

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

GOVERNMENT ACCOUNTABILITY & OVERSIGHT )  
30 North Gould Street )  
Suite 12848 )  
Sheridan, WY 82801 )

Plaintiff, )

v. )

Case No. 24-cv-3500

UNITED STATES DEPARTMENT OF ENERGY )  
1000 Independence Avenue, S.W. )  
Washington, D.C. 20585 )

Defendant. )

**COMPLAINT UNDER THE FREEDOM OF INFORMATION ACT**

Plaintiff GOVERNMENT ACCOUNTABILITY & OVERSIGHT (“GAO”), for its  
Complaint against Defendant UNITED STATES DEPARTMENT OF ENERGY (“ENERGY”  
or “DoE”), alleges as follows:

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.* for all available statutory relief, including but not limited to declaratory and injunctive relief, and an order requiring the Defendant to begin processing and release of agency records responsive to Plaintiff’s FOIA request.
2. In a November 13, 2024 request, Plaintiff sought certain described records of extraordinarily compelling and timely public and public-policy interest, following the Department’s failure to comply with the express terms of FOIA including the Department’s failure to make a “determination” as defined in *Citizens for Responsible Ethics in Washington v. Federal Election Commission*, 711 F.3d 180, 816 (D.C. Cir. 2013) (“*CREW*”) on Plaintiff’s request and on Plaintiff’s requests in the alternative for fee waivers.

3. The records at issue in this suit were initially identified as responsive to a June 7, 2024 request which is the subject of *Government Accountability & Oversight v. Department of Energy*, Case No. 24-1829 (RDM). In that matter, Defendant initially declared that the records were “potentially responsive,” to a June 7, 2024 request. Defendant later reversed course and, in engineering a Motion to Dismiss on mootness grounds, declared that the records at issue were non-responsive to Plaintiff’s earlier request. Without waiving any of its rights and for the avoidance of doubt, Plaintiff then expressly requested the ostensibly “non-responsive” records in a separate FOIA request on November 13, 2024.
4. For the reasons described above, and pursuant to Local Civ. R. 40.5, Plaintiff believes this case is properly related to *Government Accountability & Oversight v. Department of Energy*, Case No. 24-1829 (RDM).

#### **PARTIES**

5. Plaintiff Government Accountability & Oversight (“GAO”) is a nonprofit research, public policy and public interest educational center organized under the laws of the State of Wyoming. GAO is dedicated to education regarding responsible regulation and transparency in government, a key part of which is seeking public records illuminating how policymakers use public resources, and with whom.
6. Defendant Department of Energy (“DoE” or “Energy”) is a federal agency headquartered in Washington, DC, and it has possession and control over the records that Plaintiff seeks.

#### **JURISDICTION AND VENUE**

7. This Court has jurisdiction pursuant to and 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B) to review DoE’s compliance with FOIA, for reasons including but not limited to DoE’s failure

to comply with the statutory deadline for making a determination in response to plaintiff's FOIA Request.

8. Venue is proper in this Court under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).
9. Plaintiff is not required to further pursue administrative remedies before seeking relief in this Court because the defendant has failed to make a timely "determination" as that term is defined in *CREW*, 711 F.3d at 188; see also e.g., *Citizens for Resp. & Ethics in Wash. v. Dep't of Justice*, 436 F. Supp. 3d 354, 359 (D.D.C. 2020).

### **PLAINTIFF'S FOIA REQUEST**

10. On November 13, 2024, Plaintiff submitted by internet portal a FOIA request to Defendant seeking "copies of all records compiled by DoE which it located, identified, compiled, or otherwise described in the status report described in a September 13, 2024 Status Report to the court in *Government Accountability & Oversight v. Department of Energy*, 1:24-cv-1829 (ECF No. 13)(attached as part of this request), as: The second search on HQ-2024-02097-F was completed in August 2024. DOE has subsequently identified 97 potentially responsive documents, totaling 4,354 pages." (emphasis in original)
11. Plaintiff added, "The response to this request should not be constrained by the Department's current position in re: Request HQ-2024-02097-F, which position is not relevant here. This [request] seeks the 97 records described immediately above, that were identified in the search described immediately above."
12. On November 22, 2024, Defendant acknowledged the request and assigned it request number HQ-2025-00716-F. In that correspondence, Defendant stated, in pertinent part, "Upon completion of the review of the records, you will be provided a response."

