

**IN THE SUPERIOR COURT FOR  
THE DISTRICT OF COLUMBIA**

**COMPETITIVE ENTERPRISE INSTITUTE** )  
1310 L Street NW )  
7th Floor )  
Washington, DC 20005 )

**Plaintiff,** )

**v.** )

**Civil Action No. 18-\_\_\_\_\_**

**THE DISTRICT OF COLUMBIA** )  
Serve: )  
Mayor Muriel Bowser )  
1350 Pennsylvania Avenue, NW )  
Washington, DC 20004 )

**and** )

**OFFICE OF THE ATTORNEY GENERAL** )  
**FOR THE DISTRICT OF COLUMBIA,** )  
Serve: )  
Karl A. Racine )  
441 4th Street, NW )  
Washington, DC 20001 )

**Defendants.** )

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiff COMPETITIVE ENTERPRISE INSTITUTE (“CEI”) for its complaint against defendants the District of Columbia (“DC”) and the Office of the Attorney General for the District of Columbia (“the AG” or “OAG”), allege as follows:

1. This is an action under the Washington, DC Freedom of Information Act (“FOIA”), DC Code §§ 2-531–539, to compel production under seven separate FOIA requests by the plaintiff during 2016 and 2018.
2. All requests involve OAG’s involvement in two campaigns to use law enforcement offices

to pursue opponents of the “climate” political agenda, and otherwise to impose that policy agenda through the courts, and are therefore of great public interest.

3. As part of these campaigns, public records obtained from other attorneys general offices indicate that OAG has engaged former Attorney General Linda Singer who at the time was with the firm Cohen Milstein.
4. Also as part of these campaigns, OAG joined an “informal coalition” of attorneys general to “ensur[e] that the promises made in Paris become reality”—referring to the December 2015 climate treaty—and to “expand the availability and usage of renewable energy.”<sup>1</sup>
5. This coalition led to a purported Common Interest Agreement signed by Elizabeth Wilkins, Senior Counsel to the DC Attorney General, on May 2, 2016.
6. Public records suggest that DC OAG has subsequently brought on board a privately financed “Special Assistant Attorney General” to pursue issues of interest to the donor who provides the “Special Assistant AGs, working as part of the state [sic] OAG’s staff”, along with other inducements including “three full time attorneys who will be available to provide direct legal assistance to interested AGs”, “pro bono services that may be available to your offices on individual matters”, and “a full time communications expert”<sup>2</sup>.
7. The condition was that the privately funded “SAAG” would work on the “climate” agenda or, more specifically, “advancing progressive clean energy, climate change, and environmental legal positions.”<sup>3</sup>

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<sup>1</sup> March 7, 2016, letter from then-New York Attorney General Eric Schneiderman and then-Vermont Attorney General William Sorrell to numerous attorneys general.

<sup>2</sup> August 25, 2017, email from NYU’s David Hayes to, *inter alia*, [natalie.Ludaway@dc.gov](mailto:natalie.Ludaway@dc.gov), Subject: State Energy & Environmental Impact Center, obtained from numerous state offices of Attorney General.

<sup>3</sup> *Id.* See also, e.g., “Colleagues, I am pleased to announce that Steve Novick joins Natural Resources Section as a Special Assistant Attorney General, courtesy of New York University. NYU’s State Energy & Environmental Impact Center sponsors a two-year fellowship under which it has hired Steve and deputed

8. All requests at issue in this matter pertain to the above, and were sent by plaintiff by electronic mail to [dc.oag@dc.gov](mailto:dc.oag@dc.gov).
9. CEI sent its first request via electronic mail on October 21, 2016. Plaintiff sent subsequent requests on February 7, 2018, February 28, 2018, May 16, 2018, July 10, 2018, and July 20, 2018.
10. Defendant OAG acknowledged all of these requests, the first by email from [tony.towns@dc.gov](mailto:tony.towns@dc.gov), the other six by emails from [dc.oag@dc.gov](mailto:dc.oag@dc.gov).
11. Defendants have produced no response whatsoever to any of the requests beyond acknowledging them, whether an estimate of potentially responsive records to be processed, of when responsive records would be produced, or any indication that defendants are in fact processing plaintiff's requests.
12. Defendant OAG has, however, acknowledged plaintiff's correspondence contacting DC OAG seeking updates or acknowledgements that OAG was in fact processing these requests, by emails from [dc.oag@dc.gov](mailto:dc.oag@dc.gov).
13. For all requests, plaintiff requested a reduction or waiver in any fees pursuant to DC Code § 2-532(b). Defendants never responded to these requests for fee waiver.
14. Accordingly, plaintiff files this lawsuit to compel DC, and OAG, to comply with the law and produce properly described public records subject to legitimate withholdings.

