

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

DEMOCRACY FORWARD
FOUNDATION,
1333 H Street NW, 11th Floor
Washington, DC 20005,

Plaintiff,

vs.

NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION,
1401 Constitution Avenue NW,
Washington, DC 20230,

Defendant.

Case No.

COMPLAINT FOR INJUNCTIVE RELIEF

1. Plaintiff Democracy Forward Foundation (“Democracy Forward”) brings this action against Defendant National Oceanic and Atmospheric Administration (“NOAA”) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”).
2. In February 2019, retired U.S. Navy Rear Admiral Tim Gallaudet was abruptly removed from his position as acting administrator of NOAA. News reports, at the time, noted that Dr. Gallaudet had earned plaudits for advancing the agency’s priorities in ocean and atmospheric sciences without succumbing to political interference with climate research.
3. On May 13, 2019, Democracy Forward requested that NOAA produce documents relating to Dr. Gallaudet’s removal as NOAA’s acting administrator to better understand, and explain to the public, the reason for the removal.

4. NOAA has failed to respond sufficiently to Democracy Forward's request. Democracy Forward therefore respectfully requests that the Court compel NOAA to comply with the FOIA.

Jurisdiction and Venue

5. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

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

Parties

7. 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. Democracy Forward works to promote transparency and accountability in government, in part, by educating the public on government actions and policies.

8. Defendant NOAA is a federal agency within the meaning of FOIA, *see* 5 U.S.C. § 552(f)(1). NOAA has possession, custody, and control of records that Democracy Forward has requested.

Factual Allegations

9. On May 13, 2019, Democracy Forward submitted a request to NOAA for all records that (i) refer or relate to the removal of Dr. Gallaudet as NOAA's acting administrator, and (ii) were sent or received by any of the following NOAA employees:

- a. Julie Roberts, Communications Director
- b. Scott Smullen, Communications Deputy Director
- c. Chris Vaccaro, Senior Media Relations Specialist

- d. John Luce, General Counsel
- e. Kristen L. Gustafson, Deputy General Counsel
- f. Jeffrey S. Dillen, Deputy General Counsel
- g. Wendy Lewis, Director of the Office of Legislative & Intergovernmental Affairs
- h. Brandon Elsner, Senior Policy Advisor
- i. Taylor Jordan, Senior Policy Advisor
- j. Stuart Levenbach, Chief of Staff

Ex. A, FOIA Request at 1-2.

- 10. The request was limited to records created from January 1, 2019 to the date the search was performed.
- 11. The May 13, 2019 request was assigned tracking number: DOC-NOAA-2019-001232.
- 12. Democracy Forward sought a waiver of search and duplicating fees for the FOIA request under 5 U.S.C. § 552(a)(4)(A)(iii) and 12 C.F.R. § 1070.22, which require waiver of fees if the disclosure is “likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” Ex. A at 3-4.
- 13. NOAA’s determination regarding Democracy Forward’s FOIA request was due by June 11, 2019. *See* 5 U.S.C. § 552(a)(6)(A)(i). NOAA did not respond to the request by the due date.
- 14. On June 26, 2019, Democracy Forward sent NOAA an email inquiring about the status of the overdue FOIA response. *See* Ex. B. Democracy Forward received no response to this email.

15. On July 29 and July 30, 2019, Democracy Forward sent NOAA two additional emails inquiring about the overdue response. *See Ex. C.*

16. NOAA finally replied to Democracy Forward on July 31, 2019, acknowledging receipt of the FOIA request and informing Democracy Forward that the fee waiver request had been granted on May 21, 2019. *See Ex. C.* NOAA also represented that it had a backlog of FOIA requests in queue for processing. NOAA has since provided no further response or documents.

17. As of the date of this Complaint, NOAA has failed produce any requested records or demonstrate that they are lawfully exempt from production. *See 5 U.S.C.*

§ 552(a)(6)(A)(i), (C). Nor has NOAA notified Democracy Forward of the scope of any responsive records NOAA intends to produce or withhold and the reasons for any withholdings, or informed Democracy Forward that it may appeal any adequately specific, adverse determination.

18. Because NOAA has “fail[ed] to comply with the applicable time limit provision” of the FOIA, even with the benefit of any extensions of time which NOAA might have claimed, Democracy Forward is “deemed to have exhausted [its] administrative remedies.” *See id.* § 552(a)(6)(C)(i).

Claims for Relief

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

19. Democracy Forward repeats and incorporates by reference the foregoing paragraphs as if fully set forth herein.

20. By failing to respond to Democracy Forward’s request within the statutorily mandated time period, NOAA has violated its duties under FOIA, *see 5 U.S.C. § 552 et*

seq., including but not limited to its duties to conduct a reasonable search for responsive records, to take reasonable steps to release all reasonably segregable nonexempt information, and to not withhold responsive records.

21. Democracy Forward is being irreparably harmed by NOAA's violation of the FOIA, and Democracy Forward will continue to be irreparably harmed until NOAA is compelled to comply with the FOIA.

Prayer for Relief

WHEREFORE, Democracy Forward respectfully requests that this Court:

1. order NOAA to conduct a search for any and all responsive records to Democracy Forward's FOIA request and demonstrate that it employed search methods reasonably likely to lead to discovery of records responsive to Democracy Forward's FOIA request;
2. order NOAA to produce, by a date certain, any and all nonexempt records responsive to Democracy Forward's FOIA request and a *Vaughn* index of any responsive records withheld under a claim of exemption;
3. enjoin NOAA from continuing to withhold any and all nonexempt records responsive to Democracy Forward's FOIA request;
4. award Democracy Forward its attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
5. grant any other relief this Court deems appropriate.

Dated: September 16, 2019

Respectfully submitted,

/s/ Javier M. Guzman

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** Pro Hac Vice application forthcoming*