

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

**THE WASHINGTON BLADE,**

and

**CHRISTOPHER C. JOHNSON**

c/o The Washington Blade

Civil Action No.

**Plaintiffs,**

**v.**

**U.S. DEPARTMENT OF STATE**

The Executive Office,  
Office of The Legal Adviser

**Defendant.**

**COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF FOR  
VIOLATION OF THE FREEDOM OF INFORMATION ACT**

Plaintiffs The Washington Blade and Christopher C. Johnson (collectively, the “Blade”),  
by and through their undersigned attorneys, allege as follows:

**Introduction**

1. The Blade brings this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, et seq., to enjoin the United States Department of State, Office of Information Programs and Services (“DOS”), from continuing to improperly withhold agency records that are responsive to a request sent by the Blade to DOS on September 25, 2020, seeking records of certain emails to and from the U.S. ambassador to Germany (“Request”), and directing the agency to promptly disclose the records.

2. DOS has taken no action in response to the Request, and has indicated that it will not fulfill the request until *more than three years* after the Request was made. In essence, DOS has kicked the can down the road so far that the purpose for which the requested records may be used will have long disappeared by the time they see the light of day.

3. DOS has offered no explanation for its estimated three-year delay other than the fact that it receives a large volume of FOIA requests.

4. The Freedom of Information Act “focuses on the citizens’ right to be informed about ‘what their government is up to,’” by requiring the release of “[o]fficial information that sheds light on an agency’s performance of its statutory duties.” *DOJ v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 750, 773 (1989) (citation omitted). “[D]isclosure, not secrecy, is the dominant objective” of FOIA. *Dep’t of Interior v. Klamath Water Users Protective Ass’n*, 532 U.S. 1, 8, (2001) (internal quotation marks and citations omitted). The Blade plays a critical role in providing information to citizens about “what their government is up to.” Indeed, the First Amendment’s guarantee of freedom of the press is meant to enable journalists to play an “essential role in our democracy,” to “bare the secrets of government and inform the people.” *New York Times. Co. v. United States*, 403 U.S. 713, 717 (1971) (Black, J. concurring).

5. Through its FOIA Request, the Blade seeks to fulfill its journalistic function and to shine a public light on the State Department’s efforts to decriminalize homosexuality around the world, and how those efforts were received by the Trump administration. This information is critical for voters who would want to be informed of the their elected officials’ activities, as well as the activities of those government officials who speak on behalf of the United States and its

citizens as ambassadors, especially if and when such an individual is contemplating running for the office of governor of a State within the United States.

6. The Blade seeks records that will shine a light on the activities of former U.S. ambassador to Germany and Acting Director of National Intelligence Richard Grenell. DOS's failure to produce those records (a failure which DOS itself estimates will continue for years to come) is a violation of the FOIA.

### **Jurisdiction and Venue**

7. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 2201(a), and 2202. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

### **Parties**

8. Plaintiff Washington Blade is a newspaper in the Washington, DC, metropolitan area that focuses its reporting on issues relevant to the LGBTQ community. Originally launched in October 1969, it is the oldest LGBTQ newspaper in the United States, and serves an audience of more than 20,000 people, making it the third largest LGBTQ newspaper in the United States by circulation. According to the New York Times, the Blade is "one of the most influential publications written for a gay audience."

9. Plaintiff Christopher C. Johnson is a resident and citizen of the District of Columbia, and the Chief Political and White House Reporter for the Blade. With more than 15,000 Twitter followers, he works for the Blade from an office in Washington, DC, and is a member of the White House Correspondents' Association.

10. Defendant DOS is a component of the Executive Branch of the United States Government. Defendant is an “agency” within the meaning of 5 U.S.C. § 522(f). Plaintiffs are informed and believe Defendant has possession and control of the records sought by the Request.

### **Statutory and Regulatory Background**

11. The FOIA, 5 U.S.C. § 552, requires agencies of the federal government to release requested records to the public unless one or more specific statutory exemptions apply.

