

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

_____)	
AMERICAN OVERSIGHT,)	
1030 15th Street NW, B255)	
Washington, DC 20005)	
)	
)	<i>Plaintiff,</i>
)	
v.)	Case No. 17-2199
)	
U.S. DEPARTMENT OF LABOR,)	
200 Constitution Avenue NW)	
Washington, DC 20210)	
)	
)	<i>Defendant.</i>
_____)	

COMPLAINT

1) Plaintiff American Oversight brings this action against the U.S. Department of Labor under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, 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, 2201, and 2202.

3) Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

4) Because Defendant has failed to comply with the applicable time-limit provisions of the FOIA, American Oversight is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and is now entitled to judicial action enjoining the agency

from continuing to withhold agency records and ordering the production of agency records improperly withheld.

PARTIES

5) Plaintiff American Oversight is a nonpartisan, non-profit section 501(c)(3) organization committed to the promotion of transparency in government, the education of the public about government activities, and ensuring the accountability of government officials. Through research and FOIA requests, American Oversight uses the information it gathers, and its analysis of it, to educate the public about the activities and operations of the federal government through reports, published analyses, press releases, and other media. The organization is incorporated under the laws of the District of Columbia.

6) Defendant U.S. Department of Labor (DOL) is a department of the executive branch of the U.S. government headquartered in Washington, DC, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). DOL has possession, custody, and control of the records that American Oversight seeks.

STATEMENT OF FACTS

7) President Trump's administration has embarked on a number of efforts to reverse regulatory initiatives undertaken by the Obama administration, including DOL's overtime and conflict-of-interest rules.

8) On July 21, 2017, American Oversight submitted a FOIA request ("Overtime FOIA") to DOL seeking access to the following records:

- 1) All calendar entries for any meetings pertaining to "Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees under the Fair Labor Standards Act" or the "Overtime Rule," 29 C.F.R. § 541. For calendar entries created in Outlook or similar programs, the documents

should be produced in “memo” form to include all invitees, any notes, and all attachments. Please do not limit your search to Outlook calendars—we request the production of any calendar—paper or electronic, whether on government-issued or personal devices—used to track or coordinate how these individuals allocate their time on agency business.

- 2) All meeting agendas and lists of attendees for any meetings held pertaining to the Overtime Rule.
- 3) All lists of attendees for any meetings held pertaining to the Overtime Rule.
- 4) Any materials distributed by DOL or provided by non-DOL attendees at any meetings attended by persons not employed by the executive branch and held pertaining to the Overtime Rule.
- 5) All emails reflecting requests for meetings with non-DOL parties to discuss the Overtime Rule.
- 6) Copies of all correspondence pertaining to the Overtime Rule. This includes any official correspondence to or from DOL, including correspondence to or from other federal agencies, as well as any correspondence with or by any non-governmental person or entity.

Please provide all responsive records from January 20, 2017, to the date the search is conducted.

Your search for responsive records should include the Office of the Secretary (OSEC), the Office of the Assistant Secretary for Policy (ASP), the Wage and Hour Division (WHD), and the Executive Secretariat. For WHD, the search can be limited only to political appointees and career SES staff.

9) DOL assigned the Overtime FOIA request tracking number 836891.

10) On July 21, 2017, American Oversight submitted a second FOIA request

(“Conflict of Interest FOIA”) to DOL seeking access to the following records:

- 1) All calendar entries for any meetings pertaining to the development, implementation, consideration, evaluation, reconsideration, or re-evaluation of the “Fiduciary Rule” or

“Conflict of Interest Rule,” 29 C.F.R. § 2510.3-21. For calendar entries created in Outlook or similar programs, the documents should be produced in “memo” form to include all invitees, any notes, and all attachments. Please do not limit your search to Outlook calendars—we request the production of any calendar—paper or electronic, whether on government-issued or personal devices—used to track or coordinate how these individuals allocate their time on agency business.

