

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

ELECTRONIC FRONTIER FOUNDATION)
815 Eddy Street)
San Francisco, CA 94109,)
)
Plaintiff,)
)
v.)
)
UNITED STATES POSTAL SERVICE)
475 L'Enfant Plaza SW)
Washington, DC 20260,)
)
Defendant.)
)

COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, for injunctive and other appropriate relief. Plaintiff seeks the release of records requested from defendant United States Postal Service’s component, the United States Postal Inspection Service. Specifically, plaintiff seeks the disclosure of records pertaining to the operation of the United States Postal Inspection Service’s Internet Covert Operations Program and its social media surveillance operations. The Postal Service has secretly combed through the online expression of social media users, raising concerns about chilling the privacy and expressive activity of internet users. The extent of this operation is still unknown.

JURISDICTION AND VENUE

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

PARTIES

3. Plaintiff Electronic Frontier Foundation (“EFF”) is a not-for-profit corporation established under the laws of the Commonwealth of Massachusetts, with offices in San Francisco, California and Washington, D.C. EFF is a member-supported organization working to inform policymakers and the general public about civil liberties issues related to technology and to act as a defender of those liberties. In support of its mission, EFF uses the FOIA to obtain and disseminate information concerning the activities of federal agencies.

4. Defendant United States Postal Service (“USPS”) is an “agency” within the meaning of 5 U.S.C. § 552(f). The United States Postal Investigation Service (USPIS) is a component of USPS.

BACKGROUND

5. On April 21, 2021, *Yahoo News* reported that the USPS’s law enforcement arm, USPIS, operates a social-media surveillance program. The report described how USPIS’s program sorts through massive amounts of data created by social media users to surveil their expression. The report provided little explanation as to the program’s purpose, any legal justifications for the program, or any safeguards used to protect people’s civil liberties. This shadowy surveillance program has likely swept up internet users’ speech on Facebook, Twitter, and other popular social media sites.

6. According to the above-mentioned report by Jana Winter entitled “The Postal Service Is Running a ‘Covert Operations Program’ that Monitors Americans’ Social Media Posts,” USPIS analysts review social media posts as part of a program called the Internet Covert Operations Program (iCOP). According to a government bulletin dated March 16th, 2021 USPIS analysts monitored social media activity in advance of protests scheduled for March 20th, 2021. These analysts in turn reported their findings to a Department of Homeland Security (DHS) fusion

center. This bulletin is the first known public reporting on iCOP. This request seeks further records about iCOP.

7. Social media monitoring has serious consequences for all internet users' civil liberties. Social media monitoring chills and suppresses speech online: when users know they are being monitored, they frequently self-censor out of fear that any and all online speech can be used to discipline, control, or harm them. Social media monitoring also enables officials to misuse people's social media activity as a potential source of leverage and control. This surveillance exercises control regardless of whether speech is unprotected and regardless of online speech's political, cultural, sexual, and personal value. Through a combination of overbroad data collection and analysis, social media monitoring renders suspicious what is otherwise banal. Social media surveillance can combining a users' disparate speech on different platforms and can make practically obscure expression easily available to prying government eyes. Social media monitoring in this way threatens constitutional guarantees of free expression and privacy. In light of these concerns, EFF filed the April 29, 2021 FOIA request to understand the purpose of the program, its legal basis, and any steps USPS has taken to address these concerns.

Plaintiff EFF's FOIA Requests

8. By letter dated April 29, 2021 EFF submitted a FOIA request to USPS via defendant USPS's online FOIA portal. EFF directed the request at component USPS's FOIA office and sought:

- Any and all memorandums, documents or other records pertaining to or reflecting the creation and operation of iCOP and/or any other related social media monitoring or social media surveillance programs.
- Any and all memorandum, documents, or other records describing or reflecting any policies, practices, guidelines, or standards concerning USPS's use of iCOP or other social media surveillance programs.

