

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

CITIZENS FOR RESPONSIBILITY )  
AND ETHICS IN WASHINGTON, )  
et al., )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
ANDREW WHEELER, )  
Acting Administrator, U.S. )  
Environmental Protection Agency, *et al.* )  
 )  
Defendants. )  
\_\_\_\_\_ )

Civil No. 18-cv-00406 (JRB)

**PLAINTIFFS’ RULE 56(D) DECLARATION**

I, Conor Shaw, declare as follows:

1. I am counsel for Citizens for Responsibility and Ethics in Washington, one of the Plaintiffs in the above-captioned matter.
2. I am submitting this Declaration pursuant to Federal Rule of Civil Procedure 56(d), which provides that “[i]f a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may . . . allow time to obtain affidavits or declarations or to take discovery . . . .”
3. Although Plaintiffs maintain that Defendants’ alternative motion for summary judgment should be denied for several independent reasons, as set forth in Plaintiffs’ memorandum in opposition, Plaintiffs submit this Declaration to lay out material facts that are unavailable to Plaintiffs because they are in the possession of Defendants and no discovery has been conducted in this action. Without these facts Plaintiffs are unable to fully and adequately respond to Defendants’ motion.

4. Plaintiffs intend to seek discovery of the following facts:
  - a. formal or informal directives, both oral and written, from Environmental Protection Agency (“EPA”) leadership that prevented or is preventing agency records from being created, in violation of the Federal Records Act;
  - b. all communications from agency leadership to political appointees and career officials concerning records management;
  - c. materials and testimony documenting the EPA actual records management practices, including records documenting oral communications, phone calls, and other in-person meetings;
  - d. records and testimony of other oral communications and in-person meetings where key agency business was conducted;
  - e. training, safeguards, and procedures that the EPA has instituted to ensure that records of oral communications and in-person meetings are created;
  - f. evidence of disciplinary action taken against EPA employees for records management violations;
  - g. calendar entries and phone logs that might establish whether career agency employees were systematically excluded from meetings to avoid detection of unlawful failures to create records of agency business;
  - h. training documents, procedural safeguards, and other aspects of the agency’s records management program that ensure that records are properly created;
  - i. correspondence between the agency and third parties, including the National Archives and Records Administration, regarding problems with and changes to the agency’s records management program; and

j. evidence of tangible changes in the recordkeeping practices of the agency since the adoption and promulgation of the Interim Records Management Policy.

5. Discovery of these facts is necessary to prove every aspect of Plaintiffs' remaining claims that the agency had a practice of failing to create records, in violation of the Federal Records Act, and that the agency failed to maintain an adequate records management program. Discovery of these facts would further permit Plaintiffs to justify seeking injunctive relief and shape the specific parameters of that relief. Finally, this discovery is necessary to allow Plaintiffs to rebut defenses that Defendants are already asserting, including lack of subject matter jurisdiction.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Washington D.C. this 15 day of October, 2018

A handwritten signature in black ink, appearing to read 'Conor M. Shaw', written over a horizontal line.

Conor M. Shaw