

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

AMERICA FIRST LEGAL
FOUNDATION,
611 Pennsylvania Ave., SE #231
Washington, D.C. 20003

Plaintiff,

v.

COUNCIL ON ENVIRONMENTAL
QUALITY,
722 Jackson Place, NW
Washington, D.C. 20503

Defendant.

Civil Action No.: 24-2792

COMPLAINT

1. America First Legal Foundation (AFL) brings this action against the Council on Environmental Quality (CEQ), to compel compliance with the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

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. Additionally, it may grant declaratory relief pursuant to 28 U.S.C. § 2201 *et seq.*

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

PARTIES

4. The Plaintiff, AFL, is a nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, ensure due process and equal protection for all Americans, and encourage public knowledge and understanding of the law and individual rights guaranteed under the United States Constitution and the laws of the United States. AFL's mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, and/or other media, including social media platforms, all to educate the public.

5. The Defendant, CEQ, is an agency under 5 U.S.C. § 552(f), located at 722 Jackson Place NW, Washington, D.C. 20503. 40 C.F.R. § 1515.3(e).

6. The Defendant has possession, custody, and control of the requested records.

BACKGROUND

7. The Justice40 Initiative is the Biden-Harris administration's "goal that 40 percent of the overall benefits of certain Federal climate, clean energy, affordable and sustainable housing, and other investments flow to disadvantaged communities that are marginalized by underinvestment and overburdened by pollution." *Justice40*, WHITE HOUSE, <https://perma.cc/BDS3-UCUU>.

8. In February 2022, CEQ Chair Brenda Mallory announced the development of the "Environmental Justice Scorecard" and unveiled CEQ's "beta version of the Climate and Economic Justice Screening Tool (CEJST)" as a "critical

component of the Justice40 Initiative,” to “help agencies identify disadvantaged communities to ensure that everyone is receiving the benefits intended from Federal programs as part of [the Justice40] Initiative.” *CEQ Chair Brenda Mallory Delivers Remarks During WHEJAC Public Meeting*, WHITE HOUSE (Feb. 24, 2022), <https://perma.cc/62T9-QE7R>.

9. Reportedly, environmental justice advocates were concerned that race was not explicitly listed as a factor. Robin Bravender, *Biden’s CEQ Has a Stephen Miller Problem*, E&E NEWS POLITICO (Apr. 20, 2022), <https://perma.cc/X73C-TUDZ>.

10. Cecilia Martinez, CEQ’s top environmental justice official at the time, stated, “we wanted to develop the screening tool so that it would capture the needs and the conditions of racial groups,” but “surviving legal scrutiny should always be an important consideration.” *Id.*

11. According to Neal Devins, a professor at William and Mary Law School, “there’s an awareness by the Biden administration that they’re going to have to defend it in court, and it’s much easier to defend a race-neutral program” when “there are plenty of judges who are not sympathetic to race-conscious programs.” *Id.*

12. According to Rebecca Bratspies, a professor at the City University of New York School of Law, “this administration has to thread a very narrow needle.” *Id.*

13. Reportedly, CEQ Chair Brenda Mallory “said she believed the strategy would lead the government to the same places as a race-based approach: communities

of color.” Lisa Friedman, *White House Takes Aim at Environmental Racism, but Won’t Mention Race*, N.Y. TIMES (Feb. 15, 2022), <https://perma.cc/R9GP-WN8W>.

14. In February 2023, the Biden-Harris White House issued an Executive Order that directed each federal agency to update its progress on “new or revised policies and programs ... to ensure equitable access and opportunity for underserved communities.” Exec. Order No. 14091, *Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, 88 Fed. Reg. 10825, 10828 (Feb. 22, 2023) (available at <https://perma.cc/2ETP-7YMA>).

15. The Executive Order’s definition of “equity” listed the following groups as “communities that have been denied” “fair, just, and impartial,” treatment: “Black, Latino, Indigenous and Native American, Asian American, Native Hawaiian, and Pacific Islander persons and other persons of color; members of religious minorities; women and girls; LGBTQI+ persons” *Id.* at 10831–32.

16. So far, “the Biden-Harris Administration has secured approximately \$613 billion in funds ... for programs that are part of the Justice 40 Initiative,” and “more than 500 programs across 19 federal agencies are working to deliver benefits to disadvantaged communities.” *About the Environmental Justice Scorecard*, OFF. OF MGMT. & BUDGET AND COUNCIL ON ENV’T QUALITY, <https://perma.cc/9VAQ-7MQ5>.