- Any and all documents, including training manuals, that document or reflect instructions or training provided to USPIS personnel concerning iCOP or other social media monitoring surveillance conducted by the USPS and USPIS.
- Any and all documents reflecting communications or discussions between USPIS and any other federal agency or component, including the Department of Homeland Security, concerning the collection, analysis, and/or use of social media surveillance information involving iCOP or other social media monitoring surveillance conducted by USPIS.
- Any documents reflecting communications or discussions between USPIS and any other local, state, or other non-federal agency pertaining to the collection, analysis, use of social media surveillance information involving iCOP or other social media monitoring surveillance conducted by USPIS.
- Any and all legal memoranda or similar documents describing the lawfulness and/or propriety of the iCOPs or similar social media surveillance programs USPIS, including any documents that discuss or reflect any legal or other limits the USPIS places on iCOP or similar programs.
- Any and all documents reflecting the case name, docket number, and court of all criminal prosecutions, current or past, in which USPIS or any other federal agency (or any officer or agent thereof) used iCOPs or similar social media surveillance programs to obtain evidence, records, or any other information in conjunction with the criminal prosecution.

9. EFF's request also sought a news media fee benefit and a public interest fee waiver with respect to the requested records.

10. By letter dated May 4, 2021 USPS stated that it was redirecting EFF's FOIA request to the USPIS FOIA office and assigned it a tracking number of 2021-FPIS-00338.

11. By letter dated May 5, 2021, USPS's component USPIS acknowledged EFF's FOIA request and granted EFF's request for a news media fee benefit.

12. To date, defendant USPS's component USPIS has not responded to EFF's FOIA request in substance.

13. To date, defendant USPS's component USPIS has not yet released a single document responsive to EFF's FOIA request.

14. Defendant USPS's component USPIS has exceeded the twenty-day statutory

deadline for the processing of any FOIA request.

15. EFF has exhausted the applicable administrative remedies with respect to its FOIA request to defendant USPS's component USPIS dated April 29, 2021.

16. Defendant USPS's component USPIS has wrongfully withheld the requested records from EFF.

17. Defendant USPS's component USPIS has wrongfully denied EFF's request for a public interest fee waiver with respect to its records request.

CAUSES OF ACTION

Violation of the Freedom of Information Act for Wrongful Withholding of Agency Records

18. Plaintiffs repeat and reallege paragraphs 1-17.

19. Defendant's component USPIS has wrongfully withheld agency records requested by EFF by failing to comply with the statutory time limit for the processing of FOIA requests.

20. EFF has exhausted the applicable administrative remedies with respect to defendant's wrongful withholding of the requested records.

21. EFF is entitled to injunctive relief with respect to the release and disclosure of the requested documents.

Violation of the Freedom of Information Act for Wrongful Denial of a Request for a Waiver of All Processing Fees

22. Plaintiff repeats and realleges paragraphs 1-17.

23. Defendant's component USPIS has wrongfully denied Plaintiff's request for a public interest fee waiver of all search, processing, and duplication fees by failing to comply with the statutory time limit for responding to Plaintiff's request.

24. Plaintiff has exhausted the applicable administrative remedies with respect to Defendant's component's wrongful denial of Plaintiff's request for a public interest fee waiver of

all search, processing, and duplication fees.

25. Plaintiff is entitled to injunctive relief with respect to its request for a public interest fee waiver of all search, processing, and duplication fees.

REQUESTED RELIEF

WHEREFORE, plaintiffs pray that this Court:

1. order defendant to process immediately the requested records in their entirety;
2. order defendant to disclose the requested records in their entirety and make copies available to plaintiffs;
3. order defendant to waive all fees associated with the search, processing, duplication, and release of the requested records;
4. provide for expeditious proceedings in this action;
5. award plaintiff its costs and reasonable attorney's fees incurred in this action; and
6. grant such other relief as the Court may deem just and proper.

DATED: July 27, 2021

Respectfully submitted,

By: /s/ David L. Sobel

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