

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

NISKANEN CENTER, INC. )  
820 First Street, NE )  
Suite 625 )  
Washington, DC 20002, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
UNITED STATES DEPARTMENT )  
OF ENERGY, )  
 )  
Defendant. )

Civil Action No. 1:17 – cv – 676

COMPLAINT

1. The Niskanen Center, Inc. brings this action against defendant United States Department of Energy for violation of the Freedom of Information Act.

PARTIES

2. Plaintiff Niskanen Center, Inc. (“Niskanen”) is a 501(c)(3) corporation organized under the laws of Delaware, and has its principal office at 820 First Street, NE, Washington, DC.

3. Defendant U.S. Department of Energy (“DOE”) is an agency of the federal government, and has its headquarters at 1000 Independence Avenue, SW, Washington, DC.

JURISDICTION AND VENUE

4. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B).

5. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B).

FACTS

6. On March 10, 2017, Ryan Hagemann, Niskanen's Director of Technology Policy, sent a Freedom of Information Act ("FOIA") request seeking various documents related to the National Coal Council ("NCC"). The NCC is a Federal Advisory Committee established by DOE. (The request also sought these documents pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appx. § 10.)

7. The FOIA request was sent by both email and Certified Mail, Return Receipt Requested, to DOE's FOIA Requester Service Center, Daniel Matuszak (DOE's agency contact for the NCC), and Janet Gellici, NCC's CEO.

8. On March 16, 2017, Mr. Hagemann received a call from Melissa Darr, a FOIA Analyst at DOE, inquiring about whether Niskanen was seeking a fee waiver for the request. Later that day, Mr. Hagemann followed up on that call with an email to Ms. Darr formally requesting a fee waiver; Ms. Darr responded by email the same day, confirming receipt of Mr. Hagemann's fee waiver request and assigning "control number" HQ-2017-00703-F to the request.

9. On April 7, 2017, Alexander Morris, a DOE FOIA Officer, emailed a letter to Mr. Hagemann stating that DOE had granted the requested fee waiver, that DOE's Office of Fossil Energy was searching for responsive documents, and that "[u]pon completion of the search and review of any records located, you will be provided a response."

10. DOE has not made any further response to Niskanen's FOIA request.

COUNT I  
(Violation of the Freedom of Information Act)

11. Niskanen repeats and realleges paragraphs 1 - 10 as if fully set forth herein.

12. Section 552(a)(6)(A)(i) of the Freedom of Information Act requires that an agency make a determination as to a FOIA request within 20 business days after receipt of the request.

13. More than twenty business days have passed since DOE received Niskanen's FOIA request, and DOE has not made the required determination, in violation of 5 U.S.C. § 552(a)(6)(A)(i).

PRAYER FOR RELIEF

Plaintiff respectfully requests that the Court grant the following relief:

- A. Declare that defendant DOE has violated the Freedom of Information Act, 5 U.S.C. § 552(a)(6)(A)(i);
- B. Order defendant DOE to produce the requested documents within 10 days;
- C. Award Plaintiff its attorney fees and litigation expenses; and
- D. Award any other relief this Court finds just and proper.

Respectfully submitted,

s/David Bookbinder  
David Bookbinder  
D.C. Bar # 455525  
General Counsel  
Niskanen Center  
820 First Street, NE  
Suite 820  
Washington, DC 20002  
202-899-1173  
dbookbinder@niskanencenter.org