

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

BUZZFEED, INC.,
111 East 18th Street, 13th Floor
New York, NY 10003,

PETER ALDHOUS,
989 Market Street, Suite 490
San Francisco, CA 94103,

and

CHARLES SEIFE,
2 Washington Square Village #2R
New York, NY 10012,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE,
950 Pennsylvania Avenue, NW
Washington, DC 20530,

Defendant.

Case No.

COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Plaintiffs BuzzFeed, Inc., Peter Aldhous, and Charles Seife seek injunctive and other appropriate relief to compel the processing and disclosure of agency records requested from the Federal Bureau of Investigation.

Jurisdiction and Venue

2. This Court has 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).

The Parties

3. Plaintiff BuzzFeed, Inc. is a cross-platform media corporation with its principal place of business in New York, New York. BuzzFeed, Inc. is the parent company of BuzzFeed News, a global news organization.

4. Plaintiff Peter Aldhous is a BuzzFeed News staff reporter. He also teaches investigative and policy reporting in the Science Communication Program at the University of California, Santa Cruz and data visualization at the Graduate School of Journalism at the University of California, Berkeley. He resides in San Francisco, California.

5. Plaintiff Charles Seife is a Professor of Journalism at the Arthur L. Carter Journalism Institute at the New York University, where he teaches data journalism and investigative journalism. He is also a BuzzFeed News contributor. He resides in New York, New York.

6. Defendant Department of Justice (DOJ) is a Department of the Executive Branch of the United States Government. DOJ is an “agency” within the meaning of 5 U.S.C. § 552(f). The Federal Bureau of Investigation (FBI) is a component within defendant DOJ.

Background

7. The FBI performs aerial surveillance via aircraft in the United States.¹ This program has been the subject of increasing public debate and interest. BuzzFeed News has published a number of articles on the FBI’s aerial surveillance program, including a report that showed how FBI planes circled the mosque attended by one of the perpetrators of the San

¹ *Press Release: FBI Aviation Program: Purpose and Scope*, FEDERAL BUREAU OF INVESTIGATION (June 4, 2015), <https://www.fbi.gov/news/pressrel/press-releases/fbi-aviation-program-purpose-and-scope>.

Bernardino shooting.²

8. Former FBI Director James Comey publicly testified before Congress that the FBI uses aircraft in “predicated investigations to conduct surveillance of people who are under investigation,” and he confirmed that the agency flew surveillance aircraft over Ferguson, Missouri after Michael Brown was killed by a police officer in 2014.³ When the program became a subject of news coverage in Baltimore following the death of Freddie Gray, FBI spokesman Christopher Allen told the press that “the FBI’s aviation program is not secret.”⁴

9. The Federal Aviation Administration (FAA) maintains databases of aircraft registration information. Current registration information is publicly available online for free.⁵ Any member of the public can request historical registration information and airworthiness certificates, which list alterations and modifications to planes, for a small fee.⁶ Journalists have used registration information to determine which planes belong to the FBI and other government agencies.⁷ In 2015, the Associated Press published an article naming a number of fictitious

² Peter Aldhous and Charles Seife, *Spies in the Skies*, BUZZFEED (Apr. 6, 2016); *see also* Peter Aldhous, *Government Spy Planes Circled Over The Democratic Convention More Intensely Than GOP Event*, BUZZFEED (Aug. 1, 2016); Peter Aldhous, *Here’s What FBI Spy Planes Saw In Baltimore Above The Freddie Gray Protests*, BUZZFEED (Aug. 5, 2016).

³ *Oversight of the Federal Bureau of Investigation Before H. Comm. on the Judiciary*, 114th Cong. 31 (2016) (oral testimony of James B. Comey, Dir. of the Fed. Bureau of Investigation).

⁴ Jack Gillum, Eileen Sullivan, & Eric Tucker, *FBI Behind Mysterious Surveillance Aircraft Over US Cities*, AP: THE BIG STORY (June 2, 2015).

⁵ *Aircraft Registry*, FED. AVIATION ADMIN., http://registry.faa.gov/aircraftinquiry/Aircraft_Inquiry.aspx.

⁶ *See Aircraft Certification: Request Copies of Aircraft Records*, FED. AVIATION ADMIN., https://www.faa.gov/licenses_certificates/aircraft_certification/aircraft_registry/copies_aircraft_records.

