

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

DEMOCRACY FORWARD FOUNDATION,
1333 H Street NW, 11th Floor
Washington, DC 20005,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF LABOR,
200 Constitution Avenue NW, Room N-2700
Washington, DC 20210,

Defendant.

Case No. _____

COMPLAINT

1. Plaintiff Democracy Forward Foundation (“Democracy Forward”) brings this action against Defendant the U.S. Department of Labor (“DOL”) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). Defendant has failed to respond to Plaintiff’s request for communications and records regarding the administrative proceedings instituted by the Office of Federal Contract Compliance Programs (“OFCCP”) against Oracle America, Inc. (“Oracle”). Plaintiff therefore respectfully requests that the Court compel Defendant to comply with the 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.

3. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e)(1).

PARTIES

4. Plaintiff Democracy Forward is a not-for-profit organization incorporated under the laws of the District of Columbia, and based in Washington, D.C. Democracy Forward works to promote transparency and accountability in government, in part by educating the public on government actions and policies.

5. Defendant DOL is a federal agency within the meaning of FOIA, *see* 5 U.S.C. § 552(f)(1), and is headquartered in Washington, D.C. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

FACTUAL ALLEGATIONS

6. On December 16, 2019, Plaintiff sent a FOIA request to DOL regarding the status of the administrative proceedings instituted by OFCCP against Oracle. Plaintiff requested the following categories of records from DOL:

1. All communications sent to Oracle, received from Oracle, or regarding Oracle. Please search the following offices: Office of the Secretary, Office of the Deputy Secretary, Office of the Solicitor, Office of the Assistant Secretary for Policy, Office of Public Affairs, and OFCCP.
2. All communications sent from the Office of the Secretary, Office of the Deputy Secretary, or Office of the Solicitor to the Office of the Administrative Law Judges regarding Oracle.
3. All communications regarding the development, drafting, publication and communication about the August 24, 2018 Directive 2018-05 titled “Analysis of Contractor Compensation Practice During a Compliance Evaluation” (which included the rescission of DIR 2013-03), the March 25, 2019 memo signed by OFCCP Director Craig Leen and SOL O’Scannlain regarding legal complaints and documents, and communications regarding the March 22, 2019 decision in the Analogic case. Please search the following offices: Office of the Secretary, Office of the Deputy Secretary, Office of the Solicitor, Office of the Assistant Secretary for Policy, Office of Public Affairs, and OFCCP.

7. Democracy Forward requested that DOL search for responsive records created between January 20, 2017 and the date on which the search for responsive records is completed.

8. Democracy Forward sought a waiver of search and duplicating fees under 5 U.S.C. § 552(a)(4)(A)(iii), which requires waiver of fees if the disclosure is “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”

9. By letter dated January 2, 2019,¹ DOL acknowledged having received Democracy Forward’s FOIA request, having assigned it request number F2019-886720, and having routed it to several components within DOL.

10. By letter dated January 13, 2020, the Office of the Assistant Secretary for Policy informed Democracy Forward that its search had yielded no responsive documents.

11. By letter dated January 14, 2019,² the Office of Administrative Law Judges informed Democracy Forward that its search had yielded no responsive documents.

12. By email dated January 16, 2020, the Office of Public Affairs produced fifty-six pages of responsive documents. The Office has not made a final determination.

13. By email dated January 22, 2020, the Office of the Secretary acknowledged having received Democracy Forward’s FOIA request and requested forty days to deliver a determination.

14. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), DOL was required to determine whether to comply with the FOIA request within twenty business days of receipt of the request and to notify Democracy Forward immediately of their determination, the reasons therefor, and the

¹ The letter appears to be misdated and should instead read January 2, 2020.

² This letter also appears to be misdated and should instead read January 14, 2020.

right to appeal any adverse determination. When there are “unusual circumstances,” an agency may extend this deadline by ten working days, as provided in subsection 552(a)(6)(B)(iii).

15. As of the date of this Complaint, DOL has failed to produce all of the requested records or to demonstrate that such records are lawfully exempt from production. *See* 5 U.S.C. § 552(a)(6)(C). DOL also has not, for all components, notified Democracy Forward of the scope of the responsive records it intends to produce or withhold and the reasons for any withholdings, nor the expected time frame for such determination.

CLAIM FOR RELIEF

Count One (Violation of the FOIA, 5 U.S.C. § 552)

16. Democracy Forward repeats and incorporates by reference the foregoing paragraphs as if fully set forth herein.

17. By failing to respond to Democracy Forward’s request within the statutorily prescribed time limit, DOL has violated its duties under the FOIA, including but not limited to its duty to conduct a reasonable search for responsive records, and to produce all responsive, reasonably segregable, non-exempt information.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Democracy Forward respectfully requests that the Court:

1. order DOL to conduct searches for any and all records responsive to Democracy Forward’s FOIA request and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to the FOIA request;
2. order DOL to produce, by a date certain, any and all nonexempt records responsive to Democracy Forward’s FOIA request and a *Vaughn* index of any responsive records withheld under a claim of exemption;

3. enjoin DOL from continuing to withhold any and all nonexempt records responsive to Democracy Forward's FOIA request;
4. order DOL to grant Democracy Forward's request for a fee waiver;
5. grant Democracy Forward an award of attorney's fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
6. grant any other relief this Court deems appropriate.

Dated: March 5, 2020

Respectfully submitted,

/s/ Karianne M. Jones
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