

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

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<b>PROJECT ON GOVERNMENT</b>	)	
<b>OVERSIGHT, INC.</b>	)	
<b>1100 13th Street, NW</b>	)	
<b>Suite 800</b>	)	
<b>Washington, DC 20005,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Case No:</b>
	)	
<b>U.S. DEPARTMENT OF THE</b>	)	
<b>TREASURY,</b>	)	
<b>1500 Pennsylvania Avenue, N.W.</b>	)	
<b>Washington, DC 20220,</b>	)	
	)	
<b>Defendant.</b>	)	
<hr/>	)	

**COMPLAINT**

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. §§ 220 and 2202, for injunctive, declaratory, and other appropriate relief. Plaintiff Project On Government Oversight, Inc. (“POGO”) challenges the failure of defendant U.S. Department of the Treasury (“Treasury”) to provide POGO with all non-exempt documents responsive to an expedited FOIA request POGO filed with Treasury nearly 20 months ago seeking records concerning Treasury’s response to allegations by an Internal Revenue Service (“IRS”) whistleblower of interference with the IRS’s presidential audit process.

## **JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(C)(i). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331.

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

## **PARTIES**

4. Plaintiff POGO is a nonpartisan independent organization based in Washington, D.C. and organized under section 501(c)(3) of the Internal Revenue Code. Founded in 1981, POGO champions reforms to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles. POGO's investigators and journalists take leads and information from insiders and verify the information through investigations using FOIA, interviews, and other fact-finding strategies. POGO's investigative work has been recognized by Members of Congress, executive branch officials, and professional journalism organizations. For instance, in 2015, POGO won the Robert D.G. Lewis Watchdog Award, the Society of Professional Journalists Washington, D.C. Professional Chapter's highest journalistic award, for reporting on the Department of Justice's opaque system for handling allegations of attorney misconduct within its ranks. In 2018, POGO won an award from the Society for Advancing Business Editing & Writing for its investigative series scrutinizing the government's oversight of offshore drilling. POGO extensively used records obtained under FOIA for this investigation.

5. Treasury is a federal agency within the meaning of FOIA, 5 U.S.C. § 552(f). Treasury has possession and control of the records POGO seeks in this action.

## STATUTORY BACKGROUND

6. FOIA requires federal agencies, upon request, to make records “promptly available to any person,” 5 U.S.C. § 552(a)(3)(A), unless one or more specific statutory exemptions apply.

7. The agency must provide the public records when they are requested in order “to ensure an informed citizenry, vital to the functioning democratic society.” *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978).

8. The FOIA requires a requester to “reasonably describe[.]” the records sought. 5 U.S.C. § 552(a)(3)(A).

9. Through the 1974 amendments to the FOIA Congress added this language to replace the previous formulation that a request be “for identifiable records[.]” See Pub. L. No. 93-502, § 1(b)(1). Congress made the change because despite its warning that the earlier language “not . . . be used as a method for withholding,” “cases nonetheless have continued to arise where courts have felt called upon to chide the government for attempting to use the identification requirements as an excuse for withholding documents.” S. Rep. No. 93-854, 93d Cong., 2d Sess. 10 (1974). *See also Truitt v. Dep’t of State*, 897 F.2d 540, 544 (D.C. Cir. 1990). Believing “that the identification standard in the FOIA should not be used to obstruct public access to agency records,” Congress made “explicit the liberal standard for identification” with the requirement that a request reasonably describe the requested records. 1974 Senate Report at 10; *Truitt*, 897 F.2d at 545.

10. An agency must make a determination on a FOIA request within twenty business days and notify the requester of which of the requested records it will release, which it will

withhold and why, and the requester's right to appeal the determination to the agency head. 5 U.S.C. § 552(a)(6)(A)(i).

11. The twenty-day deadline for an agency to make a determination on a request begins on the earlier of: (1) the date "the request is first received by the appropriate component of the agency" or (2) "ten days after the request is "first received by any component of the agency that is designated in the agency's regulations . . . to receive [FOIA] requests." 5 U.S.C. § 552(a)(6)(A)(ii).

12. In unusual circumstances, an agency may extend the time limits the FOIA prescribes by written notice to the person making such request that sets forth the reasons for such extension and the date on which a determination is "expected" to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. 5 U.S.C. § 552(a)(6)(B)(i).

13. If an agency does not respond to a FOIA request by the statutory deadline, the requester is deemed to have exhausted administrative remedies and may immediately pursue judicial review. 5 U.S.C. §§ 552(a)(6)(C)(i), 552(a)(4)(B).

