

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

THE PROTECT DEMOCRACY PROJECT,)	
INC., 2020 Pennsylvania Avenue, NW, #163,)	
Washington, DC 20006)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
U.S. DEPARTMENT OF ENERGY, 1000)	
Independence Avenue, SW, Washington, DC)	
20585,)	
)	
Defendant.)	
_____)	

COMPLAINT

Plaintiff The Protect Democracy Project, Inc. brings this action against Defendant U.S. Department of Energy to compel compliance with the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Plaintiff alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
2. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B).

PARTIES

3. Plaintiff The Protect Democracy Project, Inc. is an organization awaiting 501(c)(3) status, incorporated under the laws of the District of Columbia, and headquartered at 2020 Pennsylvania Avenue, NW, #163, Washington, DC 20006. Plaintiff’s mission is to protect our democracy from descending into a more autocratic form of government by preventing those in power from depriving Americans of a free, fair, and fully-informed opportunity to exercise

ultimate sovereignty. As part of this mission, Plaintiff seeks to inform public understanding of operations and activities of the government by gathering and disseminating information that is likely to contribute significantly to the public understanding of executive branch operations and activities. Plaintiff regularly requests such information pursuant to FOIA. Plaintiff intends to give the public access to documents transmitted via FOIA on its website, www.protectdemocracy.org, and to provide information about and analysis of those documents as appropriate.

4. Defendant U.S. Department of Energy is an agency of the executive branch of the federal government of the United States. Defendant is headquartered at 1000 Independence Ave., SW, Washington, DC 20585. Defendant has possession, custody, and control of the documents that Plaintiff seeks in response to its FOIA request.

STATEMENT OF FACTS

5. On February 15, 2017, Plaintiff sent a FOIA request to Defendant seeking the following records:

- (1) Any and all records created between November 9, 2016 and the present date by or between Department of Energy employees regarding or including Presidential Transition Team questionnaires about climate change (aka “global warming”), including but not limited to communications between Department of Energy employees and the following individuals: Donald Trump, Stephen Bannon, Reince Priebus, Stephen Miller, Kellyanne Conway, Sean Spicer, Michael Pence, Daniel Simmons, David Jonas, Jack Spencer, John Giordano, Kelly Mitchell, Mark Maddox, Martin Dannenfelser Jr., Thomas Norris, Travis Fisher, William Greene and Rick Perry.
- (2) Any and all records created between November 9, 2016 and the present date regarding personnel changes, new personnel assignments or new personnel assignment policies by or between Department of Energy employees and the Executive Office of the President or Presidential Transition Team (aka “Landing Team”), including but not limited to communications between Department of Energy employees and the following individuals: Donald Trump, Stephen Bannon, Reince Priebus, Stephen Miller, Kellyanne Conway, Sean Spicer, Michael Pence, Daniel Simmons, David Jonas, Jack Spencer, John

Giordano, Kelly Mitchell, Mark Maddox, Martin Dannenfels Jr., Thomas Norris, Travis Fisher, William Greene and Rick Perry.

See Exhibit A (FOIA request).

6. Plaintiff also requested a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) or 5 U.S.C. § 552(a)(4)(A)(ii)(II). *See* Exhibit A.

7. Plaintiff received a letter from Defendant dated February 21, 2017, acknowledging receipt of the request on February 16, 2017, and assigning it a control number. *See* Exhibit B.

8. Plaintiff received a second letter from Defendant dated March 3, 2017, granting Plaintiff's request for a fee waiver. *See* Exhibit C.

9. On April 7, 2017, Benjamin L. Berwick, one of the undersigned counsel for Plaintiff, spoke with Anjelica Ruda, a FOIA Officer for Defendant, who represented that the agency had initiated a search for responsive records, but could not yet provide an estimate of how long it will take for Defendant to process the request.

10. Pursuant to FOIA, within 20 business days of receipt of Plaintiff's request – that is, by March 17, 2017 – Defendant was required to “determine . . . whether to comply with such request” and to “immediately notify” Plaintiff of “such determination and the reasons therefor,” Plaintiff's right “to seek assistance from the FOIA Public Liaison of the agency,” and, in the case of an adverse determination, Plaintiff's appeal rights. 5 U.S.C. § 552(a)(6)(A)(i).

11. To date, Defendant has failed to make the required determination and notifications.

COUNT I
(Violation of FOIA, 5 U.S.C. § 552)

12. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

13. Defendant is in violation of FOIA by failing to respond to Plaintiff's request within the statutorily prescribed time limit and by unlawfully withholding records responsive to Plaintiff's request.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

(1) Order Defendant, by a date certain, to conduct a search that is reasonably likely to lead to the discovery of any and all records responsive to Plaintiff's request;

(2) Order Defendant, by a date certain, to demonstrate that it has conducted an adequate search;

(3) Order Defendant, by a date certain, to produce to Plaintiff any and all non-exempt records or portions of records responsive to Plaintiff's request, as well as a *Vaughn* index of any records or portions of records withheld due to a claim of exemption;

(4) Enjoin Defendant from improperly withholding records responsive to Plaintiff's request;

(5) Grant Plaintiff an award of attorney fees and other reasonable litigation costs pursuant to 5 U.S.C. § 552(a)(4)(E);

(6) Grant Plaintiff such other relief as the Court deems appropriate.

Date: April 27, 2017

/s/ Lindsay C. Harrison
Lindsay C. Harrison
D.C. Bar No. 977407
JENNER & BLOCK LLP
1099 New York Avenue, NW
Suite 900
Washington, DC 20001-4412
Phone: 202 639-6000
Fax: 202 639-6066

Email: lharrison@jenner.com

Benjamin L. Berwick (MA Bar No. 679207)
(admission pending)

Counsel, The Protect Democracy Project

2020 Pennsylvania Ave. NW, #163

Washington, DC 20006

Ben.Berwick@protectdemocracy.org

(202) 599-0466

Counsel for Plaintiff