



4. Because Defendants the U.S. Department of the Interior and the Bureau of Land Management have failed to comply with the applicable time-limit provisions of FOIA, American Oversight is deemed to have constructively 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 promoting transparency in government, educating 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 the 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 the 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.

**STATEMENT OF FACTS**

*Jorjani Request*

8. On January 8, 2020, American Oversight submitted a FOIA request to DOI's Office of the Solicitor seeking email communications between or among Solicitor of the Interior Daniel Jorjani and 26 external entities with an interest in DOI policy:

All email communications (including email messages, email attachments, calendar invitations, and attachments thereto) between or among Daniel Jorjani and any employee or representative of the following:

- a. American Enterprise Institute (including but not limited to any individual communicating from an email address ending in aei.org)
- b. Americans for Prosperity (americansforprosperity.org)
- c. American Petroleum Institute (api.org)
- d. Antofagasta PLC (antofagasta.co.uk)
- e. British Petroleum (bp.com)
- f. Cadiz Inc. (cadizinc.com)
- g. Cato Institute (cato.org)
- h. Charles Koch Foundation (charleskochfoundation.org)
- i. Charles Koch Institute (charleskochinstitute.org)
- j. CO<sub>2</sub> Coalition (co2coalition.org)
- k. Committee for a Constructive Tomorrow (cfact.org)
- l. Competitive Enterprise Institute (cei.org)
- m. Energy and Environmental Legal Institute (eelegal.org)
- n. Exxon Mobil (exxonmobil.com)
- o. Fred and Mary Koch Foundation (fmkfoundation.org)
- p. Freedom Partners (freedompartners.org)
- q. The Heartland Institute (heartland.org)
- r. Heritage Foundation (heritage.org)
- s. Institute for Energy Research (instituteforenergyresearch.org)
- t. Koch Family Foundations (kochfamilyfoundations.org)
- u. Koch Industries (kochind.com)
- v. Manhattan Institute for Policy Research (manhattan-institute.org)
- w. National Mining Association (nma.org)
- x. Pacific Research Institute (pacificresearch.org)
- y. Texas Public Policy Foundation (texaspolicy.com)
- z. The Right Climate Stuff (therightclimatestuff.com)

Please provide all responsive records from May 1, 2017 through the date the search is conducted.

9. On October 24, 2018, DOI acknowledged receiving the Jorjani Request and assigned the request tracking number SOL-2020-00075.

10. American Oversight has not received any further communication from DOI regarding this FOIA request.

*Pendley Request*

11. On September 19, 2019, American Oversight submitted a FOIA request to BLM seeking records relating to Acting Director William Pendley:

1. All calendars or calendar entries for Acting Director William Pendley, including any calendars maintained on his behalf (e.g., by an administrative assistant).

American Oversight requests that the calendars be produced in a format that includes all invitees, any notes, and all attachments. Please do not limit your search to Outlook calendars; we request the production of any calendar—paper or electronic, whether on government-issued or personal devices—used to track or coordinate how these individuals allocate their time on agency business.

Please provide all responsive records from July 15, 2019, through the date the search is conducted.

2. Any email communications (including emails, email attachments, and calendar invitations) sent by Acting Director William Pendley to any email address ending in .com, .org, .edu, .net, or .mail.

In an effort to accommodate BLM and reduce the number of responsive records to be processed and produced, American Oversight has limited its request to emails sent by Mr. Pendley. To be clear, however, American Oversight still requests that complete email chains be produced, displaying both the sent messages and the prior received messages in each email chain. This means, for example, that both Mr. Pendley's response to an email from a responsive email address and the initial received message are responsive to this request and should be produced.

This request includes all prior messages (whether incoming or outgoing) reflected in the responsive correspondence and any attachments thereto.

Please provide all responsive records from July 15, 2019, through the date the search is conducted.

3. To the extent not responsive to part 2, all email communications (including emails, email attachments, and calendar invitations) that include (a) William Pendley, Acting Director; Casey Hammond, former Acting Director; Brian Steed, former Acting Director; Mike Nedd, former Acting Director; and anyone else serving in the capacity of Deputy Director for Policy and Programs, exercising authority of the director, and (b) any person at the White House Office (including anyone with an email address ending in @who.eop.gov) or any person using an email address ending in .com, .org, .edu, .net, or .mail regarding any planned, intended, or potential transfer of BLM-managed federal land to state ownership or custody.

Please provide all responsive records from January 20, 2017, through the date the search is conducted.

4. Any conflicts or ethics waivers or authorizations, including authorizations pursuant to 5 C.F.R. § 2635.502, for Acting Director William Pendley.
5. Records reflecting any recusal determination made or issued for Acting Director William Pendley.

For parts 4 and 5, please provide all responsive records from July 15, 2019, through the date the search is conducted.

12. As of the time of this filing, American Oversight has received no communication from BLM regarding the Pendley FOIA.

*Exhaustion of Administrative Remedies*

13. As of the date of this Complaint, Defendants have failed to (a) notify American Oversight of a final determination regarding American Oversight's FOIA requests, including the scope of 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.

14. 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 Responsive Records**

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

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

17. Defendants are agencies subject to FOIA and must therefore make reasonable efforts to search for requested records.

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

19. Defendants' failure to conduct adequate searches for responsive records violates FOIA.

20. Plaintiff American Oversight is therefore entitled to declaratory and injunctive 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 Records**

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

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

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

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

25. 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.

26. Defendants' failure to provide all non-exempt responsive records violates FOIA.

27. 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 an index 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, by such date as the Court deems appropriate, any and all non-exempt records responsive to American Oversight's FOIA requests and an index 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 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: February 20, 2020

Respectfully submitted,

/s/ Hart W. Wood  
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