

The Honorable Ronald B. Leighton

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

COWLITZ COUNTY, et al.,

Plaintiffs,

v.

UNIVERSITY OF WASHINGTON, et al.,

Defendants.

No. 3:19-cv-06250-RBL

CROSSCLAIM OF UNIVERSITY  
OF WASHINGTON AND  
ANGELINA SNODGRASS GODOY  
AGAINST THE UNITED STATES  
OF AMERICA

Pursuant to Fed. R. Civ. P. 13(g), Defendants the University of Washington (“UW”) and Doctor Angelina Snodgrass Godoy (“Dr. Godoy”) hereby allege as follows:

**I. INTRODUCTION**

1. United States Immigration and Customs Enforcement (“ICE”) maintains an “Intergovernmental Service Agreement for Housing Federal Detainees” (“IGSA”) with Plaintiff Cowlitz County (“County”), which ICE purports allows it to detain children at the County’s Youth Services Center (“YSC”), a juvenile detention center in Longview, Washington.

2. ICE is an agency of and represented in this action by the United States of America, which has been designated a Defendant by the Court.

3. As part of a UW Center for Human Rights (“UWCHR”) immigrant rights study, Dr. Godoy, the Director of UWCHR, submitted a records request to the County on July 18, 2018 (“State Request”). The State Request sought “[t]he complete jail file (redacted to conceal

1 personally-identifying information) of all minors housed in Cowlitz County facilities for ICE  
2 from 1/1/2015-7/15/2018.”

3 4. ICE asserted, in response to the State Request, that the County could not release  
4 responsive records, claiming that 8 CFR § 236.6 prohibited the County from producing the files.  
5 Based on ICE’s assertion, the County brought this action against UW and Dr. Godoy in state  
6 court, seeking declaratory relief. Defendant the United States of America, on behalf of ICE,  
7 subsequently intervened, removed the state court action to this court, and asserted  
8 “counterclaims” against the County related to the State Request.

9 5. On February 25, 2019, Dr. Godoy submitted to ICE a separate request for “copies  
10 of the complete jail files of the 15 minors held in Cowlitz County, Washington juvenile facility  
11 for ORR/ICE since 2015,” pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. §  
12 552, *et seq.* (the “FOIA Request”). The FOIA Request expressly stated that it was not seeking  
13 personally identifiable information about individuals whose files were subject to the FOIA  
14 Request.

15 6. The ICE FOIA Office assigned the FOIA Request identification numbers 2019-  
16 ICAP-00339 and 2019-ICFO-30882.

17 7. On March 18, 2019, ICE responded to the FOIA Request by stating that it  
18 required waivers from the minors identified in the YSC files in order for the files to be released.  
19 For obvious reasons, not the least of which was that Dr. Godoy could not obtain such  
20 authorizations without knowing who the children identified in the records were, and that she  
21 could not know who those children were without ICE releasing the subject records, it was  
22 impossible for Dr. Godoy to obtain the requested waivers. Moreover, the waiver requirement  
23 was unnecessary because the FOIA Request expressly did not seek personally identifiable  
24 information.

25 8. Dr. Godoy filed an administrative appeal in relation to the FOIA Request on April  
26 11, 2019. ICE acknowledged the appeal on April 30, 2019, but rejected it in a final  
27

determination letter on May 7, 2019, reaffirming the need to obtain the individual waivers. ICE informed Dr. Godoy on May 7, 2019, that she could appeal its decision pursuant to the provisions of 5 U.S.C. § 552(a)(4)(B).

9. UW and Dr. Godoy now seek adjudication of their rights under the FOIA in this proceeding.

10. ICE has consented to UW and Dr. Godoy filing this crossclaim.

## II. PARTIES

11. Plaintiff Cowlitz County is a political subdivision of the state of Washington.

12. Plaintiff Youth Services Center is a juvenile department of the Cowlitz County Superior Court in the state of Washington, pursuant to RCW 13.04.035.

13. Defendant UW is an agency of the state of Washington under RCW Ch. 28B.20.

14. Defendant Doctor Angelina Snodgrass Godoy is an employee and Director of the Center for Human Rights of the University of Washington.

15. ICE is a federal agency of the United States that enforces federal laws governing border control, customs, trade, and immigration.

