UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERATION FOR AMERICAN IMMIGRATION REFORM,

Plaintiff,

v.

UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES,

Defendant.

Civil Action No. 23-3429 (JMC)

REPLY IN FURTHER SUPPORT OF DEFENDANT'S MOTION TO DISMISS

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Defendant United States Citizenship and Immigration Services ("Defendant" or "USCIS") by and through undersigned counsel, respectfully submits this reply in further support of its motion to dismiss. In its motion, Defendant demonstrated that Plaintiff's Freedom of Information Act ("FOIA") request failed to reasonably describe the records sought. ECF No. 10, Def.'s Mot. Plaintiff's response is unpersuasive. ECF No. 11, Pl.'s Opp'n. The Court should grant Defendant's motion and dismiss Plaintiff's Complaint in its entirety.

ARGUMENT

I. Plaintiff's FOIA Request Failed to Reasonably Describe the Records Sought

Plaintiff argues that its FOIA request is a "straightforward request for agency employee communication with one private individual." Pl.'s Opp'n at 2. However, that is not what Plaintiff's FOIA request says. Plaintiff seeks "[a]ll records of communication, including email correspondence, between USCIS employees and Tania Mattos, currently a director of advocacy and policy at the Envision Freedom Fund, from and including January 20, 2021 up to and including May 11, 2022." Compl. ¶ 9. If Plaintiff was simply seeking communication between Ms. Mattos and private individuals, it could have said so. It did not. The request plainly seeks "all records of" these communications. The fact that Plaintiff now seeks to clarify its request is unavailing, for "the Court, like the Agency, must read the request as drafted, not as [Plaintiff] 'might wish it was drafted.'" *Am. Ctr. for L. & Just. v. Dep't of Homeland Sec.*, 573 F. Supp. 3d 78, 86 (D.D.C. 2021). The way Plaintiff's request was drafted can easily and reasonably be interpreted to encompass documents related to communication between a USCIS employee and Ms. Mattos, such as notes from meetings. Plaintiff's argument that the Agency would not have to "speculate about" what Plaintiff seeks is wrong. *See* Pl.'s Opp'n at 7.

A FOIA request only reasonably describes the records if "a professional employee of the agency who was familiar with the subject area of the request [can] locate the record[s] with a

reasonable amount of effort." *Truitt v. Dep't of State*, 897 F.2d 540, 545 n.36 (D.C. Cir. 1990). Plaintiff concludes that its request would not require "a massive undertaking." *Id.* As previously established by Defendant, and not rebutted or addressed by Plaintiff, to respond to Plaintiff's vague request Defendant would need to search the records of all USCIS employees—more than 19,000[1] individuals. Plaintiff's response does not dispute that more than a reasonable amount of effort would be needed to search 19,000 individual's records of communications. *See, e.g., Krohn v. Dep't of Just.*, 628 F.2d 195, 198 (D.C. Cir. 1980) (holding that the request was "fatally flawed by lack of a reasonable description" because the request was "too vague" as it would require "the agency to review the entire record of 'each and every . . . criminal case' in order to determine whether it contains any evidence of the data, information or statistics that appellant requests").

Plaintiff asserts that this case is analogous to *Shapiro v. CIA*, 170 F. Supp. 3d 147 (D.D.C. 2016). *Shapiro*, however, does not address a situation where the agency would need to search every single employee's documents. Indeed, the court in *Shapiro* explained that the agency would not need to search every record in the system and instead would need to search only files likely to contain responsive material. *Id.* at 156. Here, Plaintiff's FOIA request would require searching every single USCIS employee's records of communications.

Tellingly, Plaintiff altogether fails to address Judge McFadden's on-point and persuasive opinion in *American Center for Law & Justice v. Department of Homeland Security*, 573 F. Supp. 3d 78, 88 (D.D.C. 2021). Judge McFadden found that a plaintiff's FOIA request would require more than a "reasonable amount of effort" to find responsive documents because the request

[1] *See* "Who We Are," https://www.uscis.gov/about-us/mission-and-core-values. In resolving a motion to dismiss, the Court may take judicial notice of information posted on official public websites of government agencies. *E.g., Cannon v. District of Columbia*, 717 F.3d 200, 205, n.2 (D.C. Cir. 2013); *Blue Water Balt. v. Pruitt*, 266 F. Supp. 3d 174, 177 n.4 (D.D.C. 2017).

encompassed every single one of the defendant's employees. *Am. Ctr.*, 573 F. Supp. 3d at 86. Plaintiff sidesteps this by asserting that all the Agency has to do is "search for Ms. Mattos' name, eliminate records that are not employee communications with her, and provide those that are to Plaintiff." Pl.'s Opp'n at 8. This overly simplified instruction does not change the "broad language" or "the applicability of that language" to all the agency's employees, a search that would be unduly burdensome. *See Am. Ctr.*, 573 F. Supp. 3d at 87.

CONCLUSION

For these reasons, the Court should grant Defendant's motion and dismiss this case in its entirety.

Dated: February 27, 2024

Respectfully submitted,

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