

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

DAVE LEVINTHAL  
910 17<sup>th</sup> Street, N.W., 7<sup>th</sup> Floor  
Washington, DC 20006-2606, and

CENTER FOR PUBLIC INTEGRITY  
910 17<sup>th</sup> Street, N.W., 7<sup>th</sup> Floor  
Washington, DC 20006-2606,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION  
999 E Street, N.W.  
Washington, DC 20463,

Defendant.

Civil Action No. 15-1624  
ECF

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs, Dave Levinthal and the Center for Public Integrity (the Center), bring this action for declaratory and injunctive relief, alleging as follows:

**Nature of Action**

1. This is an action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as amended, to compel the production of certain agency records.

**Jurisdiction and Venue**

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

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

### **Parties**

4. Plaintiff Dave Levinthal is a senior investigative reporter employed by the Center for Public Integrity. His assignments include covering the Federal Election Commission and the influence of money in federal politics.

5. Plaintiff Center for Public Integrity is a District of Columbia corporation, a tax-exempt public charity and a nonprofit, nonpartisan, non-advocacy, independent journalism organization based in Washington, D.C. The Center's mission is "[t]o serve democracy by revealing abuses of power, corruption and betrayal of public trust by powerful public and private institutions, using the tools of investigative journalism." "About The Center for Public Integrity," <http://www.publicintegrity.org/about>.

6. Plaintiffs are the requesters of the withheld records.

7. Defendant, Federal Election Commission ("FEC"), is an agency of the United States. Defendant has possession of and control over the records that plaintiffs seek.

### **Plaintiffs' Freedom of Information Request**

8. By email dated July 6, 2015, addressed to FOIA@fec.gov, Plaintiffs requested a copy of a 2015 National Institute of Standards and Technology report — also known as the NIST study — pertaining to the Federal Election Commission's operations and currently in the FEC's possession [and] copies of any FEC emails, memoranda, correspondence or other documents that, in any form or fashion, mention or refer to this National Institute of Standards and Technology report, by name or otherwise.

### **Defendant's Processing of the Request**

9. On August 18, 2015, in an "interim response" to Plaintiffs' request, Defendant produced documents responsive to the second part of Plaintiffs' request. Defendant

acknowledged that it possesses additional responsive documents. Defendant denied the first part of Plaintiffs' request, for a copy of the NIST study.

10. Defendant has not yet issued a final determination with respect to Plaintiffs' request.

11. More than twenty working days have passed since Defendant received Plaintiffs' request. Plaintiffs have therefore exhausted all applicable administrative remedies with respect to records not yet produced that are responsive to the second part of Plaintiffs' request.

12. On August 18, 2015, Plaintiffs appealed Defendant's determination to withhold the NIST study.

13. On September 30, 2015, Defendant notified Plaintiffs that the administrative appeal was denied.

14. Defendant has not notified Plaintiffs that it is unable to redact portions of the NIST study which may be exempt from FOIA and to release segregable non-exempt portions. Upon information and belief, if portions of the NIST study are exempt from FOIA, there are reasonably segregable portions that are non-exempt.

15. Plaintiffs have a statutory right to the requested records, or to the non-exempt portions of the requested records, and there is no legal basis for Defendant's failure to make them available to Plaintiffs.

### **Demand for Relief**

WHEREFORE, Plaintiffs request that this Court:

1. Declare that Defendant's failure to disclose the records requested by Plaintiffs is unlawful;
2. Order Defendant to make the requested records available to Plaintiffs;

3. Award Plaintiffs their costs and reasonable attorneys' fees in this action; and
4. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

/S/

Peter Newbatt Smith  
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Attorney for Plaintiffs

October 5, 2015