

**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. 18-cv-893

U.S. ENVIRONMENTAL PROTECTION
AGENCY,
1200 Pennsylvania Avenue NW
Washington, DC 20460

Defendant.

COMPLAINT

1. Plaintiff American Oversight brings this action against the Environmental Protection Agency 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 Defendant has 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, non-profit section 501(c)(3) 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 gathered, 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 Environmental Protection Agency (EPA) is an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1) headquartered in Washington, DC. EPA has possession, custody, and control of the records that American Oversight seeks.

STATEMENT OF FACTS

Pruitt Travel FOIA

7. On February 20, 2018, American Oversight submitted a FOIA request to EPA seeking access to the following records:

Records sufficient to identify all waivers or waiver-related requests (including but not limited to emails, email attachments, memos, notes, or handwritten documents) and any final determinations either approving or denying EPA Administrator Scott Pruitt's first-class airplane travel for personal and business-related trips.

The request sought all responsive records from February 17, 2017, to the date of the search.

8. EPA assigned the Pruitt Travel FOIA tracking number EPA-HQ-2018-004640.

Perrotta Travel FOIA

9. On March 6, 2018, American Oversight submitted a FOIA request to EPA seeking access to the following records:

- 1) Records sufficient to identify all non-coach air travel by Pasquale “Nino” Perrotta.
- 2) All travel waivers, waiver-related requests (including but not limited to emails, email attachments, memos, notes, or handwritten documents), or final determinations either approving or denying first-class airplane travel for personal and business-related trips for Pasquale “Nino” Perrotta.

The request sought all responsive records from February 17, 2017, to the date of the search.

10. EPA assigned the Perrotta Travel FOIA request tracking number EPA-HQ-2018-005157.

Perrotta Steinmetz FOIA

11. Also on March 6, 2018, American Oversight submitted a FOIA request to EPA seeking access to the following records:

All records reflecting communications (including emails, email attachments, text messages, telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any responsive communications, summaries of any responsive communications, or other materials reflecting communications) between (a) Pasquale “Nino” Perrotta and (b) anyone acting on behalf of any of the individuals and/or entities listed below:

- a. Edwin Steinmetz;
- b. Edwin Steinmetz Associates;
- c. Sequoia Security Group;
- d. Robert Weaver;
- e. Steven Branigan;
- f. John McDonough;
- g. Richard Brusca;
- h. Concentric Advisors;
- i. P&P Construction;

- j. Centurion Analytics;
- k. The Guidry Group;
- l. DFLabs;
- m. Argonne National Laboratory;
- n. CyanLine; or
- o. Potomac Security Services.

The request sought all responsive records from November 8, 2016, to the date of the search.

12. EPA assigned the Perrotta Steinmetz FOIA request tracking number EPA-HQ-2018-005159.

13. On April 3, 2018, EPA informed American Oversight that a search had been initiated for documents responsive to the Perrotta Steinmetz FOIA. EPA stated that potentially responsive documents had been identified and were ready for review.

Pruitt Vehicle FOIA

14. On March 19, 2018, American Oversight submitted a FOIA request to EPA seeking access to the following records:

All records relating to the procurement of any vehicle to transport EPA Administrator Scott Pruitt, including documentation of the procurement itself, as well as communications about the decision to procure a new vehicle, which vehicle to procure, and the reasons therefor.

The request sought all responsive records from December 7, 2016, to the date of the search.

15. EPA assigned the Pruitt Vehicle FOIA request tracking number EPA-HQ-2018-005595.

16. That same day, American Oversight sent an unsolicited email to EPA providing the following clarification of the word “procurement” in the Pruitt Vehicle FOIA:

I write now to clarify that by “procurement,” we mean either the purchase, lease, long-term rental or other long-term procurement of a vehicle for use by the agency in transporting Mr. Pruitt. By contrast, this request need not extend to every rental car Mr. Pruitt

may have used for travel or other similar, isolated single-use arrangements.

Exhaustion of Administrative Remedies

17. As of the date of this Complaint, EPA has failed to (a) notify American Oversight of any determination regarding American Oversight's FOIA requests, including the full scope of any responsive records the agency intends to produce or withhold and the reasons for any withholdings; or (b) produce all of the requested records or demonstrate that the requested records are lawfully exempt from production.

18. Through EPA's failure to make determinations 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 Searches for Responsive Records

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

20. American Oversight properly requested records within the possession, custody, and control of Defendant.

21. Defendant is an agency subject to FOIA and must therefore make reasonable efforts to search for requested records.

22. Defendant has failed to promptly and adequately review agency records for the purpose of locating those records which are responsive to American Oversight's FOIA requests.

23. Defendant's failure to conduct adequate searches for responsive records violates FOIA.

24. Plaintiff American Oversight is therefore entitled to injunctive and declaratory relief requiring Defendant to promptly make reasonable efforts to conduct adequate searches for records responsive to American Oversight's FOIA requests.

COUNT II
Violation of FOIA, 5 U.S.C. § 552
Wrongful Withholding of Non-Exempt Responsive Records

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

26. American Oversight properly requested records within the possession, custody, and control of Defendant.

27. Defendant is an agency 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.

28. Defendant is wrongfully withholding non-exempt agency records requested by American Oversight by failing to produce records responsive to its FOIA requests.

29. Defendant is 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.

30. Defendant's failure to provide all non-exempt responsive records violates FOIA.

31. Plaintiff American Oversight is therefore entitled to declaratory and injunctive relief requiring Defendant 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 Defendant to conduct a search or searches reasonably calculated to uncover all records responsive to American Oversight's FOIA requests;
- (2) Order Defendant to produce, within twenty days of the Court's order, or by such other 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 Defendant from continuing to withhold any and all non-exempt records responsive to American Oversight's FOIA requests;
- (4) Award American Oversight the costs of this proceeding, including reasonable 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: April 17, 2018

Respectfully submitted,

/s/ Sara Kaiser Creighton

Sara Kaiser Creighton
D.C. Bar No. 1002367

/s/ John E. Bies

John E. Bies
D.C. Bar No. 483730

AMERICAN OVERSIGHT
1030 15th Street NW, B255
Washington, DC 20005
(202) 869-5245
sara.creighton@americanoversight.org
john.bies@americanoversight.org
Counsel for Plaintiff