

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

AMERICAN OVERSIGHT,
1030 15th Street NW, B255
Washington, DC 20005

Plaintiff,

v.

Case No. 19-1857

U.S. DEPARTMENT OF THE INTERIOR,
1849 C Street NW
Washington, DC 20240

BUREAU OF LAND MANAGEMENT
1849 C Street NW
Washington, DC 20240

U.S. DEPARTMENT OF AGRICULTURE,
1500 Pennsylvania Avenue NW
Washington, DC 20220

and

U.S. FOREST SERVICE
201 14th Street SW
Washington, DC 20024

Defendants.

COMPLAINT

1. Plaintiff American Oversight brings this action against two executive branch agencies and two components thereof 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 Defendants have 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 Defendants 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 primarily engaged in disseminating information to the public. American Oversight is 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 the Interior (DOI) 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). DOI has possession, custody, and control of the records that American Oversight seeks.

7. Defendant Bureau of Land Management (BLM) is a component of DOI and is also headquartered in Washington, DC. BLM has possession, custody, and control of the records that American Oversight seeks.

8. Defendant U.S. Department of Agriculture (USDA) 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). USDA has possession, custody, and control of the records that American Oversight seeks.

9. Defendant U.S. Forest Service (USFS) is a component of USDA and is also headquartered in Washington, DC. USFS has possession, custody, and control of the records that American Oversight seeks.

STATEMENT OF FACTS

10. On March 5, 2019, and April 23, 2019, American Oversight submitted FOIA requests to DOI, BLM, USDA, and USFS, seeking records generally pertaining to BLM's decision to renew mining leases of Twin Metals Minnesota LLC (Twin Metals) near the Boundary Waters Canoe Area Wilderness in Minnesota. Each FOIA request is described below in further detail.

Twin Metals FOIA

11. On March 5, 2019, American Oversight submitted FOIA requests to all Defendants seeking the following records:

- 1) All records reflecting communications (including email messages, email attachments, calendar invitations or entries, and any handwritten or typed notes from meetings) between the custodians listed below and the following individuals and entities:
 - a. Any employee or representative of Antofagasta PLC, including anyone with an email address ending in antofagasta.co.uk;
 - b. Andronico Luksic, and anyone acting on his behalf such as a chief of staff, scheduler, or assistant;

- c. Ivan Arriagada, and anyone acting on his behalf such as a chief of staff, scheduler, or assistant;
- d. Any employee or representative of Twin Metals Minnesota (TMM), including anyone with an email address ending in twin-metals.com;
- e. Robert Lehman (including but not limited to the email address rob.lehman@wilmerhale.com); and/or
- f. Timothy Martin (including but not limited to the email address timothy.martin@wilmerhale.com).

2) All records reflecting communications (including email messages, email attachments, calendar invitations or entries, and any handwritten or typed notes from meetings) between the custodians listed below and the following individuals and entities:

- a. Jared Kushner (jck@who.eop.gov) and anyone acting on his behalf such as a chief of staff, scheduler, or assistant;
- b. Ivanka Trump (alternatively styled Ivanka Kushner) and anyone acting on her behalf such as a chief of staff, scheduler, or assistant; and/or
- c. Anyone with an email address ending in ijkfamily.com.

12. American Oversight's requests seek responsive records from January 20, 2017, through the date the search is conducted.

13. American Oversight also sought the following additional records from DOI and BLM:

3) All records associated with the meeting that occurred in the DOI Deputy Secretary's conference room on or about April 28, 2017, with Rob Lehman of WilmerHale regarding Twin Metals, including all agendas, handwritten or typed meeting notes, talking points, memoranda, or any other documentation made in preparation for, during, or following the call. This includes any materials compiled, created, or maintained by DOI principals themselves or assistants, including any other employee in attendance on the call, as well as any backgrounders or one-pagers provided by WilmerHale.

14. American Oversight requested that DOI search the records of the following custodians:

- a. All political appointees in the Immediate Office of the Secretary;
- b. All political appointees in the Immediate Office of the Deputy Secretary;
- c. The Immediate Office of the Solicitor, including anyone serving as Acting Solicitor or Principal Deputy Solicitor (including Daniel Jorjani), and any Chiefs of Staff and Counselors; and

- d. The Immediate Office of the Assistant Secretary for Land and Minerals Management, including the Assistant Secretary, Deputy Assistant Secretaries, and Chiefs of Staff.

