

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

	X	
THE NEW YORK TIMES COMPANY	:	
and CHARLIE SAVAGE,	:	
	:	
Plaintiffs,	:	
	:	<u>COMPLAINT</u>
- against -	:	
	:	
DEPARTMENT OF JUSTICE,	:	
	:	
Defendant.	:	
	X	

Plaintiffs THE NEW YORK TIMES COMPANY and CHARLIE SAVAGE (together, “The Times”), by their undersigned attorneys, allege as follows:

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), to obtain an order for the production of agency records from Defendant Department of Justice (“DOJ”) in response to a request properly made by Plaintiffs.
2. The records concern Omarosa Manigault Newman, who served as assistant to the president and director of communications for the White House Office of Public Liaison from January 2017 until December 2017.
3. After leaving her White House position, Ms. Manigault Newman published a book in August 2018 that was sharply critical of President Trump.
4. In June 2019, DOJ filed a civil complaint against her, alleging that she violated the Ethics in Government Act and seeking a fine of up to \$50,000.
5. DOJ’s legal action has raised the question of whether and how White House officials influenced the Justice Department decision to bring legal action against a Trump critic,

given the norm of Justice Department independence regarding individual law enforcement decisions.

PARTIES

6. Plaintiff The New York Times Company publishes *The New York Times* newspaper and www.nytimes.com. The New York Times Company is headquartered in this judicial district at 620 Eighth Avenue, New York, New York, 10018.

7. Plaintiff Charlie Savage is a reporter for *The New York Times* and an employee of The New York Times Company.

8. Defendant DOJ is an agency of the federal government that has possession and control of the records that Plaintiffs seek.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

10. Venue is premised on Plaintiffs' place of business and is proper in this district under 5 U.S.C. § 552(a)(4)(B).

11. Plaintiffs have exhausted all administrative remedies available in regard to the request at issue, pursuant to 5 U.S.C. § 704.

FACTS

The August 13, 2019 Request

12. On August 13, 2019, Mr. Savage submitted a FOIA request to DOJ for all emails since January 1, 2019 that contained either "Omarosa" or "Newman" and that were sent to, received by, or referenced communications with any official in the Executive Office of the President, the White House Counsel's Office, or elsewhere within the White House.

13. The Times limited the scope of this request to the accounts of a small subset of officials: Attorney General Barr or his chief of staff; Deputy Attorney General Rosen or his chief of staff; Principal Deputy Associate Attorney Generals Jesse Panuccio and Claire McCusker Murray or the chief of staff for the office of the associate attorney general; or Assistant Attorney General Joseph (Jody) Hunt or his chief of staff at the Civil Division.

14. On September 11, 2019, DOJ acknowledged receipt of the request and asserted that it fell within “unusual circumstances,” invoking the statutory right to take ten additional days to respond beyond the usual 20-day processing time.

15. On May 12, 2020, DOJ issued its initial response (under tracking number 145-FOI-16926), releasing just six pages of responsive records in full, as well as one page in part. It then stated that 41 additional pages of responsive records were exempt from disclosure under Exemptions 5 and 6 of FOIA.

16. On May 14, 2020, The Times sent via the FOIA STAR Portal an administrative appeal contesting the withholding of these forty-one pages.

17. On July 13, 2020, DOJ Administrative Appeals Staff denied The Times’s appeal (under tracking number 145-FOI-16926), reiterating that the responsive material was protected from disclosure under Exemptions 5 and 6.

COUNT

18. Plaintiff repeats, realleges, and reincorporates the allegations in the foregoing paragraphs as though fully set forth herein.

19. Defendant DOJ is subject to FOIA and must therefore release in response to a FOIA request any disclosable records in its possession at the time of the request and provide a lawful reason for withholding any materials as to which it is claiming an exemption.

20. DOJ has denied Plaintiffs' administrative appeal. Accordingly, Plaintiffs are deemed to have exhausted their administrative remedies under FOIA. *See* 5 U.S.C. § 704.

21. Neither Exemption 5 or 6 is applicable to the facts herein and DOJ must therefore release the withheld materials and disclose the redacted portions of produced material.

22. To the extent portions of a record are properly withheld, FOIA mandates the disclosure of any non-exempt material that can be segregated from exempt material. 5 U.S.C. § 552(a)(8)(A)(ii).

23. Accordingly, Plaintiffs are entitled to an order compelling DOJ to produce all records that are responsive to its FOIA request.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

24. Declare that the documents sought by its FOIA request, as described in the foregoing paragraphs, are public under 5 U.S.C. § 552 and must be disclosed;

25. Order DOJ to provide the requested documents to Plaintiffs within 20 business days of the Court's order;

26. Award Plaintiffs the costs of this proceeding, including reasonable attorney's fees, as expressly permitted by FOIA; and

27. Grant Plaintiffs such other and further relief as this Court deems just and proper.

Dated: New York, New York
July 23, 2020

/s/ David E. McCraw

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