12. An agency must respond to a party making a FOIA request within 20 working days, notifying that party of at least the agency’s determination of which of the requested records it will release, which it will withhold and why, and the requester’s right to appeal the determination to the agency head. 5 U.S.C. § 552(a)(6)(A)(i).

### **The Blade’s Interest in the United States’ Initiatives to Decriminalize Homosexuality Around the World**

13. The Washington Blade has reported on a number of stories addressing the Trump administration’s global campaign to end criminalization of homosexuality in the estimated 70 nations where it is still illegal to be gay.

14. Since 2019, the Blade has been publishing articles reporting on the initiative. For example, on assignment for the Blade, Mr. Johnson interviewed attendees of the April 2019 Conservative Political Action Committee Conference to ask them about Trump’s initiative and how they reconciled support for Trump’s initiative with other policies of the Trump administration that seemed opposed to the interests of the LGBTQ community, including the transgender military ban and “religious freedom” initiatives seen to enable to discrimination against members of the LGBTQ community. Mr. Johnson’s reporting on these interviews and global initiative were published in the Blade. *See*

<https://www.washingtonblade.com/2019/03/05/surprise-trump-global-plan-to-decriminalize-homosexuality-has-fans-at-cpac/>.

15. In September 2020, the Blade reported on comments made by Richard Grenell, former U.S. ambassador to Germany, Acting Director of National Intelligence, and the highest-profile openly gay person in the Trump administration. Grenell had been the leader of the Trump administration's global initiative to decriminalize homosexuality, and his comments came in the wake of Iran's execution of 27-year old wrestler Navid Afkari, who was killed after denouncing the Iranian regime. In response to the execution, Grenell publicly called for the International Olympic Committee to exclude Iran from the Olympic Games to be held in Tokyo, Japan, in 2021. See <https://www.washingtonblade.com/2020/09/23/grenell-defends-progress-in-global-initiative-to-decriminalize-homosexuality/>.

16. The Blade has continued its reporting on developments related to Grenell and his continued efforts to address global anti-LGBTQ sentiment. See <https://www.washingtonblade.com/2020/10/06/grenell-says-not-meeting-with-germanys-far-right-leader-a-difficult-thing-report/>.

17. It had been reported that Grenell was considering declaring his candidacy for this year's California governor recall election. See <https://www.politico.com/states/california/story/2021/02/12/grenell-lays-groundwork-for-california-gubernatorial-run-1363378>; *see also* <https://www.politico.com/states/california/story/2021/05/11/grenell-still-weighing-california-recall-bid-as-republican-field-grows-9426406>.

18. Even though Grenell eventually announced he would not run in the upcoming recall election, he may be considering a run in the regularly scheduled 2022 California



gubernatorial election. See <https://californiaglobe.com/section-2/former-ambassador-ric-grenell-announces-that-he-will-not-run-for-governor-in-2021/>.

19. Grenell was the face of the Trump administration's efforts to decriminalize homosexuality around the world and efforts to reach LGBTQ voters. He has remained an active participant in conservative media after the end of the Trump presidency. The general public, and the Blade's readership, would benefit from knowing the details of Grenell's activities while a part of the Trump administration, and how or whether his tenure as U.S. ambassador to Germany and Acting National Security Advisor had an impact on the administration's approach to LGBTQ issues both domestically and globally.

20. If and when Grenell runs for governor of California, voters will want to know about his record on LGBTQ issues and the extent of his success, if any, at promoting the interests of the LGBTQ community in his past roles in the Department of State under the Trump administration.

**The Blade's Request for Release of Email Records Regarding  
U.S. Initiatives to Decriminalize Homosexuality**

21. On September 25, 2020, the Blade requested under FOIA certain email records to and from the U.S. ambassador to Germany. Specifically, the Blade requested:

all emails to and from the persons in the role of U.S. ambassador to Germany including the words "initiative," "homosexuality," "gay" "criminalize," "decriminalize," "criminalization" or "decriminalization" from May 15, 2019 to June 30, 2020. Please delete all duplicates.

See **Ex. A.**

22. The Blade requested expedited handling for its FOIA request on the ground that the Blade is a member of the news media seeking information as part of a news gathering effort.