17. For example, the Federal Emergency Management Agency (FEMA) announced in May 2023 that it would prioritize Regional Catastrophic Preparedness Grant awards “to projects that address the needs of disadvantaged communities,” and instructed state and local governments to use CEQ’s screening tool. *Fiscal Year 2023*

Regional Catastrophic Preparedness Grant Program Key Changes, FEMA (May 24, 2023), <https://perma.cc/Z2F2-HW3B>.

18. FEMA also incorporated a “Supplemental Guidance on Equity and Environmental Justice” into its grant application process, so that “FEMA as a whole prioritizes access for and meeting the needs of underserved and disadvantaged communities,” in part “[b]y instilling equity as a foundation of emergency management.” *The U. S. Department of Homeland Security (DHS) Notice of Funding Opportunity (NOFO) Fiscal Year 2024 Regional Catastrophic Preparedness Grant Program*, FEMA (May 23, 2024), <https://perma.cc/F8XR-MSP8>.

19. FEMA even adopted CEQ’s screening tool for ensuring post-disaster “equity.” *See, e.g., ACHIEVING EQUITABLE RECOVERY: A POST-DISASTER GUIDE FOR LOCAL OFFICIALS AND LEADERS*, at 18, FEMA (November 2023) (available at <https://perma.cc/PDH6-WAA3>) (“Different individuals can be affected by the same disaster in very different ways over different time horizons. These factors inform responses tailored to those specific needs. Other tools that can support these efforts include ... The White House Council on Environmental Quality (CEQ) Climate and Economic Justice Screening Tool.”).

20. In her previous government roles, CEQ Chair Brenda Mallory “led operational efforts focused on Environmental Justice and diversity initiatives,” and “supported the development” of a tool that outlined “legal authorities for advancing environmental protection of low-income and communities of color.” *About Chair Mallory*, WHITE HOUSE, <https://perma.cc/Y8ZA-CBZQ>.

21. While CEQ was created “as an agency whose sole purpose is to implement and monitor [the National Environmental Policy Act],” *Carolina Action v. Simon*, 389 F. Supp. 1244, 1246 (M.D.N.C.), *aff’d*, 522 F.2d 295 (4th Cir. 1975), under the Biden-Harris administration’s Justice40 Initiative, CEQ’s screening tool and scorecard currently impacts hundreds of billions of dollars funded through hundreds of different federal programs including, but not limited to, disaster preparedness and relief funding. *See About the Environmental Justice Scorecard, supra* ¶ 15.

AFL’S FOIA REQUEST

22. To shed more light on the Chair and other political appointees working at CEQ during the Biden-Harris administration—including their education, work experience, and other qualifications—AFL submitted a FOIA request to CEQ on May 9, 2023. *See Exs. A and B.*

23. This request sought a fee waiver. *See id.*

24. On May 15, 2023, CEQ responded to AFL, noting that it does not accept FOIA requests solely as attachments and instructed AFL to copy and paste the contents of AFL’s FOIA request into the body of an email and resend it. *See Ex. C.*

25. On May 16, 2023, AFL resubmitted its FOIA request to CEQ by accordingly copying and pasting the contents of the request into the body of an email. *See Ex. D.*

26. As of the date of this filing, CEQ has provided no documents under this FOIA request.

CLAIM FOR RELIEF

Violation of the FOIA, 5 U.S.C. § 552

27. AFL incorporates paragraphs 1–26 by reference.
28. AFL properly requested records within the possession, custody, and control of CEQ.
29. The CEQ failed to conduct searches for responsive records.
30. Moreover, because CEQ failed to conduct searches, it has failed to disclose any segregable, non-exempt portions of responsive records. *See* 5 U.S.C. § 552(b).
31. CEQ has failed to respond to AFL’s requests within the statutory time period. *See* 5 U.S.C. § 552(a)(6).
32. Accordingly, AFL has exhausted its administrative remedies. *See* 5 U.S.C. § 552(a)(6)(C).
33. CEQ has violated the FOIA by failing, within the prescribed time limit, to reasonably search for records responsive to AFL’s FOIA request and release nonexempt records.

PRAYER FOR RELIEF

WHEREFORE, AFL respectfully requests that this Court:

- i. Declare that the records sought by AFL’s requests must be disclosed pursuant to 5 U.S.C. § 552;
- ii. Order the Defendant to search immediately, demonstrating search methods reasonably likely to lead to the discovery of responsive records;

- iii. Order the Defendant to produce by a date certain all non-exempt records responsive to AFL's FOIA requests, accompanied by a Vaughn index of any responsive records or portions of responsive records being withheld under a claim of exemption;
- iv. Order the Defendant to grant AFL's requests for fee waivers;
- v. Award AFL attorneys' fees and costs incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- vi. Grant AFL such other and further relief as this Court deems proper.

