OF STATE's J-1 Au Pair program that contain the words "abuse" or "exploitation" since January 1, 2010. GAP also requested expedited processing. A true and correct copy of the request is attached as Exhibit A.

7. On September 21, 2016, the DEPT. OF STATE responded acknowledging that it received the September 16 request on September 19 and had assigned it Case Control Number F-2016-11607. DEPT. OF STATE also denied GAP's request for expedited processing. A true and correct copy of the correspondence is attached as Exhibit B.

8. Having heard nothing further from DEPT. OF STATE, on January 19, 2017, GAP appealed the constructive denial of request F-2016-11607 to the DEPT OF STATE. A true and correct copy of this appeal is attached as Exhibit C.

9. On March 2, 2017, the DEPT. OF STATE responded to the January 19 appeal stating that the request was not subject to administrative appeal, because no denial had been issued. A true and correct copy of the correspondence is attached as Exhibit D.

10. Thereafter, GAP and DEPT. OF STATE had a series of communications in which GAP requested updates regarding the estimated date of completion and sought to speed up production of the responsive records.

11. On August 18, 2017, DEPT. OF STATE stated that the estimated completion date was December 31, 2017. A true and correct copy of the correspondence is attached as Exhibit E.

12. As of the date of filing, GAP has received no records or further communication from DEPT. OF STATE regarding its request.

GAP'S NOVEMBER 27 FOIA REQUEST

13. On November 27, 2016, GAP requested all records related to DEPT. OF STATE's J-1 Au Pair Program compiled by DEPT. OF STATE'S Office of the Inspector General (OIG) since 2010. A true and correct copy of the request is attached as Exhibit F.

14. On May 12, 2017, DEPT. OF STATE issued a final response to the request, releasing 273 pages of records and withholding 27 pages. DEPT. OF STATE also transferred 580,062 pages of records to DEPT. OF STATE Office of Information Programs and Services. A true and correct copy of the correspondence is attached as Exhibit G.

15. The request was processed under Case Control Number 17-00014.

16. On August 4, 2017, GAP requested an update on the status of several FOIA requests, including the November 27 request. A true and correct copy of the correspondence is attached as Exhibit H.

17. On August 11, 2017, GAP called the DEPT. OF STATE FOIA Requester Service Center and requested an estimated date for completion of the request and an acknowledgement of it. DEPT. OF STATE communicated that the November 27 request was being processed under the Case Control Number F-2017-12367.

18. On August 18, 2017, DEPT. OF STATE responded to GAP's August 4 email, without providing an estimated completion date for the request. Instead, DEPT. OF STATE said

that request F-2017-12367 had been assigned to the appropriate Compliance and Research Branch. A true and correct copy of the correspondence is attached as Exhibit I.

19. As of the date of filing, GAP has received no further records and no further communication from DEPT. OF STATE regarding the request.

GAP'S DECEMBER 11 FOIA REQUEST

20. On December 11, 2016, GAP requested all emails sent or received by the DesignationAuPair@State.Gov email account since September 2015.

21. On December 15, 2016, DEPT. OF STATE acknowledged receipt of the request and assigned it Case Control Number F-2016-17112. A true and correct copy of correspondence is attached as Exhibit J.

22. On April 14, 2017, a reviewer from DEPT. OF STATE called GAP and requested that it narrow its request in order to reduce processing time.

23. On April 14, 2017, DEPT. OF STATE sent a follow-up email requesting confirmation that GAP was willing to narrow its request. A true and correct copy of the correspondence letter is attached as Exhibit K.

24. On April 14, 2017, GAP confirmed it was willing to narrow its request to:

- 15 CY 2015 annual reports and management audits submitted to the Office of Private Sector Exchange Designation electronically by one of 15 au pair sponsor organizations to the Designationaupair@state.gov mailbox during the time period of June 17-30, 2016.
- 2014 annual reports and management audits submitted during a similar time period to the same e-mail address in 2015.
- A portion of these documents, submitted in both 2014 and 2015, by the sponsors, called the Statistical Report Based on All Program Participants, a disaggregated set of data about an au pair company operations.

A true and correct copy of the correspondence is attached as Exhibit L.

25. On May 3, 2017, after a series of inquiries from GAP, DEPT. OF STATE responded that the estimated completion date was August 2017. A true and correct copy of the correspondence is attached as Exhibit M.

26. After a series of communications, on September 1, 2017, GAP called DEPT. OF STATE to ask if the responsive records had been sent to him.

27. As of the date of filing, GAP has received no records and no further communication from DEPT. OF STATE regarding this request.

