

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

**CATO INSTITUTE,** )  
1000 Massachusetts Ave. NW )  
Washington, D.C. 20001 )  
 )  
**Plaintiff,** )  
 )  
**v.** )  
 )  
**U.S. CUSTOMS AND BORDER** )  
**PROTECTION,** )  
Office of Chief Counsel )  
1300 Pennsylvania Avenue, Suite 4.4-B )  
Washington, D.C. 20229 )  
 )  
**U.S. DEPARTMENT OF HOMELAND** )  
**SECURITY,** )  
Office of the General Counsel MS0485 )  
2707 Martin Luther King Jr. Ave SE )  
Washington, D.C. 20528 )  
 )  
**Defendants.** )

**COMPLAINT**

1. Plaintiff, CATO INSTITUTE, brings this Freedom of Information Act suit to force Defendants U.S. CUSTOMS AND BORDER PROTECTION and U.S. DEPARTMENT OF HOMELAND SECURITY to comply with Plaintiff's FOIA request for records about the deployment of U.S. Customs and Border Protection personnel to respond to public demonstrations or protests. In violation of the Freedom of Information Act, Defendants have failed to issue a determination and have failed to produce the requested records for over 30 months.

## **PARTIES**

2. Plaintiff CATO INSTITUTE is a public policy research organization—a think tank—dedicated to the principles of individual liberty, limited government, free markets, and peace. Its scholars and analysts conduct independent, nonpartisan research on a wide range of policy issues. CATO INSTITUTE made the FOIA request at issue in this case.

3. Defendant U.S. CUSTOMS AND BORDER PROTECTION (“CBP”) is a federal agency subject to the Freedom of Information Act, 5 U.S.C. § 552. CBP is a component agency of U.S. DEPARTMENT OF HOMELAND AND SECURITY.

4. Defendant U.S. DEPARTMENT OF HOMELAND SECURITY (“DHS”) is a federal agency subject to the Freedom of Information Act, 5 U.S.C. § 552.

## **JURISDICTION AND VENUE**

5. This case is brought under 5 U.S.C. § 552(a)(4)(B) and presents a federal question conferring jurisdiction on this Court. *See* 28 U.S.C. § 1331.

6. Venue is proper under 5 U.S.C. § 552(a)(4)(B).

## **JULY 31, 2020 FOIA REQUEST**

7. On July 31, 2020, CATO INSTITUTE submitted a FOIA request for the following records:

[1] The number of times CBP personnel have been deployed to a state or locality for law enforcement operations involving public demonstrations absent a direct request for assistance from state or local officials. The date range of this request is January 1, 2001 to the date of this request;

[2] The number of CBP personnel and types of equipment deployed to states and localities in response to the civil unrest, including street demonstrations. The date range of this request is January 1, 2017 to the date of this request;

[3] The number and type of wide-area motion imagery (WAMI) or other photographic or imaging systems deployed on any fixed-wing, rotary-wing, or unmanned aerial systems (UAS) deployed in support of CBP personnel deployed in response to civil

unrest, including street demonstrations. The date range of this request is January 1, 2017 to the date of this request;

[4] The number and type of signals intelligence (SIGINT), cell site simulator or other communications or cellular signal tracking or monitoring devices employed, either in an airborne or vehicle-borne mode, by CBP personnel deployed in response to civil unrest, including street demonstrations. The date range of this request is January 1, 2017 to the date of this request;

[5] A copy of the document titled *Comprehensive Nationwide Civil Unrest Report*, as mentioned in draft responses to Senator Kamala Harris's questions leaked to *The Nation* magazine in July 2020;

[6] Documents that mention the Protecting American Communities Task Force. The date range of this request is January 1, 2017 to the date of this request;

[7] Emails between deployed CBP personnel and CBP headquarters regarding surveillance or monitoring of civil unrest (including social media monitoring), including street demonstrations. The date range of this request is January 1, 2017 to the date of this request;

[8] Documents containing guidance, directives or orders regarding surveillance or monitoring of civil unrest (including social media monitoring), including street demonstrations. The date range of this request is January 1, 2017 to the date of this request.

A true and correct copy of the FOIA Request is attached as Exhibit 1.

8. CATO INSTITUTE sought expedited processing for the request.

9. CBP assigned reference number CBP-2020-069754 to the request.

10. On August 28, 2020, CBP granted expedited processing for the request. A true and correct copy of the email is attached as Exhibit 2.

11. On February 24, 2022, CBP, assigned a new reference number, CBP-2022-046577, for Item 5 and Item 8 of the request. CBP did not provide a reason for assigning the new reference number. A true and correct copy of CBP's February 24, 2022 letter is attached as Exhibit 3.

12. On two separate occasions—on April 7, 2023, and April 11, 2023—CATO INSTITUTE called CBP to inquire the estimated date of completion for CBP-2020-069754 and CBP-2022-046577.

13. CATO INSTITUTE was not able to reach anyone on either day and left a voicemail asking CBP to provide an estimated date of completion for the FOIA requests.

14. CBP never provided an estimated date of completion for the requests.

15. As of the date of this filing, Defendants have not issued a determination for the FOIA request, which was granted expedited processing.

16. As of the date of this filing, Defendants have not complied with FOIA and have released no records responsive to the requests.

**COUNT I – JULY 31, 2020 FOIA REQUEST  
DEFENDANTS’ FOIA VIOLATION**

17. The above paragraphs are incorporated by reference.

18. CATO INSTITUTE’s FOIA request seeks the disclosure of agency records and was properly made.

19. Defendants are federal agencies subject to FOIA.

20. Included within the scope of the request are one or more records or portions of records that are not exempt under FOIA.

21. Defendants have failed to conduct a reasonable search for records responsive to the request.

22. Defendants have failed to issue a complete determination within the statutory deadline.

23. Defendants have failed to produce all non-exempt records responsive to the request.

**WHEREFORE**, CATO INSTITUTE asks the Court to:

- i. declare that Defendants have violated FOIA;
- ii. order Defendants to conduct a reasonable search for records responsive to the requests;
- iii. order Defendants to issue a complete determination for all requests at issue in this case;
- iv. order Defendants produce all non-exempt records responsive to the requests or portions of records promptly;
- v. enjoin Defendants from withholding non-exempt public records under FOIA;
- vi. award CATO INSTITUTE attorneys' fees and costs; and
- vii. award any other relief the Court considers appropriate.

Dated: May 1, 2023

RESPECTFULLY SUBMITTED,

/s/ Matthew V. Topic

Attorney for Plaintiff,  
CATO INSTITUTE

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