23. By email to Mr. Johnson dated September 25, 2020, DOS acknowledged that it had received the Blade's FOIA Request described *supra* at ¶ 21, assigned it subject reference

number “Ref: F-2020-08789” and stated that the Request had been “placed in the complex processing track where it will be processed as quickly as possible,” citing 22 C.F.R. § 171.11(h). Attached as **Exhibit B** is DOS’s September 25, 2020 email.

24. DOS, citing 22 C.F.R. § 171.11(f), also denied the Blade’s request for expedited handling of the request, stating that the request did “not demonstrate a ‘compelling need’ for the requested information.” **Ex. B.**

25. Finally, DOS stated that it would not respond within the 20 days provided under FOIA due to “unusual circumstances,” which, according to DOS, included “the need to search for and collect requested records from other Department office or Foreign Service posts.” **Ex. B.**

**DOS’s Radio Silence and Eventual Estimated Date of Completion  
More Than Three Years After the Date of the Blade’s FOIA Request**

26. Mr. Johnson reached out to DOS on November 5, 2020 for a status update on the Blade’s FOIA Request, and stated that he would be willing to change the parameters of the Request if that would help expedite processing. *See Ex. C.*

27. DOS responded the following day, saying merely that the request was “in process” and that Mr. Johnson would be notified of the results of DOS’s search when available. *See Ex. C.*

28. After hearing nothing from DOS for nearly three more months, Mr. Johnson reached out again on February 2, 2021 for more information. In an attempt to help expedite processing of the Blade’s Request, Mr. Johnson also requested that the scope of the Request be narrowed by deleting the terms “criminalize” and “criminalization” from the search. *See Ex. D.*

29. On February 3, DOS acknowledged receipt of Mr. Johnson’s February 2 status update request, and Mr. Johnson’s request to narrow the scope of the Blade’s FOIA Request was forwarded “to the processing team for their information and appropriate action.” *See Ex. E.*

30. On February 5, DOS responded further that the Blade's Request "continues to be processed" and the estimated date of completion ("EDC") was October 23, 2023. *See* **Ex. D**.

31. DOS's EDC was *more than three years* after the date the Blade submitted its FOIA Request.

32. By letter dated February 15, 2021, addressed to DOS, the Blade submitted an Appeal of Constructive Denial of Freedom of Information Act Request F-2020-08789, which recounted the factual background described above. *See* **Ex. F**. In its appeal, the Blade also explained that DOS is required to make records "promptly available" to the requester, and that an EDC of October 23, 2023 would be simply unacceptable. *See* **Ex. F**.

33. Over a month later, by letter to Mr. Johnson dated March 29, 2021, a DOS Appeals Officer responded that because no specific material had been denied in response to the Request, it was not subject to administrative appeal at that time. The Appeals Officer "confirmed that [the Blade's] request is being processed," but informed Mr. Johnson that DOS "receives thousands of FOIA and Privacy Act requests each year and yours will be processed in turn." **Ex. G**.

34. As of July 30, 2021, DOS confirmed that the "request remains in process and has an estimated date of completion of October 23, 2023" and that "there will be a delay in processing FOIA requests." **Ex. H**.

35. To date, almost one year after the Blade submitted its FOIA request, DOS has produced zero documents in response to the Blade's Request, and there has been no indication that any search for documents has begun. By the time DOS's estimated date of completion (October 23, 2023) arrives, more than three years will have passed since the date of the Request,



California's 2021 Gubernatorial Election will be long-over, and the purpose of the Request will have disappeared.

36. In the end, if the Blade is not granted the relief it seeks here, it will be the American voting public who is deprived of potentially invaluable information and records that would otherwise have contributed to a well-informed electorate.

### **PLAINTIFFS' CLAIM FOR RELIEF**

#### **COUNT I (Failure to Produce Documents)**

37. Plaintiffs repeat and re-allege the above paragraphs as if fully restated here..

38. The Blade properly submitted a FOIA request for documents from DOS—namely, copies of emails to and from the U.S. Ambassador to Germany created between May 15, 2019 and June 30, 2020, that contained the terms “initiative,” “homosexuality,” “gay,” “criminalize,” “decriminalize,” “criminalization” or “decriminalization.”