GAP'S JANUARY 20 FOIA REQUEST

28. On January 20, 2017, GAP requested records from the DEPT. OF STATE on "Dina Powell, former Assistant Secretary of the Bureau of Educational and Cultural Affairs, specifically records about the au pair program, especially compliance with regulations to prevent abuse of au pairs" from July 11, 2005 to June 6, 2007. A true and correct copy of the correspondence is attached Exhibit N.

29. On January 25, 2017, the DEPT. OF STATE acknowledged receipt the January 20 request assigned it Case Control Number F-2017-00853. A true and correct copy of the January 25 letter is attached as Exhibit O.

30. After a series of communications, on August 18, 2017, DEPT. OF STATE informed GAP that the estimated completion date was June 2018.

31. As of the date of filing, GAP has received no further communication from DEPT. OF STATE regarding this request.

GAP'S APRIL 4 AND JULY 18 FOIA REQUESTS

32. On April 4, 2017, GAP requested all 2015 and 2016 annual reports of J-1 sponsors submitted to DEPT. OF STATE. GAP also requested all 2015 and 2016 annual reports

analysis for all J-1 programs compiled by DEPT. OF STATE. A true and correct copy of the correspondence is attached as Exhibit P.

33. On April 12, 2017, DEPT. OF STATE acknowledged receipt of the request and assigned it Case Control Number F-2017-08682. A true and correct copy of the April 12 letter is attached as Exhibit Q.

34. On July 18, 2017, GAP submitted a second similar FOIA request to DEPT. OF STATE, seeking documents from 2016 given that DEPT. OF STATE may not have had those records at the time of the April 4 request. The July 18 request sought:

- 2016 Statistical Reports Based on All Program Participants for every sponsor company in the J-1 Au Pair program, 2016 Annual Reports (AKA Management Review), and Complaints and Management Audits by an Independent Auditor from each sponsor company in the J-1 Au Pair program, along with all emails submitted to Designationaupair@state.gov mailbox during the time period of June 15-30, 2017.

A true and correct copy of the correspondence is attached as Exhibit R.

35. On August 18, 2017, the DEPT. OF STATE stated that the April 4 request had a March 31, 2018 estimated completion date. A true and correct copy of this email is attached as Exhibit S.

36. On August 21, 2017, the DEPT. OF STATE acknowledged receipt of the July 18 request and assigned it Case Control Number F-2017-14464. A true and correct copy of the correspondence is attached as Exhibit T.

37. As of the date of filing, GAP has received no records or further communication from DEPT. OF STATE regarding either of these requests.

COUNT I – SEPTEMBER 16 VIOLATION OF FOIA

38. The above paragraphs are incorporated herein.

39. Defendant DEPT. OF STATE is an agency subject to FOIA.

40. The requested records are not exempt under FOIA.

41. Defendant DEPT. OF STATE has refused to conduct a timely search for the records.

COUNT II – NOVEMBER 27 VIOLATION OF FOIA

42. The above paragraphs are incorporated herein.

43. Defendant DEPT. OF STATE is an agency subject to FOIA.

44. The requested records are not exempt under FOIA.

45. Defendant DEPT. OF STATE has refused to conduct a timely search for the records.

COUNT III – DECEMBER 11 VIOLATION OF FOIA

46. The above paragraphs are incorporated herein.

47. Defendant DEPT. OF STATE is an agency subject to FOIA.

48. The requested records are not exempt under FOIA.

49. Defendant DEPT. OF STATE has refused to conduct a timely search for the records.

COUNT IV – JANUARY 20 VIOLATION OF FOIA

50. The above paragraphs are incorporated herein.

51. Defendant DEPT. OF STATE is an agency subject to FOIA.

52. The requested records are not exempt under FOIA.

53. Defendant DEPT. OF STATE has refused to conduct a timely search for the records.

COUNT V – APRIL 4 AND JULY 18 VIOLATIONS OF FOIA

54. The above paragraphs are incorporated herein.

55. Defendant DEPT. OF STATE is an agency subject to FOIA.

56. The requested records are not exempt under FOIA.

57. Defendant DEPT. OF STATE has refused to conduct a timely search for the records.

WHEREFORE, GAP asks the Court to:

- i. Order DEPT. OF STATE to produce the requested records;
- ii. Award Plaintiff attorney fees and costs; and
- iii. Enter any other relief the Court deems appropriate.

RESPECTFULLY SUBMITTED,

/s/ Joshua Hart Burday

Attorneys for Plaintiff
GOVERNMENT ACCOUNTABILITY
PROJECT

Matthew Topic
Joshua Burday
LOEVY & LOEVY
311 N. Aberdeen, Third Floor
Chicago, IL 60607
(312) 243-5900
matt@loevy.com
joshb@loevy.com