

**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. ENVIRONMENTAL PROTECTION )  
AGENCY )  
1200 Pennsylvania Avenue, N.W. )  
Washington, D.C. 20460, )  
 )  
Defendant. )  
\_\_\_\_\_ )

Civil Case No. 1:24-cv-00818

**COMPLAINT**

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

#### **STATEMENT OF FACTS**

6. On September 29, 2023, PPT submitted a FOIA request to EPA (attached as Exhibit A) seeking the following EPA records related to the role of “Indigenous Knowledge” in executive branch decision-making:

1. From January 20, 2021, through the date this request is processed, records of communications between the list of officials and anyone at the White House (domain: eop.gov) and/or Office of Science and Technology Policy (domain: ostp.eop.gov) regarding the recognition or use of “Indigenous Knowledge” in decision making.

Officials:

- a) Michael Regan, Administrator
- b) Janet McCabe, Deputy Administrator
- c) John Lucey, Special Assistant to the Administrator
- d) Dan Utech, Chief of Staff
- e) Dorien Paul Blythers, Deputy Chief of Staff for Operations
- f) Alison Cassidy, Deputy Chief of Staff for Policy
- g) Wesley J. Carpenter, Deputy Chief of Staff
- h) Robin Morris Collin, Senior Advisor for Environmental Justice
- i) Nick Conger, Associate Administrator, Office of Public Affairs
- j) Timothy Carroll, Deputy Associate Administrator

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 EPA and because PPT would use them to inform the public about the nature of EPA’s reliance on “indigenous knowledge” in making decisions that affect the American people.
9. On September 29, 2023, EPA responded with multiple emails.
10. First, EPA sent an email confirming its receipt of PPT’s request and assigning it the tracking number EPA-2023-006988.
11. Second, EPA sent PPT an email containing an attached “FOIA Request Assignment Letter.”
12. Third, EPA sent PPT an email containing an attached letter granting PPT a fee waiver for its FOIA request. EPA followed up on this email with a further email confirming that EPA was granting PPT a fee waiver.
13. After this flurry of emails on September 29, 2023, EPA went silent.
14. After over 135 days of silence from EPA, PPT requested an update on the status of its request on February 14, 2024.
15. EPA responded with an email stating that the request had been assigned to an EPA staff member who was copied on the email and would be responding directly to PPT.

16. PPT received no response from this staff member, nor any further communication from EPA regarding the request.
17. To this day, EPA has provided no further response regarding the request.
18. As the Garland Memo makes clear, “Timely disclosure of records is also essential to the core purpose of FOIA.” Garland Memo at 3.
19. PPT’s request has been pending for over 170 days—well beyond the statutory period to respond to a FOIA request, even in “unusual circumstances.” 5 U.S.C. § 552(a)(6)(B). EPA still has not determined whether it will comply with PPT’s request. *See Citizens for Responsibility and Ethics in Washington v. FEC*, 711 F.3d 180 (D.C. Cir. 2013). In failing to meaningfully engage with PPT’s request, EPA has not 1) provided an estimated date of completion, let alone produced the requested documents, 2) communicated to PPT the scope of the documents it intends to produce and withhold, along with the reasons for such withholding, or 3) informed PPT of its ability to appeal any adverse portion of its determination.
20. Given these facts, EPA has not met its statutory obligations to provide the requested records, and it appears EPA does not intend to do so absent litigation.
21. Through EPA’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**

22. PPT repeats and incorporates by reference each of the foregoing paragraphs as if fully set forth herein.

23. PPT properly submitted a request for records within the possession, custody, and control of EPA.
24. EPA 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.
25. EPA is wrongfully withholding non-exempt agency records requested by PPT by failing to produce non-exempt records responsive to its request.
26. EPA's failure to provide all non-exempt responsive records violates FOIA.
27. PPT is therefore entitled to declaratory and injunctive relief requiring EPA 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 EPA complies with the requirements of FOIA and any and all orders of this Court.
- (2) Order EPA 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 21, 2024

Respectfully submitted,

PROTECT THE PUBLIC'S TRUST  
By Counsel:

/s/Gary M. Lawkowski

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