

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

PROTECT THE PUBLIC’S TRUST)
712 H Street, N.E.)
Suite 1682)
Washington, D.C. 20002,)
)
Plaintiff,)
)
v.)
)
U.S. DEPARTMENT OF ENERGY)
1000 Independence Avenue, S.W.)
Washington, D.C. 20585,)
)
Defendant.)
_____)

Civil Case No. 1:23-cv-03749

COMPLAINT

1. Plaintiff Protect the Public’s Trust brings this action against the U.S. Department of Energy under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
3. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

PARTIES

4. Plaintiff Protect the Public’s Trust (“PPT”) is a nonprofit corporation dedicated to restoring public trust in government by promoting the fair and equal application of the rules and standards of ethical conduct to all public servants. Consistent with Justice Brandeis’s aphorism that “Sunlight is said to be the best of disinfectants; electric light the most efficient policeman,” PPT seeks to promote transparency and broadly disseminate

information so that the American people can evaluate the integrity and ethical conduct of those who act in their name. Louis Brandeis, *OTHER PEOPLE’S MONEY AND HOW BANKERS USE IT* (1914), <https://louisville.edu/law/library/special-collections/the-louis-d.-brandeis-collection/other-peoples-money-chapter-v>.

5. Defendant U.S. Department of Energy (the “Department”) is a federal agency within the meaning of FOIA, 5 U.S.C. § 552(f)(1). The Department has possession, custody, and control of records responsive to Plaintiff’s FOIA request.

STATEMENT OF FACTS

6. On or about March 10, 2023, PPT submitted a FOIA request (attached as Exhibit A) seeking the following records:

1. From January 20, 2021, through the date this request is processed, records of communications between the list of DOE officials and the list of external individuals.

Internal officials:

- a) Jennifer Wilcox – DOE Principal Deputy Assistant Secretary, Office of Fossil Energy and Carbon Management
- b) Robert Edwards - DOE Loan Office
- c) Jonah Wagner - DOE Loan Office Staff

External individuals:

- I. Melissa Stark – Managing Director - Global Renewables and Energy Transition Lead, Accenture
- II. Caroline Narich – Managing Director – Strategy Senior Manager, Accenture
- III. Dhiren Shethia – Managing Director, Accenture
- IV. Sandra Colin, Accenture
- V. Laura Duncan, Accenture

- VI. Trudy Atkinson, Accenture
 - VII. Arush Goyal, Accenture
 - VIII. Alex Hodgson, Accenture
 - IX. Sonja Albright, Accenture
 - X. Peter Corkum, Accenture
 - XI. Will Lochhead - UK Department of Business, Energy & Industrial Services
 - XII. Brad Markell - AFL-CIO
7. As Attorney General Garland has made clear, FOIA is “a vital tool for ensuring transparency, accessibility, and accountability in government” whose “‘basic purpose . . . is to ensure an informed citizenry,’ which is ‘vital to the functioning of a democratic society [and] needed to check against corruption and to hold the governors accountable to the governed.’” Merrick Garland, *Memorandum for Heads of Executive Departments and Agencies: Freedom of Information Act Guidelines* 1 (Mar. 15, 2022), <https://www.justice.gov/ag/page/file/1483516/download> (quoting *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978)) (“Garland Memo”).
8. The release of these documents is in the public interest because they will illuminate the relationship between the Department and outside groups and help ensure that Department officials are complying with their ethical obligations.
9. On March 13, 2023, the Department acknowledged receipt of Plaintiff’s request, referring to it as “HQ-2023-00694-F,” and sent an “interim response.” This interim response stated in part that Plaintiff’s request had been assigned to “DOE’s Loan Programs Office and Office of Fossil Energy and Carbon Management (FECM) to conduct a search of its files

for responsive documents.” The letter also noted that the Department “determined that the information satisfies the criteria considered for a waiver of fees” because “the subject of the request relates to a government activity, and information about the activity could lead to greater understanding by the public about the matter” and because Plaintiff “also demonstrated the ability and intent of [its] organization to disseminate the information to the public in a form that can further understanding of the subject matter.”

10. On March 15, 2023, the Department reached out requesting a call with Plaintiff.
11. Plaintiff and the Department spoke on April 3, 2023. During this phone call, Plaintiff agreed to limit the search for responsive documents to just emails.
12. That same day, Plaintiff followed up via email, providing email domains for Brad Markell and Will Lochhead, which were @aflcio.org and @beis.gov.uk, respectively.
13. There has been no further communication from the Department since April 3, 2023.
14. As the Garland Memo makes clear, “Timely disclosure of records is also essential to the core purpose of FOIA.” Garland Memo at 3.
15. Plaintiff’s request has been pending for over 270 days—well beyond the statutory period to respond to a FOIA request, even in “unusual circumstances.” 5 U.S.C. § 552(a)(6)(B). Yet the Department still has not made a determination of whether it will comply with Plaintiff’s request. *See Citizens for Responsibility and Ethics in Washington v. FEC*, 711 F.3d 180 (D.C. Cir. 2013). To wit, the Department has not provided an estimated date of completion, let alone produced the requested documents, communicated to the Plaintiff the scope of the documents it intends to produce and withhold, along with the reasons for such withholding, nor informed Plaintiff of its ability to appeal any adverse portion of its determination.

16. Thus, the Department has not and does not appear to intend to meet its statutory obligations to provide the requested records absent litigation.
17. Through the Department's failure to make a determination within the time period required by law, PPT has constructively exhausted its administrative remedies and seeks immediate judicial review.

COUNT I

Violation of FOIA, 5 U.S.C. § 552
Wrongful Withholding of Non-Exempt Responsive Records

18. PPT repeats and incorporates by reference each of the foregoing paragraphs as if fully set forth herein.
19. PPT properly submitted a request for records within the possession, custody, and control of the Department.
20. The Department is an agency subject to FOIA, and therefore has an obligation to release any non-exempt records and provide a lawful reason for withholding any materials in response to a proper FOIA request.
21. The Department is wrongfully withholding non-exempt agency records requested by PPT by failing to produce non-exempt records responsive to its request.
22. The Department's failure to provide all non-exempt responsive records violates FOIA.
23. Plaintiff is therefore entitled to declaratory and injunctive relief requiring the Department to promptly produce all non-exempt records responsive to its FOIA request and provide an index justifying the withholding of any responsive records withheld under claim of exemption.

REQUESTED RELIEF

Protect the Public's Trust respectfully requests this Court:

- (1) Assume jurisdiction in this matter and maintain jurisdiction until Defendant complies with the requirements of FOIA and any and all orders of this Court.
- (2) Order Defendant to produce, within ten days of the Court's order, or by other such date as the Court deems appropriate, any and all non-exempt records responsive to PPT's FOIA request and an index justifying the withholding of all or part of any responsive records withheld under claim of exemption.
- (3) Award PPT the costs of this proceeding, including reasonable attorney's fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E).
- (4) Grant PPT other such relief as the Court deems just and proper.

Dated: December 18, 2023

Respectfully submitted,

PROTECT THE PUBLIC'S TRUST
By Counsel:

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