

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

CENTER FOR PUBLIC INTEGRITY  
910 17<sup>th</sup> Street, N.W., 7<sup>th</sup> Floor  
Washington, DC 20006-2606,

Plaintiff,

v.

Civil Action No. 20-1614

U.S. SMALL BUSINESS ADMINISTRATION  
409 3rd St., S.W.  
Washington, DC 20416,

Defendant.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiff, the Center for Public Integrity, brings this action for declaratory and injunctive relief, alleging as follows:

**Introduction**

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to compel the production of certain agency records.

2. In response to the economic effects of the COVID-19 pandemic, Congress authorized extraordinary measures to provide relief to small businesses. Congress appropriated a total of \$659 billion for the Paycheck Protection Program (“PPP”) (an expansion of the Small Business Administration’s longstanding “Section 7(a)” loan program), which small businesses may receive as forgivable loans to pay up to eight weeks of payroll costs, benefits, rent,

mortgage interest, and utilities.<sup>1</sup> Congress also provided \$60 billion for the Economic Injury Disaster Loan program (“EIDL”), which lends up to \$2 million to individual businesses.<sup>2</sup>

3. Historically, the Small Business Administration has routinely posted on its website information about each Section 7(a) loan and borrower. See “Frequently requested records,” <https://www.sba.gov/about-sba/open-government/foia#section-header-32>.

4. Despite the SBA’s long-held practice of publicly disclosing information about loans and borrowers under its Section 7(a) program, it is refusing to do so in connection with the PPP or EIDL programs. Specifically, on June 12, 2020, Treasury Secretary Steven Mnuchin testified before a Senate committee that the administration would consider the names of PPP loan recipients to be “confidential” and “proprietary” and would not disclose them. See, e.g., Marcy Gordon and Mary Clare Jalonick, “Treasury Chief Refusing to Disclose Recipients of Virus Aid,” <https://hosted.ap.org/article/21f905f0922119534919a9c0effbe46f/treasury-chief-refusing-disclose-recipients-virus-aid>, June 12, 2020.

5. Given the massive size, scope and importance of the PPP and EIDL, it is critical that the public have access to information about the participants in these programs. Without such access, the public will be left in the dark about the identities of the loan recipients and the amounts they have received, creating the potential for corruption or other inappropriate uses of taxpayer funds. Through this lawsuit, the Center for Public Integrity seeks to ensure that the SBA comply with its legal requirement to disclose such information to the public consistent with its past practices.

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<sup>1</sup> Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub.L. 116-136, March 27, 2020 (\$349 billion), and Paycheck Protection Program and Health Care Enhancement Act, Pub.L. 116-139, April 24, 2020 (\$310 billion).

<sup>2</sup> \$10 billion in the CARES Act, and \$50 billion in the Paycheck Protection Program and Health Care Enhancement Act.

### **Jurisdiction and Venue**

6. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B), 28 U.S.C. § 1331, and 28 U.S.C. § 2201(a).

7. Venue lies in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391.

### **Parties**

8. Plaintiff, Center for Public Integrity, is a District of Columbia corporation, a tax-exempt public charity and a nonprofit, nonpartisan, non-advocacy, independent journalism organization based in Washington, D.C. Public Integrity’s “reporting focuses on the influence of money and the impact of inequality on our society.” “About Us,”

<https://publicintegrity.org/inside-publici/aboutus/>. Plaintiff is the requester of the withheld records.

9. Defendant, U.S. Small Business Administration (“SBA”), is an agency of the United States. Defendant has possession of and control over the records that Plaintiff seeks.

### **Plaintiff’s Freedom of Information Request**

10. On April 22, 2020, Plaintiff requested from Defendant:

- All records regarding recipients of the Paycheck Protection Program, including the name and address of the borrower, amount of approved loan, name of the third-party lender, date of approved loan.
- All records regarding recipients of the Economic Injury Disaster Loan (EIDL)-COVID-19 related assistance program (including EIDL Advances), including name and address of the borrower, amount of approved loan, name of the third-party lender, date of approved loan.
- All records reflecting any communication between Administrator Jovita Carranza and her staff concerning the Paycheck Protection Program and the EIDL assistance program, including but not limited to letters, emails, memoranda, reports, appointment calendars, and telephone call logs, and dated between March 1, 2020 and the date you process this request;
- All records reflecting any communication between Administrator Jovita Carranza, her staff, and members of Congress and their respective staff

concerning the Paycheck Protection Program and the EIDL assistance program, including but not limited to letters, emails, memoranda, reports, appointment calendars, and telephone call logs, and dated between March 1, 2020 and the date you process this request;

- All records reflecting any communication between Administrator Jovita Carranza, her staff, and third-party lenders concerning the Paycheck Protection Program and the EIDL assistance program, including but not limited to letters, emails, memoranda, reports, appointment calendars, and telephone call logs, and dated between March 1, 2020 and the date you process this request;
- All records reflecting any communication between Administrator Jovita Carranza, her staff, and borrowers under the CARES Act's paycheck protection program and the EIDL program concerning the Paycheck Protection Program and the EIDL assistance program, including but not limited to letters, emails, memoranda, reports, appointment calendars, and telephone call logs, and dated between March 1, 2020 and the date you process this request;
- A database or other similar electronic copy of requested records.

A full copy of the request is filed as Exhibit 1.