15. American Oversight requested that BLM search the records of the following custodians:

- a. The Immediate Office of the Director of the Bureau of Land Management, including anyone serving in an acting capacity as Director or Deputy Director of Policy and Programs or Operations;
- b. The Assistant Director of Energy, Minerals, and Realty Management; and
- c. The Senior Advisor for the Bureau of Land Management, Kathleen Benedetto.

16. American Oversight requested that USDA search the records of the following custodians:

- a. All political appointees in the Immediate Office of the Secretary;
- b. All political appointees in the Immediate Office of the Deputy Secretary; and
- c. All political appointees in the Immediate Office of the General Counsel.

17. American Oversight requested that USFS search the records of the following custodians:

- a. The Chief Forester;
- b. The Associate Chief Forester;
- c. The Chief of Staff to the Chief Forester;
- d. The Deputy Chief and Associate Deputy Chief, Research and Development;
- e. The Deputy Chief and Associate Deputy Chief, National Forest System;
- f. The Deputy Chief and Associate Deputy Chief, State and Private Forestry; and
- g. The Deputy Chief and Associate Deputy Chief, Business Operations and Policy

18. American Oversight's request clarified that "political appointee" should be understood as any person who is a Presidential Appointee with Senate Confirmation (PAS), a Presidential Appointee (PA), a Non-career SES, any Schedule C employees, or any persons hired under Temporary Non-career SES Appointments, Limited Term SES Appointments, or Temporary Transitional Schedule C Appointments.

19. DOI assigned the request tracking number OS-2019-00546.

20. To American Oversight's knowledge, BLM has not assigned the request a tracking number.

21. USDA assigned the request tracking number 2019-DA-02590-F.

22. To American Oversight's knowledge, USFS has not assigned the request a tracking number.

23. On May 1, 2019, a USDA FOIA officer asked American Oversight whether it had a prioritization preference as to the two FOIA requests at issue in this complaint. American Oversight responded that it took no position on prioritization.

24. American Oversight has otherwise received no further communication from any defendant regarding the processing of its FOIA requests.

Congressional Communications FOIA

25. On April 23, 2019, American Oversight submitted FOIA requests to all Defendants seeking the following records:

All communications (including email messages, email attachments, calendar invitations or entries, and any handwritten or typed notes from meetings) between the custodians listed below and the following individuals and entities, regarding the mining leases of Twin Metals in Minnesota:

- a. Representative Tom Emmer, and anyone acting on his behalf or serving on his staff, including but not limited to Christopher Maneval (Christopher.Maneval@mail.house.gov), David Fitzsimmons (David.fitzsimmons@mail.house.gov), Alyssa Anderson (alyssa.anderson@mail.house.gov), Landon Zinda (landon.zinda@mail.house.gov), and Catherine Lenz (Catherine.lenz@mail.house.gov).
- b. Representative Paul Gosar, and anyone acting on his behalf or serving on his staff, including but not limited to Thomas Van Flein (tom.vanflein@mail.house.gov), Leslie Foti (leslie.foti@mail.house.gov), Rory Burke (rory.burke@mail.house.gov), and Jeff Small (jeff.small@mail.house.gov).

26. American Oversight's requests seek responsive records from January 20, 2017, through the date the search is conducted.

27. American Oversight requested that DOI search the records of the following custodians:

- a. Ryan Zinke, former Secretary, and anyone who served as Mr. Zinke's Chief of Staff, including Scott Hommel, or Scheduler, including Samantha Hebert and her predecessor;
- b. David Bernhardt, Secretary, and anyone who has served as Secretary Bernhardt's Chief of Staff including Todd Willens, or Scheduler, including Samantha Hebert and Gareth Rees;
- c. Joseph Balash, Assistant Secretary for Land and Minerals Management, and anyone who has served as Mr. Balash's Deputy or Chief of Staff;
- d. Anyone who has served as Chief or Deputy Chief of Staff for Policy, including Katharine MacGregor and Downey Magallanes;
- e. Anyone serving as Acting Solicitor or Principal Deputy Solicitor (including Daniel Jorjani), and any Chiefs of Staff and Counselors in the Office of the Solicitor;
- f. Anyone serving as White House Liaison, including Lori Mashburn;
- g. Todd Wynn, Director of Intergovernmental and External Affairs;
- h. Cole Rojewski, Director of Congressional and Legislative Affairs;
- i. Matthew Quinn, Attorney-Advisor for BLM; and
- j. All political appointees in the Immediate Office of Congressional and Legislative Affairs, including former appointees who have since departed DOI, such as advisor Blake Deeley.