13. The FOIA provides that a requesting party is entitled to a substantive agency response within twenty working days, including a determination of whether the agency intends to comply with the request. 5 U.S.C. § 552(a)(6)(A)(i). Within that deadline, the agency must also “determine and communicate the scope of the documents it intends to produce and withhold, and the reasons for withholding any documents,” and “inform the requester that it can appeal whatever portion of” the agency’s “determination” is adverse to the requestor. *CREW*, 711 F.3d at 188.
14. 5 U.S.C. § 552(a)(6)(A) prescribes that FOIA’s 20-day time limit shall not be tolled by the agency except in two narrow scenarios: The agency may make one request to the requester for information and toll the 20-day period while it is awaiting such information that it has reasonably requested from the requester, 5 U.S.C. § 552(a)(6)(A)(ii)(I), and agencies may also toll the statutory time limit if necessary to clarify with the requester issues regarding fee assessment. 5 U.S.C. § 52(a)(6)(A)(ii)(II). In either case, the agency’s receipt of the requester’s response to the agency’s request for information or clarification ends the tolling period.
15. Neither of those scenarios are applicable to DoE’s actions in the instant matter. Therefore, no relevant statutory deadlines were tolled.
16. DoE owed Plaintiff this determination on Plaintiff’s request no later than December 12, 2024.
17. Notwithstanding its legal obligations, DoE has provided no substantive response or “determination” with respect to any aspect of the request.
18. Plaintiff understands, from sworn testimony given before the United States House of Representatives on December 4, 2024, by Assistant Secretary of Energy for Fossil Energy

and Carbon Management Brad Crabtree in response to a question about those specific 97 records, that the Department had made four document productions by that date and was producing “about two thousand pages or so pages” on or before Friday December 6, 2024.

This testimony is available at <https://oversight.house.gov/hearing/exposing-the-truth-on-lng-how-the-administration-played-politics-with-americas-energy-future/>. The relevant portion of the testimony begins at approximately 37:00.

19. As such, and affirming Defendant’s previous representations to Plaintiff and to this Court that it had identified these 97 records, Defendant plainly has obtained and segregated and, in great part if not entirely, already reviewed these records. Yet Defendant has provided plaintiff with no determination.
20. DoE is now past its statutory period for issuing such determination on the request at issue.

**FIRST CLAIM FOR RELIEF**  
**Duty to Provide Records**

21. Plaintiff restates and incorporates by reference each of the foregoing paragraphs as if fully set forth herein.
22. This count relates to Plaintiff’s ultimate entitlement to the record at issue under FOIA and Defendant’s failure to provide the required determination.
23. Plaintiff has sought and been denied production of responsive records reflecting the conduct of official Government activity.
24. Plaintiff has the statutory right to the information it seeks and the Energy Department has unlawfully withheld the information and otherwise failed to respond as required.
25. Plaintiff has a statutory right to a fee waiver under FOIA and the Energy Department has unlawfully failed to grant such a waiver.
26. Plaintiff is not required to further pursue administrative remedies.

27. Plaintiff is entitled to injunctive relief compelling the Energy Department to produce the records responsive to the FOIA request described herein, and to further injunctive relief prohibiting the Department from charging fees for the record at issue.

28. Plaintiff asks this Court to enter a judgment declaring that:

- a. Plaintiff is entitled to the records responsive to its FOIA request as described above, but that DoE has failed to provide the described records;
- b. DoE's processing of Plaintiff's FOIA request described above is not in accordance with the law, and does not satisfy the Department's obligations under FOIA;
- c. DoE must now produce records responsive to Plaintiff's request, within twenty business days of the date of the order; and
- d. DoE must waive any fees that would otherwise be required to produce the records described herein.

29. Plaintiff asks the Court to order the Parties to consult regarding the withheld documents and to file a status report to the Court within thirty days after plaintiff receives the produced documents, addressing the Energy Department's preparation of a *Vaughn* log, and a briefing schedule for resolution of remaining issues associated with plaintiff's challenges to the Energy Department's withheld information, if any, and any other remaining issues.

**SECOND CLAIM FOR RELIEF**  
**Costs And Fees**

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

31. Pursuant to 5 U.S.C. § 552(a)(4)(E), the Court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any FOIA case in which the complainant has substantially prevailed.

32. This Court should enter an injunction or other appropriate order requiring the Defendant to pay reasonable attorney's fees and other litigation costs reasonably incurred in this case.

**PRAYER FOR RELIEF**

Plaintiff respectfully requests this Court:

1. Assume jurisdiction in this matter, and maintain jurisdiction until the Defendant complies with FOIA and every order of this Court;
2. Declare Defendant has violated FOIA by failing to provide Plaintiff with its required determinations, on either the request or the requests in the alternative for fee waiver;
3. Order Defendant to expeditiously provide the requested records to Plaintiff within 20 business days of the Court's order and without cost to the Plaintiff;
4. Award Plaintiff's attorneys their fees and other litigation costs reasonably incurred pursuant to 5 U.S.C. § 552(a)(4)(E); and
5. Grant such other relief as this Court deems just and proper.

Respectfully submitted this the 16<sup>th</sup> day of December, 2024,

GOVERNMENT ACCOUNTABILITY & OVERSIGHT  
By Counsel:

/s/Matthew D. Hardin  
Matthew D. Hardin, D.C. Bar No. 1032711  
Hardin Law Office  
101 Rainbow Drive # 11506  
Livingston, TX 77399  
Phone: (202) 802-1948  
Email: MatthewDHardin@protonmail.com

/s/Christopher Horner  
Christopher Horner, D.C. Bar No. 440107  
Max Will, PLLC  
1725 I Street NW, Suite 300  
Washington, DC 20006  
Phone: (202) 262-4458  
Email: Chris@CHornerLaw.com