

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

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PUBLIC CITIZEN,)	
1600 20th Street NW)	
Washington, DC 20009,)	
	Plaintiff,)	Civil Action No. 20-3166
v.)	
U.S. DEPARTMENT OF LABOR,)	
200 Constitution Avenue NW)	
Washington, DC 20210,)	
	Defendant.)	
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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Plaintiff Public Citizen brings this action to compel defendant U.S. Department of Labor (DOL) to produce records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

JURISDICTION AND VENUE

2. This Court has jurisdiction under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331. Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

PARTIES

3. Plaintiff Public Citizen is a nonprofit, public-interest organization. Public Citizen submitted the FOIA request at issue in this action.

4. Defendant DOL is an agency of the United States. DOL has possession or control of records responsive to Public Citizen’s FOIA request.

FACTS

5. In 2016, the Occupational Safety and Health Administration (OSHA), a subdivision of DOL, promulgated a new recordkeeping regulation to collect establishment-specific injury and

illness data. The final rule, entitled “Improve Tracking of Workplace Injuries and Illnesses,” 81 Fed. Reg. 29,624 (May 12, 2016), as revised by the final rule entitled “Tracking of Workplace Injuries and Illnesses,” 84 Fed. Reg. 380 (Jan. 25, 2019), requires certain categories of employers to electronically submit to OSHA, on an annual basis, the summary workplace injury and illness data that employers are required to record on OSHA Form 300A. 29 C.F.R. § 1904.41.

6. Employers submit their Form 300A data through OSHA’s Injury Tracking Application. The data stored in the Injury Tracking Application are transmitted to the Office of Statistical Analysis, Directorate of Technical Support and Emergency Management. The Office of Statistical Analysis uploads those records into a Microsoft Access database.

7. The first set of data OSHA collected under the Electronic Reporting Rule was Calendar Year (CY) 2016 OSHA Form 300A data, which OSHA required employers to submit by December 15, 2017. Notwithstanding the deadline, OSHA accepted CY 2016 data through December 31, 2017.

8. The second set of data OSHA collected under the Rule was CY 2017 OSHA Form 300A data, which OSHA required employers to submit by July 1, 2018.

9. The third set of data OSHA collected under the Rule was the CY 2018 OSHA Form 300A data, which OSHA required employers to submit by March 2, 2019.

10. The fourth set of data OSHA collected under the Rule was the CY 2019 OSHA Form 300A data, which OSHA required employers to submit by March 2, 2020.

11. Following two decisions holding that Form 300A data must be disclosed under FOIA, *see Pub. Citizen Found. v. DOL*, No. 1:18-cv-00117 (D.D.C. June 23, 2020); *Ctr. for Investigative Reporting v. DOL*, No. 4:18-cv-02414-DMR, 2020 WL 2995209 (N.D. Cal. June 4, 2020), OSHA posted on its website the Form 300A data for CYs 2016, 2017, and 2018. *See Press*

Release, DOL, U.S. Department of Labor Releases Work-Related Injury and Illness Data (Sept. 4, 2020), <https://www.osha.gov/news/newsreleases/national/09042020>.

12. On September 1, 2020, Public Citizen submitted a FOIA request to DOL seeking all CY 2019 Form 300A data submitted to OSHA through the Injury Tracking Application and requesting a waiver of any fees associated with processing the FOIA request. Public Citizen requested that DOL produce the requested data as an Excel spreadsheet, as DOL did when it produced Form 300A data for an earlier time period pursuant to an order entered in *Public Citizen Foundation v. DOL*, No. 18-cv-00117 (D.D.C. July 20, 2020).

13. DOL received Public Citizen's FOIA request for CY 2019 Form 300A data on September 1, 2020.

14. On September 2, 2020, DOL acknowledged receipt of Public Citizen's FOIA request and assigned it to OSHA with tracking number 896595.

15. On October 2, 2020, DOL again acknowledged receipt of Public Citizen's FOIA request and stated that the request was forwarded to OSHA's Directorate of Technical Support and Emergency Management (DTSEM) for a response. The Office of Statistical Analysis, which manages the Agency's collection of Form 300A data, is part of DTSEM.

16. Under 5 U.S.C. § 552(a)(6)(A)(i), DOL had 20 working days to respond to Public Citizen's request.

17. More than 20 working days have passed since Public Citizen's request. DOL has neither made a determination on Public Citizen's FOIA request nor produced any records in response to the request.

CLAIM FOR RELIEF

18. Public Citizen has a statutory right under FOIA, 5 U.S.C. § 552(a)(3)(A), to the records it requested.

19. DOL has no legal basis for refusing to produce the records responsive to Public Citizen's request.

PRAYER FOR RELIEF

Public Citizen requests that this Court:

- A. Declare that DOL's failure to provide the records responsive to Public Citizen's FOIA request is unlawful;
- B. Order DOL to make the requested records available to Public Citizen at no charge and without delay;
- C. Award Public Citizen its costs and reasonable attorneys' fees under 5 U.S.C. § 552(a)(4)(E); and
- D. Grant all other appropriate relief.

Dated: November 2, 2020

Respectfully submitted,
/s/ Michael T. Kirkpatrick
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