

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

JIMMY TOBIAS,)
1336 N Cranbrook Rd.)
Bloomfield Village, MI 48301)
)
Plaintiff,)
)
v.)
)
U.S. DEPARTMENT OF INTERIOR,)
1849 C Street NW,)
Washington, D.C. 20240)
)
Defendant.)

COMPLAINT

1. Plaintiff JIMMY TOBIAS brings this suit to overturn Defendant U.S. DEPARTMENT OF INTERIOR’s failure to timely respond to TOBIAS’ FOIA requests.

PARTIES

2. Plaintiff JIMMY TOBIAS is an independent reporter with The Guardian and The Nation, among other media outlets, and is the FOIA requester in this case.

3. Defendant DEPARTMENT OF INTERIOR (“DOI”) is a federal agency and is subject to the Freedom of Information Act, 5 U.S.C. § 552.

JURISDICTION AND VENUE

4. This case is brought under 5 U.S.C. § 552(a)(4)(B) and presents a federal question conferring jurisdiction on this Court. *See* 28 U.S.C. § 1331.

5. Venue is proper under 5 U.S.C. § 552(a)(4)(B).

SEPTEMBER 5, 2018, FOIA REQUEST (DEVITO COX OIL)

6. On September 5, 2018, TOBIAS submitted a FOIA request to DOI for the following records: “Any and all written or electronic communications, including attachments, between (former) DOI energy counselor Vincent DeVito and any representative, agent, employee, or lobbyist of the oil and gas firm, Cox Oil Offshore LLC. This request seeks records produced between January 20, 2017 and September 1, 2018.” Exhibit A.

7. On September 26, 2018, DOI acknowledged receipt of the request and assigned reference number OS-2018-01588 to the request. Exhibit B

8. Having received no additional communications from DOI besides the acknowledgement letter, TOBIAS contacted DOI many times for an update over the next few months, but DOI never responded. Exhibit A.

9. As of the date of this filing, DOI has not issued a determination and has produced no responsive records.

AUGUST 16, 2019, FIRST FOIA REQUEST (HUNTON PANTHER)

10. On August 16, 2019, TOBIAS submitted a FOIA request to DOI for the following records: “Any and all email communications, including attachments, between any email address ending in @hunton.com and one or more of the following DOI officials: Susan Combs, Andrea Travanicek, and/or Aurelia Skipwith.” Exhibit C.

11. On August 28, 2019, DOI acknowledged receipt of the two requests submitted on August 16, 2019, aggregated the requests, and assigned the following reference number to the requests: OS-2019-01201. In that same letter, DOI took a 10-day extension. Exhibit D.

12. Having received no additional communications from DOI besides the acknowledgement letter, TOBIAS contacted DOI many times for an update over the next few months, but DOI never responded.

13. As of the date of this filing, DOI has not issued a determination and has produced no responsive records.

AUGUST 16, 2019, SECOND FOIA REQUEST (HUNTON II)

14. On August 16, 2019, TOBIAS submitted a FOIA request to DOI for the following records: “Any and all email communications, including attachments, between any email address ending in @huntonAK.com and one or more of the following DOI officials: Susan Combs, Andrea Travanicek, and/or Aurelia Skipwith.” Exhibit E.

15. On August 28, 2019, DOI acknowledged receipt of both requests submitted on August 16, 2019, aggregated the requests, and assigned the following reference number to the requests: OS-2019-01201. In that same letter, DOI took a 10-day extension. Exhibit D.

16. Having received no additional communications from DOI besides the acknowledgement letter, TOBIAS contacted DOI many times for an update over the next few months regarding both requests titled Hunton Panther and Hunton II, but DOI never responded. Exhibit E.

17. As of the date of this filing, DOI has not issued a determination and has produced no responsive records.

DECEMBER 23, 2019, FOIA REQUEST (JORJANI TPPF II)

18. On December 23, 2019, TOBIAS submitted a FOIA request to DOI for “[a]ll emails, including attachments, sent or received by Daniel Jorjani that contain one or more of the following words or phrases: ‘Bone Cave,’ ‘harvestman,’ ‘red river,’ ‘red river case,’ ‘Henneke,’

‘Texas Public Policy Foundation,’ and/or ‘TPPF.’ This request seeks records produced between May 15, 2017 and the date this request is processed.” Exhibit F.

19. On January 3, 2020, DOI acknowledged receipt of the request and assigned reference number SOL-2020-00066 to the matter. Exhibit G.

20. Having received no additional communications from DOI besides the acknowledgement letter, TOBIAS contacted DOI many times for an update over the next few months, but DOI never responded. Exhibit F.

