

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TECHSERVE ALLIANCE, F/K/A
NATIONAL ASSOCIATION OF
COMPUTER CONSULTANT
BUSINESSES
1420 King Street, Suite 610
Alexandria, VA 22314

Plaintiff,

v.

JANET NAPOLITANO
SECRETARY OF HOMELAND SECURITY)
Department of Homeland Security)
U.S. Department of Homeland Security)
Washington, DC 20528)

ALEJANDRO MAYORKAS)
DIRECTOR)
U.S. CITIZENSHIP AND IMMIGRATION)
SERVICES)
U.S. Citizenship and Immigration Services)
20 Massachusetts Avenue, N.W.)
Washington, D.C. 20529-2000)

Defendants.

Civil Action No. _____

COMPLAINT

I. Introduction

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, to compel the Secretary of Homeland Security and the Director of the United States Citizenship and the Immigration Services ("USCIS") to release documents requested under FOIA and for which the Secretary and Director have not timely asserted that any FOIA exemption applies.

II. Jurisdiction and Venue

2. This Court has jurisdiction under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331. Venue is proper in this district under 28 U.S.C. § 1391(e).

III. Parties

3. The Plaintiff, TechServe Alliance, is an association of information technology (“IT”) staffing, IT solutions and IT consulting firms that deploy tens of thousands of affiliated professionals. TechServe’s members are petitioners for H-1B Visas on behalf of their prospective and current employees. TechServe was formerly known as the National Association of Computer Consultant Businesses (“NACCB”) and the request at issue here was submitted while TechServe was operating under its prior name, NACCB.
4. Defendant Janet Napolitano is the Secretary of Homeland Security. The United States Citizenship and Immigration Services is a non-independent agency within her department and subject to her supervision. Defendant Napolitano is being sued in her official capacity only. DHS is an agency within the meaning of 5 U.S.C. §§ 551, 552(f).
5. Defendant Alejandro Mayorkas is the Director of the United States Citizenship and Immigration Services, which is a non-independent agency within the United States Department of Homeland Security and is directly or through one of its subordinate entities, the custodian of the records at issue. USCIS is an agency within the meaning of 5 U.S.C. §§ 551, 552(f).

IV. Statutory Framework

6. FOIA requires agencies of the federal government to release requested information to the public unless a specified statutory exemption applies.
7. An agency must respond to a party making a FOIA request within twenty working days, notifying the party of at least its determination whether to provide the requested information and the reasons therefor, and of the requester's right to appeal any negative determination by the head of the agency. 5 U.S.C. § 552(a)(6)(A)(i); *see also* 6 C.F.R. § 5.5.
8. An agency may delay its response, but only "[i]n unusual circumstances" and only following written notification to the requester setting forth the unusual circumstances and providing a date on which a determination is expected to be dispatched. 5 U.S.C. § 552(a)(6)(B)(i). The agency may not delay indefinitely.

V. Factual Background

9. By letter dated April 15, 2009, TechServe, under its former name, NACCB, submitted a FOIA request seeking a copy of documents relating to H-1B petitions and related policies. A copy of that request is attached as Exhibit A and incorporated by reference.
10. By letter dated April 22, 2009, defendant USCIS acknowledged TechServe's FOIA request and notified TechServe that it had assigned the request Case No. NRC2009022434. A copy of the April 22, 2009 letter from USCIS to TechServe is attached as Exhibit B.
11. The USCIS letter made no reference to appeal rights nor did it indicate whether or when any documents would be released to NACCB.

12. Since April 22, 2009, TechServe has received no written communications from defendants. The defendants have failed to produce any records responsive to the request or to demonstrate that responsive records are exempt from production. Nor have defendants indicated when any responsive records will be produced.
13. Because defendants failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A) or failed to extend that time limit pursuant to 5 U.S.C. § 552(a)(6)(B), plaintiff is deemed to have exhausted any and all administrative remedies with respect to its FOIA request pursuant to 5 U.S.C. § 552(a)(6)(C).

VI. Claim

Count I (Violation of the Freedom of Information Act) (5 U.S.C. § 552)

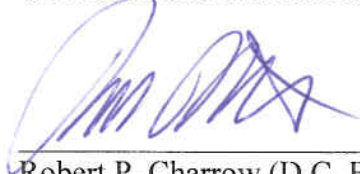
14. Plaintiff realleges paragraphs 1-13.
15. Defendants have violated FOIA by failing to produce any and all non-exempt records responsive to TechServe's April 15, 2009 request within the twenty-day period required by 5 U.S.C. § 552(a)(6)(A)(i) and by failing to demonstrate that any withheld records responsive to the request are exempt from production.
16. Defendants have violated FOIA by not providing TechServe written notice of any unusual circumstances and/or providing a date on which a determination is expected to be dispatched. *See* 5 U.S.C. § 552(a)(6)(B)(i).
17. TechServe is being irreparably harmed by reason of defendants' violation of FOIA, and plaintiff will continue to be irreparably harmed unless defendants are compelled to conform their conduct to the requirements of law.

WHEREFORE, Plaintiff respectfully requests that the Court:

1. Declare defendants' failure to comply with FOIA to be unlawful;
2. Order defendants to search for and produce any and all non-exempt records responsive to TechServe's April 15, 2009 request and to prepare a *Vaughn* index of allegedly exempt records responsive to the request by a date certain;
3. Provide for expeditious proceedings in this action;
4. Enjoin defendants from continuing to withhold any and all non-exempt records responsive to the request;
5. Award plaintiff attorney's fees and litigation costs reasonably incurred in this action as authorized by 5 U.S.C. § 552(a);
6. Retain jurisdiction over this matter to resolve any disputes over the propriety of claimed exemptions, should any be claimed; and
7. Grant plaintiff such other relief as the Court deems appropriate.

Respectfully submitted,

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