Dated: October 1, 2024

Respectfully Submitted,

/s/ William Scolinos
William Scolinos (DC Bar No. 90023488)
Email: William.Scolinos@aflegal.org
Michael Ding (DC Bar No. 1027252)
E-mail: Michael.Ding@aflegal.org
Rachel Jag* (MO Bar No. 70674)
E-mail: Rachel.Jag@aflegal.org
Tel: (301) 965-0179
AMERICA FIRST LEGAL FOUNDATION
611 Pennsylvania Avenue SE #231
Washington, D.C. 20003
Counsel for the Plaintiff
America First Legal Foundation

**Application for Pro Hac Vice Forthcoming*



May 9, 2023

Via E-mail: efoia@ceq.eop.gov

Freedom of Information Officer
Council on Environmental Quality
730 Jackson Place, NW
Washington, DC 20503

Freedom of Information Act Request: Information Regarding Political Leadership and Staffing at the Council on Environmental Quality

Dear FOIA Officer:

America First Legal Foundation is a national, nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, and ensure due process and equal protection for all Americans, all to promote public knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States. To that end, we file Freedom of Information Act (FOIA) requests on issues of pressing concern, then disseminate the information we obtain, making documents broadly available to the public, scholars, and the media. Using our editorial skills to turn raw materials into distinct work, we distribute that work to a national audience through traditional and social media platforms. AFL's email list contains over 75,000 unique addresses, our Twitter page has over 90,000 followers, the Twitter page of our Founder and President has over 441,000 followers, our Facebook page has 127,000 followers, and we have another 31,800 followers on GETTR.

I. Definitions

For the purposes of this request, "Political Appointee" means any person who is employed by the Department who is: 1) Presidentially Appointed and Senate Confirmed ("PAS"); 2) Presidentially Appointed ("PA"); 3) in a non-career Senior Executive Service ("SES") position; 4) a career SES but has been detailed to a leadership or political position since January 20, 2021, 5) a Schedule C employee; 6) a Schedule A employee; 7) in an administratively determined position; 8) in a position that was filled by coordination with, or through, the White House Liaison or Presidential Personnel Office ("PPO"); or 9) a Special Government Employee ("SGE").

611 Pennsylvania Ave SE #231
Washington, DC 20003

320 South Madison Avenue
Monroe, Georgia 30655

To the extent an SGE is not a Political Appointee or an actual employee any request or reference to a political appointee or employee should be read to mean “Political Appointee or SGE.”

Requests A through C below are intended to be enterprise-wide, meaning that any political appointee who has been hired should be identified regardless of the office, component, or agency to which they have been assigned or have been detailed.

II. Requested Records

- A. Records sufficient to identify all employees who entered into a position at the agency as a Political Appointee since January 20, 2021, to the date this records request is processed, and the title or position of each employee (to the extent that individuals have held multiple positions during this time period, identify each title or position and the time period it was held).
- B. Records sufficient to identify all career employees who, between January 20, 2021, and the date this records request is processed, have been detailed to 1) a position eligible to be filled by a Political Appointee, or 2) a new position through coordination or consultation with either the White House Liaison or Presidential Personnel Office; the title or position of each employee while on detail; and each employee’s originating agency or component, and prior title.
- C. For each individual identified in response to Requests A and B provide:
 1. The resume provided by the individual to the agency in connection with determining the appropriate salary for the individual, or if that is not available, a recent resume contained within the agency’s records. AFL has no objection to the redaction of employee’s contact information, such as email, address, phone numbers etc.; however, prior employment, education, and descriptions of such experiences are not exempt and should be produced.
 2. Any waivers issued to the individual pursuant to 18 U.S.C. § 208(b).
 3. Any authorizations for the individual issued pursuant to 5 C.F.R. § 2635.502.
 4. Any Ethics Pledge waivers, issued pursuant to Section 3 of Executive Order 13989 and Office of Government Ethics Legal Advisory 21-04, received by the individual.

5. Any ethics agreement executed by the individual; any Certification of Ethics Agreement Compliance; and any records relating to any violation by an individual of his or her ethics agreement.
6. Records reflecting any recusal determination made or issued for the individual.
7. Copies of any SF-50 forms for the individual reflecting any change in position, title, or salary, including when the employee starts or leaves a position.
8. Completed Ethics Pledge for each individual.
9. All records of position descriptions on file for each individual identified in Parts A and B above.

