

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

WESTERN VALUES PROJECT,)	
704C East 13th Street, Suite 568)	
Whitefish, MT 59937)	
)	
and)	
)	
AMERICAN OVERSIGHT,)	
1030 15th Street NW, B255)	
Washington, DC 20005)	
)	
<i>Plaintiffs,</i>)	Case No. 18-cv-2336
)	
v.)	
)	
U.S. DEPARTMENT OF THE INTERIOR,)	
1849 C Street NW)	
Washington, DC 20240)	
)	
<i>Defendant.</i>)	
)	
)	

COMPLAINT

1. Plaintiffs Western Values Project and American Oversight bring this action against the U.S. Department of Interior 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, Western Values Project and American Oversight are deemed to have exhausted their administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and are 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 Western Values Project (WVP) is a nonprofit, public-interest organization that gives voice to Western values in the national conversation about resource development and public-lands conservation. WVP uses the information it gathers as well as its analysis of it, to educate the public through reports, press releases, or other media. WVP also makes the material it gathers available on its public website.

6. Plaintiff American Oversight is a nonpartisan, non-profit section 501(c)(3) organization primarily engaged in disseminating information to the public. American Oversight is 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 will use 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.

7. Defendant U.S. Department of the Interior (DOI) 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). DOI has possession, custody, and control of the records that WVP seeks.

STATEMENT OF FACTS

8. Between August 21, 2017, and June 29, 2018, Plaintiff WVP submitted twelve FOIA requests to DOI seeking access to records relating to Secretary of the Interior Ryan Zinke's compliance with his ethical obligations, including any use of taxpayer funds for travel and political events, communications from personal email addresses, and involvement in a planned development in Whitefish, Montana backed by the chairman of Halliburton. During that same period, Plaintiff American Oversight also submitted a FOIA request seeking records reflecting any involvement by Secretary Zinke in the contract to repair Puerto Rico's energy infrastructure following Hurricane Maria.

WVP Request: Denver Travel

9. On August 17, 2017, WVP submitted a FOIA request to DOI seeking access to the following records:

[A]ll receipts and other documents submitted by Secretary Ryan Zinke to reimburse taxpayers for political events attended during his trip to the American Legislative Exchange Council in Denver, CO from July 19-21.

This should include, but not be limited to any receipts, itineraries, schedules, or any other documents submitted by Secretary Zinke concerning payment or reimbursement for political expenses during this trip.

10. A copy of the request is attached hereto as Exhibit 1 and incorporated herein.

11. On August 29, 2017, DOI sent a letter acknowledging its receipt of this request.

DOI assigned the request tracking number OS-2017-01064.

WVP Request: Travel Files

12. On September 21, 2017, WVP submitted a FOIA request to DOI seeking access to the following records:

[T]he Secretary's Travel Files for all trips involving air travel at any point since and including March 1, 2017.

This should include, but not be limited to, all records documenting cost, itinerary and provider of air travel for the Secretary during this time period.

13. A copy of the request is attached hereto as Exhibit 2 and incorporated herein.

14. On October 18, 2017, DOI sent a letter acknowledging its receipt of this request.

DOI assigned the request tracking number OS-2017-01234.

WVP Request: AQD-91 Forms

15. On October 2, 2017, WVP submitted a FOIA request to DOI seeking access to the following records:

[A]ll AQD-91 forms submitted by Secretary Ryan Zinke or any other individual in the Immediate Office of the Secretary at any point since and including March 1, 2017.

16. A copy of the request is attached hereto as Exhibit 3 and incorporated herein.

17. On November 3, 2017, DOI sent a letter acknowledging its receipt of this request.

DOI assigned the request tracking number OS-2018-00010.

WVP Request: Swift Emails

18. On October 16, 2017, WVP submitted a FOIA request to DOI seeking access to the following records:

[A]ll e-mails sent by or sent to Ms. Heather Swift from (and including) September 25, 2017 – October 15, 2017.

19. A copy of the request is attached hereto as Exhibit 4 and incorporated herein.

20. On November 17, 2017, DOI sent a letter acknowledging its receipt of this request. DOI assigned the request tracking number OS-2018-00127.

WVP Request: Montana Travel

21. On November 7, 2017, WVP submitted a FOIA request to DOI seeking access to the following records:

[T]he following records concerning the Interior Secretary Ryan Zinke's trip to Montana between October 27, 2017 – November 5, 2017:

- A daily schedule of the Secretary's events, meetings and activities including locations and attendees; this should include all official travel schedules for the Secretary during this time period.
- All documents related to the Secretary and any family members' government-sponsored travel during this time period; this should include itineraries, receipts, written approvals, accommodations and any other documents outlining the travel arrangements and funding (payment) for the trip to Montana.

22. A copy of the request is attached hereto as Exhibit 5 and incorporated herein.

23. On December 20, 2017, DOI sent a letter acknowledging its receipt of this request. DOI assigned the request tracking number OS-2018-00285.

