

**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 JUSTICE)
950 Pennsylvania Avenue N.W.)
Washington, D.C. 20530,)
))
Defendant.)
_____)

Civil Case No. 1:24-cv-00673

COMPLAINT

1. Plaintiff Protect the Public’s Trust brings this action against the U.S. Department of Justice 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 Justice (“DOJ”) is a federal agency within the meaning of FOIA, 5 U.S.C. § 552(f)(1). DOJ has possession, custody, and control of records responsive to Plaintiff’s FOIA request.

STATEMENT OF FACTS

6. On August 18, 2023, PPT submitted a FOIA request to DOJ (attached as Exhibit A) seeking the following records:

From March 1, 2015, through the date this request is processed:

1. Records of communications between Laura Rowley and David Batson.
 2. Records of communications between Brian Donohue and David Batson.
 3. Records of communications between Laura Rowley and Brian Donohue with any employees of AlterEcho (anyone at the domain @alterecho.org).
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 concern the operations and activities of DOJ. PPT previously filed an ethics complaint with the Office of Government Ethics, Department of Justice, and Environmental Protection Agency expressing concern that David Batson, a former EPA employee, may have violated federal ethics laws by working on matters relating to the Diamond Alkali Superfund Site. *See Request for Investigation into Potential Violation by David Batson of the Lifetime Ethics Ban* (18 U.S.C. § 207), Protect the Public's Trust (Apr. 3, 2023), <https://protectpublictrust.org/wp-content/uploads/2023/03/PPT-Request-for-Investigation-into-Potential-Violation-by-David-Batson-of-the-Lifetime-Ethics-Ban.pdf>.
The requested records will further inform the public of whether and how Mr. Batson and the identified DOJ officials complied with applicable federal ethics laws.
9. On or about September 13, 2023, PPT received an email from the FOIA officer for DOJ's Environmental and Natural Resources Division ("ENRD") acknowledging receipt of the request and asking for clarification about which DOJ component should process it: ENRD or the Justice Management Division ("JMD").
10. PPT responded that DOJ should send the request to whichever DOJ component is best suited to produce the records it sought.
11. The ENRD FOIA officer replied that ENRD would process the request as it related to ENRD's records and that PPT could separately submit a FOIA to JMD if it sought JMD's records as well.
12. On September 22, 2023, the ENRD FOIA officer sent PPT an email with a letter attached. The letter stated that ENRD was "currently processing [PPT's] FOIA request" and

provided contact information for ENRD personnel who could assist with the request in various ways.

13. On October 3, 2023, PPT asked ENRD for an update about the request.

14. On October 4, 2023, the ENRD FOIA officer replied, “ENRD is currently collecting, uploading to our database, and reviewing records responsive to your FOIA request” and “we should be able to forecast our response time more accurately on your FOIA request in about two weeks.”

15. ENRD did not provide an estimated response time within two weeks.

16. On December 14, 2023, after more than 70 days of silence from ENRD, PPT followed up to ask for an update on its request.

17. On December 18, 2023, ENRD responded:

Thank you for your inquiry. ENRD has completed its collection of potentially responsive records and they have undergone initial review by the subject matter experts and a secondary review by our FOIA team. Additional review and coordination is needed, which is underway. We anticipate providing you with our interim or complete response to your request by the end of January and will keep you updated if that timeline requires adjustment.

18. Over 80 days have passed since ENRD stated that it anticipated providing a complete/interim response to the request by the end of January, and over 30 days have passed since ENRD’s January deadline. PPT has received no further communications from ENRD.

19. As the Garland Memo makes clear, “Timely disclosure of records is also essential to the core purpose of FOIA.” Garland Memo at 3.

20. Plaintiff’s request has been pending for over 200 days—well beyond the statutory period to respond to a FOIA request, even in “unusual circumstances.” 5 U.S.C. § 552(a)(6)(B).

To this day, DOJ still has not made a determination as to 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, DOJ has not 1) provided an estimated date of completion that has not already passed, let alone produced the requested documents, 2) communicated to the Plaintiff the scope of the documents it intends to produce and withhold, along with the reasons for such withholding, or 3) informed Plaintiff of its ability to appeal any adverse portion of its determination.

21. Given these facts, DOJ has not met its statutory obligations to provide the requested records, and it appears DOJ does not intend to do so absent litigation.
22. Through DOJ'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**

23. PPT repeats and incorporates by reference each of the foregoing paragraphs as if fully set forth herein.
24. PPT properly submitted a request for records within the possession, custody, and control of DOJ.
25. DOJ 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.
26. DOJ is wrongfully withholding non-exempt agency records requested by PPT by failing to produce non-exempt records responsive to its request.

27. DOJ's failure to provide all non-exempt responsive records violates FOIA.
28. Plaintiff is therefore entitled to declaratory and injunctive relief requiring DOJ 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 DOJ complies with the requirements of FOIA and any and all orders of this Court.
- (2) Order DOJ 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: March 8, 2024

Respectfully submitted,

PROTECT THE PUBLIC'S TRUST
By Counsel:

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