39. FOIA requires agencies to determine within 20 working days after the receipt of a FOIA request whether to comply. *See* 5 U.S.C. § 552(a)(6)(A)(i).

40. In certain “unusual circumstances,” the 20-day time limit to make a determination can be extended by no more than 10 days, and the agency must notify the requester of the date on which a determination is expected. *See* 5 U.S.C. § 552(a)(6)(B)(i).

41. If an agency determines that it will comply with a request for records, those records shall be made “promptly available” to the requester. *See* 5 U.S.C. § 552(a)(3)(A), (a)(6)(C)(i). This means within days or a few weeks of a determination, ***not months or years***.

42. DOS failed to issue a determination on the Blade's Request within the time required by the FOIA, and has since communicated to Plaintiffs that DOS estimates that it will

not complete the Request until October 23, 2023, *more than three years* after the date of the Request, all in violation of FOIA.

43. As a result of the actions complained of herein, the Blade's access to government records that it is entitled to review has been improperly delayed, in violation of the FOIA.

44. Accordingly, the Blade is entitled to injunctive and declaratory relief with respect to the immediate issuance of a determination on and processing of its Request.

**Requested Relief**

WHEREFORE, Plaintiffs respectfully request that this Court:

(1) Order Defendant to immediately and fully process Plaintiffs' September 25, 2020 FOIA Request and disclose all non-exempt documents immediately to Plaintiffs;

(2) Issue a declaration that the agency violated FOIA and Plaintiffs are entitled to immediate processing and disclosure of the requested records;

(3) Retain jurisdiction of this action to ensure no agency records are wrongfully withheld;

(4) Award Plaintiffs their costs and reasonably attorneys' fees in this action; and

(5) Grant such other relief as the Court may deem just and proper.

Dated: August 16, 2021

Respectfully submitted,

/s/ Courtney DeThomas

Courtney DeThomas (D.C. Bar No. 888304075)

DAVIS WRIGHT TREMAINE LLP

Thomas R. Burke (*pro hac vice* forthcoming)

DAVIS WRIGHT TREMAINE LLP

*Attorneys for Plaintiffs*

### **CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_ day of August, 2021, I caused the foregoing Complaint for Injunctive and Declaratory Relief for Violation of the Freedom of Information Act to be served via the court's CM/ECF system upon the Clerk of the Court and via First Class mail, postage prepaid, upon the following persons:

**U.S. DEPARTMENT OF STATE**

The Executive Office,  
Office of The Legal Adviser

/s/ Courtney DeThomas

Courtney DeThomas



# **EXHIBIT A**



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## FOIA Request Letter

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State Department FOIA <

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Fri, Sep 25, 2020 at 11:10 AM

To:

Thank you for filing your FOIA request online on 9/25/2020. Here is a review of your request.

The records I request can be described as follows:

I'm writing to submit a FOIA request to obtain all emails to and from the persons in the role of U.S. ambassador to Germany including the words "initiative," "homosexuality," "gay" "criminalize," "decriminalize," "criminalization" or "decriminalization" from May 15, 2019 to June 30, 2020. Please delete all duplicates. I'm a member of the media. I'd also like to request expedited handling for this FOIA request.

The time period of my request is from 05/15/2109 to 06/30/2020

I am A representative of the news media seeking information as part of a news gathering effort and not for commercial use.

I am willing to pay \$25 for my request.

I have a compelling need for expeditious handling:

-I'm a member of the media.

