

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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FIX THE COURT,	)
1440 G St. NW, Ste. 800	)
Washington, DC 20005	)
	)
<i>Plaintiff,</i>	)
	)
v.	) Case No. 18-cv-2091
	)
U.S. DEPARTMENT OF	)
JUSTICE,	)
950 Pennsylvania Avenue NW	)
Washington, DC 20530	)
	)
<i>Defendant.</i>	)
	)
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**COMPLAINT**

1. Plaintiff Fix the Court brings this action against the U.S. Department of Justice under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201, and 2202.

3. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

4. Because Defendant has failed to comply with the applicable time-limit provisions of the FOIA, Fix the Court is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and is now entitled to judicial action enjoining the agency from

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's Office of Legal Policy ("OLP") has possession, custody, and control of the records that Fix the Court seeks.

### **STATEMENT OF FACTS**

#### *The Kavanaugh Records Request*

7. On July 24, 2018, Fix the Court submitted a FOIA request to DOJ seeking: "all correspondence sent by Office of Legal Policy personnel to Brett M. Kavanaugh and all correspondence sent by Brett M. Kavanaugh to Office of Legal Policy personnel from January 20, 2001, to May 30, 2006."

8. Fix the Court further clarified that responsive records should include "all memos and all e-mail, print or other correspondence and attachments including instances where [Judge Kavanaugh] was merely carbon copied (CC'd)."

9. In its request, Fix the Court requested expedition because the "American public has a substantial and urgent need to have access to public records concerning Mr. Kavanaugh's public service record to inform its understanding of the impending confirmation hearings."

10. DOJ first acknowledged the request on August 1, 2018, advising Fix the Court that the request was “already in the queue, received on July 24th and assigned to an analyst for processing . . . .”

11. On August 3, 2018, Vanessa R. Brinkmann, Senior Counsel at OIP, sent an acknowledgment letter to Fix the Court stating that she had “determined that [Fix the Court’s] request for expedited processing should be granted.” The letter further stated that DOJ needed to extend the time limit to respond to Fix the Court’s FOIA request by ten additional days pursuant to 5 U.S.C. § 552(a)(6)(B)(i)-(iii).

12. On September 4, 2018, Fix the Court requested an update on the status of its request via telephone. DOJ responded that because the request had been placed in the expedited queue and had been deemed a “narrow” request, DOJ would not further expedite the release of documents.

*Exhaustion of Administrative Remedies*

13. As of the date of this complaint, DOJ has failed to (a) notify Fix the Court of any determination regarding its FOIA request, 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.

14. Through DOJ’s failure to respond to Fix the Court’s FOIA request 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**

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

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

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

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

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

20. 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 request.

**COUNT II**

**Violation of FOIA, 5 U.S.C. § 552**

**Wrongful Withholding of Non-Exempt Responsive Records**

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

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

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

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

25. 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 request.

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

27. 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 request 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 request 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 request;
- (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: September 6, 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

/s/ Hart W. Wood

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