

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
FRIENDS OF THE EARTH,)		
1101 15th Street, NW,)		
Washington, DC 20005,)		
)		
<i>Plaintiff,</i>)		
)		
v.)	No. _____	
)		
COUNCIL ON ENVIRONMENTAL QUALITY,)		
730 Jackson Place)		
Washington, DC 20503,)		
)		
<i>Defendant.</i>)		
_____)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552, to compel the Council on Environmental Quality (“CEQ”) to release non-exempt information concerning potential political interference in a much-anticipated report on the causal connection between climate change and federal fossil fuel leases. These records are essential to Plaintiff Friends of the Earth’s (“FOE”) efforts to monitor and educate the public about the role that federal oil-and-gas leasing plays in exacerbating climate change. Despite FOE properly submitting a request for information at issue in this case on January 11, 2022, CEQ has never even acknowledged FOE’s request, let alone disclosed any responsive information. As such, FOE has been forced to seek judicial intervention to obtain CEQ’s compliance with federal law.

JURISDICTION

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

PARTIES

3. Plaintiff FOE is a non-profit organization headquartered in Washington, D.C. For more than fifty years, it has championed the causes of a clean and sustainable environment, protection of the nation's public lands and waterways, and the exposure of political malfeasance and corporate greed. FOE is the requester of the information at issue.

4. Defendant CEQ, a federal agency within the Executive Office of the President, coordinates the federal government's efforts to improve, preserve, and protect America's public health and environment, and is in possession of the records at issue in this suit.

FACTS GIVING RISE TO PLAINTIFF'S CLAIMS

A. Executive Order 14008, the U.S. Department of Interior's Report, and Subsequent Modifications by CEQ

5. Shortly after being sworn into office, President Biden issued Executive Order 14008, titled "Tackling the Climate Crisis at Home and Abroad." *See* Exec. Order, 14,008, 86 Fed. Reg. 7,619 (Jan. 27, 2021) [hereinafter "Order" or "Executive Order"]. Given the years of federal inaction on climate issues, President Biden's Order seemed to be an auspicious policy change; it promised, for example, to "combat the climate crisis with bold, progressive action that combines the full capacity of the Federal Government with efforts from every corner of our Nation, every level of government, and every sector of our economy." *Id.* at 7,622. To that end, it directed agencies throughout the federal government to review their respective roles in contributing to climate change and recommend strategies to reduce or mitigate those contributions. *See generally id.*

6. Among the most promising agency-specific directives was one levied at the U.S. Department of Interior's oil and gas leasing program. Specifically, Section 208 of the Executive Order directed the Secretary of the Interior to "pause new oil and natural gas leases on public

lands or in offshore waters pending completion of a comprehensive review and reconsideration of Federal oil and gas permitting and leasing practices . . . including potential climate and other impacts associated with oil and gas activities on public lands or in offshore waters. . . .” *Id.* at 7,624-25. The Secretary’s review and subsequent report were to be conducted “in consultation with the Secretary of Agriculture, the Secretary of Commerce, through the National Oceanic and Atmospheric Administration, and the Secretary of Energy.” *Id.* at 7,625.

7. Given the lofty climate goals outlined in the Executive Order, many (including FOE’s members) expected the Secretary’s report to contain a thorough discussion of how fossil fuels extracted from federal lands and waters exacerbate the ever-growing climate crisis in this country and around the world, and to recommend stringent limits on, or even fully withdraw, the amount of federal lands and waters that would be available to oil-and-gas development.

8. Despite the Secretary indicating that her report would be released during the summer of 2021, it was ultimately delayed several times until being quietly released the day after Thanksgiving 2021.¹ The report is underwhelming. Rather than live up to the bold vision articulated in the Executive Order, the report entirely fails to discuss the federal leasing program’s causal role in accelerating climate change. Indeed, the report mentions the term “climate change” only once. *See* U.S. Dep’t of Interior, *Report on the Federal Oil and Gas Leasing Program* at 4 (Nov. 2021).

9. FOE believes that the Secretary’s report may have been modified significantly in response to political pressure from the White House and CEQ, acting at the behest of oil-and-gas

¹ *U.S. Oil and Gas Leasing Review To Be Released In ‘Early Summer’ -Official*, Reuters (May 28, 2021 4:20 PM EDT), <https://www.reuters.com/business/energy/us-oil-gas-leasing-review-be-released-early-summer-official-2021-05-28/>; *see also Review of U.S. Federal Oil, Gas Leasing Program Being Finalized Internally -Haaland*, Reuters (July 27, 2021 3:51 PM EDT), <https://www.reuters.com/business/energy/review-federal-oil-gas-leasing-program-being-finalized-internally-haaland-2021-07-27/>.

industry interests and oil-producing states. FOE submitted the FOIA request now at issue to help determine the extent of such undue influence on the Secretary's report.

B. The Freedom of Information Act

10. "The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 152 (1989) (citations omitted). FOIA was enacted to "permit access to official information long shielded unnecessarily from public view" by creating a "right to secure such information from possibly unwilling official hands." *Dep't of Air Force v. Rose*, 425 U.S. 352, 361 (1976) (citation omitted). "[D]isclosure, not secrecy, is the dominant objective of the Act." *John Doe*, 493 U.S. at 152 (citation omitted).