### **FACTUAL BACKGROUND**

14. In August 2019, it was reported that a whistleblower had made "credible allegations" to the House of Representative Ways and Means Committee of possible unlawful interference in the presidential audit process conducted by the IRS. *See, e.g.,* Aaron Lorenzo, [House Democrats say whistleblower bolsters case for getting Trump's tax returns](https://www.politico.com/story/2019/08/20/tax-democrats-trump-1673427), *Politico*, Aug. 20, 2019, <https://www.politico.com/story/2019/08/20/tax-democrats-trump-1673427>. The allegations came to light in a motion by the House Ways and Means Committee seeking access to President Donald Trump's tax returns. *Id.*

15. Upon learning of these allegations House Ways and Means Chair Richard Neal sent a letter to then-Treasury Secretary Steven Mnuchin on August 8, 2019, about the “credible allegations of ‘evidence of possible misconduct’—specifically, potential ‘inappropriate efforts to influence’ the mandatory audit program” that the committee had received in an “unsolicited communication” on July 29, 2019. *Id.*

16. Subsequent reporting brought to light that Secretary Mnuchin had advised Rep. Neal in an August 13, 2019 letter that he had referred the allegations to Treasury’s Inspector General for Tax Administration. Alan Rappaport, Treasury Officials Pressured I.R.S. on Trump Tax Audit, Whistle-Blower Alleges, *New York Times*, Oct. 3, 2019, <https://www.nytimes.com/2019/10/03/us/politics/trump-taxes-whistleblower.html>.

17. The revelations about the IRS whistleblower became public as the legal battle between Treasury and the House Ways and Means Committee was escalating. Reporting about this very public escalation explained that the annual presidential audit process “is supposed to be walled off from political appointees and interference.” Jeff Stein, Tom Hamburger, and Josh Dawsey, IRS whistleblower said to report Treasury political appointee might have tried to interfere in audit of Trump or Pence, *Washington Post*, Oct. 3, 2019, [https://www.washingtonpost.com/business/economy/irs-whistleblower-said-to-report-treasury-political-appointee-might-have-tried-to-interfere-in-audit-of-trump-or-pence/2019/10/03/0c768b34-e52e-11e9-a331-2df12d56a80b\\_story.html](https://www.washingtonpost.com/business/economy/irs-whistleblower-said-to-report-treasury-political-appointee-might-have-tried-to-interfere-in-audit-of-trump-or-pence/2019/10/03/0c768b34-e52e-11e9-a331-2df12d56a80b_story.html).

18. In an interview with the IRS whistleblower, the *Washington Post* learned that on July 29, 2019, the whistleblower had filed a formal complaint with the tax committee chairs of both houses of Congress and the Treasury Inspector General for Tax Administration. *Id.*

19. By November 2019, it was reported that both Senator Charles E. Grassley and Senator Ron Wyden, the chair and ranking Democrat on the Senate Finance Committee respectively, were investigating the IRS whistleblower's allegations. Jeff Stein and Tom Hamburger, [IRS whistleblower case advances as Senate staff looks at whether political appointee meddled with audit of Trump or Pence](https://www.washingtonpost.com/business/2019/11/18/irs-whistleblower-case-advances-senate-staff-probe-whether-political-appointee-meddled-with-audit-of-trump-or-pence/), *Washington Post*, Nov. 18, 2019, <https://www.washingtonpost.com/business/2019/11/18/irs-whistleblower-case-advances-senate-staff-probe-whether-political-appointee-meddled-with-audit-trump-or-pence/>. The investigation continued as the Senate impeachment trial of President Trump got underway and comparisons were made between that process—which was initiated by a whistleblower complaint—and the ongoing investigation by the Senate of the allegations of the IRS whistleblower. Jeff Stein and Erica Werner, [Senate investigators interview IRS whistleblower about alleged interference with Trump or Pence audit](https://www.washingtonpost.com/business/2020/01/31/irs-whistleblower-trump-pence-audit/), *Washington Post*, Jan. 31, 2020, <https://www.washingtonpost.com/business/2020/01/31/irs-whistleblower-trump-pence-audit/>.

*Plaintiff's February 28, 2020 Freedom of Information Act Request*

20. On February 28, 2020, in the midst of the news reports concerning the IRS whistleblower's allegations of illegality in the IRS's presidential audit process, POGO submitted a FOIA request to Treasury by email on February 28, 2020. POGO requested emails and email attachments since July 1, 2019, mentioning the terms "Ways and Means," "Grassley," "Wyden," "finance.senate.gov" or "Trump" in connection with the following terms: (1) evidence of possible misconduct; (2) inappropriate efforts to influence; (3) IRM 4.2.1.11; (4) Processing Returns and Accounts of the President and Vice President; (5) IRM 4.8.4.2.5; (6) Audit of President and Vice President; (7) IRM 11.3.30; (8) Disclosure to the President; or (9) whistleblower.

