

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Oversight v. U.S. Env'tl. Prot. Agency

Oversight v. U.S. Env'tl. Prot. Agency, 386 F. Supp. 3d 1 (D.D.C. 2019) · Decided April 29, 2019

SUMMARY

In this FOIA case, the D.C. Circuit held that American Oversight failed to prove the EPA maintained an unlawful policy or practice of refusing to process requests for communications records unless they included keywords or subject matters. The court granted summary judgment to the EPA, finding that the agency's responses were case-specific and based on individualized assessments of whether each request reasonably described the records sought. The decision clarifies that a plaintiff bears the burden of demonstrating an ongoing policy that impairs future access to information, and that isolated or context-specific denials do not establish such a policy.

CASE DETAILS

COURT	United States District Court for the District of Columbia
WRITING FOR THE COURT	Timothy J. Kelly
JURISDICTION	Federal
DECIDED	April 29, 2019
DISPOSITION	other
PROCEDURAL POSTURE	Cross-motions for summary judgment on policy-or-practice claim under FOIA
STANDARD OF REVIEW	Summary judgment under Fed. R. Civ. P. 56(a); plaintiff bears burden to show existence of alleged policy or practice.
PRECEDENTIAL VALUE	published

TOPICS

[public records](#)[open government](#)[summary judgment](#)[civil procedure](#)[administrative law](#)

PRACTICE AREAS

[Administrative Law](#)[Freedom of Information Act](#)

QUESTIONS PRESENTED

1. Whether the EPA maintains a policy or practice of refusing to process FOIA requests for communications records that clearly identify custodians, recipients, and date ranges, on the grounds that

they do not provide keywords, search terms, or a particular subject matter.

2. Whether either party is entitled to summary judgment on the policy-or-practice claim.

HOLDINGS

1. The record does not support American Oversight's claim that the EPA has a policy or practice of categorically refusing to process requests for communications records unless they provide a keyword or subject matter. The EPA's responses were case-specific, and the EPA provided examples of processing requests without keywords. Therefore, the EPA is entitled to summary judgment on the policy-or-practice claim.

KEY QUOTATIONS

"When a party has been unlawfully denied access to records under FOIA, it may, even after those records are disclosed, continue to seek equitable relief from the agency because the unlawful denial resulted from a 'policy or practice [that] will impair the party's lawful access to information in the future.'" (at 8)

"The Court finds that the EPA is entitled to judgment on American Oversight's claim as a matter of law." (at 9)

"The record, however, tells a different story. The EPA's responses to American Oversight's requests, and the requests from other organizations that American Oversight holds up in support of its claim, vary depending on the specifics—or lack thereof—of each request." (at 10)

FACTUAL BACKGROUND

In June 2017, American Oversight submitted three FOIA requests to the EPA for email records of former Administrator Scott Pruitt and senior staff, covering specific date ranges and custodians. The EPA responded that each request did not reasonably describe the records sought, citing lack of details such as subject matters, keywords, or domain names, and invited clarification. American Oversight declined to provide additional information, and the EPA denied the requests. After litigation, the underlying records claims were settled, leaving only the claim that the EPA maintains an unlawful policy or practice of refusing to process FOIA requests for communications records unless they provide a keyword or subject matter.

PROCEDURAL HISTORY

American Oversight submitted three FOIA requests to EPA; EPA sought clarification, American Oversight refused, EPA denied requests; American Oversight sued alleging unlawful withholding and a policy-or-practice claim; the underlying records claims were resolved, leaving only the policy-or-practice claim.

DISPOSITION

other

CASES CITED

- *Payne Enters., Inc. v. United States*, 837 F.2d 486 (D.C. Cir. 1988)

- *Muttitt v. Dep't of State*, 926 F. Supp. 2d 284 (D.D.C. 2013)
- *Judicial Watch, Inc. v. U.S. Dep't of Homeland Sec.*, 895 F.3d 770 (D.C. Cir. 2018)
- *Newport Aeronautical Sales v. Dep't of the Air Force*, 684 F.3d 160 (D.C. Cir. 2012)
- *Muckrock v. CIA*, 300 F. Supp. 3d 108 (D.D.C. 2018)
- *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986)
- *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986)
- *Am. Civil Liberties Union v. U.S. Dep't of Justice*, 655 F.3d 1 (D.C. Cir. 2011)
- *Dep't of the Air Force v. Rose*, 425 U.S. 352 (1976)
- *Citizens for Responsibility & Ethics in Wash. v. FEC*, 711 F.3d 180 (D.C. Cir. 2013)
- *Morley v. CIA*, 508 F.3d 1108 (D.C. Cir. 2007)
- *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344 (D.C. Cir. 1983)
- *Milner v. Dep't of the Navy*, 562 U.S. 562 (2011)
- *FBI v. Abramson*, 456 U.S. 615 (1982)
- *Nat'l Sec. Counselors v. CIA ("NSC II")*, 960 F. Supp. 2d 101 (D.D.C. 2013)
- *Brayton v. Office of the U.S. Trade Representative*, 641 F.3d 521 (D.C. Cir. 2011)
- *Larson v. Dep't of State*, 565 F.3d 857 (D.C. Cir. 2009)
- *Am. Ctr. for Law & Justice v. U.S. Dep't of State*, 289 F. Supp. 3d 81 (D.D.C. 2018)
- *Tax Analysts v. Internal Revenue Serv.*, 117 F.3d 607 (D.C. Cir. 1997)
- *Kowalczyk v. Dep't of Justice*, 73 F.3d 386 (D.C. Cir. 1996)
- *Hall & Assocs. v. EPA*, 83 F. Supp. 3d 92 (D.D.C. 2015)
- *Sack v. CIA*, 53 F. Supp. 3d 154 (D.D.C. 2014)
- *Armstrong v. Bush*, 139 F.R.D. 547 (D.D.C. 1991)
- *Am. Fed. of Gov't Emps. v. U.S. Dep't of Commerce*, 907 F.2d 203 (D.C. Cir. 1990)
- *Assassination Archives & Research Ctr. v. CIA*, 720 F. Supp. 217 (D.D.C. 1989)
- *Dale v. Internal Revenue Serv.*, 238 F. Supp. 2d 99 (D.D.C. 2002)
- *Convertino v. U.S. Dep't of Justice*, 684 F.3d 93 (D.C. Cir. 2012)
- *Nat'l Sec. Counselors v. CIA ("NSC I")*, 898 F. Supp. 2d 233 (D.D.C. 2012)
- *Judicial Watch, Inc. v. Exp.-Imp. Bank*, 108 F. Supp. 2d 19 (D.D.C. 2000)