

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

JASON LEOPOLD,)
6824 Lexington Avenue)
Los Angeles, CA 90038)

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

Case No. 19-cv-3028

Plaintiffs,)

v.)

U.S. DEPARTMENT OF HOMELAND)
SECURITY,)
2707 Martin Luther King Jr. Avenue SE)
Washington, D.C. 20528)

U.S. IMMIGRATION & CUSTOMS)
ENFORCEMENT,)
500 12th St., SW)
Washington, D.C. 20536)

U.S. CUSTOMS AND BORDER)
PROTECTION,)
1300 Pennsylvania Ave NW)
Washington, D.C. 20229)

U.S. DEPARTMENT OF HOMELAND)
SECURITY OFFICE OF INSPECTOR)
GENERAL,)
245 Murray Lane SW)
Washington, D.C. 20528)

Defendants.)

COMPLAINT

1. Plaintiffs, JASON LEOPOLD and BUZZFEED INC., bring this Freedom of Information Act suit to force Defendants U.S. DEPARTMENT OF HOMELAND SECURITY, U.S. IMMIGRATIONS AND CUSTOMS ENFORCEMENT, U.S. CUSTOMS AND BORDER

PROTECTION, and U.S. DEPARTMENT OF HOMELAND SECURITY OFFICE OF INSPECTOR GENERAL to produce records relating or referring to specific deceased individuals who died while in custody of ICE.

PARTIES

2. Plaintiffs JASON LEOPOLD and BUZZFEED INC. are members of the media and made the FOIA requests at issue in this case.

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

4. Defendant U.S. IMMIGRATION & CUSTOMS ENFORCEMENT (“ICE”) is a component of DHS and is subject to the Freedom of Information Act, 5 U.S.C. § 552.

5. Defendant U.S. CUSTOMS AND BORDER PROTECTION (“CBP”) is a component of DHS and is subject to the Freedom of Information Act, 5 U.S.C. § 552.

6. Defendant U.S. DEPARTMENT OF HOMELAND SECURITY OFFICE OF INSPECTOR GENERAL (“DHS OIG”) is a component of DHS and is subject to the Freedom of Information Act, 5 U.S.C. § 552.

JURISDICTION AND VENUE

7. 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.

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

JULY 2, 2019, FOIA REQUEST (DHS)

9. On July 2, 2019, Plaintiffs submitted a FOIA request to DHS for “[a]ll records, which includes but is not limited to emails, after action reports, reports of investigations, external investigations, search, arrest and seizure records, alien health records, records memorializing repatriation, relating or referring to the following deceased individuals who died while in custody

of ICE at the locations listed” in the excerpts from press stories that Plaintiffs included. Exhibit A.

10. Plaintiffs also requested a fee waiver for this request. Exhibit A.

11. DHS never acknowledged the request.

12. As the date of this filing, DHS has not issued a determination and has produced no records responsive to the request.

JULY 2, 2019, FOIA REQUEST (ICE)

13. On July 2, 2019, Plaintiffs submitted a FOIA request to ICE for “[a]ll records, which includes but is not limited to emails, after action reports, reports of investigations, external investigations, search, arrest and seizure records, alien health records, records memorializing repatriation, relating or referring to the following deceased individuals who died while in custody of ICE at the locations listed” in the excerpts from press stories that Plaintiffs included. Exhibit A.

14. Plaintiffs also requested a fee waiver for this request. Exhibit A.

15. On July 30, 2019, ICE acknowledged receipt of the request and assigned 2019-ICFO-49677 to the matter. ICE also invoked a 10-day extension for the request. Exhibit B.

16. As the date of this filing, ICE has not issued a determination and has produced no records responsive to the request.

JULY 2, 2019, FOIA REQUEST (CBP)

17. On July 2, 2019, Plaintiffs submitted a FOIA request to CBP for “[a]ll records, which includes but is not limited to emails, after action reports, reports of investigations, external investigations, search, arrest and seizure records, alien health records, records memorializing repatriation, relating or referring to the following deceased individuals who died while in custody

of ICE at the locations listed” in the excerpts from press stories that Plaintiffs included. Exhibit A.

18. Plaintiffs also requested a fee waiver for this request. Exhibit A.

19. CBP never acknowledged the request.

20. As the date of this filing, CBP has not issued a determination and has produced no records responsive to the request.

JULY 2, 2019, FOIA REQUEST (DHS OIG)

21. On July 2, 2019, Plaintiffs submitted a FOIA request to DHS OIG for “[a]ll records, which includes but is not limited to emails, after action reports, reports of investigations, external investigations, search, arrest and seizure records, alien health records, records memorializing repatriation, relating or referring to the following deceased individuals who died while in custody of ICE at the locations listed” in the excerpts from press stories that Plaintiffs included. Exhibit A.

22. Plaintiffs also requested a fee waiver for this request. Exhibit A.

23. DHS OIG never acknowledged the request.

24. As the date of this filing, DHS OIG has not issued a determination and has produced no records responsive to the request.

COUNT I – DHS’S FOIA VIOLATION

25. The above paragraphs are incorporated herein.

26. DHS is a federal agency and is subject to FOIA.

27. The requested records are not exempt under FOIA.

28. DHS has refused to produce the requested materials in a timely manner.

COUNT II – ICE’S FOIA VIOLATION

29. The above paragraphs are incorporated herein.

30. ICE is a component of DHS and is subject to FOIA.
31. The requested records are not exempt under FOIA.
32. ICE has refused to produce the requested materials in a timely manner.

COUNT III – CBP’S FOIA VIOLATION

33. The above paragraphs are incorporated herein.
34. CBP is a component of DHS and is subject to FOIA.
35. The requested records are not exempt under FOIA.
36. CBP has failed to produce the requested materials in a timely manner.

COUNT IV – DHS OIG’S FOIA VIOLATION

37. The above paragraphs are incorporated herein.
38. DHS OIG is a component of DHS and is subject to FOIA.
39. The requested records are not exempt under FOIA.
40. DHS OIG has failed to produce the requested materials in a timely manner.

WHEREFORE, Plaintiffs ask the Court to:

- i. declare that Defendants have violated FOIA;
- ii. order Defendants to conduct a reasonable search for records and to produce the requested records;
- iii. enjoin Defendants from withholding non-exempt public records under FOIA;
- iv. award Plaintiffs attorneys’ fees and costs;
- v. award such other relief the Court considers appropriate.

Dated: October 10, 2019

RESPECTFULLY SUBMITTED,

/s/ Matthew V. Topic

Attorney for Plaintiffs

Matthew Topic, IL0037
Joshua Burday, IL0042
Merrick Wayne, IL 0058
LOEVY & LOEVY
311 North Aberdeen, 3rd Floor
Chicago, IL 60607
312-243-5900
foia@loevy.com