

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

DEMOCRACY FORWARD FOUNDATION
1333 H Street, NW
Washington, DC 20005

Case No.

Plaintiff,

vs.

U.S. DEPARTMENT OF
TRANSPORTATION
1200 New Jersey Avenue, SE
Washington, D.C. 20590,

Defendant.

COMPLAINT

Plaintiff Democracy Forward Foundation brings this action under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), against Defendant Department of Transportation (“DOT” or “agency”) to compel it to produce documents that would shed light on the role Daniel Elwell has played in rulemakings since accepting his position at DOT.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
2. Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).
3. Because Defendant has failed to comply with the applicable time limit provisions in FOIA, Plaintiff is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(A)(6)(C)(i).

PARTIES

4. Plaintiff Democracy Forward Foundation is a not-for-profit organization incorporated under the laws of the District of Columbia and based in Washington, D.C. Plaintiff works to promote transparency and accountability in government, in part, by educating the public on government actions and policies.

5. Defendant DOT is a federal agency within the meaning of FOIA, 5 U.S.C. § 552(f)(1), that is headquartered in Washington, D.C., and has possession, custody, and control of records to which Plaintiff seeks access.

FACTUAL ALLEGATIONS

6. Daniel Elwell is a former lobbyist for American Airlines and executive with Airlines for America.

7. In January, 2017, Mr. Elwell was appointed to serve as the Senior Advisor on Aviation to U.S. Secretary of Transportation Elaine L. Chao. In that role, he also served as a member of DOT's Regulatory Reform Task Force.

8. On June 26, 2017, Mr. Elwell was appointed the Deputy Administrator of the Federal Aviation Administration. He now serves as the Acting Administrator.

9. On August 25, 2017, Plaintiff submitted a FOIA request to DOT, seeking access to the following records for the time period of January 20, 2017 to the date the search is conducted:

- All records, including calendars, that refer or relate to Daniel Elwell's role on the deregulation team established by the Department of Transportation under the February 24, 2017 Presidential Executive Order on Enforcing the Regulatory Reform Agenda;

- All records, including calendars, that refer or relate to Daniel Elwell's role as Senior Advisor on Aviation to the Secretary of Transportation;
- All communications sent to or from any government email account for Daniel Elwell, regarding the Reporting of Data for Mishandled Baggage and Wheelchairs and Scooters Transported in Aircraft Cargo Compartments rule, 81 Fed. Reg. 76300, or the Extension of Compliance Date thereto, 82 Fed. Reg. 14437;
- All communications sent to or from Airlines for America ("A4A"), regarding the Reporting of Data for Mishandled Baggage and Wheelchairs and Scooters Transported in Aircraft Cargo Compartments rule, 81 Fed. Reg. 76300, or the Extension of Compliance Date thereto, 82 Fed. Reg. 14437;
- All communications between any government email account for Daniel Elwell and representatives, employees, or lobbyists of any domestic airline company or airline trade association, including but not limited to Airlines for America ("A4A"); and
- All communications sent to or from any non-governmental email account for Daniel Elwell between January 1, 2012 and January 20, 2017.

10. The August 25 FOIA request further sought a waiver of all fees associated with the request.

11. On August 28, 2017, DOT confirmed receipt of the August 25 FOIA request and assigned it a tracking number of 2017-393.

12. Notwithstanding the statutory obligation to make a determination on Plaintiff's request within 20 working days, DOT has made no determination on Plaintiff's request, nor has the agency produced any materials in response to that request.

13. Through DOT's failure to respond within the statutory time limit, Plaintiff has

constructively exhausted its administrative remedies and seeks immediate judicial review.

CLAIM FOR RELIEF

Count One (Violation of FOIA, 5 U.S.C. § 552)

14. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth herein.

15. By failing to respond to Plaintiff's request within the statutorily prescribed time limit, Defendant has violated its duties under 5 U.S.C. § 552, including but not limited to the duties to conduct a reasonable search for responsive records, to take reasonable steps to release all nonexempt information, and to not withhold responsive records.

WHEREFORE, Plaintiff prays that this Court:

1. Order Defendant to conduct a search for any and all responsive records to Plaintiff's FOIA request using search methods reasonably likely to lead to discovery of all responsive records;
 2. Order Defendant to produce, by a date certain, any and all non-exempt responsive records and a *Vaughn* index of any responsive records withheld under a claim of exemption;
 3. Enjoin Defendant from continuing to withhold any and all non-exempt responsive records;
 4. Order Defendant to grant in full Plaintiff's request for a fee waiver;
 5. Award Plaintiff its costs, attorneys' fees, and other disbursements for this action;
- and
6. Grant any other relief this Court deems appropriate.

Dated: February 5, 2018

Respectfully submitted,

/s/ Javier M. Guzman

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