My additional comments are as follows:

N/A

Contact Information  
Mr. Chris C Johnson

# **EXHIBIT B**



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**Ref: F-2020-08789, Freedom of Information Act Acknowledgement**1 message

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Fri, Sep 25, 2020 at 2:55 PM

**\*\*THIS EMAIL BOX IS NOT MONITORED, PLEASE DO NOT REPLY TO THIS EMAIL.\*\***

Mr. Johnson:

This email acknowledges receipt of your September 25, 2020, Freedom of Information Act (FOIA) (5 U.S.C. § 552) request received by the U.S. Department of State, Office of Information Programs and Services on September 25, 2020, regarding emails to and from the persons in the role of U.S. ambassador to Germany including the words "initiative," "homosexuality," "gay" "criminalize," "decriminalize," "criminalization" or "decriminalization" (Date Range for Record Search: From 5/15/2019 To 6/30/2020). Unless you advise otherwise, we will treat as non-responsive any compilations of publicly available news reports and any publicly available documents not created by the U.S. government, such as mass-distribution emails from news media. This Office assigned your request the subject reference number and placed it in the complex processing track where it will be processed as quickly as possible. See 22 CFR § 171.11(h).

Also, you requested expedited processing of this request. According to 22 CFR § 171.11(f), requests shall receive expedited processing when a requester demonstrates a "compelling need" for the information exists for one of the following reasons: (1) failure to obtain the requested information on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; (2) the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal government activity; or (3) failure to release the information would impair substantial due process rights or harm substantial humanitarian interests. Your request does not demonstrate a "compelling need" for the requested information. Therefore, this Office denies your request for expedited processing.

If you are not satisfied with this Office's determination in response to your request for expedited processing, you may administratively appeal to: Appeals Officer, Appeals Review Panel, Office of Information Programs and Services, U.S. Department of State, 2201 C Street, NW, Suite B266, Washington, D.C. 20520; or facsimile at 202-485-1718. Your appeal must be postmarked or electronically transmitted within 90 days of the date of this email.

This Office will not be able to respond within the 20 days provided by the statute due to "unusual circumstances." See 5 U.S.C. § 552(a)(6)(B)(i)-(iii). In this instance, the unusual circumstances include the need to search for and collect requested records from other Department offices or Foreign Service posts.



If you have any questions regarding your request, would like to narrow the scope or arrange an alternative time frame to speed its processing, or would like an estimated date of completion, please contact our FOIA Requester Service Center or our FOIA Public Liaison by email at \_\_\_\_\_ or telephone at \_\_\_\_\_. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, \_\_\_\_\_; telephone at \_\_\_\_\_ toll free at \_\_\_\_\_; or facsimile at \_\_\_\_\_.

Sincerely,

*/s/ Nicholas J. Cormier*

Nicholas J. Cormier  
Chief, Requester Communications Branch  
Office of Information Programs and Services

**\*\*THIS EMAIL BOX IS NOT MONITORED, PLEASE DO NOT REPLY TO THIS EMAIL.\*\***

# **EXHIBIT C**



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## Seeking update on FOIA request No. F-2020-08789

2 messages

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Chris Johnson

Thu, Nov 5, 2020 at 4:02 PM

Greetings!

I'm writing to seek an update on FOIA request No. F-2020-08789, which I submitted on Sept. 25. Can you give me an update on where it stands? I'm open to changing the parameters of the search if that would expedite the process.

Thanks for any help. I'm at

--

Chris Johnson

**Washington Blade**

Chief Political & White House Reporter

*Follow me on Twitter:*

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**FOIA Status**

Fri, Nov 6, 2020 at 4:25 PM

To:

Mr. Johnson,

This is in reference to your email below regarding the status of FOIA request control number F-2020-08789.

The Office of Information Programs and Services electronic records system indicates that this request is in process. You will be notified of the results of the Department's search and review efforts in response to this request as soon as that information becomes available.

If you wish to narrow the scope of your request you may do so by emailing the new parameters to the FOIA Requester Service Center at [foia@state.gov](mailto:foia@state.gov). We will forward your email to the processing team for action.

Sincerely,

U.S. Department of State

FOIA Requester Service Center

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[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

<https://twitter.com/chrisjohnson82>

SENSITIVE BUT UNCLASSIFIED



# **EXHIBIT D**



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**Re: Seeking update on F-2020-08789**1 message

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**FOIA Status**

Fri, Feb 5, 2021 at 11:12 AM

To:

Mr. Johnson,

This is in reference to your email below regarding the status of FOIA request control number F-2020-08789.

