

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

PROTECT THE PUBLIC’S TRUST)
712 H Street, N.E.)
Suite 1682)
Washington, D.C. 20002,)
)
Plaintiff,)
)
v.)
)
U.S. ENVIRONMENTAL PROTECTION)
AGENCY)
1200 Pennsylvania Avenue, N.W.)
Washington, D.C. 20460,)
)
Defendant.)
_____)

Civil Case No. 1:22-cv-00281

COMPLAINT

1. Plaintiff Protect the Public’s Trust brings this action against the United States Environmental Protection Agency under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), and the Declaratory Judgement 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 Court pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

PARTIES

4. Plaintiff Protect the Public’s Trust (“PPT”) is an unincorporated association of retired and former public servants and concerned citizens that is dedicated to restoring public trust in

government by promoting the fair and equal application of the rules and standards of ethical conduct to all public servants. *See* D.C. Code § 29–1102(5). Consistent with Justice Brandeis’s aphorism that “Sunlight is said to be the best of disinfectants; electric light the most efficient policeman,” PPT seeks to promote transparency and broadly disseminate information so that the American people can evaluate the integrity and ethical conduct of those who act in their name. Louis Brandeis, *OTHER PEOPLE’S MONEY AND HOW BANKERS USE IT* (1914), <https://louisville.edu/law/library/special-collections/the-louis-d.-brandeis-collection/other-peoples-money-chapter-v>.

5. Defendant United States Environmental Protection Agency (“EPA” or “the Agency”) is a federal agency within the meaning of FOIA, 5 U.S.C. § 552(f)(1). The Agency has possession, custody, and control of records responsive to Plaintiff’s FOIA request.

STATEMENT OF FACTS

I. FOIA EPA-2021-004891

6. On June 11, 2021, PPT submitted a FOIA request (“EPA-2021-004891”) (attached as Exhibit A) to the Agency seeking the following:

All records and communications, documents, and other records from January 20, 2021 through the date this request is processed, between any political appointees of the Biden Administration and any employee or representative of the following organizations: the Environmental Defense Fund, the Natural Resources Defense Council, the Hub Project, the Sierra Club, US Climate Alliance, Center for American Progress, Georgetown Climate Center, Earthjustice, Union of Concerned Scientists, NextGen, Democracy Forward, and the US Water Alliance.

7. The release of these documents is in the public interest because they will allow Plaintiff to convey to the public information about how high ranking Agency officials are spending their official time and with whom they are meeting. They will also help inform the public about whether, and to what extent, political appointees are communicating

with their former employers. The public interest in this aspect of the request has only grown since it was originally submitted. Political appointees are limited in their ability to communicate with former employers by both federal ethics law and regulations, *see, e.g.*, 5 C.F.R. § 2635.502, and by the Administration’s Ethics Pledge, *see* Executive Office of the President, Executive Order 13989: Ethics Commitments by Executive Branch Personnel, 86 Fed. Reg. 7029 (Jan. 20, 2021). Subsequent to this request, Plaintiff filed a complaint with the Agency’s Inspector General alleging that one senior agency official may have arranged a meeting on behalf of his former employer, *see* Sophie Mann, *Watchdog Group Files Complaint with EPA Inspector General Over Apparent Violation from Agency Head*, Just the News (Aug. 17, 2021),

<https://justthenews.com/accountability/political-ethics/watchdog-group-files-complaint-epa-inspector-general-over-apparent>. Plaintiff believes that the requested records will

shed light on whether any other high ranking employees may have similar issues.

8. On June 11, 2021, the Agency acknowledged receipt of the Plaintiff’s request, referred to it as tracking number EPA-2021-004891.
9. On June 14, 2021, the Agency indicated that the request was “assigned for processing,” asserted that an extension of time pursuant to 40 C.F.R. § 2.104(d) was necessary, and stated “If EPA will require more than the additional 10 working days to respond, our FOIA Program will contact you to provide information on the estimated date of completion.”
10. On June 23, 2021, the Agency denied Plaintiff’s request for a fee waiver.

