

**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.)

Civil Case No. 1:24-cv-01487

U.S. DEPARTMENT OF ENERGY)
1000 Independence Avenue, SW)
Washington, D.C. 20585,)

Defendant.)

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

STATEMENT OF FACTS

6. 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”).
7. PPT submitted four FOIA requests to Energy seeking various communications records related to Energy Director Jigar Shah.
8. For all four requests, Energy failed to meaningfully respond by either producing records or withholding records and explaining its basis for doing so.

The First Request: HQ-2024-00359-F

9. On or about November 6, 2023, PPT submitted its first request to Energy (the “First Request” or “HQ-2024-00359”) (attached as Exhibit A) seeking the following communications records related to Director Shah:

1. From January 20, 2021, through the date this request is processed, records of communications between Jigar Shah and any individual at the list of outside organizations affiliated with Cleantech Leaders Roundtable.

Organizations:

- a) Ambient Fuels, ambientfuels.com
- b) Transcend Software, transcendinginfra.com
- c) CrossRiver Capital, xrivercap.com
- d) Sparxell, @sparxell.com
- e) Copacity, copacity.com

10. The release of these documents is in the public interest because it will enable the public to evaluate whether there is an improper relationship between Cleantech Leaders Roundtable, a trade association reportedly “founded” by Director Shah, and Energy’s Loan Programs Office. *See* Alana Goodman, *Biden's Energy Loan Czar Founded a Trade Association. Now It's Selling Access to Him*, Free Beacon (Oct. 6, 2023), <https://freebeacon.com/biden-administration/bidens-energy-loan-czar-founded-a-trade-association-now-its-selling-access-to-him/>.

11. On November 9, 2023, Energy sent PPT an email with an attached interim response letter. The letter stated that in part PPT’s fee waiver request had been granted and that request had been assigned to Energy’s Loan Programs Office to conduct a search for responsive records.

12. On February 2, 2024, PPT connected Energy by phone to amend the request’s parameters to include documents responsive to the search terms “Ambient Fuels,” “Transcend

Software,” “CrossRiver Capital,” and “Copacity.” This amendment was confirmed in an email sent by Energy to PPT.

13. On February 13, 2024, PPT requested an update on the request from Energy.
14. On February 15, 2024, Energy responded that the search had been completed and an analyst was “working the case.”
15. To date, PPT has received neither a further response nor any other communication from Energy regarding HQ-2024-00359-F.

The Second Request: HQ-2024-00360-F

16. On or about November 6, 2023, PPT sent its second request to Energy (the “Second Request” or “HQ-2024-00360-F”) (attached as Exhibit B) seeking the following communications records involving Director Shah:

1. From January 20, 2021, through the date this request is processed, records of communications between Jigar Shah and any individual at the list of outside organizations who have sponsored events for Cleantech Leaders Roundtable.

Organizations and email domains:

- a) Lazard, @lazard
- b) ALLY, ally.com
- c) Earthshot Foundation, earthshot.us
- d) Petroleum Club of Houston, pcoh.com
- e) Hannon Armstrong, Hasi.com
- f) ANTIN, antin-ip.com
- g) Clean Energy Venture Group cleanenergyventures.com.
- h) Foley Hoag, foleyhoag.com
- i) YSG Solar, ysgsolar.co
- j) NineDot Energy, nine.energy.com
- k) Twelve antennagroup.com
- l) Galway Sustainable Capital, galwaysustainablecredit.com
- m) Colorado Cleantech Industries Association, coloradocleantech.com
- n) Blackthorn ventures, blackhornvc.com
- o) Rakas, rakas.gr
- p) Scale Microgrids, scalemicrogrids.com
- q) Distributed Sun, Distributedsun.com
- r) caprock renewables, caprockrenewables.com
- s) CleanTX, cleantx.org

- t) Dentons, dentons.com.
- u) Booz Allen Hamilton, bah.com
- v) Antenna Group, antennagroup.com
- w) Dylan Green, dylan-green.com
- x) Activate Capital, activatecp.com

17. The release of these documents is in the public interest because it will enable the public to evaluate whether there is an improper relationship between Cleantech Leaders Roundtable, a trade association reportedly “founded” by Director Shah, and Energy’s Loan Programs Office. *See* Alana Goodman, *Biden's Energy Loan Czar Founded a Trade Association. Now It's Selling Access to Him*, Free Beacon (Oct. 6, 2023), <https://freebeacon.com/biden-administration/bidens-energy-loan-czar-founded-a-trade-association-now-its-selling-access-to-him/>.
18. On November 9, 2023, Energy sent PPT an email with an attached interim response letter. The letter stated in part that PPT’s fee waiver request had been granted and that request had been assigned to Energy’s Loan Programs Office to conduct a search for responsive records.
19. On February 13, 2024, PPT requested an update on the request from Energy.
20. On February 15, 2024, Energy responded that the search had been completed and an analyst was “working the case.”
21. To date, PPT has received neither a further response nor any other communication from Energy regarding HQ-2024-00360-F.

