

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

AMERICAN OVERSIGHT, 1030 15th Street NW, B255 Washington, DC 20005)	
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)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Case No. 17-2246
)	
U.S. DEPARTMENT OF STATE, 2201 C Street NW Washington, DC 20520)	
)	
)	
<i>Defendant.</i>)	

COMPLAINT

1) Plaintiff American Oversight brings this action against the U.S. Department of State 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 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 State (State) 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). State has possession, custody, and control of the records that American Oversight seeks.

STATEMENT OF FACTS

7) On June 16, 2017, American Oversight submitted a FOIA request (“Mexico Communications FOIA”) to State seeking access to the following records:

All diplomatic communications, including formal and informal channel communications, with Mexico (including any individual acting on behalf of the country of Mexico) relating to funding for the construction of a wall, fence, or other physical or virtual barrier along the U.S.-Mexico border. (Please note that this request does not relate to any discussions exclusively concerning expenses related to the current walls or fences built along portions of the border. Rather, it seeks records relating to funding for any potential new construction along the border.)

The search for responsive records should include all individuals and locations where records are likely to exist, including but not limited

to the Office of the Secretary, the Office of the Deputy Secretary (including the Deputy Secretary and the Deputy Secretary for Management and Resources), the White House Liaison's Office, the Executive Secretariat, Policy Planning Staff, the Bureau of Western Hemisphere Affairs, the Office of the Undersecretary for Management, and the U.S. embassy in Mexico.

Please provide all responsive records from November 8, 2016, to the date the search is conducted.

8) State assigned the Mexico Communications FOIA request tracking number F-2017-12874.

9) On June 16, 2017, American Oversight submitted a second FOIA request ("Wall Preparations FOIA") to State seeking access to the following records:

All records reflecting any preparations by the State Department to seek or collect funding, reimbursement, or other remuneration from Mexico to pay for the cost of constructing a wall, fence, or other physical or virtual barrier along the U.S.-Mexico border, including but not limited to communications within the government regarding strategies for getting Mexico to pay (directly or indirectly) for the wall; communications within the government regarding potential alternative forms of compensation for the wall; any analyses of the likely success of any such efforts; or any other preparations for seeking or receiving funds from Mexico. This request includes but is not limited to cables, telegrams, emails, information memoranda, and action memoranda.

The search for responsive records should include all individuals and locations where records are likely to exist, including but not limited to the Office of the Secretary, the Office of the Deputy Secretary (including the Deputy Secretary and the Deputy Secretary for Management and Resources), the White House Liaison's Office, the Executive Secretariat, Policy Planning Staff, the Bureau of Western Hemisphere Affairs, the Office of the Undersecretary for Management, and the U.S. embassy in Mexico.

Please provide all responsive records from November 8, 2016, to the date the search is conducted.

10) State assigned the Wall Preparations FOIA request tracking number F-2017-14831.

11) State 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.

12) Through State'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

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

14) American Oversight properly requested records within the possession, custody, and control of State.

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

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

17) State's failure to conduct adequate searches for responsive records violates FOIA.

18) Plaintiff American Oversight is therefore entitled to injunctive and declaratory relief requiring State 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

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

20) American Oversight properly requested records within the possession, custody, and control of State.

21) State 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.

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

23) State's failure to provide all responsive records violates FOIA.

24) Plaintiff American Oversight is therefore entitled to injunctive and declaratory relief requiring State 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 Mexico Communications FOIA and Wall Preparations FOIA requests submitted to Defendant on June 16, 2017;
- (2) Order Defendant to produce, by such a date as the Court deems appropriate, any and all non-exempt records responsive to Mexico Communications FOIA and Wall

- Preparations 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 Mexico Communications FOIA and Wall Preparations 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 31, 2017

Respectfully submitted,

/s/ Cerissa Cafasso

Cerissa Cafasso

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