WVP Request: Law Vegas Travel

24. On February 23, 2018, WVP submitted a FOIA request to DOI seeking access to records including:

[A]ll of Secretary Ryan Zinke's official travel schedules from October 1, 2017 to present, and all information related to food and lodging for him and those traveling with him to Las Vegas, NV, in January 2018, including receipts for dining and lodging for him and those traveling with him [to] Las Vegas

25. A copy of the request is attached hereto as Exhibit 6 and incorporated herein.

26. On May 3, 2018, DOI sent a letter acknowledging its receipt of this request. DOI assigned the request tracking number OS-2018-00760.

27. In the May 3, 2018, acknowledgment letter, DOI stated that the responsive records WVP requested were publicly available, and that the Office of the Secretary's response to WVP's request was complete. WVP responded on the same day to dispute the closing of its request, and DOI acknowledged that it was closed in error and that DOI would continue processing the request.

WVP Request: CPAC Travel

28. On March 23, 2018, WVP submitted a FOIA request to DOI seeking access to the following records:

[D]ocuments showing all expenses and reimbursements for travel and security for Secretary Zinke's appearances at the Conservative Political Action Conference (CPAC) at the Gaylord National Resort & Convention Center, in National Harbor, Maryland, which took place between February 20, and February 25, 2018.

This should include but not be limited to: all expense reports, invoices, reimbursements, and any other documentation of Secretarial and staff travel for [] all gas, mileage, trains, buses, lodging, meals, receptions, and any additional expenses or reimbursements from or as a result of Secretarial, security, advance, and other staffers travel to CPAC.

29. A copy of the request is attached hereto as Exhibit 7 and incorporated herein.

30. To the best of WVP's knowledge, DOI has not assigned the request a tracking number and has not sent a letter acknowledging the request.

WVP Request: Travel Schedules and North Dakota

31. On April 23, 2018, WVP submitted a FOIA request to DOI seeking access to the following records:

[A]ll of Secretary Ryan Zinke's official travel schedules from April 4, 2018 to April 10, 2018.

WVP also requested:

[D]ocuments showing all expenses and reimbursements for travel and security for Secretary Zinke's trip to North Dakota, from April 4, 2018 to April 10, 2018 including his appearance at the North Dakota GOP Convention.

This should include but not be limited to: all expense reports, invoices, reimbursements, and any other documentation of Secretarial and staff travel for all flights, gas, mileage, trains, buses, lodging, meals, receptions, and any additional expenses or reimbursements accrued during, or as a result of Secretarial, security, advance, and other staffers travel to North Dakota.

32. A copy of the request is attached hereto as Exhibit 8 and incorporated herein.

33. On July 31, 2018, DOI sent a letter acknowledging its receipt of this request. DOI assigned the request tracking number OS-2018-01400.

WVP Request: Personal Email

34. On April 2, 2018, WVP submitted a FOIA request to DOI seeking access to the following records:

[A]ll correspondence since January 19, 2017, between all official “@ios.doi.gov” Department of Interior email addresses and all email addresses used by Secretary Ryan Zinke, excluding his official “@ios.doi.gov” Department of the Interior email. This should include, but not be limited to, all communications with the following email addresses:

- ryanzinke@yahoo.com
- ryankzinke@yahoo.com
- ryanzinke@gmail.com
- ryankzinke@gmail.com
- KonradZinke@gmail.com
- Caribao@aol.com
- RagnarZinke@gmail.com

“All correspondence” should include, but not be limited to, copies of digital and hardcopy information sent by, sent to, carbon copying (“CC”), or blind carbon copying (“BCC”) any of these email addresses during this time period.

35. A copy of the request is attached hereto as Exhibit 9 and incorporated herein.

36. On June 19, 2018, DOI sent a letter acknowledging its receipt of this request. DOI assigned the request tracking number OS-2018-00968.

WVP Request: Private Server

37. On April 2, 2018, WVP submitted a FOIA request to DOI seeking access to the following records:

[A]ll correspondence, since January 19, 2017, between all official “@ios.doi.gov” Department of Interior email addresses and any email address ending in “@ryanzinke.com” since March 1, 2017.

“All correspondence” should include, but not be limited to, copies of digital and hardcopy information sent by, sent to, carbon copying (“CC”), or blind carbon copying (“BCC”) any of these accounts during this time period.

38. A copy of the request is attached hereto as Exhibit 10 and incorporated herein.

39. On June 19, 2018, DOI sent a letter acknowledging its receipt of this request. DOI assigned the request tracking number OS-2018-00967.

WVP Request: Whitefish Correspondence

40. On June 22, 2018, WVP submitted a FOIA request to DOI seeking access to the following records:

[A]ll correspondence, including but not limited to letters, texts, emails, and faxes, between Secretary Ryan Zinke and Caroline Boulton and the following individuals:

- John Lesar
- Katie Lesar
- David Lesar
- Sheryl Lesar
- Bruce Boody
- Casey Malmquist
- Tim Grattan

“All correspondence” should include, but not be limited to, copies of digital and hardcopy information sent by, sent to, carbon copying (“CC”), or blind carbon copying (“BCC”) Steve Wackowski during this time period.