11. Since that time, Plaintiff reached out at least four times regarding EPA-2021-004891, including on August 2, 2021, October 15, 2021, December 22, 2021, and on January 25, 2022.
12. On August 23, 2021, the Agency confirmed that request EPA-2021-004891 was in the “search phase of processing.”
13. On October 21, 2021, the Agency indicated that the request was “under review” and that it “should have some updates in the coming week.”
14. On December 27, 2021, the Agency stated “Your FOIA request resulted in a large number of records but I expect I should be able to provide a response by end of January.”
15. As of today, Plaintiff’s request has been pending for more than 230 days – well beyond the statutory period for federal agencies to make a determination with respect to a FOIA request. 5 U.S.C. § 552(a)(6)(A)-(B).
16. Notwithstanding the Agency’s December 27 response, January has come and gone without the Agency producing responsive records to the Plaintiff and without the Agency making a determination of whether it will comply with Plaintiff’s request. *See Citizens for Responsibility and Ethics in Washington v. FEC*, 711 F.3d 180 (D.C. Cir. 2013). To wit, while the Agency indicated that it had begun its search for responsive records, it has not produced them to PPT, it has not determined and communicated to PPT the scope of the documents it intends to produce and withhold, along with the reasons for such withholding, and it has not informed PPT of its ability to appeal any adverse portion of its determination.

17. Through the Agency's failure to make a determination within the time period required by law, PPT has constructively exhausted its administrative remedies and seeks immediate judicial review.

II. FOIA EPA-2021-006089

18. On August 19, 2021, PPT submitted a FOIA request ("EPA-2021-006089") (attached as Exhibit B) to the Agency seeking the following:

All records and communications, documents, and other records from January 20, 2021 through the date this request is processed, for the following records:

1. All Microsoft Teams meeting invites, calendar requests, and call logs for meetings between the following officials and any individual outside of the federal government:
 - a. Michael Regan
 - b. Joseph Goffman
 - c. Melissa Hoffer
 - d. Dan Utech
 - e. Tomas Carbonell
 - f. Alejandra Nunez
 - g. Dimple Chaudhary
 - h. Christopher Frey
 - i. Rosemary Enobkhare
2. All communications concerning meeting requests or follow up items with outside entities (non-federal entities should include state government officials). The specific focus should be on entities that are listed on individuals' recusal statement or ethics agreement, their 278 financial disclosure forms, or otherwise were identified as having a potential covered relationship with the officials listed above.
3. All schedules of the above listed officials that include detailed calendars that reflect actual meetings requested, placed, and that occurred. This should be more detailed than those listed on the website which are intentionally vague and display no insights into the daily administration of the agency by its political leaders.

19. The release of these documents is in the public interest because they will allow Plaintiff to convey to the public information about how high ranking Agency officials are spending their official time and with whom they are meeting. They will also help inform the public about whether, and to what extent, political appointees are communicating

with their former employers. Political appointees are limited in their ability to communicate with former employers by both federal ethics law and regulations, *see, e.g.*, 5 C.F.R. § 2635.502, and by the Administration’s Ethics Pledge, *see* Executive Office of the President, Executive Order 13989: Ethics Commitments by Executive Branch Personnel, 86 Fed. Reg. 7029 (Jan. 20, 2021). Plaintiff previously filed a complaint with the Agency’s Inspector General alleging that one senior agency official may have arranged a meeting on behalf of his former employer, *see* Sophie Mann, *Watchdog Group Files Complaint with EPA Inspector General Over Apparent Violation from Agency Head*, Just the News (Aug. 17, 2021), <https://justthenews.com/accountability/political-ethics/watchdog-group-files-complaint-epa-inspector-general-over-apparent>, and believe that the requested records will shed light on whether any other high ranking employees may have similar issues.

20. On August 19, 2021, the Agency acknowledged receipt of the Plaintiff’s request, referred to it as tracking number EPA-2021-006089.
21. On August 20, 2021, the Agency indicated that the request was “assigned for processing,” asserted that an extension of time pursuant to 40 C.F.R. § 2.104(d) was necessary, and stated “If EPA will require more than the additional 10 working days to respond, our FOIA Program will contact you to provide information on the estimated date of completion.”
22. On September 9, 2021, the Agency granted Plaintiff’s request for a fee waiver.
23. Since that time, Plaintiff reached out at least twice regarding EPA-2021-006089, including on October 15, 2021 and January 25, 2022.