## III. JURISDICTION AND VENUE

16. Subject Matter Jurisdiction. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction).

17. Personal Jurisdiction. This Court has personal jurisdiction over ICE because ICE is an agency of the United States and has appeared and filed counterclaims in the instant action.

18. Venue. Venue is proper in the Western District of Washington under 5 U.S.C. § 552(a)(4)(B). Venue is also proper under 28 U.S.C. § 1391 because Dr. Godoy's requests and communications were sent from Seattle, Washington and, therefore, a substantial part of the events giving rise to the claim occurred in this judicial district.

**IV. FACTUAL BACKGROUND**

19. UWCHR was chartered by the state legislature in 2009 with a mission to expand opportunities for Washington residents to receive a world-class education in human rights, generate research data and expert knowledge to enhance public and private policymaking, and become an academic center for human rights teaching and research in the nation.

20. Defendant Dr. Godoy is the Director of UWCHR. She is a professor and full-time employee at the University of Washington, and holds the Helen H. Jackson Endowed Chair in Human Rights.

21. UWCHR promotes interdisciplinary excellence in the education of undergraduate and graduate students in the field of human rights; promotes human rights as a core area of faculty and graduate research; and engages productively with local, regional, national, and international organizations and policymakers to advance respect for human rights.

**A. UW's State Request**

22. Between June 5, 2018 and August 3, 2018, UW submitted four records requests to the County seeking documents relating to the minors kept in the YSC pursuant to the IGSA.

23. The August 3, 2018 records request was subsequently withdrawn, leaving three total records requests to the State.

24. The three records requests were made in furtherance of a research study being conducted by UWCHR (the "Study").

25. On information and belief, starting on or about June 2018 and through the fall of 2018, the County provided notice to and was in communication with ICE about the UW's three document requests.

26. On July 18, 2018, Dr. Godoy submitted the third of the three records requests to the County seeking, in relevant part, "[t]he complete jail file (redacted to conceal personally identifying information) of all minors housed in Cowlitz County facilities for ICE from 1/1/2015-7/15/2018" (the "State Request").

1           27.     The County made one production of documents in response to the State Request  
2 on or about September 17, 2018 (the “First Installment”).

3           28.     On information and belief, on or about September 18, 2018, ICE notified the  
4 County that the County was prohibited by 8 CFR § 236.6 from releasing any further documents  
5 responsive to the State Request.

6           29.     Because of ICE’s position that the County could not release the remaining  
7 documents in response to the State Request, the County filed the instant action and refused to  
8 produce any further documents pending the outcome of this dispute.

9           **B.     UW’s FOIA Request**

10          30.     On February 25, 2019, Dr. Godoy submitted the FOIA Request to ICE through its  
11 electronic portal. ICE’s FOIA Office assigned the FOIA Request identification numbers 2019-  
12 ICAP-00339 and 2019-ICFO-30882.

13          31.     The FOIA Request sought copies of the complete jail files for the minors held in  
14 the YSC since 2015, *excluding any personally identifiable information about the minors whose*  
15 *jail files were subject to the request.*

16          32.     The requested records will be used for the public benefit, specifically for the  
17 Study. Dr. Godoy and UW do not have a commercial interest in the information sought through  
18 the FOIA Request, and will obtain no commercial benefit therefrom. Dr. Godoy and UW are  
19 non-commercial use requesters.

20          33.     The ICE FOIA Office acknowledged receipt of the FOIA Request by e-mail dated  
21 March 18, 2019.

22          34.     In the same March 18, 2019 e-mail, the ICE FOIA Office denied the FOIA  
23 Request, claiming that DHS regulations prevented it from disclosing information regarding the  
24 individuals unless it received a waiver containing “a statement from the individual verifying his  
25 or her identity and certifying that individual’s agreement that records concerning him or her may  
26 be released to a third-party[.]”  
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1           35.     It was impossible for Dr. Godoy to obtain waivers because she did not know who  
2 the “individual[s]” were.

3           36.     It was also practically unnecessary for ICE to require waivers because the FOIA  
4 Request expressly did not seek personally identifiable information.

5           37.     Moreover, ICE’s position was legally incorrect. While it cited 6 C.F.R. § 5.21(f)  
6 as the basis for its need for the waivers, 6 C.F.R. § 5.21(f) regulates the disclosure of information  
7 regarding an individual when the request is “*made on behalf of that individual*.”

