

continuing to withhold agency records and ordering the production of agency records improperly withheld.

PARTIES

5. Plaintiff Fix the Court is a national, non-partisan grassroots organization, created to take the Supreme Court to task for its lack of accountability and transparency and to push Chief Justice John Roberts and the court's associate justices to enact basic yet critical reforms to make the court more open and honest.

6. Defendant the U.S. Department of Justice (DOJ) is a department of the executive branch of the U.S. government headquartered in Washington, D.C., and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). DOJ has possession, custody, and control of the records that Fix the Court seeks.

STATEMENT OF FACTS

The Kavanaugh Records Request

7. On May 8, 2017, Fix the Court submitted a FOIA request to DOJ seeking: “[a]ll correspondence sent by U.S. Department of Justice personnel to Brett M. Kavanaugh and all correspondence sent by Brett M. Kavanaugh to U.S. Department of Justice personnel from January 20, 2001, to May 30, 2006.”

8. Fix the Court further clarified that responsive records should include “all digital (e-mail), print or other correspondence and attachments including instances where [Mr. Kavanaugh] was merely carbon copied (CC’d)” during the stated time frame.

9. In telephone and email correspondence on August 14, 2017 and August 15, 2017, DOJ requested that Fix the Court narrow its request to a search of the email accounts of the heads of the Office of Legal Counsel during the stated time period.

10. In an effort to work cooperatively with DOJ, Fix the Court agreed to narrow its request, and on September 5, 2017, sent a revised request to DOJ seeking: “[a]ll correspondence sent by the Assistant Attorney General in charge of the Office of Legal Counsel and his or her primary deputy to Brett M. Kavanaugh and all correspondence sent by Brett M. Kavanaugh to the Assistant Attorney General in charge of the Office of Legal Counsel and his or her primary deputy from January 20, 2001, to May 30, 2006.”

11. Fix the Court restated its clarification that responsive records should include “all digital (e-mail), print or other correspondence and attachments among and between the stated individuals including instances where [Mr. Kavanaugh] was merely carbon copied (CC’d)” during the stated time frame.

12. DOJ acknowledged the request on September 5, 2017.

13. On October 17, 2017, Fix the Court requested an update on the status of its request.

14. DOJ responded on October 20, 2017 that there was “not really” any update, and that the “request [was] still in queue for processing.”

15. Fix the Court followed up with DOJ again in December 2017, and on December 22, 2017, DOJ informed Fix the Court that its “request [was] in the queue behind many other requests[.]”

16. On May 14, 2018, having received no further response, Fix the Court requested another status update from DOJ.

17. On May 25, 2018, DOJ responded that, “[u]nfortunately, the status for this request remains the same.”

Exhaustion of Administrative Remedies

18. As of the date of this complaint, DOJ has failed to (a) notify Fix the Court of any determination regarding its FOIA requests, including the scope of any responsive records DOJ intends to produce or withhold and the reasons for any withholdings; or (b) produce the requested records or demonstrate that the requested records are lawfully exempt from production.

19. Through DOJ's failure to respond to Fix the Court's FOIA requests within the time period required by law, Fix the Court has constructively exhausted its administrative remedies and seeks immediate judicial review.

COUNT I
Violation of FOIA, 5 U.S.C. § 552
Failure to Conduct Adequate Search for Responsive Records

20. Fix the Court repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

21. Fix the Court properly requested records within the possession, custody, and control of DOJ.

22. DOJ is an agency subject to FOIA and must therefore make reasonable efforts to search for requested records.

23. DOJ has failed to promptly review agency records for the purpose of locating those records which are responsive to Fix the Court's FOIA requests.

24. DOJ's failure to conduct an adequate search for responsive records violates FOIA.

25. Plaintiff Fix the Court is therefore entitled to injunctive and declaratory relief requiring Defendant to promptly make reasonable efforts to search for records responsive to Fix the Court's FOIA requests.

COUNT II
Violation of FOIA, 5 U.S.C. § 552
Wrongful Withholding of Non-Exempt Responsive Records

26. Fix the Court repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

27. Fix the Court properly requested records within the possession, custody, and control of DOJ.

28. DOJ is an agency subject to FOIA and must therefore release in response to a FOIA requests any non-exempt records and provide a lawful reason for withholding any materials.

29. DOJ is wrongfully withholding non-exempt agency records requested by Fix the Court by failing to produce non-exempt records responsive to its FOIA requests.

30. DOJ is wrongfully withholding non-exempt agency records requested by Fix the Court by failing to segregate exempt information in otherwise non-exempt records responsive to Fix the Court's FOIA requests.

31. DOJ's failure to provide all non-exempt responsive records violates FOIA.

32. Plaintiff Fix the Court is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to its FOIA requests and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.

REQUESTED RELIEF

WHEREFORE, Fix the Court respectfully requests the Court to:

- (1) Order Defendant to conduct a search or searches reasonably calculated to uncover all records responsive to Fix the Court's FOIA request;

- (2) Order Defendant to produce, within twenty days of the Court's order, or by such other date as the Court deems appropriate, any and all non-exempt records responsive to Fix the Court's FOIA requests and indexes justifying the withholding of any responsive records withheld under claim of exemption;
- (3) Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Fix the Court's FOIA requests;
- (4) Award Fix the Court the costs of this proceeding, including reasonable attorneys' fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (5) Grant Fix the Court such other relief as the Court deems just and proper.

Dated: July 10, 2018

Respectfully submitted,

/s/ Elizabeth France

Elizabeth France
D.C. Bar No. 999851

/s/ Austin R. Evers

Austin R. Evers
D.C. Bar No. 1006999

AMERICAN OVERSIGHT
1030 15th Street NW, B255
Washington, DC 20005
(202) 869-5244
beth.france@americanoversight.org
austin.evers@americanoversight.org

Counsel for Plaintiff Fix the Court