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him to us. Oregon joins New York, Massachusetts, Maryland, Washington, and the District of Columbia (so far) as beneficiaries of this fellowship program. The purpose of the fellowship is to provide additional resources to state AGs's offices in defending and promoting clean energy, climate, and environmental laws and policies." June 18, 2018 email from: Steven Wolf, to General Counsel, Cc: Executive Staff, Subject: New NRS SAAG—Steve Novick, obtained from the Oregon Department of Justice under that State's Public Records Law. The "Center" is a project of climate activist and billionaire Michael Bloomberg (*see, e.g.*, Juliet Eilperin, "NYU Law Launches New Center to Help State AGs Fight Environmental Rollbacks," Washington Post, August 16, 2017, [https://www.washingtonpost.com/politics/nyu-law-launches-new-center-to-help-state-ags-fight-environmental-rollbacks/2017/08/16/e4df8494-82ac-11e7-902a-2a9f2d808496\\_story.html?utm\\_term=.d89bd330b9e4](https://www.washingtonpost.com/politics/nyu-law-launches-new-center-to-help-state-ags-fight-environmental-rollbacks/2017/08/16/e4df8494-82ac-11e7-902a-2a9f2d808496_story.html?utm_term=.d89bd330b9e4)).

## **PARTIES**

15. Plaintiff The Competitive Enterprise Institute (“CEI”) is a public policy research and educational institute in Washington, D.C., dedicated to advancing responsible regulation and in particular economically sustainable environmental policy. CEI’s programs include research, investigative journalism and publication, as well as a transparency initiative seeking public records relating to environmental policy and how policymakers use public resources.
16. Defendant District of Columbia is the government for the District of Columbia and is in possession of the records plaintiffs seek, by and through DC’s constituent agency, the Office of the Attorney General.
17. The Office of the Attorney General for the District of Columbia is an agency of government for the District of Columbia.

## **JURISDICTION AND VENUE**

18. This Court has jurisdiction pursuant to § 2-532(e) and §537(a)(1), because the defendants have failed to respond in a timely manner to the seven FOIA requests at issue in this case and are, therefore, deemed to have exhausted all administrative remedies. Furthermore, jurisdiction is proper under Rule 57, because the plaintiff seeks declaratory judgment.
19. Venue in this Court is proper under § 2-532(e) and §537(a)(1).

## **FACTUAL BACKGROUND** **The October 21, 2016 Request**

20. In an October 21, 2016, submission sent by electronic mail to dc.oag@dc.gov and Lateefah.Williams@dc.gov, plaintiff requested “copies of any retainer or engagement agreement(s) or contract(s) between your Office and the law firm Cohen Milstein

Seller & Toll PLLC (Cohen Milstein), and /or with Linda Singer dated between July 1, 2015 through the date you process this request, inclusive.”

21. Defendant OAG responded on October 24, 2016, by email from [tony.towns@dc.gov](mailto:tony.towns@dc.gov), stating, “This email is written to acknowledge receipt of your FOIA Request on Friday, October 21, 2016. The Office of the Attorney General’s response to your FOIA request is due on November 15, 2016 unless there is a need to assert the ten day extension.”<sup>4</sup>
22. Defendants have not responded further to this request.

