

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

**CITIZENS FOR RESPONSIBILITY
AND ETHICS IN WASHINGTON,**)
1101 K St. N.W., Suite 201,)
Washington, D.C. 20005,)

Plaintiff,)

v.)

Civil Action No.

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

Defendant.)

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 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 Defendant U.S. Department of Commerce (“Commerce”) to release records in response to CREW’s FOIA request for (1) all communications with former Commerce official Eric Branstad and former Trump campaign official Rick Gates from January 20, 2017, to March 1, 2018; and (2) all communications sent or received by Branstad mentioning the defense firm Circinus.

2. This case seeks declaratory relief that Commerce is in violation of FOIA, 5 U.S.C. § 552(a)(3)(a), by refusing to provide CREW all responsive, non-exempt documents, and injunctive relief ordering Commerce to process and release to CREW immediately the requested records.

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). The Court also has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 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 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 its research, CREW uses government records made available to it under the FOIA.

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

Factual Background

6. Eric Branstad is a political consultant who served as the Iowa State Director for Donald J. Trump's 2016 presidential campaign. After the election, Branstad joined Commerce as Senior White House Advisor and Chief Aide to Commerce Secretary Wilbur Ross. Branstad left Commerce in January 2018.

7. Rick Gates is a political consultant and lobbyist who worked for Trump's 2016 presidential campaign as a deputy campaign manager. Branstad and Gates worked together on the campaign. In February 2018, Gates pleaded guilty to charges of conspiracy and false statements relating to his consulting work with pro-Russian political figures in the Ukraine.

8. While Branstad worked at Commerce, Gates contacted him on at least one occasion on behalf of Circinus, a defense firm owned by Elliott Broidy, a top fundraiser for President Trump. According to reporting by the *New York Times*, Gates considered Branstad a "contact" at Commerce who could help secure the agency's endorsement of lucrative defense work by Circinus for the Romanian government. Kenneth P. Vogel, et al., Two Trump Allies, Seeing Unlimited Opportunity, Instead Draw Scrutiny, *New York Times*, July 24, 2018, available at <https://nyti.ms/2uO97dj>. Gates relayed talking points to Branstad explaining why Circinus deserved the endorsement, which Branstad, in turn, relayed to the agency staff overseeing Romania. *Id.* Commerce ultimately provided the endorsement. *Id.*

9. To help answer questions about these contacts, CREW submitted a FOIA request to Commerce by email dated August 2, 2018, seeking:

1. All communications between former White House advisor to the Commerce Department Eric Branstad and former Trump campaign official Rick Gates from January 20, 2017 to March 1, 2018.
2. All communication[s] sent or received by Mr. Branstad that mention the defense firm Circinus.

10. CREW sought a waiver of fees associated with processing its request, explaining the requested records would shed light on how individuals with ties to President Trump sought to influence federal agencies on behalf of lobbying clients, and how agency officials responded to these requests.

11. By email dated August 6, 2018, Commerce confirmed receipt of CREW's request, assigning it tracking number DOC-IOS-2018-001899.¹

12. By email dated October 3, 2018, Commerce granted CREW's fee waiver.

13. After receiving no determination on its request, CREW called Commerce on October 31, 2018, to obtain an update. Commerce stated that it sent CREW a letter on August 22, 2018, asking for clarification on its request and that, after not receiving a response, it closed the request on October 4. CREW noted that it had no record of these communications in either the email address listed in CREW's request or Commerce's online FOIA portal. Commerce responded that it would reopen the request. CREW also agreed to modify the second part of its request to include a date range, so that it would seek all communication sent or received by Branstad that mention the defense firm Circinus "from January 20, 2017, to March 1, 2018."

14. Later on October 31, 2018, CREW sent Commerce an email memorializing the phone call earlier that day. Commerce responded by email dated November 1, 2018, that it would "reopen the request for processing."

15. By email dated November 5, 2018, Commerce confirmed that it had modified the second part of CREW's request to seek all communication sent or received by Branstad that mention the defense firm Circinus "from January 20, 2017, to March 1, 2018."

16. To date, Commerce has not provided CREW with a determination on its request.

17. CREW has exhausted all administrative remedies applicable to its request.

¹ Commerce sent another email on August 13, 2018 purportedly changing the tracking number to DOC-IOS-2018-001899, but that was the initial tracking number, as well.

PLAINTIFF'S CLAIM FOR RELIEF

(Wrongful Withholding of Non-Exempt Records)

18. Plaintiff repeats and re-alleges the preceding paragraphs.
19. In its August 2, 2018 FOIA request, Plaintiff properly asked for records within the custody and control of Defendant.
20. Defendant wrongfully withheld from disclosure agency records requested by Plaintiff in its August 2, 2018 FOIA request.
21. By failing to release the records Plaintiff requested, Defendant violated FOIA.
22. Plaintiff is therefore entitled to injunctive and declaratory relief with respect to the immediate processing and disclosure of the records requested in its August 2, 2018 FOIA request.

Requested Relief

WHEREFORE, Plaintiff respectfully requests that this Court:

- (1) Order Defendant to immediately and fully process Plaintiff's August 2, 2018 FOIA request and disclose all non-exempt documents immediately to Plaintiff;
- (2) Issue a declaration that Plaintiff is entitled to immediate processing and disclosure of the records requested in its August 2, 2018 FOIA request;
- (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 costs and reasonable attorneys' fees in this action; and
- (6) Grant such other relief as the Court may deem just and proper.

Date: December 20, 2018

Respectfully Submitted,

/s/ Nikhel Sus

NIKHEL S. SUS

(D.C. Bar No. 1017937)

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