

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN OVERSIGHT,
1030 15th Street NW, B255
Washington, DC 20005

Plaintiff,

v.

Case No. 17-920

U.S. DEPARTMENT OF COMMERCE,
1401 Constitution Avenue NW
Washington, DC 20230

U.S. DEPARTMENT OF EDUCATION,
400 Maryland Avenue SW
Washington, DC 20202

U.S. DEPARTMENT OF LABOR,
200 Constitution Avenue NW
Washington, DC 20210

U.S. DEPARTMENT OF THE TREASURY,
1500 Pennsylvania Avenue NW
Washington, DC 20220

and

U.S. SMALL BUSINESS ADMINISTRATION,
409 3rd Street SW
Washington, DC 20416

Defendants.

COMPLAINT

1. Plaintiff American Oversight brings this action against the U.S. Departments of Commerce, Education, Labor, and the Treasury, and the Small Business Administration under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), and the Declaratory Judgment 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 district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

4. Because Defendants have failed to comply with the applicable time-limit provisions of the FOIA, American Oversight is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and is now entitled to judicial action enjoining the agency from continuing to withhold agency records and ordering the production of agency records improperly withheld.

PARTIES

5. Plaintiff American Oversight is a nonpartisan organization committed to the promotion of transparency in government, the education of 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, and its application for section 501(c)(3) status is pending with the Internal Revenue Service.

6. Defendant U.S. Department of Commerce (Commerce) 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). Commerce has possession, custody, and control of the records that American Oversight seeks.

7. Defendant U.S. Department of Education (ED) 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). ED has possession, custody, and control of the records that American Oversight seeks.

8. Defendant U.S. Department of Labor (DOL) 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). DOL has possession, custody, and control of the records that American Oversight seeks.

9. Defendant U.S. Department of the Treasury (Treasury) 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). Treasury has possession, custody, and control of the records that American Oversight seeks.

10. Defendant U.S. Small Business Administration (SBA) is an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1) and headquartered in Washington, DC. SBA has possession, custody, and control of the records that American Oversight seeks.

STATEMENT OF FACTS

Ivanka Trump's Role in the Trump Administration

11. As described below, American Oversight filed FOIA requests seeking documents that would shed light on the role Ivanka Trump played and continues to play in the administration of her father, President Donald J. Trump.

12. Ms. Trump has long played professional roles in her father's endeavors.

13. Ms. Trump is involved with Mr. Trump's real estate empire.

14. Ms. Trump appeared on Mr. Trump's reality shows, *The Apprentice* and *The Celebrity Apprentice*.

15. Ms. Trump was reported to be an influential resource during her father's presidential campaign.

16. In response to questions as to what role Ms. Trump would play in her father's latest endeavor, serving as President of the United States, public statements were inconsistent about Ms. Trump's role in her father's administration.

17. In August 2016, it was reported that Ms. Trump said she "most definitely would have a role in a Trump White House."

18. In the weeks leading up to the election, it was reported that Ms. Trump said she did not "intend to be a part of the government."

19. Following the inauguration, Ms. Trump was a highly visible presence in the first two months of her father's administration, including by attending meetings with heads of state—including German Chancellor Angela Merkel and Canadian Prime Minister Justin Trudeau—and business leaders.

20. Following those official meetings, Ms. Trump has also been reported to have an office in the West Wing; to have a government-issued communications device; and to be receiving a security clearance.

21. Notwithstanding the fact that she had reportedly obtained an office in the White House, a government-issued communications device, and a security clearance, media reports indicated that Ms. Trump continued to assert that she was "not technically serving as a government employee."

22. On March 29, 2017, media reports first indicated that Ms. Trump had announced her intention to become an unpaid federal employee.

23. On information and belief, prior to March 29, 2017, Ms. Trump had not taken an oath of office to serve as an employee of the federal government.

24. On information and belief, prior to March 29, 2017, Ms. Trump had no contract or other legal agreement to serve as an employee of the federal government.

25. On information and belief, prior to March 29, 2017, Ms. Trump had not filed ethics agreements or financial disclosures required of federal employees in senior White House positions.

26. On information and belief, prior to March 29, 2017, it was Ms. Trump's position that she was not serving as an employee of the federal government.

27. On information and belief, prior to March 29, 2017, Ms. Trump was not an employee of the federal government.

28. On information and belief, at some point on March 29, 2017, or thereafter, Ms. Trump became an employee of the federal government.

29. On information and belief, at some point on March 29, 2017, or thereafter, Ms. Trump took an oath of office to serve as an employee of the federal government.

