

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

**CITIZENS FOR RESPONSIBILITY AND
ETHICS IN WASHINGTON**)
455 Massachusetts Ave., N.W., Sixth Floor)
Washington, D.C. 20001)

Plaintiff,)

v.)

U.S. DEPARTMENT OF COMMERCE)
1401 Constitution Avenue, N.W.)
Washington, D.C. 20230,)

Defendant.)

Civil Action No.

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, for injunctive, declaratory, and other appropriate relief. Plaintiff Citizens for Responsibility and Ethics in Washington (“CREW”) challenges the failure of the National Oceanic and Atmospheric Administration (“NOAA”), a component agency of the U.S. Department of Commerce (“DOC”) to disclose to CREW records related to questionnaires submitted to NOAA by representatives of President-elect Donald Trump’s transition team.

2. This case seeks declaratory relief that DOC is in violation of the FOIA, 5. U.S.C. § 552(a)(6)(E)(i), by failing to provide CREW with all responsive records, and injunctive relief ordering the defendant DOC and its component agency NOAA to process and release to CREW immediately the requested records in their entirety.

Jurisdiction and Venue

3. 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, and 28 U.S.C. §§ 2201(a) and 2202. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

Parties

4. Plaintiff CREW is a non-profit, non-partisan corporation organized under section 501(c)(3) of the tax 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 governmental 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 its research, CREW uses government records made available to it under the FOIA.

5. Defendant DOC is an agency within the meaning of 5 U.S.C. § 552(f) and 5 U.S.C. § 701. NOAA is a component agency within DOC. DOC is the federal agency with possession and control of the requested records and is responsible for fulfilling plaintiff's FOIA requests.

FACTUAL BACKGROUND

6. In early December 2016, news outlets reported that President-elect Donald J. Trump's transition team had sent an extensive questionnaire to the Department of Energy that included a request for the names of all agency employees or contractors who have attended conferences related to climate change policy as well as e-mails and documents associated with

the conferences. Coral Davenport, Climate Change Conversations are Targeted in Questionnaire, *New York Times*, Dec. 9, 2016, available at <http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html>.

7. The questionnaire raised concerns about potential retaliation against Department of Energy staff by the incoming administration. Brakkton Booker, Trump Questionnaire Raises Concerns About Retaliation Against Energy Department Staff, *NPR*, Dec. 10, 2016, available at <http://www.npr.org/sections/thetwo-way/2016/12/10/505105258/trump-questionnaire-raises-concerns-about-retaliation-against-energy-department>. The Department of Energy declined to provide individual names to transition team while acknowledging that some of the questions “left many in our workforce unsettled.” Joe Davidson, Energy Dept. Rejects Trump’s Request to Name Climate-Change Workers, Who Remain Worried, *Washington Post*, Dec. 13, 2016, available at https://www.washingtonpost.com/news/powerpost/wp/2016/12/13/energy-dept-rejects-trumps-request-to-name-climate-change-workers-who-remain-worried/?utm_term=.9f1b05b29d6f.

8. It is unknown if President-elect Trump’s transition team sent similar questionnaires to other departments and agencies, including NOAA, seeking the names of employees or contractors worked on climate change policy and/or documents and correspondence related to climate change.

Plaintiff’s FOIA Request and Request for Expedited Processing

9. By letter dated on December 16, 2016 and delivered by the FOIAonline system, plaintiff requested under the FOIA copies of any questionnaires submitted to NOAA by any representative of President-elect Donald Trump’s transition team, including representatives of

Trump for America, Inc., and the Office of the President-Elect and the Office of the Vice President-Elect.

10. On that same day, NOAA acknowledged receiving the request.

11. By form letter dated January 4, 2017, NOAA granted CREW's request for a fee waiver.

12. To date, NOAA has not otherwise responded to CREW request.

13. NOAA has not provided CREW with a determination on its request, including an identification of what documents the agency plans to release, what documents the agency plans to withhold, and why – the determination the FOIA requires agencies to make of non-expedited requests with 20 business days of receiving a FOIA request.

14. Because NOAA has failed to make a determination under the FOIA on CREW's request, CREW has now exhausted all applicable administrative remedies.

PLAINTIFF'S CLAIMS FOR RELIEF

CLAIM ONE (Wrongful Withholding Of Non-Exempt Records)

15. Plaintiff repeats and re-alleges paragraphs 1-15.

16. Plaintiff properly asked for records within the custody and control of DOC and its component agency NOAA.

17. Defendant DOC and its component agency NOAA wrongfully withheld agency records requested by plaintiff by failing to comply with the statutory time limit for making a determination on non-expedited FOIA requests, and by withholding from disclosure records responsive to plaintiff's FOIA request.

18. Therefore, by failing to release the records as plaintiff specifically requested, defendant violated the FOIA.

19. Plaintiff is therefore entitled to injunctive and declaratory relief with respect to the expedited processing and disclosure of the requested records.

Requested Relief

WHEREFORE, plaintiff respectfully requests that this Court:

- (1) Order defendant DOC and its component agency NOAA to complete the processing of plaintiff's December 16, 2016 FOIA request and disclose all non-exempt documents immediately to plaintiff;
- (2) Issue a declaration that plaintiff is entitled to expedited 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 plaintiff its cost and reasonable attorneys' fees in this action; and
- (6) Grant such other relief as the Court may deem just and proper.

Respectfully submitted,



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