24. On October 29, 2021, an Agency FOIA officer stated that he “will process [EPA-2021-006089] when [he is] finished with [another request]” and represented “I can’t give you a specific timeframe of when I will be able to complete this request at this stage. However, the EPA has been releasing senior leadership calendars so I will organize that information and let you know where you can access these records. I will try and take care of that next week.”
25. Plaintiff has not received an update from the Agency regarding EPA-2021-006089 since October 29, 2021.
26. To date, the Agency has not begun producing responsive records to Plaintiff, nor has it indicated a date when it will do so, notwithstanding several requests to do so.
27. As of today, Plaintiff’s request has been pending for more than 160 days – well beyond the statutory period for federal agencies to make a determination with respect to a FOIA request. 5 U.S.C. § 552(a)(6)(A)-(B).
28. During this time, the Agency has not made a determination of whether it will comply with Plaintiff’s request. *See Citizens for Responsibility and Ethics in Washington v. FEC*, 711 F.3d 180 (D.C. Cir. 2013). To wit, while the Agency indicated that it had begun “releasing senior leadership calendars,” it has not produced them to PPT, nor has it directed PPT to where it can access them. Furthermore, it has not determined and communicated to PPT the scope of the documents it intends to produce and withhold, along with the reasons for such withholding, nor has it informed PPT of its ability to appeal any adverse portion of its determination.

29. Through the Agency's failure to make a determination within the time period required by law, PPT has constructively exhausted its administrative remedies and seeks immediate judicial review.

COUNT I
Violation of FOIA, 5 U.S.C. § 552
Wrongful Withholding of Non-Exempt Responsive Records in Response to Request
EPA-2021-004891

30. PPT repeats and incorporates by reference each of the foregoing paragraphs as if fully set forth herein.

31. PPT properly requested records within the possession, custody, and control of the Agency.

32. The EPA is an agency subject to FOIA, and therefore has an obligation to release any non-exempt records and provide a lawful reason for withholding any materials in response to a proper FOIA request.

33. The Agency is wrongfully withholding non-exempt agency records requested by PPT in EPA-2021-004891 by failing to produce non-exempt records responsive to its request.

34. The Agency is wrongfully withholding non-exempt agency records requested by PPT in request EPA-2021-004891 by failing to segregate exempt information in otherwise non-exempt records responsive to the PPT FOIA request.

35. The Agency's failure to provide all non-exempt responsive records violates FOIA.

36. Plaintiff PPT is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to request EPA-2021-004891 and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.

COUNT II
Violation of FOIA, 5 U.S.C. § 552
Wrongful Withholding of Non-Exempt Responsive Records in Response to Request
EPA-2021-006089

37. PPT repeats and incorporates by reference each of the foregoing paragraphs as if fully set forth herein.
38. PPT properly requested records within the possession, custody, and control of the Agency.
39. The EPA is an agency subject to FOIA, and therefore has an obligation to release any non-exempt records and provide a lawful reason for withholding any materials in response to a proper FOIA request.
40. The Agency is wrongfully withholding non-exempt agency records requested by PPT in EPA-2021-006089 by failing to produce non-exempt records responsive to its request.
41. The Agency is wrongfully withholding non-exempt agency records requested by PPT in request EPA-2021-006089 by failing to segregate exempt information in otherwise non-exempt records responsive to the PPT FOIA request.
42. The Agency's failure to provide all non-exempt responsive records violates FOIA.
43. Plaintiff PPT is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to request EPA-2021-006089 and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.

REQUESTED RELIEF

Protect the Public's Trust respectfully requests this Court:

- (1) Assume jurisdiction in this matter, and maintain jurisdiction until the Defendant complies with the requirements of FOIA and any and all orders of this Court.
- (2) Order Defendant to produce, within ten days of the Court's order, or by other such date as the Court deems appropriate, any and all non-exempt records responsive to request EPA-2021-004891 and indexes justifying the withholding of all or part of any responsive records withheld under claim of exemption.
- (3) Enjoin the Defendant from continuing to withhold any and all non-exempt records responsive to request EPA-2021-004891.
- (4) Order Defendant to produce, within ten days of the Court's order, or by other such date as the Court deems appropriate, any and all non-exempt records responsive to request EPA-2021-006089 and indexes justifying the withholding of all or part of any responsive records withheld under claim of exemption.
- (5) Enjoin the Defendant from continuing to withhold any and all non-exempt records responsive to request EPA-2021-006089.
- (6) Award PPT the costs of this proceeding, including reasonable attorney's fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E).
- (7) Grant PPT other such relief as the Court deems just and proper.

Dated: February 3, 2022

Respectfully submitted,

PROTECT THE PUBLIC'S TRUST
By Counsel:

/s/ Gary M. Lawkowski

Gary M. Lawkowski

D.D.C. Bar ID: VA125

DHILLON LAW GROUP, INC.

2121 Eisenhower Avenue, Suite 402

Alexandria, Virginia 22314

Telephone: 703-965-0330

Facsimile: 415-520-6593

GLawkowski@Dhillonlaw.com

Counsel for the Plaintiff