11. Plaintiff requested expedited processing for this request “because [Plaintiff is] ‘primarily engaged in disseminating information,’ and there is ‘urgency to inform the public concerning actual or alleged Federal Government activity.’ 5 U.S.C. § 552(a)(6)(E)(v)(II). Specifically, the request relates: 1.) To a matter of immediate concern to the American public during a global pandemic and; 2.) To an imminent agency action, so that the public can be informed and comment (or write to members of Congress) on the proposed action.” *See* Exhibit 1.

12. Defendant assigned tracking numbers SBA-2020-000848, SBA-2020-000849, and SBA-2020-000850 to Plaintiff's request.

**Response to Request No. SBA-2020-000848**

13. By letter dated May 12, 2020, Defendant responded to request No. SBA-2020-000848, stating in pertinent part:

The Small Business Administration (“Agency”) is providing statistical information on the Paycheck Protection Program (“PPP”) loans and Economic Injury Disaster Loans (“EIDL”) in an effort to keep the public informed of the assistance and actions both it and the thousands of lenders across the country are taking at this difficult time.

The statistical information can be found at: <https://www.sba.gov/about-sba/open-government/foia#section-header-32>. Please select “COVID-19 Information” located under Frequently requested records to obtain the data that is currently available.

This response is for the PPP requests only. You will receive separate responses for your other requests.

A full copy of the letter is filed as Exhibit 2.

14. Defendant transmitted the May 12 letter to Plaintiff on May 14, 2020, by an email from the foiaonline.gov system, with a message that stated, “SBA-2020-000848 has been processed with the following final disposition: Full Grant.”

15. Despite purporting to grant this portion of Plaintiff’s request, Defendant did not produce any records related to the Paycheck Protection Program responsive to Plaintiff’s request. The webpage that Defendant linked to in the May 12 letter did not contain or lead to any specific information responsive to Plaintiff’s request, such as the names and addresses of PPP borrowers.

16. On May 14, 2020, Defendant sent a separate email to Plaintiff via the foiaonline.gov system, with a message that stated, “Your request for Expedited Processing for the FOIA request SBA-2020-000848 has been denied.”

**Response to Request No. SBA-2020-000849**

17. By letter dated June 15, 2020, Defendant responded to request No. SBA-2020-000849, stating in pertinent part:

This letter is in response to records regarding the Economic Injury Disaster Loan program under the Office of Disaster Assistance only. You will receive a further response from the Agency regarding communications once a search has been completed.

The Small Business Administration (“Agency”) is providing statistical information on the Paycheck Protection Program (“PPP”) loans and Economic

Injury Disaster Loans (“EIDL”) in an effort to keep the public informed of the assistance and actions both it and the thousands of lenders across the country are taking at this difficult time.

The statistical information can be found at: <https://www.sba.gov/about-sba/open-government/foia#section-header-32>. Please select “COVID-19 Information” located under Frequently requested records to obtain the data that is currently available.

A full copy of the letter is filed as Exhibit 3.

18. In the foiaonline.gov system, Defendant has coded request No. SBA-2020-000849 with the status: “Final Disposition: Full Grant.”

19. Despite purporting to grant this portion of Plaintiff’s request, Defendant did not produce any records related to the Economic Injury Disaster Loan program responsive to Plaintiff’s request. The webpage that Defendant linked to in the June 15 letter did not contain or lead to any specific information responsive to Plaintiff’s request, such as the names and addresses of EIDL borrowers.

20. On June 15, 2020, Defendant sent a separate email to Plaintiff via the foiaonline.gov system, with a message that stated, “Your request for Expedited Processing for the FOIA request SBA-2020-000849 has been granted.”

**Request No. SBA-2020-000850**

21. With respect to the portions of Plaintiff’s request designated as No. SBA-2020-000850, Plaintiff has not received from Defendant records responsive to Plaintiff’s request nor a determination on Plaintiff’s request.

22. With respect to request No. SBA-2020-000850, Plaintiff has not received from Defendant a determination on Plaintiff’s request for expedited processing.

**Allegations Common to All Portions of Plaintiff's Request**

23. Defendant has not informed Plaintiff whether it will produce or withhold the specific records requested by Plaintiff, nor has it produced any such records. Although Defendant purports to have granted the requests with tracking numbers SBA-2020-000848 and SBA-2020-000849, in reality it has failed to “determine and communicate the scope of the documents it intends to produce and withhold,” as required by law. *Citizens for Responsibility and Ethics in Washington v. Fed Election Comm’n.*, 711 F.3d 180, 188 (D.C. Cir. 2013).

24. More than twenty working days have passed since Defendant received Plaintiff's request. Plaintiff has therefore exhausted all applicable administrative remedies. 5 U.S.C. § 552(a)(6)(A)(i).

25. Plaintiff has a statutory right to the withheld records (*see* 5 U.S.C. § 552(a)(3)(A)), and there is no legal basis for Defendant's failure to make them available to Plaintiff.

**Demand for Relief**

WHEREFORE, Plaintiff requests that this Court:

1. Declare that Defendant's failure to disclose the records requested by Plaintiff is unlawful;
2. Order Defendant to process Plaintiff's FOIA requests on an expedited basis;
3. Order Defendant to make the requested records available to Plaintiff;
4. Award Plaintiff its costs and reasonable attorneys' fees in this action; and
5. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

/S/

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