

opportunity. It regularly requests access under the FOIA to the public records of federal agencies, entities, and offices, and publicly disseminates its findings, analysis, and commentary.

5. DOC is an agency within the meaning of 5 U.S.C. § 552(f)(1). It has possession, custody, and control of records to which CoA Institute seeks access and that are the subject of this Complaint.

FACTS

I. FOIA Request # DOC-IOS-2018-1990 (the Work Calendar Request)

6. By letter, dated August 28, 2018, CoA Institute sent a FOIA request to DOC seeking access to:

- a. Copies of the work calendars for the following Department of Commerce employees, from April 1, 2018 to the present, Secretary Wilbur Ross, Under Secretary Gilbert Kaplan, General Counsel Peter Davidson, Chief of Staff Wendy Teramoto, Assistant Secretary for Legislative and Intergovernmental Affairs Mike Platt, and Acting White House Liaison Kelly Anne Ilagan; and
- b. A copy of the records produced in response to FOIA request DOC-IOS-2017-1147, which was submitted by the Washington Post in 2017 seeking access to Secretary Wilbur Ross's daily schedule. Ex. 1.

7. CoA Institute sought a public interest fee waiver and to be classified as a representative of the news media for fee purposes. *Id.* at 2–3.

8. By email, dated August 29, 2018, DOC acknowledged receipt of the request and assigned it tracking number DOC-IOS-2018-1990. Ex. 2.

9. By email, dated August 30, 2018, DOC “fully granted” CoA Institute’s request for a public interest fee waiver. Ex. 3.

10. CoA Institute has received no further substantive communication from DOC regarding this FOIA request.¹

II. FOIA Request # DOC-BIS-2018-2062 (the Staffing Level Request)

11. By letter, dated September 10, 2018, CoA Institute sent a FOIA request to DOC seeking access to:

- a. Records sufficient to identify all employees, contractors, companies, or third-parties reviewing requests for product exclusions from Section 232 steel and aluminum tariffs;
- b. For each individual identified in response to Item 1: All records reflecting background or work history provided to the agency including but not limited to resumes, introductory emails, or other relevant documents;
- c. Copies of all contracts with companies involved in reviewing requests for product exclusions from Section 232 steel and aluminum tariffs; and
- d. All records reflecting guidance given to staff, contractors, companies, or third-parties processing and making determinations on requests for product exclusions from Section 232 steel and aluminum tariffs. Ex. 4.

12. The time period for this request is January 1, 2018, to the present. *Id.* at 2.

13. CoA Institute sought a public interest fee waiver and to be classified as a representative of the news media for fee purposes. *Id.* at 2–3.

¹ CoA Institute did receive an email from DOC stating that it was changing the tracking number for the request. But the “old” and “new” tracking numbers were not, in fact, different. (email on file with CoA Institute).

14. By email, dated September 10, 2018, DOC acknowledged receipt of the request and assigned it tracking number DOC-OS-2018-2062, which it subsequently changed to DOC-BIS-2018-2062. Ex. 5 at 1–2.

15. By email, dated September 13, 2018, DOC “fully granted” CoA Institute’s request for a public interest fee waiver. Ex. 6.

16. CoA Institute has received no further substantive communication from DOC regarding this FOIA request.

III. FOIA Request # DOC-IOS-2018-2063 (the Exclusions Emails Request)

17. By letter, dated September 10, 2018, CoA Institute sent a FOIA request to DOC seeking access to all records reflecting communications, including e-mails, e-mail attachments, call logs, or text/instant messages, to or from eleven named DOC officials containing any of a list of supplied key search terms. Ex. 7.

18. CoA Institute sought a public interest fee waiver and to be classified as a representative of the news media for fee purposes. *Id.* at 3–4.

19. By email, dated September 10, 2018, DOC acknowledged receipt of the request and assigned it tracking number DOC-OS-2018-2063, which it subsequently changed to DOC-IOS-2018-2063. Ex. 8 at 1–4.

20. By email, dated September 18, 2018, DOC expressed that it needed a clarification of the Exclusions Emails Request, but DOC actually requested that CoA Institute narrow the scope of its request. Ex. 9 at 3–4.

21. In response to DOC’s request, and in an effort to facilitate and ease processing of the request, CoA Institute agreed to remove four search terms from the request. *Id.* at 2–3.

22. DOC again asked CoA Institute to narrow the scope of its request. *Id.* at 2.

23. In response, CoA Institute agreed to allow DOC to use combinations of terms as base search terms to be coupled with the remaining search terms in its request. *Id.* at 1. For example, using “Exemption AND United States Steel.” DOC agreed to this approach. *Id.*

24. DOC has not responded to CoA Institute’s request for a public interest fee waiver or to be classified as a representative of the news media on this request.

25. CoA Institute has received no further substantive communication from DOC regarding this request.

COUNT 1

Violation of the FOIA: Failure to Comply with Statutory Deadlines

26. CoA Institute repeats all of the above paragraphs.

27. The FOIA requires agencies to respond to requests within twenty (20) business days or, in “unusual circumstances,” thirty (30) business days. 5 U.S.C. §§ 552(a)(6)(A)–(B).

28. More than twenty (20) business days have passed since DOC received FOIA requests numbered DOC-IOS-2018-1990 (the Work Calendar Request), DOC-BIS-2018-2062 (the Staffing Level Request), and DOC-IOS-2018-2063 (the Exclusions Emails Request).

29. DOC has not provided a final determination on or produced any records responsive to any of the requests at issue in this Complaint within the statutory time limits.

30. DOC therefore has failed to comply with the FOIA’s statutory deadline to issue a final determination.

31. CoA Institute has exhausted its administrative remedies for all the requests at issue in this Complaint under 5 U.S.C. § 552(a)(6)(C).

RELIEF REQUESTED

WHEREFORE, Plaintiff CoA Institute respectfully requests and prays that this Court:

- a. order DOC to issue a final determination on all the requests at issue in this Complaint within twenty (20) days of the date of the Order;
- b. order DOC to produce all responsive records promptly upon issuing a final determination;
- c. award CoA Institute its costs and reasonable attorney fees incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- d. grant such other relief as the Court may deem just and proper.

Date: October 18, 2018

Respectfully submitted,

/s/ R. James Valvo, III

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