41. A copy of the request is attached hereto as Exhibit 11 and incorporated herein.

42. On July 10, 2018, DOI sent a letter acknowledging its receipt of this request. DOI assigned the request tracking number OS-2018-01331.

WVP Request: Whitefish Keywords

43. On June 29, 2018, WVP submitted a FOIA request to DOI seeking access to the following records:

[A]ll correspondence sent to or sent by Heather Swift, Faith Vander Voort, and Laura Keehner Rigas since May 1, 2017, that includes any of the following keywords:

...

- “Lesar”

- “Halliburton”
- “Haliburton”
- “Boody”
- “Malmquist”
- “Grattan”
- “Peace Park”
- “95 Karrow”

“All correspondence” should include, but not be limited to, copies of digital and hardcopy information sent by, sent to, carbon copying (“CC”), or blind carbon copying (“BCC”) any of these individuals during this time period.

44. A copy of the request is attached hereto as Exhibit 12 and incorporated herein.

45. On July 24, 2018, DOI sent a letter acknowledging its receipt of this request. DOI assigned the request tracking number OS-2018-01368.

American Oversight Request: Puerto Rico Response

46. On October 24, 2017, American Oversight submitted a FOIA request to DOI seeking access to records reflecting (1) communications relating to Puerto Rico between political appointees in the Office of the Secretary and particular government entities; (2) communications between political appointees in the Office of the Secretary and the Office of the Governor of Puerto Rico regarding Hurricane Maria and the damage to Puerto Rico’s energy infrastructure; (3) communications between political appointees in the Office of the Secretary and certain entities involved in a contract to repair Puerto Rico’s energy infrastructure; (4) communications with those same entities forwarded to political appointees in the Office of the Secretary; and (5) communications between political appointees in the Office of the Secretary, the Office of Insular Affairs, or the Office of Congressional and Legislative Affairs containing certain keywords relating to Hurricane Maria and Puerto Rico’s energy infrastructure.

47. A copy of the request is attached hereto as Exhibit 13 and incorporated herein.

48. On November 14, 2017, DOI sent a letter acknowledging its receipt of this request. DOI assigned the request tracking number OS-2018-00183.

Exhaustion of Administrative Remedies

49. Upon information and belief, the DOI Office of the Secretary FOIA Office has only four employees assigned to process FOIA requests, two of whom exclusively work on matters related to litigation.

50. As of the date of this complaint, DOI has failed to (a) notify either WVP or American Oversight of any determination regarding their respective FOIA requests, including the scope of any responsive records DOI intends to produce or withhold and the reasons for any withholdings; or (b) produce the requested records or demonstrate that the requested records are lawfully exempt from production.

51. Through DOI's failure to respond to WVP's and American Oversight's respective FOIA requests within the time period required by law, WVP and American Oversight have constructively exhausted their administrative remedies and seek immediate judicial review.

COUNT I

Violation of FOIA, 5 U.S.C. § 552

Failure to Conduct Adequate Search for Responsive Records

52. Plaintiffs repeat the allegations in the foregoing paragraphs and incorporate them as though fully set forth herein.

53. Plaintiffs properly requested records within the possession, custody, and control of DOI.

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

55. DOI has failed to promptly review agency records for the purpose of locating those records which are responsive to Plaintiffs' respective FOIA requests.

56. DOI's failure to conduct an adequate search for responsive records violates FOIA.

57. Plaintiffs are therefore entitled to injunctive and declaratory relief requiring Defendant to promptly make reasonable efforts to search for records responsive to Plaintiffs' respective FOIA requests.

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

58. Plaintiffs repeat the allegations in the foregoing paragraphs and incorporate them as though fully set forth herein.

59. Plaintiffs properly requested records within the possession, custody, and control of DOI.

60. DOI 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.

61. DOI is wrongfully withholding non-exempt agency records requested by Plaintiffs by failing to produce non-exempt records responsive to their respective FOIA requests.

62. DOI is wrongfully withholding non-exempt agency records requested by Plaintiffs by failing to segregate exempt information in otherwise non-exempt records responsive to their respective FOIA requests.

63. DOI's failure to provide all non-exempt responsive records violates FOIA.

64. Plaintiffs are therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to their respective FOIA

requests and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.

REQUESTED RELIEF

WHEREFORE, Western Values Project and American Oversight respectfully request the Court to:

- (1) Order Defendant to conduct a search or searches reasonably calculated to uncover all records responsive to Plaintiffs' respective 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 Plaintiffs' respective 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 Plaintiffs' respective FOIA requests;
- (4) Award Plaintiffs 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 Plaintiffs such other relief as the Court deems just and proper.

Dated: October 10, 2018

Respectfully submitted,

/s/ Hart W. Wood

Hart W. Wood

D.C. Bar No. 1034361

/s/ John E. Bies

John E. Bies

D.C. Bar No. 483730

AMERICAN OVERSIGHT

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