21. As of the date of this filing, DOI has not issued a determination and has produced no responsive records.

MARCH 2, 2020, FOIA REQUEST (BERNHARDT PANTHER 1)

22. On March 2, 2020, TOBIAS submitted a FOIA request to DOI for the following records: “Any and all written or electronic communications, including attachments, sent or received by David Bernhardt that contain one or more of the following words or phrases: ‘ECPO,’ ‘ECMSHCP,’ ‘Collier,’ ‘Colliers,’ ‘Spilker,’ ‘Hunton,’ and/or ‘panther.’ This request seeks records produced since January 1, 2018.” Exhibit H.

23. On March 12, 2020, DOI acknowledged receipt of the request and assigned reference number OS-2020-00353 to the matter. Exhibit I.

24. On March 27, 2020, DOI sought a “10-workday extension.” Exhibit J.

25. On April 9, 2020, DOI informed TOBIAS that it has been “unable to make a determination” on the request and apologized for the delay. DOI did not indicate how long it will take to make the determination. Exhibit K.

26. As of the date of this filing, DOI has not issued a determination and has produced no responsive records.

MARCH 2, 2020, FOIA REQUEST (JORJANI PANTHER 1)

27. On March 2, 2020, TOBIAS submitted a FOIA request to DOI for the following records: “Any and all written or electronic communications, including email attachments, sent or received by Daniel Jorjani that contain one or more of the following words or phrases: ‘ECPO,’ ‘ECMSHCP,’ ‘Collier,’ ‘Spilker,’ ‘Hunton,’ and/or ‘panther.’ This request seeks records produced since January 1, 2018.” Exhibit L.

28. On March 4, 2020, DOI acknowledged receipt of this request along with two other requests that are not at issue in this case. DOI specifically assigned reference number SOL-2020-00097 to the request at issue. Exhibit M.

29. On April 28, 2020, DOI posted a response letter on the corresponding Muckrock link, but the response letter pertained to a different request. Exhibit L.

30. As of the date of this filing, DOI has not issued a determination and has produced no responsive records.

COUNT I - SEPTEMBER 5, 2018, DOI’S FOIA VIOLATION (DEVITO COX OIL)

31. The above paragraphs are incorporated by reference.

32. Defendant DOI is a federal agency subject to FOIA.

33. The requested records are not exempt under FOIA.

34. DOI has refused to produce the requested records in a timely manner.

**COUNT II – AUGUST 2, 2019, DOI’S FOIA VIOLAION
(WILLENS TITLE TRANSFER)**

35. The above paragraphs are incorporated by reference.

36. Defendant DOI is a federal agency subject to FOIA.

37. The requested records are not exempt under FOIA.

38. DOI has refused to produce the requested records in a timely manner.

**COUNT III – AUGUST 2, 2019, DOI’S FOIA VIOLATION
(BERNHARDT TITLE TRANSFER)**

39. The above paragraphs are incorporated by reference.
40. Defendant DOI is a federal agency subject to FOIA.
41. The requested records are not exempt under FOIA.
42. DOI has refused to produce the requested records in a timely manner.

**COUNT IV – DECEMBER 23, 2019, DOI’S FOIA VIOLATION
(JORJANI TPPF II)**

43. The above paragraphs are incorporated by reference.
44. Defendant DOI is a federal agency subject to FOIA.
45. The requested records are not exempt under FOIA.
46. DOI has refused to produce the requested records in a timely manner.

COUNT V – MARCH 2, 2020, DOI’S FOIA VIOLATION (BERNHARDT PANTHER 1)

47. The above paragraphs are incorporated by reference.
48. Defendant DOI is a federal agency subject to FOIA.
49. The requested records are not exempt under FOIA.
50. DOI has not complied with FOIA.

COUNT VI – MARCH 2, 2020, DOI’S FOIA VIOLATION (JORJANI PANTHER 1)

51. The above paragraphs are incorporated by reference.
52. Defendant DOI is a federal agency subject to FOIA.
53. The requested records are not exempt under FOIA.
54. DOI has not complied with FOIA.

WHEREFORE, TOBIAS asks the Court to:

- i. declare that Defendant has violated FOIA;

- ii. order Defendant to conduct a reasonable search for records and to produce the requested records;
- iii. enjoin Defendant from withholding non-exempt public records under FOIA;
- iv. award TOBIAS attorneys' fees and costs; and
- v. award such other relief the Court considers appropriate.

Dated: April 28, 2020

RESPECTFULLY SUBMITTED,

/s/ Merrick J. Wayne

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JIMMY TOBIAS

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