

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

CITIZENS FOR RESPONSIBILITY AND
ETHICS IN WASHINGTON,
1101 K Street NW, Suite 201,
Washington, DC 20005,

Plaintiff,

v.

U.S. DEPARTMENT OF THE
TREASURY,
1500 Pennsylvania Avenue, NW
Washington, DC 20220, and

U.S. DEPARTMENT OF STATE,
2201 C Street, NW
Washington, DC 20520,

Defendants.

Civil Action No. _____

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1. Plaintiff Citizens for Responsibility and Ethics in Washington (“CREW”) brings this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, against Defendants U.S. Department of the Treasury (“Treasury”) and U.S. Department of State (“State”) seeking records relating to the Trump administration’s decision to lift financial sanctions on Israeli billionaire Dan Gertler.

2. CREW seeks declaratory relief that Defendants are in violation of FOIA, and injunctive relief requiring Defendants to immediately process and release the requested records.

Jurisdiction and Venue

3. This Court has subject-matter jurisdiction and personal jurisdiction under 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(C)(i). The Court also has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 2201(a), and 2202.

4. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

Parties

5. Plaintiff CREW is a non-profit, non-partisan organization organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the rights of citizens to be informed about the activities of government officials and agencies, and to ensuring the integrity of government officials and agencies. CREW seeks to empower citizens to have an influential voice in government decisions and in the government decision-making process through the dissemination of information about public officials and their actions. To advance its mission, CREW uses a combination of research, litigation, and advocacy. As part of those efforts, CREW uses government records it obtains under FOIA.

6. Defendant Treasury is an agency within the meaning of 5 U.S.C. § 552(f)(1). The Office of Foreign Assets Control (“OFAC”) is a component of Treasury. Treasury has possession, custody, and control of the requested records.

7. Defendant State is an agency within the meaning of 5 U.S.C. § 552(f)(1). State has possession, custody, and control of the requested records.

Factual Background

8. In the waning days of the Trump administration, former Treasury Secretary Steven Mnuchin, in consultation with former Secretary of State Mike Pompeo, quietly lifted financial sanctions on Israeli billionaire Dan Gertler.¹

9. The sanctions were imposed in 2017, in response to Gertler’s allegedly corrupt dealings in the Democratic Republic of Congo.²

¹ Eric Lipton, *Tough Sanctions. Then a Mysterious Last-Minute Turnabout*, *New York Times*, Feb. 21, 2021, <https://nyti.ms/3ekqw16>.

² *Id.*

10. The stiff sanctions “effectively cut[] off [Gertler’s] access to the international banking system and fr[oze] money held in U.S. banks.”³

11. Gertler reportedly spent the next four years lobbying the Trump administration to lift the sanctions, including by hiring high-powered lawyers and lobbyists with close connections to former President Trump.⁴

12. In mid-January 2021, former Secretary Mnuchin “granted Mr. Gertler much of what he wanted, signing off, without any public announcement, on a one-year arrangement that gave him access to money frozen in U.S. banks and allowed him once again to do business with financial institutions worldwide.”⁵

13. The decisionmaking process largely played out in secret, and “cut out the American diplomats most directly responsible for dealing with Congo and fighting corruption in Africa”; the “decision became public only after Mr. Trump had left office.”⁶

14. Although the Biden administration moved to reimpose sanctions on Gertler on March 8, 2021, by that point Mr. Gertler likely “already moved at least some of the previously frozen money out of the United States.”⁷

15. To help answer questions about these issues, CREW submitted two FOIA requests to Treasury and one request to State.

March 11, 2021 FOIA Requests to Treasury

16. On March 11, 2021, CREW submitted two FOIA requests to Treasury.

17. The first request sought:

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Eric Lipton, Sanctions Are Reimposed on Israeli Billionaire Granted Relief Under Trump, *New York Times*, Mar. 8, 2021, <https://nyti.ms/33ioTOu>.