### **The February 7, 2018 Request**

23. In a February 7, 2018, submission CEI requested all correspondence between DC OAG employees Elizabeth Wilkins, Anika Harris, and/or Tarifah Coaxum, from August 1, 2017 through the date OAG processes the request, which was also to, from or copied one or more of two specified email domains, and/or nine specified parties.
24. In the same submission CEI also requested “copies of any agreement that includes both your Office and New York University, New York University’s School of Law, and/or the (NYU) State Energy & Environmental Impact Center, that was in effect at any time during 2017 or during 2018. This includes but is not limited to, e.g., 1) any agreement to hire, house, second or otherwise place any attorney or attorneys or staff in your Office; 2) any purported common interest agreement with any of those entities; and/or 3) any confidentiality agreement with any of those entities.”
25. In the same submission CEI also requested “copies of any agreement of any sort with any individual staff or attorney(s) who to your Office’s knowledge came to your employ or secondment through any of the groups named in II, or who is otherwise

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<sup>4</sup> The acknowledgements of all 2018 requests did not similarly assert a respond-by date but instead asserted that the Office would review and direct the correspondence to the proper office.

placed in and/or works for or in your Office through any of those groups, which agreement(s) was in effect at any time during 2017 or during 2018.”

26. Defendant OAG acknowledged this request by email the same day from [dc.oag@dc.gov](mailto:dc.oag@dc.gov).
27. Plaintiff reminded OAG of this request by emails to [dc.oag@dc.gov](mailto:dc.oag@dc.gov) on March 9, 2018, May 18, 2018 and July 7, 2018.
28. Defendant OAG acknowledged these reminders the same days, by emails from [dc.oag@dc.gov](mailto:dc.oag@dc.gov).
29. Defendants have produced no response whatsoever to the request.

#### **The February 28, 2018 Request**

30. In a February 28, 2018, submission CEI requested all emails and attachments dated August 1, 2017, through December 31, 2017, sent to or from or copying Chief Deputy Attorney General Natalie Ludaway that were also sent to or from any of three named parties including at specified email addresses.
31. Defendant OAG acknowledged this request by email the same day from [dc.oag@dc.gov](mailto:dc.oag@dc.gov).
32. Plaintiff reminded OAG of this request by emails to [dc.oag@dc.gov](mailto:dc.oag@dc.gov) on May 18, 2018 and July 7, 2018.
33. Defendant OAG acknowledged these reminders the same days, by emails from [dc.oag@dc.gov](mailto:dc.oag@dc.gov).
34. Defendants have produced no response whatsoever to the request.

#### **The May 16, 2018 Request**

35. In a May 16, 2018 submission, CEI requested “any correspondence, attachment, or instrument by which your Office rescinded, reversed, withdrew or otherwise altered” a purported “‘Common Interest Agreement’ your Office signed on to on May 2, 2016 (see

attached signature page), relating to an “informal coalition” of OAGs, according to the recruiting letter also attached, led by former New York Attorney General Eric Schneiderman.”

36. Defendant OAG acknowledged this request by email the same day from [dc.oag@dc.gov](mailto:dc.oag@dc.gov).
37. Plaintiff reminded OAG of this request by emails to [dc.oag@dc.gov](mailto:dc.oag@dc.gov) on June 7, 2018 and July 7, 2018.
38. Defendant OAG acknowledged these reminders the same days they were sent, by emails from [dc.oag@dc.gov](mailto:dc.oag@dc.gov).
39. Defendants have produced no response whatsoever to the request.

#### **The July 10, 2018 Request**

40. In a July 10, 2018 submission, CEI requested all emails and attachments dated from March 31, 2016 through April 30, 2016, inclusive, sent to or from or which copy Elizabeth Wilkins, which are also to or from or which copy Linda Singer.
41. In the email transmitting this request, plaintiff noted DC OAG’s running failures to process CEI’s prior requests, specifically asking DC OAG to remedy the situation.
42. Defendant OAG acknowledged this request by email the same day from [dc.oag@dc.gov](mailto:dc.oag@dc.gov).
43. Defendants have produced no response whatsoever to the request.

#### **The July 20, 2018 Requests**

44. In a July 20, 2018 submission, CEI requested certain described emails and attachments dated from September 1, 2017, through the date OAG processes the request, which was sent to or from or copying (whether as cc: or bcc:) Natalie Ludaway, all of which relate to any offer, assertion or affirmation of the appointment of any Special Assistant Attorney General, Special Deputy Attorney General, Pro Bono Assistant Counsel, or

appointee by any title through, or affiliated with or mentioning New York University's State Energy & Environmental Impact Center.