The Office of Information Programs and Services electronic records system indicates that request control number F-2020-08789 continues to be processed. The estimated date of completion (EDC) is October 23, 2023. EDCs are estimates and are subject to change. Please be advised that the Department takes its FOIA responsibilities seriously and is processing this request as quickly as possible. If the request can be completed prior to the EDC, a response will be sent sooner.

If you have any concerns or questions regarding a FOIA-related matter, please contact the FOIA Requester Service Center at [\[redacted\]](#) send an e-mail to [\[redacted\]](#).

Sincerely,

U.S. Department of State

FOIA Requester Service Center

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**From:** Chris Johnson <[\[redacted\]](#)>  
**Sent:** Tuesday, February 2, 2021 3:54 PM  
**To:** FOIA Status <[\[redacted\]](#)>  
**Subject:** Seeking update on F-2020-08789- When is it coming?

Greetings!

I'm writing to request an update on F-2020-08789, which I submitted to the State Department in September 2020. When would the production be available?

Also, I'd like to modify the request in hopes that will expedite processing. Please delete the terms "criminalize" and "criminalization" from my search request.

Thanks for any help.

--

Chris Johnson

**Washington Blade**

White House Reporter

*Follow me on Twitter:*

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# **EXHIBIT E**





Chris Johnson &lt;cjohnson@dcagenda.com&gt;

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**Seeking update on F-2020-08789- When is it coming?**

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FOIA Status &lt;

&gt;

Wed, Feb 3, 2021 at 12:14 PM

To:

Mr. Johnson,

The Office of Information Programs and Services (IPS) is in receipt of your inquiry below regarding the status of FOIA case control number F-2020-09789. We will follow-up with you as soon as possible to provide the information you requested. Thank you in advance for your patience.

Please note that we have forwarded your email regarding modifying your request (delete the terms "criminalize" and "criminalization" from the search request) to the processing team for their information and appropriate action.

If you have any questions regarding a FOIA-related matter, please contact the FOIA Requester Service Center (FRSC) at [redacted] or send an email to [redacted].

Sincerely,

U.S. Department of State

FOIA Requester Service Center

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[Quoted text hidden]

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[Quoted text hidden]

SENSITIVE BUT UNCLASSIFIED

# **EXHIBIT F**

Chris Johnson  
Washington Blade

**FREEDOM OF INFORMATION ACT APPEAL**

Feb. 15, 2021

U.S. Department of State  
Appeals Officer

**Re: Appeal of Constructive Denial of Freedom of Information Act  
Request F-2020-08789**

To Whom It May Concern:

I am a reporter with the Washington Blade who filed the above-referenced Freedom of Information Act ("FOIA") request with the U.S. Department of State. I am writing to appeal the failure of the U.S. Department of State ("State Department") to respond to the request in a timely manner.

**I. The Request**

On September 25, 2020, I submitted a FOIA request with the State Department seeking copies of access to all emails to and from the persons in the role of U.S. ambassador to Germany including the words "initiative," "homosexuality," "gay" "criminalize," "decriminalize," "criminalization" or "decriminalization" from May 15, 2019 to June 30, 2020.

On September 25, 2020, the State Department acknowledged receipt of the request. In the acknowledgement, the State Department stated it had placed the request "in the complex processing track where it will be processed as quickly as possible." The State Department had indicated it will "not be able to respond within the 20 days provided by the statute due to 'unusual circumstances,' citing "the need to search for and collect requested records from other Department offices or Foreign Service posts."

On February 2, 2021, I submitted a follow-up request with the State Department to ascertain the status of the request. I also sought to expedite to the processing by asking the terms "criminalize" and "criminalization" be removed from the request.

On February 3, 2021, the State Department acknowledged receipt of the follow-up request, the request to modify the terms was forwarded "to the processing team for their information and appropriate action" and stated we will "follow-up with you as soon as possible to provide the information you requested." On February 5, 2021, the State Department sent a subsequent email stating the request "continues to be processed." The esteemed date of completion was Oct. 23, 2023.