⁷ *See Spies in the Skies: Support Documentation*, <http://buzzfeednews.github.io/2016-04-federal-surveillance-planes/analysis.html>.

companies to which planes used by the FBI are registered.⁸ Planes registered under the names of those companies are still flown by the FBI today.

10. In May 2015, in the midst of public protests in Baltimore after the killing of Freddie Gray, the American Civil Liberties Union (ACLU) requested under the FOIA agency records about planes that were spotted flying over that city. In September 2015, the FBI released 133 pages of documents in response to the ACLU's request, including 19 pages of redacted FBI flight logs and evidence logs. The FBI also released surveillance video from those flights.⁹

BuzzFeed's FOIA Request

11. On March 4, 2016, BuzzFeed journalists Peter Aldhous and Charles Seife requested under the FOIA agency records regarding FBI surveillance or monitoring flights. The request specifically sought evidence logs and flight logs associated with the following planes from August 15, 2015 to the date of the request:

- A. Aircraft operating in the greater DC/Baltimore area with tail numbers N208EB, N467TS, N539MY, N610AG, N629ET, N632MR, N632TK, N728MP and N859JA;
- B. Aircraft operating in California with tail numbers N143GS, N168DK, N301A, N404KR, N514NY, N610AG, N632TK, N657TP, N879WM and N956D; and
- C. Aircraft operating in the greater New York area with tail numbers N232DW, N236KS, N461AJ, N520EP, N629BA, N687RT, N910LF, N912EX, N916WR, and N6971A.

12. The request noted that the records BuzzFeed sought were narrower in scope than those requested by the ACLU in May 2015.

⁸ *FBI Behind Mysterious Surveillance Aircraft Over US Cities.*

⁹ Nathan Freed Wessler & Naomi Dwork, *FBI Releases Secret Spy Plane Footage From Freddie Gray Protests*, ACLU SPEAK FREELY BLOG (Aug. 4, 2016), <https://www.aclu.org/blog/speak-freely/fbi-releases-secret-spy-plane-footage-freddie-gray-protests>.

13. In a May 2, 2016, response to BuzzFeed's request, the FBI stated, "[I]t is the FBI's policy to neither confirm nor deny the existence of any records which would disclose techniques and procedures used for law enforcement investigations or prosecutions. Acknowledging these techniques and procedures invites the risk of circumvention of federal law enforcement efforts. Thus, pursuant to FOIA exemption (b)(7)(E) [18 U.S.C. § 552(b)(7)(E)], the FBI neither confirms nor denies the existence of the records for the aircraft tail numbers listed in your request." The FBI advised BuzzFeed that it could file an appeal with the DOJ Office of Information Policy (OIP) within sixty (60) days of the date of the determination.

14. BuzzFeed submitted a timely appeal to OIP on June 8, 2016. The appeal noted that the FBI has publicly admitted that it maintains a fleet of surveillance aircraft that conduct flights over the United States, and again pointed out the FBI had released agency documents in response to a similar FOIA request from the ACLU.

15. On September 20, 2016, OIP affirmed the FBI's action on the request.

16. Plaintiffs have exhausted the applicable administrative remedies.

17. Defendant DOJ and the FBI have wrongfully withheld the requested records from Plaintiffs.

CAUSE OF ACTION

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

18. Plaintiffs repeat and reallege paragraphs 1-17.

19. The FBI has wrongfully withheld agency records requested by Plaintiffs.

20. Plaintiffs have exhausted the applicable administrative remedies with respect to the FBI's wrongful withholding of the requested records.

21. Plaintiffs are entitled to injunctive relief with respect to the release and disclosure of the requested documents.

REQEUSTED RELIEF

Plaintiffs pray that this Court:

- A. Order defendant DOJ and its component to process immediately the requested records in their entirety;
- B. Order defendant DOJ and its component, upon completion of such processing, to disclose the requested records in their entirety and make copies available to the plaintiffs;
- C. Provide for expeditious proceedings in this action;
- D. Award the plaintiffs their costs and reasonable attorneys fees incurred in this action; and
- E. Grant such other relief as the Court may deem just and proper.

Respectfully submitted,

/s/ Marcia Hofmann
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