The Third Request: HQ-2024-00361-F

22. On or about November 6, 2023, PPT sent its third request to Energy (the “Third Request” or “HQ-2024-00361-F”) (attached as Exhibit C) seeking the following communications records involving Director Shah:

1. From January 20, 2021, through the date this request is processed, records of communications between Jigar Shah and the DOE ethics office regarding events and meetings Mr. Shah attended and/or was invited to attend.
23. The release of these documents is in the public interest because it will enable the public to better understand any communications between Director Shah and the ethics office regarding his ability to attend meetings and events.
24. On November 9, 2023, Energy sent PPT an email with an attached interim response letter. The letter stated in part that PPT's fee waiver request had been granted and that request had been assigned to Energy's Loan Programs Office to conduct a search for responsive records.
25. On February 13, 2024, PPT requested an update on the request from Energy.
26. On February 15, 2024, Energy responded that the search had been completed and an analyst was "working the case."
27. To date, PPT has received neither a further response nor any other communication from Energy regarding HQ-2024-00361-F.

The Fourth Request: HQ-2024-00362-F

28. On or about October 31, 2023, PPT submitted its fourth request to Energy (the "Fourth Request" or "HQ-2024-00362-F") (attached as Exhibit D) seeking the following communications records related to Director Shah:
1. From January 20, 2021, through the date this request is processed, records of communications between the list of DOE officials and any individual at the Cleantech Leaders Roundtable (email domain: cleantechleaders.org)
 2. From January 20, 2021, through the date this request is processed, records of communications between the list of officials regarding Cleantech Leaders Roundtable.

Officials:

- a) Jigar Shah
- b) Rupinder Kaur
- c) Gretchen Kittel
- d) Hernan Cortes
- e) Sheila Moynihan
- f) Robert Marcum
- g) Rebecca Limmer
- h) Christopher Creed
- i) Michael Reed
- j) Jennifer Granholm
- k) Jigar Shah
- l) Robert Edwards - DOE Loan Office
- m) Jonah Wagner - DOE Loan Office Staff

29. The release of these documents is in the public interest because it will enable the public to evaluate whether there is an improper relationship between Cleantech Leaders Roundtable, a trade association reportedly “founded” by Director Shah, and Energy’s Loan Programs Office. *See* Alana Goodman, *Biden's Energy Loan Czar Founded a Trade Association. Now It's Selling Access to Him*, Free Beacon (Oct. 6, 2023), <https://freebeacon.com/biden-administration/bidens-energy-loan-czar-founded-a-trade-association-now-its-selling-access-to-him/>.

30. On November 9, 2023, Energy sent PPT an email with an attached interim response letter. The letter stated that PPT’s fee waiver request had been granted and that request had been assigned to Energy’s Loan Programs Office to conduct a search for responsive records.

31. To date, PPT has received neither a further response nor any other communication from Energy regarding HQ-2024-00362-F.

Energy has violated its obligations under FOIA

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

33. It has been over 190 days since PPT first submitted all four requests and over 100 days since PPT clarified its First Request—well beyond the statutory period to respond to a FOIA request, even in “unusual circumstances.” 5 U.S.C. § 552(a)(6)(B). Yet Energy still has not determined whether it will comply with PPT’s requests. *See Citizens for Responsibility and Ethics in Washington v. FEC*, 711 F.3d 180 (D.C. Cir. 2013). To wit, Energy 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.
34. Given these facts, Energy has not met its statutory obligations to provide the requested records, and it appears Energy does not intend to do so absent litigation.
35. Through Energy’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: PPT’s First Request

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

36. PPT repeats and incorporates by reference paragraphs 1-15 and 32-35 as if fully set forth herein.
37. PPT properly submitted a request for records within the possession, custody, and control of Energy.
38. Energy 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.

39. Energy is wrongfully withholding non-exempt agency records requested by PPT by failing to produce non-exempt records responsive to its request.
40. Energy's failure to provide all non-exempt responsive records violates FOIA.
41. PPT is therefore entitled to declaratory and injunctive relief requiring Energy 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.

COUNT II: PPT's Second Request

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

42. PPT repeats and incorporates by reference paragraphs 1-8, 16-21, and 32-35 as if fully set forth herein.
43. PPT properly submitted a request for records within the possession, custody, and control of Energy.
44. Energy 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.
45. Energy is wrongfully withholding non-exempt agency records requested by PPT by failing to produce non-exempt records responsive to its request.
46. Energy's failure to provide all non-exempt responsive records violates FOIA.
47. PPT is therefore entitled to declaratory and injunctive relief requiring Energy 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.

COUNT III: PPT's Third Request

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

48. PPT repeats and incorporates by reference paragraphs 1-8, 22-27, and 32-35 as if fully set forth herein.
49. PPT properly submitted a request for records within the possession, custody, and control of Energy.
50. Energy 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.
51. Energy is wrongfully withholding non-exempt agency records requested by PPT by failing to produce non-exempt records responsive to its request.
52. Energy's failure to provide all non-exempt responsive records violates FOIA.
53. PPT is therefore entitled to declaratory and injunctive relief requiring Energy 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.

COUNT IV: PPT's Fourth Request

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

54. PPT repeats and incorporates by reference paragraphs 1-8 and 28-35 as if fully set forth herein.
55. PPT properly submitted a request for records within the possession, custody, and control of Energy.

56. Energy 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.
57. Energy is wrongfully withholding non-exempt agency records requested by PPT by failing to produce non-exempt records responsive to its request.
58. Energy's failure to provide all non-exempt responsive records violates FOIA.
59. PPT is therefore entitled to declaratory and injunctive relief requiring Energy 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 Energy complies with the requirements of FOIA and any and all orders of this Court.
- (2) Order Energy to produce, within 10 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: May 20, 2024

Respectfully submitted,

PROTECT THE PUBLIC'S TRUST
By Counsel:

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