

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

NEW HAMPSHIRE RIGHT TO LIFE,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 11-585-PB
)	
UNITED STATES DEPARTMENT OF)	
HEALTH AND HUMAN SERVICES,)	
)	
Defendant.)	
_____)	

MOTION FOR PRELIMINARY INJUNCTION

NOW COMES Plaintiff, New Hampshire Right to Life, by and through its attorneys, Wadleigh, Starr, & Peters, P.L.L.C., and moves that the Court, pursuant to Fed. R. Civ. P. 65, issue a Preliminary Injunction ordering Defendant United States Department of Health and Human Services (“Defendant”) to comply with 5 U.S.C. § 552(6)(A)(i), stating as follows :

1. In this action, Plaintiff seeks, among other relief, disclosure of certain documents that Defendant has withheld, despite the fact that the documents do not fall into a valid Freedom of Information Act (“FOIA”) exemption. See, generally, 5 U.S.C. § 552(b).

2. FOIA requires an agency to produce requested documents within twenty days. See 5 U.S.C. § 552(6)(A)(i). Nevertheless, Defendant has failed to produce the requested documents within the 130 days that have passed since Plaintiff’s October 7, 2011 FOIA request, and in its discovery plan, filed with the Court on February 15, 2012, [Doc. 8], proposes to delay production for an additional sixty days until April 15, 2012.

3. Given the reasons for Plaintiff’s FOIA request, and its time sensitive nature, as well as the policy underlying FOIA’s statutory scheme, *see, e.g., Payne Enters. v. United States,*

837 F.2d 486, 494 (D.C. Cir. 1988), Plaintiff requests that this Court issue a preliminary injunction requiring productions of the at-issue documents by a date certain. “On numerous occasions, federal courts have entertained motions for a preliminary injunction in FOIA cases and, when appropriate, have granted such motions.” Electronic Privacy Information Ctr. v. Dept. of Justice, 416 F.Supp.2d 30, 35 (D.D.C. 2006)(citing ACLU v. Dept. of Defense, 339 F.Supp.2d 501, 503 (S.D.N.Y. 2004)).

4. As explained more fully in the attached memorandum of law, Plaintiff satisfies the relevant legal standard for granting a preliminary injunction. See, e.g., Esso Std. Oil. v. Monroiq-Zayas, 445 F.3d 13, 18 (1st Cir. 2006).

4. Plaintiff’s memorandum of law shows that Plaintiff will likely succeed on the merits, that the potential for irreparable harm is severe if this motion is denied, that the potential for hardship if the injunction is denied is greater for Plaintiff than Defendant, and that the preliminary injunction will not harm the public interest. See id. Accordingly, this Court should grant the preliminary injunction. A copy of the proposed injunction is attached as Exhibit 1. See L.R. 65.1

5. Attorney Gretchen Witt, counsel for Defendant, does not assent to this Motion. See L.R. 7.1(c). A memorandum of law explaining Plaintiff’s entitlement to the relief sought is attached. See L.R. 7.1(a)(2).

WHEREFORE, for the reasons set forth in the attached memorandum of law, Plaintiff respectfully requests that this Court:

A) Grant this Motion for Preliminary Injunction;

- B) Issue the Proposed Injunction Requiring HHS to Comply with the FOIA Statute; and
- C) Grant such further relief as justice may require.

Respectfully submitted,

NEW HAMPSHIRE RIGHT TO LIFE

Dated: February 16, 2012

By: /s/ Michael J. Tierney
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Certificate of Service

I, Michael J. Tierney, hereby certify that I sent a copy of the foregoing motion, as well the attached memorandum of law and proposed preliminary injunction, to Counsel of Record via ECF, this day.

/s/ Michael J. Tierney