The estimated date of completion is more than three years after the request was made. As of now, nearly five months have passed and the State Department has yet to produce a production, nor has it identified any justifiable reason for the delay or identified any basis for withholding such documents. Indeed, it is possible the State Department has failed to even begin to search for the documents.

## **II. The State Department's Failure to Respond to the Request Within the Time Period Required by the FOIA Constitutes of Constructive Denial of the Request**

The estimated date of completion of Oct. 23, 2023 is far beyond the statutory requirements under FOIA, which requires a determination on the request be made within 20 days, then to make records be "promptly available" to the requester. The Court of Appeals for the D.C. Circuit has stated that "depending on the circumstances ['promptly available'] typically would mean within days or a few weeks of a 'determination,' not months or years."

However, FOIA provides only a 10-working day extension for the initial 20 working-day requirement to make a determination. The estimated date of completion is unacceptable.

I respectfully request the State Department respond to this appeal within 20 business days. If you have questions or requirement any additional information, please contact me directly at \_\_\_\_\_ or \_\_\_\_\_

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Johnson", written in a cursive style.

Chris Johnson

# **EXHIBIT G**



United States Department of State

Washington, D.C. 20520

March 29, 2021

Chris C. Johnson  
Washington Blade

Dear Mr. Johnson:

Thank you for your letter of February 15, 2021, concerning Freedom of Information Act ("FOIA") request number F-2020-08789, in which you note that the Department of State has not yet responded to your request.

Your FOIA request is not subject to administrative appeal at this time, since no specific material has been denied in response to the request. Section (a)(6)(C) of the FOIA provides that a requester shall be deemed to have exhausted his administrative remedies if an agency fails to respond within the applicable time limit specified in the paragraph, which is 20 days (with certain exceptions). The requester, therefore, would not be required to appeal administratively before instituting suit in federal court. This provision does not, however, provide a basis for an administrative appeal of a request that is still being processed. Moreover, the lack of a substantive response to date is not the same as a response indicating that no documents were found.

I have confirmed that your request is being processed. The Department receives thousands of FOIA and Privacy Act requests each year and yours will be processed in turn. I have sent a copy of your letter to the office that has been assigned responsibility for processing your request. If you need further assistance, please contact the FOIA Requester Service Center at  
or

Sincerely,

/s/

Lori Hartmann  
Appeals Officer  
Office of Information Programs and Services

# **EXHIBIT H**



**Fiedler, Dan**

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**From:** FOIA Status < >  
**Sent:** Friday, July 30, 2021 7:21 AM  
**To:** Fiedler, Dan  
**Subject:** RE: Status Update Request: F-2020-08789

[EXTERNAL]

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Mr. Fiedler,

This is in response to your email below regarding the status of FOIA case control numbers F-2020-08789.

The Office of Information Programs and Services electronic records system indicates that this request remains in process and has an estimated date of completion of October 23, 2023 . Please note that due to the COVID-19 pandemic, resources to process FOIA cases are limited at the Department. Therefore, there will be a delay in processing FOIA requests.

We appreciate your continued patience.

If you have any questions regarding a FOIA-related matter, please send an e-mail to or contact the  
FOIA Requester Service Center at .  
Regards,  
U.S. Department of State  
FOIA Requester Service Center

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**From:** Fiedler, Dan < >  
**Sent:** Friday, July 16, 2021 1:41 PM  
**To:** FOIA Status < >  
**Subject:** Status Update Request: F-2020-08789

To Whom it May Concern:

My name is Dan Fiedler, and I am an attorney with Davis Wright Tremaine in Seattle, Washington. I am writing to ask for a status update on a FOIA Request submitted to the Department of State on September 25, 2020. The Request was given reference number F-2020-08789.

1. What is the current status of this Request?
2. What is the current estimated date of completion of this Request?

Thank you.

Regards,

Dan Fiedler

**Daniel A. Fiedler** | Davis Wright Tremaine LLP

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | **Seattle** | Washington, D.C.