

Exhibit D

the
center for
investigative
reporting

Solicitor of Labor
U.S. Department of Labor
200 Constitution Ave., NW, Room N-2420
Washington, D.C. 20210
foiaappeal@dol.gov

Office of the Solicitor
Office of Information Services
Division of Management and Administrative Legal Services
200 Constitution Avenue, N.W., Room N-2420
Washington, D.C. 20210
foiarequest@dol.gov

November 27, 2017

Via U.S. mail and email

Re: Freedom of Information Act Constructive Denial Letter No. 838133

Dear Ms. Suzuki and Ms. Burroughs:

The Center for Investigative Reporting (“CIR”) hereby writes on behalf of the requester, Mr. Will Evans pursuant to the Freedom of Information Act, 5 U.S.C. § 552, given the failure of the Department of Labor’s Office of Federal Contract Compliance Programs (“OFCCP”) to respond to Mr. Evans’ request for employment diversity reports.

I. Factual Background

The “Employer Information EEO-1” is a survey conducted annually under the authority of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, et. seq., as amended. *See* Office of Federal Contract Compliance Programs, *Instruction Booklet*, U.S. Equal Employment Opportunity Commission, <https://www.eeoc.gov/employers/eo1survey/2007instructions.cfm>. According to the statute, all employers in the United States with 15 or more employees are required to keep employment records. *Id.* Based on those records, certain large employers are required to file an EEO-1 reports on an annual basis. *Id.* The survey is a single form and is required by law; “it is not voluntary.” *Id.* “Under section 709(c) of Title VII, the Equal

Employment Opportunity Commission may compel an employer to file this form by obtaining an order from the United States District Court.” *Id.*; *see also* 42 U.S.C. 2000e. To date, many companies have publicly published their forms online to promote diversity, including but not limited to Apple, Amazon, Cisco Systems, Microsoft, Citrix Systems, Facebook, Intel, Intuit, Adobe, HP Inc., Linkedin, eBay, Salesforce, Yahoo, Uber, Lyft and Twitter. OFCCP has also released the reports through various FOIA requests.

The importance of public disclosure of EEO-1 reports for promoting diversity has been championed by civil rights activists such as Rev. Jesse Jackson Sr., members of Congress, and investment firms. *See, e.g.,* Salvador Rodriguez, *Jesse Jackson Gives Uber a Diversity Deadline*, INC.COM, Jan. 5, 2017, <https://www.inc.com/salvador-rodriguez/uber-diversity-jesse-jackson.html>; Jessica Guyun, *Barbara Lee calls on Apple, tech holdouts to release diversity data*, USATODAY, Aug. 4, 2015, <https://www.usatoday.com/story/tech/2015/08/04/barbara-lee-black-caucus-federal-diversity-data-apple/31128479/>; Will Evans, *11 men and 1 woman on management team? No need for diversity report*, REVEAL.ORG, Nov. 8, 2017, <https://www.revealnews.org/article/11-men-and-1-woman-on-management-team-no-need-for-diversity-report/>. The reports have also formed the basis of numerous news articles that are of the utmost public interest. *See, e.g.,* Will Evans & Sinduja Rangarajan, *Hidden figures: How Silicon Valley keeps diversity data secret*, REVEAL.ORG, Oct. 19, 2017, <https://www.revealnews.org/article/hidden-figures-how-silicon-valley-keeps-diversity-data-secret/>; Laura Lorenzetti, *Microsoft releases diversity stats: How the tech giant sizes up*, FORTUNE, Jan. 5, 2015, <http://fortune.com/2015/01/05/microsoft-eeo-1-diversity-tech/>; Jessica Guynn, *Apple leadership is more than 80% white and male*, USATODAY, Nov. 9, 2017, <https://mail.google.com/mail/u/0/#inbox/15fdac7401c25c14>.

II. Procedural History

On August 9, 2017 through August 25, 2017, Mr. Evans submitted five FOIA requests via email to OFCCP. True and correct copies of those requests and their acknowledgments are attached as Exhibit A. On August 30, 2017, OFCCP notified Mr. Evans over the phone that it consolidated all the requests under FOIA No. 838133. The consolidated requests (hereinafter “the Request”) sought records pertaining various companies’ EEO-1 reports. More specifically, the Request sought EEO-1 Type 2 Consolidated reports for Oracle Corp., Hewlett-Packard Co., Salesforce, Splunk Inc., Dropbox, Inc., Fitbit, Gilead Sciences, Inc., Github, Inc., Pandora Media, Inc., Slack Technologies, Inc., Tesla, VMWare, and Palantir. *See* Exhibit A. The Request also sought a fee waiver, as CIR is a representative of the news media.

On October 20, 2017, Mr. Evans received an email from an OFCCP FOIA Officer stating that OFCCP had an interim response that the agency was working on and was expecting to send out the following week. A true and correct copy of that email is attached as Exhibit B. On November 9, 2017, Mr. Evans emailed the OFCCP FOIA officer for an update but did not receive a response. A true and correct copy of that email is attached as Exhibit C. On November 17, 2017, Mr. Evans contacted the OFCCP FOIA officer by phone for an update and was told

that the response was being processed but was not provided a final date. To date, Mr. Evans has received no determination from OFCCP.

As I'm sure you are aware, under 5 U.S.C. § 552(a)(6)(A) a FOIA request is considered constructively denied after twenty business days at which point the request is subject to litigation. Here, the Request was made over three months ago and CIR has taken all reasonable steps to contact OFCCP. Given the grave public interest in this issue, we look forward to an immediate response and disclosure. If we do not receive a response within one week of this letter, we anticipate to file litigation.

III. Conclusion

In conclusion, OFCCP should release all relevant information immediately. Should OFCCP need clarification as to any aspect of the Request, it may reach me at vbaranetsky@revealnews.org or (510) 982-2890.

Sincerely,



Victoria D. Baranetsky
General Counsel
The Center for Investigative Reporting

cc: Will Evans