D. All records relating to the processing of A, B, and C above.

III. Processing and Production

Per 5 U.S.C. § 552(a)(4)(A)(iii) and your agency's fee waiver regulations, AFL requests a waiver of all search and duplication fees. AFL has a demonstrated ability and intention to effectively convey the information broadly to the public; AFL's status as a representative of the news media has been recognized by other agencies for granting fee waivers by the Departments of Defense, Education, Energy, Health and Human Services, Justice, Interior, and Homeland Security. As a non-profit organization, AFL has no commercial interest, and the request is made entirely to serve the public interest. We are, of course, available to provide additional information in writing or offline in support of this request. If AFL's request for a fee waiver is not granted in full, please contact us immediately upon making that determination.

Processing should strictly comply with the processing guidance in the Attorney General's Memorandum on Freedom of Information Act Guidelines.¹ If you have any questions about our request or believe further discussions regarding search and processing would facilitate the more efficient production of requested records, please get in touch with me at FOIA@aflegal.org.

To accelerate your release of responsive records, AFL welcomes production on an agreed rolling basis. Please provide responsive records in an electronic format by email. Alternatively, please provide responsive records in native or PDF format on a USB drive to America First Legal Foundation, 611 Pennsylvania Ave SE #231, Washington, DC 20003.

¹ U.S. DEPT JUST. (Mar. 15, 2022), <https://bit.ly/3zvpxb6>.

Thank you in advance for your cooperation.

Sincerely,

/s/ Michael Ding

America First Legal Foundation



AFL FOIA <foia@aflegal.org>

new Freedom of Information Act request

AFL FOIA <foia@aflegal.org>

Tue, May 9, 2023 at 3:52 PM

To: efoia@ceq.eop.gov

Good afternoon,
Please find attached a new Freedom of Information Act request.
Thank you,
America First Legal Foundation

 **05092023_CEQ_Dept Leadership FOIA pt2.pdf**
162K



AFL FOIA <foia@aflegal.org>

new Freedom of Information Act request

FN-CEQ-efoia <efoia@ceq.eop.gov>
To: AFL FOIA <foia@aflegal.org>

Mon, May 15, 2023 at 10:01 AM

Dear AFL,

For security reasons, CEQ does not accept FOIA requests solely as an attachment. Please copy and paste the contents of your attachment and resend your request. Alternatively, you may submit a FOIA request to CEQ via fax or postal mail to the location below. I am the FOIA Public Liaison for CEQ. For additional information on how to submit a FOIA request to CEQ, please visit our CEQ FOIA website <https://www.whitehouse.gov/ceq/foia>

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efoia@ceq.eop.gov

Fax: (202) 456-0753

Postal Address:

Freedom of Information Officer, Council on Environmental Quality

[722 Jackson Place, NW](#)

[Washington, DC 20503](#)

Very Respectfully,

Howard Sun

Attorney Advisor

Council on Environmental Quality

Executive Office of the President

Office: (202) 456-3621

[Quoted text hidden]



AFL FOIA <foia@aflegal.org>

new Freedom of Information Act request

AFL FOIA <foia@aflegal.org>
To: FN-CEQ-efoia <efoia@ceq.eop.gov>

Tue, May 16, 2023 at 12:01 PM

Dear Mr. Sun,

America First Legal Foundation is a national, nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, and ensure due process and equal protection for all Americans, all to promote public knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States. To that end, we file Freedom of Information Act (FOIA) requests on issues of pressing concern, then disseminate the information we obtain, making documents broadly available to the public, scholars, and the media. Using our editorial skills to turn raw materials into distinct work, we distribute that work to a national audience through traditional and social media platforms. AFL's email list contains over 75,000 unique addresses, our Twitter page has over 90,000 followers, the Twitter page of our Founder and President has over 441,000 followers, our Facebook page has 127,000 followers, and we have another 31,800 followers on GETTR.

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Sincerely,

/s/ Michael Ding

America First Legal Foundation

[1] U.S. DEP'T JUST. (Mar. 15, 2022), <https://bit.ly/3zvpxb6>.

On Mon, May 15, 2023 at 10:01 AM FN-CEQ-efoia <efoia@ceq.eop.gov> wrote:

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efoia@ceq.eop.gov

Fax: (202) 456-0753

Postal Address:

Freedom of Information Officer, Council on Environmental Quality

722 Jackson Place, NW

Washington, DC 20503

Very Respectfully,

Howard Sun

Attorney Advisor

Council on Environmental Quality

Executive Office of the President

Office: (202) 456-3621

From: AFL FOIA <foia@aflegal.org>
Sent: Tuesday, May 9, 2023 3:52 PM
To: FN-CEQ-efoia <efoia@ceq.eop.gov>
Subject: [EXTERNAL] new Freedom of Information Act request

Good afternoon,

Please find attached a new Freedom of Information Act request.

Thank you,
America First Legal Foundation