11. FOIA requires agencies of the federal government to conduct a reasonable search for requested records and to release them to a requester, unless one of nine specific statutory exemptions applies to the requested information. 5 U.S.C. § 552(a)(3), (b).

12. FOIA requires federal agencies to release all non-exempt segregable information that is requested. *Id.* § 552(b).

13. Upon receiving a FOIA request, an agency generally has twenty working days to respond, *id.* § 552(a)(6)(A)(i), and twenty working days to respond to any appeal of its initial determination, *id.* § 552(a)(6)(A)(ii).

14. A requester is deemed to have exhausted administrative remedies "if the agency fails to comply" with either twenty-day deadline. *Id.* § 552(a)(6)(C)(i). In that event, FOIA authorizes the requester to invoke the jurisdiction of a federal court to obtain the requested information. *Id.* § 552(a)(4)(B).

15. CEQ is a federal “agency” within the meaning of and subject to FOIA. *Id.* § 552(f)(1); *see also Pac. L. Found. v. Council on Env'tl. Quality*, 636 F.2d 1259, 1263 (D.C. Cir. 1980); *Rushforth v. Council of Econ. Advisors*, 762 F.2d 1038, 1042 (D.C. Cir. 1985).

16. CEQ recommends that the public to submit FOIA requests by email. On CEQ’s FOIA website, the agency directs the public to “[s]ubmit requests electronically to efoia@ceq.eop.gov”; because CEQ “will not respond to FOIA requests submitted as email attachments,” the agency directs requesters to “include the information in the text body of the email.”²

C. Friends of the Earth’s FOIA Request to CEQ

17. Due to its concerns over the inappropriate weakening of the Secretary’s report, Plaintiff FOE submitted a FOIA request to CEQ on January 11, 2022. Pursuant to CEQ’s instructions, FOE submitted its FOIA request via email. A copy of FOE’s FOIA request is attached to this Complaint as Exhibit 1.

18. FOE’s January 11, 2022 request sought certain “records and documents pertaining to the [Secretary’s] report on the Federal Oil and Gas Leasing Program in response to Executive Order 14008,” including the following:

- Any and all documents or reports, or drafts, outlines, or portions of such documents or reports prepared, commented, or edited by the Council of Environmental Quality, Department of the Interior or its subsidiary agencies, the Bureau of Land Management, the Bureau of Safety and Environmental Enforcement, and Bureau of Ocean Energy Management, collectively (“Interior”), between January 28, 2021 and November 25, 2021, in response to Section 208 of Executive Order 14008 of January 27, 2020, entitled “Tackling the Climate Crisis at Home and Abroad,” Fed. Reg. Vol. 86, No. 19.
- Any communications between CEQ and/or the White House and other agencies regarding Section 208 of Executive Order 14008, in response to the Order’s direction that Interior complete “a comprehensive review and

² CEQ, *FOIA*, <https://www.whitehouse.gov/ceq/foia/> (last visited April 19, 2022).

reconsideration of the federal oil and gas leasing” program “in consultation with the Secretary of Agriculture, the Secretary of Commerce, through the National Oceanic and Atmospheric Administration, and the Secretary of Energy.”

- Any and all drafts or prior iterations or sections of the document titled “Report on the Federal Oil and Gas Leasing Program Prepared in Response to Executive Order 14008, Section 208, U.S. Department of the Interior, November 2021,” which was released on November 26, 2021, produced between January 28, 2021 and November 25, 2021.
- Any and all records regarding items 1-3, above, created, produced, or under the control of CEQ, such records to include communications between or among appointed officials, employees, staff members, or consultants of CEQ or other agencies, produced or sent between January 28, 2021 and November 25, 2021.
- Any and all records with trade associations of oil and gas operators/lessees, including but not limited to the American Petroleum Institute, Western Energy Alliance, National Ocean Industries Association, Louisiana Mid-Continent Oil and Gas Association, and Independent Petroleum Association of America.

19. By January 20, 2022, FOE had yet to receive any response to its FOIA request, including any acknowledgment by CEQ of its receipt. As such, FOE wrote to CEQ that day via email requesting confirmation of receipt. CEQ did not reply.

20. By February 7, 2022, nothing had changed; CEQ had not even acknowledged receipt of FOE’s January 11, 2022 FOIA request, let alone provided records in response thereto. Accordingly, FOE again wrote to CEQ via email that day requesting confirmation of receipt, but received no response from the agency.

21. To date—well over the twenty-working days allotted to respond to FOE’s January 11, 2022 FOIA request—CEQ has never acknowledged the receipt of FOE’s properly submitted FOIA request, nor has the agency released any responsive information.

PLAINTIFF'S CLAIMS FOR RELIEF

22. By failing to provide FOE all non-exempt information that FOE has requested under FOIA, CEQ is in violation of FOIA, 5 U.S.C. § 552(a)(3).

23. Plaintiff FOE has right to obtain the requested information, and CEQ has no lawful basis for withholding it.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Declare that CEQ is in violation of FOIA;
2. Order CEQ to immediately release to Plaintiff all non-exempt information responsive to Plaintiff's January 11, 2022 FOIA request at issue in this case;
3. Award Plaintiff its costs and attorney's fees; and
4. Award Plaintiff such other relief as the Court may deem just and proper.

Respectfully submitted,

/s/ Matthew R. Arnold

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