28. American Oversight requested that BLM search the records of the following custodians:

- a. The Immediate Office of the Director of the Bureau of Land Management, including anyone serving in an acting capacity as Director or Deputy Director of Policy and Programs or Operations;
- b. The Assistant Director of Energy, Minerals, and Realty Management; and
- c. The Senior Advisor for the Bureau of Land Management, Kathleen Benedetto.

29. American Oversight requested that USDA search the records of the following custodians:

- a. The Secretary, Deputy Secretary, anyone serving as a Chief of Staff or Deputy Chief of Staff, and anyone serving on behalf of the aforementioned individuals such as an executive assistant or scheduler;

- b. The General Counsel, Deputy General Counsel, and anyone serving as a Chief of Staff or Deputy Chief of Staff;
- c. The Assistant Secretary for Congressional Relations, the Chief of Staff to the Assistant Secretary, Senior Congressional Advisor for the U.S. Forest Service, and any other political appointees in the Office of Congressional Relations.

30. American Oversight requested that USFS search the records of the following custodians:

- a. The Chief Forester;
- b. The Associate Chief Forester;
- c. The Chief of Staff to the Chief Forester;
- d. The Deputy Chief and Associate Deputy Chief, Research and Development;
- e. The Deputy Chief and Associate Deputy Chief, National Forest System;
- f. The Deputy Chief and Associate Deputy Chief, State and Private Forestry; and
- g. The Deputy Chief and Associate Deputy Chief, Business Operations and Policy

31. American Oversight's request clarified that "political appointee" should be understood as any person who is a Presidential Appointee with Senate Confirmation (PAS), a Presidential Appointee (PA), a Non-career SES, any Schedule C employees, or any persons hired under Temporary Non-career SES Appointments, Limited Term SES Appointments, or Temporary Transitional Schedule C Appointments.

32. DOI assigned the request tracking number OS-2019-00777.

33. To American Oversight's knowledge, BLM has not assigned the request a tracking number.

34. USDA assigned the request tracking number 2019-DA-03591-F.

35. To American Oversight's knowledge, USFS has not assigned the request a tracking number.

36. On June 21, 2019, USDA released 23 pages of responsive records to American Oversight and indicated that it had not completed processing the request.

37. American Oversight has otherwise received no further communication from any defendant regarding the processing of its FOIA requests.

Exhaustion of Administrative Remedies

38. As of the date of this Complaint, Defendants have failed to (a) notify American Oversight of a final determination regarding the requests, including the full scope of any responsive records Defendants intend to produce or withhold and the reasons for any withholdings; or (b) produce the requested records or demonstrate that the requested records are lawfully exempt from production.

39. Through Defendants' failure to respond 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 Searches for Records

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

41. American Oversight properly requested records within the possession, custody, and control of Defendants.

42. Defendants are subject to FOIA, and they must therefore make reasonable efforts to search for requested records.

43. Defendants have failed to promptly review agency records for the purpose of locating those records that are responsive to American Oversight's FOIA requests.

44. Defendants' failure to conduct adequate searches for responsive records violates FOIA and agency regulations.

45. Plaintiff American Oversight is therefore entitled to injunctive and declaratory relief requiring Defendants 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 Responsive Records

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

47. American Oversight properly requested records within the possession, custody, and control of Defendants.

48. Defendants are subject to FOIA, and they must therefore release in response to a FOIA request any non-exempt records and provide a lawful reason for withholding any materials.

49. Defendants are wrongfully withholding non-exempt agency records requested by American Oversight by failing to produce non-exempt records responsive to its FOIA requests.

50. Defendants are wrongfully withholding non-exempt agency records requested by American Oversight by failing to segregate exempt information in otherwise non-exempt records responsive to American Oversight's FOIA requests.

51. Defendants' failure to provide all non-exempt responsive records violates FOIA and agency regulations.

52. Plaintiff American Oversight is therefore entitled to declaratory and injunctive relief requiring Defendants 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 Defendants to conduct a search or searches reasonably calculated to uncover all records responsive to American Oversight's FOIA requests;
- (2) Order Defendants to produce, within twenty days of the Court's order, or by such other date as the Court deems appropriate, any and all non-exempt records responsive to American Oversight's FOIA requests and indexes justifying the withholding of any responsive records withheld under claim of exemption;
- (3) Enjoin Defendants from continuing to withhold any and all non-exempt records responsive to American Oversight's FOIA requests;
- (4) Award American Oversight the costs of this proceeding, including reasonable 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: June 25, 2019

Respectfully submitted,

/s/ Hart W. Wood

Hart W. Wood

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