8           38.     On April 11, 2019, Dr. Godoy filed an administrative appeal by sending a letter to  
9 ICE appealing the ICE FOIA Office’s denial (the “Administrative Appeal”).

10          39.     On information and belief, ICE received the Administrative Appeal on April 12,  
11 2019.

12          40.     ICE affirmed the ICE FOIA Office’s decision, stating “because you are a third-  
13 party requester, any information pertaining to the 15 minors cannot be disclosed to you without a  
14 waiver [from the minors] authorizing release.” This time ICE cited 6 C.F.R. § 5.21(f), as well as  
15 6 C.F.R. 5.10(c), which regulates disclosure of information protected by the United States  
16 Privacy Act, 5 U.S.C. § 552a, *et seq.*

17          41.     It is not possible for Dr. Godoy or UW to obtain authorization to release the  
18 records from the minors detained by ICE at the YSC because they do not know who those  
19 minors are. Moreover, ICE’s refusal to produce the documents without Dr. Godoy obtaining  
20 waivers rests on erroneous legal authority. ICE thus effectively denied the FOIA Request, and  
21 then affirmed its denial in response to the Administrative Appeal.

22          42.     In its response to Dr. Godoy’s Administrative Appeal, ICE advised Dr. Godoy  
23 that inasmuch as she considered the response “to be a denial of your appeal, you may obtain  
24 judicial review of this decision pursuant to the provisions of 5 U.S.C. § 552(a)(4)(B) ....”

25          43.     To date, ICE has not produce a single record in response to the FOIA Request.  
26  
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1           44.     The records sought in the FOIA Request are the similar to, or substantially the  
2 same as, the records sought in the State Request that is at issue in the claims already pending  
3 before this Court.

4                               **V.     CAUSE OF ACTION**

5                               **Violation of Freedom of Information Act (FOIA)**

6                               **For Failure to Disclose Responsive Records**

7           45.     UW and Dr. Godoy allege and incorporate each and every preceding allegation as  
8 though fully set forth herein.

9           46.     ICE has violated 5 U.S.C. § 552(a)(3)(A) by failing to promptly release agency  
10 records in response to Dr. Godoy's FOIA Request, which reasonably described the records  
11 sought, as detailed above.

12           47.     Injunctive relief is authorized under 5 U.S.C. § 552(a)(4)(B) because ICE is  
13 improperly withholding the requested material, and is doing so as a matter of policy or practice,  
14 in violation of the FOIA.

15           48.     UW and Dr. Godoy have suffered injury of their legal rights, and will continue to  
16 suffer injury from ICE's refusal to provide records.

17           49.     Declaratory relief is authorized under 22 U.S.C. § 2201 because an actual  
18 controversy exists regarding ICE's improper withholding of the records in violation of the FOIA.  
19 An actual controversy also exists because UW and Dr. Godoy contend that ICE's continuing  
20 failure to release the records violates the law.

21                               **VI.     PRAYER FOR RELIEF**

22                               WHEREFORE, Defendants UW and Dr. Godoy request that judgment be entered in their  
23 favor against Defendant the United States, and that the Court:  
24

25           A.     Declare that ICE's failure to disclose responsive records violates the FOIA;  
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1 B. Declare unlawful and enjoin ICE's practice of failing to comply with its required  
2 duties upon receipt of a properly submitted request under FOIA;

3 C. Order ICE and all entities and agents, or other persons acting by, through, or on  
4 behalf of ICE, to conduct a prompt, reasonable search for records responsive to Dr. Godoy's  
5 FOIA requests, without imposing search of duplication fees pursuant to 5 U.S.C. § 552(a)(4)(A),  
6 and to produce those records to Dr. Godoy.

7 D. Enjoin ICE and all entities and agents, or other persons acting by, through, for, or  
8 on behalf of Defendants, from withholding records responsive to Dr. Godoy's FOIA requests and  
9 order them to promptly produce the same;

10 E. Award Dr. Godoy and UW their reasonable attorneys' fees and costs pursuant to 5  
11 U.S.C. § 552(a)(4)(E) and 28 U.S.C. § 2412; and

12 F. Grant all such other relief to UW and Dr. Godoy as the Court deems just and  
13 equitable.

14  
15 DATED this 26th day of May, 2020.

16 Davis Wright Tremaine LLP  
17 Attorneys for University of Washington and  
Angelina Snodgrass Godoy

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