

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

GEORGE E. CLARK,)
P.O. Box 381006)
Cambridge, MA 02238)

Plaintiff,)

v.)

ENVIRONMENTAL PROTECTION)
AGENCY,)
William Jefferson Clinton Building)
1200 Pennsylvania Avenue NW)
Washington, DC 20460)

Defendant.)

Civil Action No. 1:18-cv-00075

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This action is brought under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, to compel the Environmental Protection Agency (EPA) to produce records responsive to a FOIA request for correspondence between EPA Chief of Staff Ryan Jackson and 20 individuals, during a five-month period.

JURISDICTION AND VENUE

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

PARTIES

3. Plaintiff George E. Clark, Ph.D., is a research librarian at Harvard University. Dr. Clark assists researchers who work on environmental resources issues. He also publishes academic and media articles in this area.

4. Defendant EPA is an agency of the federal government of the United States and has possession of and control over the records plaintiff seek.

STATEMENT OF FACTS

5. On June 2, 2017, Dr. Clark submitted a FOIA request to the EPA requesting emails between EPA Chief of Staff Ryan Jackson and 20 individuals, dated from January 19, 2017, through June 2, 2017, inclusive of the start and end dates. The 20 individuals listed in the request were Scott Pruitt, Donna Vizian, David Bloom, Lawrence Starfield, Robin Richardson, Samantha Dravis, Reginald E. Allen, John Reeder, Rick Perry, Ryan Zinke, Brian McCormack, Scott Hommel, Joe Hagin, Rick Dearborn, Katie Walsh, George David Banks, Mary Neumayr, Kathleen Hartnett White, Marty Hall, and Mike Catanzaro. Dr. Clark also requested a public interest fee waiver and expedited processing.

6. EPA acknowledged receipt on the same day.

7. By letter dated July 12, 2017, EPA granted Dr. Clark's fee waiver request and denied expedited processing.

8. On August 7, 2017, Dr. Clark emailed the signatories on the July 12 letter to inquire about an estimated completion date for his FOIA request.

9. On August 11, 2017, EPA Attorney-Advisor Victor Farren responded by email to Dr. Clark. Mr. Farren stated that EPA had determined the request did not "reasonably define a set of records to search as required by the FOIA and EPA regulations," and that "[w]henever possible, your requester [sic] should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter." Mr. Farren further stated that the request did not "provide a subject matter that would allow a subject matter expert to identify and

locate responsive records with a reasonable amount of effort.” Mr. Farren requested that Dr. Clark contact him to discuss the request and “determine how to move forward.”

10. Dr. Clark responded by email to Mr. Farren on September 18, 2017. Dr. Clark stated that he did not wish to modify his request because it reasonably described the records he sought: “email traffic between one specific individual at EPA (Ryan Jackson) and a number of specified other individuals in a specific time period, which is less than five months.” Dr. Clark further explained that he had already provided the date range, author, and recipient of each record, and thus “simple searches of Mr. Jackson’s email(s) for the names of the other specific persons requested should return all responsive records.”

11. After receiving no response, Dr. Clark sent a follow-up email on October 17, 2017.

12. On October 23, 2017, Mr. Farren responded and reiterated his position that the request did “not reasonably describe a set of records.” Mr. Farren asked Dr. Clark to respond within two weeks to discuss how “to refine your search”; otherwise, the email stated, Mr. Farren would close the request.

13. On October 30, 2017, Dr. Clark responded that his “request reasonably describes the record [he was] seeking” and asked EPA to process the request. Dr. Clark further requested that, if EPA would not process his request as written, it provide him with information regarding how to appeal the denial of his request.

14. On November 15, 2017, EPA denied Dr. Clark’s request for failing to “reasonably define a set of records to search” and provided Dr. Clark with information regarding how to administratively appeal the denial of his request.

15. Dr. Clark filed an administrative appeal of the denial of the request on November 22, 2017. Dr. Clark explained that his request reasonably described the records he was requesting in compliance with both FOIA, 5 U.S.C. § 552(a)(3)(A)(i), and EPA's regulations, 40 C.F.R. § 2.102(c).

16. More than 20 working days have passed since EPA received plaintiff's appeal, and EPA has not responded.

**CAUSE OF ACTION
(FOIA – Failure to Disclose Responsive Records)**

17. Dr. Clark has exhausted all administrative remedies with respect to his FOIA request for records regarding correspondence between EPA Chief of Staff Ryan Jackson and 20 other individuals under 5 U.S.C. § 552(a)(6)(C)(i).

18. Dr. Clark has a statutory right under FOIA, 5 U.S.C. § 552(a)(3)(A), to the records he requested, and there is no legal basis for EPA's failure to disclose them.

PRAYER FOR RELIEF

WHEREFORE, Dr. Clark requests that this Court:

- (1) Declare that EPA's withholding of the requested records is unlawful;
- (2) Order EPA to make the requested records available to Dr. Clark;
- (3) Award Dr. Clark his costs and reasonable attorneys' fees pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (4) Grant such other and further relief as this Court may deem just and proper.

Dated: January 12, 2018

Respectfully submitted,

/s/ Patrick D. Llewellyn
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