30. Prior to becoming a federal employee, Ms. Trump actively participated as a private citizen in the promotion of her policy positions at federal agencies, including her policy positions related to Defendants' work.

31. It was reported that in February 2017 Ms. Trump invited female Republican lawmakers to the White House to discuss reforming the tax code, child care, and family leave.

32. On February 22, 2017, it was reported that Ms. Trump participated in a round-table discussion with small-business owners and SBA Administrator Linda McMahon.

33. On March 17, 2017, it was reported that Ms. Trump guided a conversation with Ms. Merkel and business leaders to discuss vocational training and workforce development.

34. The email correspondence that American Oversight seeks in its FOIA requests will meaningfully inform the public's understanding of the nature of Ms. Trump's role in the administration as a purported outsider, a subject that has been of significant interest to the American people.

FOIA Requests

35. On March 31, 2017, American Oversight submitted FOIA requests to the Defendants seeking access to the following records:

- 1) All emails or text messages regarding agency business, whether conducted on government or personal accounts, between Ms. Trump—or anyone acting on behalf of Ms. Trump, such as an assistant or scheduler—and the individuals below, or anyone acting on behalf of the individuals below:
 - a) Any non-career member of the Senior Executive Service (SES) in the Office of the Secretary, or career employee detailed to a position eligible to be filled by a non-career member of the SES.
 - b) Any Schedule C employee in the Office of the Secretary.
 - c) Any employee appointed by the President, with or without Senate confirmation (PAS and PA).
 - d) Any employee serving in an “Acting” PAS or PA capacity.
- 2) All calendar entries reflecting meetings between Ms. Trump and the individuals below, or anyone acting on behalf of the individuals below:
 - a) Any non-career member of the Senior Executive Service (SES) in the Office of the Secretary, or career employee detailed to a position eligible to be filled by a non-career member of the SES.
 - b) Any Schedule C employee in the Office of the Secretary.

- c) Any employee appointed by the President, with or without Senate confirmation (PAS and PA).
- d) Any employee serving in an “Acting” PAS or PA capacity.

American Oversight requested all responsive records from January 20, 2017, to the date of the search.

- 36. Commerce assigned the request tracking number DOC-OS-2017-000936.
- 37. ED assigned the request tracking number 17-01386-F.
- 38. SBA assigned the request tracking number SBA-2017-000831.
- 39. American Oversight has not received any communication from DOL regarding this request.
- 40. On April 18, 2017, Treasury sent American Oversight an acknowledgment letter assigning the request tracking number 2017-04-038.
- 41. In its April 18, 2017, acknowledgement letter, Treasury stated that it could not process American Oversight’s request because it was “unclear what specific records” American Oversight was seeking from Treasury.
- 42. On April 20, 2017, an attorney from American Oversight spoke with a FOIA analyst at Treasury and relayed American Oversight’s position that the request as drafted sufficiently described the records sought to enable Treasury to conduct a search.
- 43. On April 28, 2017, Treasury informed American Oversight that the Acting Director of the FOIA office determined that there were no issues with the request as written.
- 44. Treasury informed American Oversight that its request involves “unusual circumstances” and that in such an instance the FOIA allows the agency to take an additional ten days to process the request.

Agency Inaction

45. No Defendant has made a determination as to American Oversight's FOIA requests described in paragraph 35, notwithstanding the obligation of the agencies under FOIA to respond within twenty working days, or, when there are "unusual circumstances," within thirty working days.

46. Through Defendants' failure to make a determination as 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 Search for Records

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

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

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

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

51. Defendants' failure to conduct an adequate search for responsive records violates FOIA.

52. Plaintiff American Oversight is therefore entitled to injunctive and declaratory 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

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

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

55. Defendants are agencies subject to FOIA and must therefore release in response to a FOIA requests any disclosable records and provide a lawful reason for withholding any materials.

56. Defendants are wrongfully withholding agency records requested by American Oversight by failing to produce records responsive to its FOIA requests.

57. Defendants' failure to provide all responsive records violates FOIA.

58. Plaintiff American Oversight is therefore entitled to injunctive and declaratory relief requiring Defendants to promptly produce all non-exempt records responsive to its FOIA requests and provide indexes 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 reasonably calculated to uncover all records responsive to American Oversight's FOIA requests submitted to Defendants on March 31, 2017;
- (2) Order Defendants to produce, by such a date as the Court deems appropriate, any and all non-exempt records responsive to American Oversight's FOIA requests and

indexes 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: May 17, 2017

Respectfully submitted,

/s/ Cerissa Cafasso

Cerissa Cafasso

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