1. All records or communications from December 20, 2017 to the present related to the blocked property and interests in property of Daniel Gertler or any designated persons or entities listed in Appendix A [to the request], including any reports of blocked property, reports releasing property from blocked status, or reports required to be submitted to the Office of Foreign Assets Control (“OFAC”) for activities undertaken pursuant to License No. GLOMAG-2021-371648, which was issued to Arnold & Porter Kaye Scholer LLP, on January 15, 2021, by OFAC Director Andrea Gacki.
 2. All records and communications related to the designations of Daniel Gertler and the designated persons and entities listed in Appendix A [to the request], including any designation packages, whether classified or unclassified, prepared in support of their designations.
18. The second request sought:
- All records or communications from December 20, 2017 to the present referring or relating to Office of Foreign Assets Control (“OFAC”) License No. GLOMAG-2021-371648, which was issued to Arnold & Porter Kaye Scholer LLP, on January 15, 2021, including information submitted to the State Department on behalf of Mr. Dan Gertler or the designated persons or entities listed in Appendix A [to the request], and any other records or communications relating to lifting U.S. sanctions against Mr. Gertler or the designated persons and entities listed in Appendix A.
19. Both of CREW’s requests sought fee waivers.
20. By email dated March 12, 2021, Treasury acknowledged receipt of CREW’s first request, assigning it tracking number 2021-FOIA-00431.
21. By letter dated March 18, 2021, Treasury acknowledged receipt of CREW’s second request, assigning it tracking number 2021-FOIA-00432.
22. On March 24, 2021, CREW and OFAC conferred about CREW’s FOIA requests. OFAC agreed to provide additional information to CREW so it could determine whether it would agree to narrow aspects of its requests.
23. By email dated April 2, 2021, CREW asked OFAC if it had any updates following the parties’ March 24, 2021 discussion.

24. Later that day, OFAC responded, “We have not received a final response to our inquiry. We anticipate that we will have something for you next week.”

25. To date, CREW has received no further communications from Treasury regarding its March 11, 2021 FOIA requests.

March 11, 2021 FOIA Request to State

26. On March 11, 2021, CREW submitted a FOIA request to State seeking:

All records or communications from December 20, 2017 to the present referring or relating to Office of Foreign Assets Control (“OFAC”) License No. GLOMAG-2021-371648, which was issued to Arnold & Porter Kaye Scholer LLP, on January 15, 2021, including information submitted to the State Department on behalf of Mr. Dan Gertler or the designated persons or entities listed in Appendix A [to the request], and any other records or communications relating to lifting U.S. sanctions against Mr. Gertler or the designated persons and entities listed in Appendix A.

27. CREW’s request sought a fee waiver.

28. By email dated March 15, 2021, State acknowledged receipt of CREW’s request, assigned it tracking number F-2021-03846, and invoked a 10-day extension of its response deadline due to “unusual circumstances.”

29. To date, CREW has received no other communications from State regarding its March 11, 2021 FOIA request.

CREW’S CLAIMS FOR RELIEF

COUNT I

**Treasury’s Wrongful Withholding of Records Responsive to
CREW’s March 11, 2021 FOIA Requests**

(Tracking Nos. 2021-FOIA-00431 and 2021-FOIA-00432)

30. CREW repeats and re-alleges the preceding paragraphs.

31. In its March 11, 2021 FOIA requests, CREW properly asked for records within the possession, custody, and control of Treasury.

32. Treasury has failed to conduct adequate searches in response to CREW's requests.

33. Treasury is wrongfully withholding records responsive to CREW's requests.

34. By failing to timely release all requested records in full to CREW, Treasury is in violation of FOIA.

35. CREW has constructively exhausted its administrative remedies.

36. CREW is therefore entitled to injunctive and declaratory relief requiring immediate processing and disclosure of the requested records.

COUNT II
State's Wrongful Withholding of Records Responsive to
CREW's March 11, 2021 FOIA Request
(Tracking No. F-2021-03846)

37. CREW repeats and re-alleges the preceding paragraphs.

38. In its March 11, 2021 FOIA request, CREW properly asked for records within the possession, custody, and control of State.

39. State has failed to conduct an adequate search in response to CREW's request.

40. State is wrongfully withholding records responsive to CREW's request.

41. By failing to timely release all requested records in full to CREW, State is in violation of FOIA.

42. CREW has constructively exhausted its administrative remedies.

43. CREW is therefore entitled to injunctive and declaratory relief requiring immediate processing and disclosure of the requested records.

Requested Relief

WHEREFORE, CREW respectfully requests that this Court:

1. Order Defendants to immediately and fully process CREW's FOIA requests and disclose all non-exempt records to CREW;

2. Issue a declaration that CREW is entitled to immediate processing and disclosure of the requested records;
3. Provide for expeditious proceedings in this action;
4. Retain jurisdiction of this action to ensure no agency records are wrongfully withheld;
5. Award CREW its costs and reasonable attorneys' fees in this action; and
6. Grant such other relief as the Court may deem just and proper.

Date: May 6, 2021

Respectfully Submitted,

/s/ Nikhel S. Sus

Nikhel S. Sus

(D.C. Bar No. 1017937)

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