- 2) All meeting agendas and lists of attendees for any meetings held pertaining to the development, implementation, consideration, evaluation, reconsideration, or re-evaluation of the Conflict of Interest Rule.
- 3) All lists of attendees for any meetings held pertaining to the development, implementation, consideration, evaluation, reconsideration, or re-evaluation of the Conflict of Interest Rule.
- 4) Any materials distributed by DOL or provided by non-DOL attendees at any meetings attended by persons not employed by the executive branch and held pertaining to the development, implementation, consideration, evaluation, reconsideration, or re-evaluation of the Conflict of Interest Rule.
- 5) All emails reflecting requests for meetings with non-DOL parties to discuss the development, implementation, consideration, evaluation, reconsideration, or re-evaluation of the Conflict of Interest Rule.
- 6) Copies of all correspondence pertaining to the development, implementation, consideration, evaluation, reconsideration, or re-evaluation of the Conflict of Interest Rule. This includes any official correspondence to or from DOL, including correspondence to or from other federal agencies, as well as correspondence with or by any non-governmental person or entity.

Please provide all responsive records from January 20, 2017, to the date the search is conducted.

Your search for responsive records should include the Office of the Secretary (OSEC), the Office of the Assistant Secretary for Policy (ASP), the Employee Benefits Security

Administration (EBSA), and the Executive Secretariat. For EBSA, the search can be limited only to political appointees and career SES staff.

11) DOL assigned the Conflict of Interest FOIA request tracking number 836892.

12) In subsequent communications with DOL, American Oversight made clear that the DOL components listed in the FOIA requests were suggestions, and that other offices with potentially responsive records should also be searched. For example, if anyone in the Front Office of the Office of the Solicitor (whether an Acting Solicitor, Deputy Solicitor, counsel, or any political appointee) or the relevant Associate Solicitor has potentially responsive records, American Oversight would expect that they would be searched as well for responsive records for both the Overtime FOIA and the Conflict of Interest FOIA.

13) DOL has not made determinations as to American Oversight's FOIA requests described above, notwithstanding the obligation of the agency under FOIA to respond within twenty working days.

14) Through DOL's failure to make determinations as to American Oversight's FOIA requests within the time period required by law, American Oversight has constructively exhausted its administrative remedies and seeks immediate judicial review.

COUNT I
Violation of FOIA, 5 U.S.C. § 552
Failure to Conduct Adequate Search for Records

15) American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

16) American Oversight properly requested records within the possession, custody, and control of DOL.

17) DOL is an agency subject to FOIA and must therefore make reasonable efforts to search for requested records.

18) DOL has failed to promptly review agency records for the purpose of locating those records which are responsive to American Oversight's FOIA requests.

19) DOL's failure to conduct adequate searches for responsive records violates FOIA.

20) Plaintiff American Oversight is therefore entitled to injunctive and declaratory relief requiring DOL to promptly make reasonable efforts to search for records responsive to American Oversight's FOIA requests.

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

21) American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

22) American Oversight properly requested records within the possession, custody, and control of DOL.

23) DOL is an agency subject to FOIA and must therefore release in response to a FOIA request any disclosable records and provide a lawful reason for withholding any materials.

24) DOL is wrongfully withholding agency records requested by American Oversight by failing to produce records responsive to its FOIA requests.

25) DOL's failure to provide all responsive records violates FOIA.

26) Plaintiff American Oversight is therefore entitled to injunctive and declaratory relief requiring DOL to promptly produce all non-exempt records responsive to its FOIA requests and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.

REQUESTED RELIEF

WHEREFORE, American Oversight respectfully requests the Court to:

- (1) Order Defendant to conduct a search reasonably calculated to uncover all records responsive to American Oversight's Overtime FOIA and Conflict of Interest FOIA requests submitted to Defendant on July 21, 2017;
- (2) Order Defendant to produce, by such a date as the Court deems appropriate, any and all non-exempt records responsive to American Oversight's Overtime FOIA and Conflict of Interest FOIA requests and indexes justifying the withholding of any responsive records withheld under claim of exemption;
- (3) Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to American Oversight's Overtime FOIA and Conflict of Interest FOIA requests;
- (4) Award American Oversight attorneys' fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (5) Grant American Oversight such other relief as the Court deems just and proper.

Dated: October 24, 2017

Respectfully submitted,

/s/ Cerissa Cafasso

Cerissa Cafasso

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