21. POGO's FOIA request specified that the following email accounts were to be searched: (1) Secretary of the Treasury Steven Mnuchin; (2) Deputy Secretary of the Treasury Justin Muzinich; (3) General Counsel Bran Callanan; (4) Assistant Secretary for Tax Policy David Kautter; (5) Assistant Secretary for Legislative Affairs Brian McGuire; (6) Counselor to the Secretary Dan Kowalski; and (7) Counselor to the Secretary Adam Lerrick. POGO specified that its request includes all emails sent and received on official email accounts as well as any other non-official email accounts or communication applications, including personal and campaign email accounts such as Gmail and personal phones that have been used to conduct official business.

22. POGO also requested a waiver of fees explaining that the requested records will inform the public about how Treasury leadership is responding to allegations by a whistleblower that involve the president, and specifically whether Treasury is seeking to protect the unnamed whistleblower or identify them and whether Treasury is cooperating with Congress in its investigation of the whistleblower's claims. POGO explained it is an organization that investigates, exposes, and seeks to remedy systemic abuses of power and mismanagement in the federal government, and will publicize the requested records in ways that will contribute to public understanding of how the IRS is responding to a whistleblower with high-profile claims that could anger the president.

23. POGO also requested that Treasury expedite its processing of the request in light of the upcoming Supreme Court oral argument on March 31, 2020 in the lawsuit filed by the House Ways and Means Committee seeking President Trump's tax returns under 26 U.S.C. §6103(f). POGO explained that the documents POGO is requesting on how Treasury's leadership is responding to the whistleblower raise a matter of current exigency to the American

public because they would show whether the IRS is administering its audits of the president's and vice president's tax returns in accord with law and free from political influence. They would also show whether Treasury leadership is attempting to inhibit the flow of information from the whistleblower to Congress, a right protected by both the constitution and statute. POGO explained further that as a representative of the news media the requester was primarily engaged in disseminating information.

24. By letter dated February 28, 2020 and sent by email, Treasury advised POGO of its determination that POGO's request was "too broad to be processed." The letter advised POGO that Treasury could conduct a search on the terms POGO had listed in its request—Ways and Means, Grassley, Wyden, [finance.senate.gov](http://finance.senate.gov), and Trump—in connection with the terms POGO had specified except for the term "whistleblower," because that term "could result in voluminous records which are not responsive to your request." Treasury requested that POGO respond with an amended request within 30 days.

25. By letter dated March 5, 2020, Treasury acknowledged that in a February 28, 2020 email POGO had provided additional information clarifying the scope of its request along the lines of what Treasury had recommended. Treasury also advised that due to unusual circumstances, specifically the need to consult between two or more program offices and the expectation that a search will result in voluminous records and/or will request an off-site search, Treasury required an additional ten days to process POGO's request.

26. Treasury's March 5, 2020 letter also advised POGO that its request for expedited processing had been granted based on an urgency to inform the public about an actual or alleged federal government activity by a person primarily engaged in disseminating information.



27. Despite multiple subsequent inquiries from POGO on the status of this expedited request, the most recent occurring in early October 2021, to date Treasury has neither made a substantive response nor advised POGO when Treasury will complete processing the request.

28. Under 5 U.S.C. § 552(a)(6)(C)(i), POGO has now effectively exhausted all applicable administrative remedies with respect to its February 28, 2020 request.

### **PLAINTIFF'S CLAIM FOR RELIEF**

29. Plaintiff repeats and re-alleges the preceding paragraphs.

30. With its February 28, 2020 FOIA request, Plaintiff properly requested records within the possession, custody, and control of Defendant.

31. Defendant Treasury wrongfully withheld agency records requested by Plaintiff by failing to comply with the statutory time limit for making a determination on Plaintiff's expedited request, and by withholding from disclosure records responsive to Plaintiff's request.

32. Plaintiff POGO is therefore entitled to injunctive and declaratory relief with respect to the immediate processing and disclosure of the records requested in its expedited February 28, 2020 FOIA request.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court:

(1) Order Defendant to immediately and fully process plaintiff's February 28, 2020 FOIA request and to disclose all non-exempt documents immediately and at no cost to Plaintiff;

(2) Issue a declaration that Plaintiff is entitled to the immediate processing and disclosure of the requested records at no cost to Plaintiff;

(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.

Respectfully submitted,

/s/ Anne L. Weismann  
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Dated: October 21, 2021

*Attorney for Plaintiff*