

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

JUDICIAL WATCH, INC.,)
425 Third Street SW, Suite 800)
Washington, DC 20024,)
)
Plaintiff,)

Civil Action No.

v.)

U.S. DEPARTMENT OF COMMERCE,)
1401 Constitution Avenue NW)
Washington, DC 20230,)

and)

BRIAN DIGIACOMO, in his Official Capacity as)
Assistant General Counsel for Employment,)
Litigation, and Information,)
U.S. Department of Commerce,)
1401 Constitution Avenue NW)
Washington, DC 20230,)

Defendants.)

_____)

COMPLAINT

Plaintiff Judicial Watch, Inc. brings this action against Defendant U.S. Department of Commerce to compel compliance with the Freedom of Information Act. Plaintiff also brings this action in the alternative against Brian DiGiacomo, in his official capacity as Defendant Commerce’s Assistant General Counsel for Employment, Litigation, and Information to compel compliance with the common law right of access to public records. Plaintiff alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B), 28 U.S.C. §1331, and/or 28 U.S.C. § 1361.
2. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

PARTIES

3. Plaintiff Judicial Watch, Inc. is a not-for-profit, educational organization incorporated under the laws of the District of Columbia and headquartered at 425 Third Street SW, Suite 800, Washington, DC 20024. Plaintiff seeks to promote transparency, accountability, integrity in government, and fidelity to the rule of law. As part of its mission, Plaintiff regularly requests records from federal agencies pursuant to FOIA. Plaintiff analyzes the responses and disseminates its findings and the requested records to the American public to inform them about “what their government is up to.”

4. Defendant U.S. Department of Commerce is an agency of the United States Government. Defendant Commerce has possession, custody, and control of records to which Plaintiff seeks access. Defendant Commerce is headquartered at 1401 Constitution Avenue NW, Washington, DC 20230.

5. Defendant Brian DiGiacomo is the Assistant General Counsel for Employment, Litigation for Defendant Commerce. In that role, Defendant DiGiacomo provided Plaintiff with Defendant Commerce’s final decision concerning the records to which Plaintiff seeks access. He is being sued in his official capacity.

STATEMENT OF FACTS

6. On October 4, 2024, the Wall Street Editorial Board published an editorial concerning the implementation of the Biden administration’s “Internet for All” initiative being led by Vice President Kamala Harris. “The Harris Broadband Rollout Has Been a Fiasco,” *Wall Street Journal* (Oct. 4, 2024).

7. On October 16, 2024, Plaintiff submitted a FOIA request to the National Telecommunications and Information Administration (“NTIA”), a component of Defendant Commerce, seeking access to the following records:

Records and / or communications (internal and external), including emails, email chains, email attachments, text messages, meeting minutes, interviews, voice recordings, video recordings, photographs, correspondence, statements, letters, memoranda, reports, briefings, inspections, presentations, notes, or other form of record regarding from the below listed persons (employees) concerning implementing President Biden’s Infrastructure Law “Internet For All” Employees include:

- (1) Alan Davidson, Assistant Secretary
- (2) April McClain-Delaney, Deputy Assistant Secretary
- (3) Andy Berke, Special Representative for Broadband
- (4) Sarah Morris, Principal Deputy Assistant Secretary and Deputy Administrator
- (5) Karin O’Leary, Deputy Assistant Secretary for Operations and Administration
- (6) Paul P. Desai, Chief of Staff
- (7) Shiva Goel, Senior Spectrum Advisor
- (8) Lukas Pietrzak, Special Policy Advisor
- (9) Sarah Skaluba, Special Policy Advisor
- (10) All Assistant Secretary’s (sic), NTIA

8. Plaintiff’s request also specifically sought the following records about the “Broadband Equity, Access, and Deployment” component of the “Internet For All” initiative:

- (a) Requirements for internet service providers under Broadband Equity, Access, and Deployment (BEAD) to engage in “green initiatives.”
- (b) Requirements under BEAD to employ unionized labor.
- (c) Stipulated hiring preferences under BEAD.
- (d) State applications for BEAD.
- (e) Funds allocated per state under BEAD.

9. The time frame of the request was identified as “March 1, 2022, to present.”

10. By letter dated November 13, 2024, NTIA denied Plaintiff’s FOIA request, claiming that the requested records are not subject to FOIA.

11. On December 2, 2024, Plaintiff administratively appealed NTIA’s denial.

12. Also on December 2, 2024, Plaintiff submitted a common law right of access request for the same records it requested under FOIA on October 16, 2024.

13. By letter dated January 1, 2025, Defendant DiGiacomo responded to both Plaintiff's administrative appeal and its common law right of access request. Acting on behalf of Defendant Commerce, Defendant DiGiacomo denied Plaintiff's administrative appeal and informed Plaintiff of its right to seek judicial review under FOIA. Defendant DiGiacomo also denied Plaintiff access to the records under the common law right of access.

14. As of the date of this Complaint, Defendants have not produced the requested records to Plaintiff or otherwise demonstrated that the requested records should not be produced.

**COUNT I
(Violation of FOIA)**

15. Plaintiff realleges paragraphs 1 through 14 as if fully stated herein.

16. Defendant Commerce is in violation of FOIA.

17. Plaintiff is being irreparably harmed by Defendant Commerce's violation of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant Commerce is compelled to comply with the law.

18. Plaintiff has no adequate remedy at law.

**Count II
(Common Law Right of Access)**

19. Plaintiff realleges paragraphs 1 through 18 as if fully stated herein.

20. Defendant DiGiacomo is in violation of the common law right of access to public records.

21. The requested records are public records because they were created or kept by an executive branch agency for the purpose of memorializing or recording an official action, decision, statement, or other matter of legal significance, broadly conceived.

22. The public interest in the requested records outweighs Defendant DiGiacomo's interest in keeping them secret.

23. Defendant DiGiacomo has a non-discretionary duty to make these public records available upon request.

24. Plaintiff is being irreparably harmed by Defendant DiGiacomo's violation, and Plaintiff will continue to be irreparably harmed unless Defendant DiGiacomo is compelled to comply with the law.

25. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff respectfully requests that the Court: (1) declare Defendant Commerce's failure to produce all non-exempt, responsive records to Plaintiff to violate FOIA; (2) declare Defendant DiGiacomo's failure to produce all non-exempt, responsive records to Plaintiff to violate the common law right of access; (3) order Defendants to conduct searches for any and all records responsive to Plaintiff's requests and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's requests; (4) order Defendants to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's requests and Vaughn indices of any responsive records withheld under claim of exemption; (5) enjoin Defendants from continuing to withhold any and all non-exempt records responsive to Plaintiff's requests; (6) grant Plaintiff an award of attorneys' fees and other litigation costs reasonably incurred in this action; and (7) grant Plaintiff such other relief as the Court deems just and proper.

Dated: January 10, 2025

Respectfully submitted,

/s/ Michael Bekesha

Michael Bekesha

D.C. Bar No. 995749

JUDICIAL WATCH, INC.

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Washington, DC 20024

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Counsel for Plaintiff