45. Defendant OAG acknowledged this request by email the same day from [dc.oag@dc.gov](mailto:dc.oag@dc.gov).
46. In a separate July 20, 2018 submission CEI requested all correspondence and other records, including any attachments, dated from December 6, 2017 through the date OAG processes the request, which was sent to, from or which copied OAG Communications Director Robert Marus, which also was sent to, from or which copied any email address ending with @nyu.edu and/or any email address ending with @resource-media.org.
47. Defendant OAG acknowledged this request by email the same day from [dc.oag@dc.gov](mailto:dc.oag@dc.gov).
48. Defendants have produced no records responsive to these requests, or otherwise substantively responded.

### **LEGAL ARGUMENTS**

49. All of plaintiff's requests at issue in this matter reasonably describe the requested information and are otherwise filed in compliance with applicable law.
50. Under the DC Freedom of Information Act, after an individual submits a request, an agency must ordinarily provide responsive records within 15 working days, D.C. Code § 2-532 (c), although an agency may claim an additional ten days to respond pursuant to D.C. Code § 2-532 (d).
51. Defendants owed plaintiffs records responsive to the requests at issue in this suit within 15 working days of the requests' submissions, subject to legitimate withholdings.
52. Defendants have produced no substantive response whatsoever to any of these requests, and are in violation of their obligations in each instance.

**FIRST CLAIM FOR RELIEF**  
**Seeking Declaratory Judgment**

53. Plaintiffs re-allege paragraphs 1-51 as if fully set out herein.
54. Plaintiffs have sought and been denied production of responsive records reflecting the conduct of official business, because defendants have failed to provide a substantive response to the FOIA requests at issue in this case.
55. Defendants also failed to respond to plaintiff's fee waiver requests.
56. Plaintiff asks this Court to enter a judgment declaring that:
  - a. The records as specifically described in plaintiff's FOIA requests, and any attachments thereto, are public records, and as such, are subject to release under FOIA;
  - b. The defendants must release those requested records or segregable portions thereof subject to legitimate exemptions;
  - c. The defendants may not assess or seek costs and fees for the request at issue in this case, as plaintiffs are entitled to a waiver of their fees.

**SECOND CLAIM FOR RELIEF**  
**Seeking Injunctive Relief Seeking Injunctive Relief**

57. Plaintiff re-alleges paragraphs 1-55 as if fully set out herein.
58. Plaintiff is entitled to injunctive relief compelling defendants to produce all records in their possession responsive to plaintiff's FOIA requests, without fees, subject to legitimate withholdings.
59. Plaintiff asks the Court to order the defendants to produce to plaintiffs, within 10 business days of the date of the order, the requested records described in plaintiff's requests, and any attachments thereto, subject to legitimate withholdings.

60. Plaintiff asks the Court to order the Parties to consult regarding withheld documents and to file a status report to the Court within 30 days after plaintiffs receive the last of the produced documents, addressing defendants' preparation of a *Vaughn*-style withholdings log and a briefing schedule for resolution of remaining issues associated with plaintiff's challenges to defendants' withholdings and any other remaining issues.
61. Plaintiff asks the Court to enter an injunction ordering the defendants to either grant plaintiff's fee waiver requests pursuant to DC Official Code § 2-532(b) within 10 business days of the date of the order, or not seek fees for the plaintiffs requests. Plaintiff re-alleges paragraphs 1-34 as if fully set out herein.

**THIRD CLAIM FOR RELIEF**

**Seeking Costs and Fees**

62. Plaintiff re-alleges paragraphs 1-60 as if fully set out herein
63. Pursuant to D.C. Code § 2-537(c), the Court shall award reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.
64. Plaintiff is statutorily entitled to recover fees and costs incurred as a result of defendants' refusal to fulfill the FOIA requests at issue in this case.
65. Plaintiff asks the Court to order the defendants to pay reasonable attorney fees and other litigation costs reasonably incurred in this case.

WHEREFORE, Plaintiffs request the declaratory and injunctive relief herein sought, and an award for their attorney fees and costs and such other and further relief as the Court shall deem proper.

Respectfully submitted this xx day of October 2018,

\_\_\_\_\_/s/\_\_\_\_\_  
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