

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATURAL RESOURCES DEFENSE COUNCIL,)
1200 New York Ave., N.W.)
Suite 400)
Washington, DC 20005,)
)
Plaintiff,)
)
v.)
)
DEPARTMENT OF ENERGY)
1000 Independence Ave., S.W.)
Washington, D.C. 20585,)
)
Defendants.)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This case challenges the United States Department of Energy's ("DOE") ongoing violation of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended, by refusing, for almost eight months, to provide responsive records relating to the Energy Task Force chaired by Vice-President Richard Cheney ("Cheney Energy Task Force"). The records at issue are relevant to legislation now being considered by Congress, as well as administrative actions now being taken to expedite energy-related projects on the nation's public lands. Immediate disclosure of the records is needed to allow the public to participate in these decisions in a meaningful way.

JURISDICTION

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B).

PARTIES

3. Plaintiff Natural Resources Defense Council, Inc., ("NRDC") is a non-profit organization with over 390,000 members dedicated to the protection of the environment. It brings this action on its own behalf, and on behalf of its members.

4. With its nationwide membership and a staff of lawyers, scientists, and other environmental specialists, NRDC plays a leading role in a diverse range of environmental issues, including the energy-related matters which were considered by the Cheney Energy Task Force. In particular, for decades NRDC has worked to protect the very public lands the Task Force has recommended for exploitation to increase energy supplies. NRDC has also worked on a number of other issues intricately related to the matters under consideration by the Task Force, such as increasing fuel efficiency, reducing air pollution, and the hazards associated with nuclear power.

5. NRDC is also actively involved in influencing the energy legislation now being considered by Congress. For example, NRDC has lobbied against votes that have occurred in both the House of Representatives and the Senate to open the Arctic National Wildlife Refuge for oil and gas drilling, one of the Task Force's specific recommendations. In addition, through its various publications and its web site, NRDC distributes information to the public concerning methods to achieve a sustainable energy future.

6. Defendant Department of Energy is an Executive Branch Department, and has possession or control of the records plaintiff seeks in this action.

**STATUTORY FRAMEWORK AND FACTS GIVING
RISE TO CAUSE OF ACTION**

THE FREEDOM OF INFORMATION ACT

7. The Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, as amended, requires agencies of the federal government to release, upon request, information to the public, unless one of nine specific statutory exemptions applies.

8. Upon receiving an FOIA request, an agency has twenty working days to respond. 5 U.S.C. § 552(a)(6)(A). Although the agency may grant itself an extension of ten additional days in "unusual circumstances," the FOIA does not permit an agency to delay a response indefinitely. 5 U.S.C. § 552(a)(6)(B).

9. Under the FOIA, a requestor is entitled to a waiver of fees associated with responding to an FOIA request when the information sought "is likely to contribute significantly to public understanding of the operations or activities of the government" 5 U.S.C. § 552(a)(4)(A)(iii).

FACTUAL BACKGROUND

10. In his second week in office, President Bush announced the formation of a Task Force, called the National Energy Policy Development Group, to provide him with advice and recommendations concerning a purported crisis in U.S. energy supplies, and appointed Vice-President Cheney the Task Force Chairman. Other Task Force members included the Secretaries of the Department of Energy, Interior, Agriculture, Transportation, and Commerce, as well as the

Administrator of the Environmental Protection Agency and the Director of the Office of Management and Budget.

11. During the next several months, members of the Task Force and their staff, including Department of Energy officials, met with various individuals and groups to collect information and to develop specific recommendations for legislative and administrative action.

12. In May, 2001 the Task Force issued its Report, entitled "National Energy Policy: Report of the National Energy Policy Development Group." Among other recommendations, the Report recommends increased extraction of coal, oil and other natural resources from public lands; the construction of hundreds of new power plants; and increased reliance on nuclear power. The Report also recommends expediting the permitting process for energy infrastructure projects. Speed is likely to come at the expense of an analysis of environmental impacts and public participation.

13. Despite repeated requests by NRDC and others, the Task Force, DOE and other agencies have refused to publicly release the names of the individuals and groups who were consulted in preparing the Report.

14. On April 26, 2001, plaintiff NRDC submitted an FOIA Request to the Department of Energy for records related to the Cheney Energy Task Force. The Request asked for:

- a. Records identifying the members of the Task Force and any and all working groups, subcommittees or other groups reporting to the Task Force;
- b. Records relating to the purpose or work plan of the Task Force and any and all working groups, subcommittees or other groups formed to assist the Task Force;
- c. The calendars dating from January 21, 2001 to the present of the agency head and any agency staff performing work related to the Task Force;

- d. Minutes, notes or other records of meetings attended by the agency head or any agency staff relating to the work of the Task Force;
- e. Records relating to any contractors or temporary full-time employees hired by the agency regarding the work of the Task Force, including, but not limited to the contracts with these individuals, their resumes, and their SF-171 forms;
- f. Records relating to communications between agency personnel and members of the Presidential transition team regarding the Task Force;
- g. Records regarding any efforts by agency personnel or the Task Force to screen for conflicts of interest or bias among the individuals or groups providing advice relating to the work of the Task Force;
- h. Records prepared by agency personnel relating to the work of the Task Force;
- i. Records received from non-agency individuals or groups, contractors or temporary full-time agency employees relating to the work of the Task Force; and
- j. Records relating to solicitation of advice from individuals or groups regarding the work of the Task Force that have not already been included in response to any of the categories above.

NRDC also asked DOE to waive any fees associated with responding to the request.

15. On May 1, 2001, DOE responded to the FOIA request by stating that, since many of the responsive documents may be withheld on exemption grounds, NRDC was not entitled to a fee waiver. However, on May 11, 2001, DOE reversed itself, and informed NRDC that no fees would be charged. At that time, DOE produced copies of some correspondence between DOE, members of Congress and members of the public in which DOE referred in passing to the existence of the Task Force.

16. On May 16, 2001, NRDC wrote to DOE, explaining that NRDC was still waiting for documents responsive to the FOIA request. During the following week, NRDC agreed to narrow the

scope of its request by limiting its request for calendars to those of senior DOE personnel, and limiting its request for agency-generated documents to later drafts of any chapters of the Task Force's Report which DOE submitted to the Task Force, as well as documents which relate information received from non-federal employees concerning the Task Force.

17. Despite NRDC's agreement to narrow the scope of its FOIA request, DOE failed to provide any more responsive records. Accordingly, on July 2, 2001, NRDC filed an appeal of DOE's constructive denial of their FOIA request.

18. On July, 19, 2001, DOE dismissed NRDC's administrative appeal, on the grounds that DOE's Office of Hearings and Appeals lacks jurisdiction to consider DOE's failure to respond to an FOIA request within the statutory time limits.

PLAINTIFFS' CLAIM FOR RELIEF

19. By failing for almost eight months to provide all records responsive to plaintiff's FOIA request, DOE is in violation of the FOIA. 5 U.S.C. § 552(a)(6).

20. Plaintiffs have a right to obtain the requested records.

WHEREFORE, plaintiffs pray that this Court:

- (1) Declare that defendant has violated the FOIA by failing to timely provide all records responsive to plaintiff's April 26, 2001 FOIA request;
- (2) Order defendant to make the requested records available to plaintiff within twenty days;
- (3) Award plaintiff their costs and reasonable attorneys' fees in this action; and

- (4) Grant such other and further relief as the Court may deem just and proper.

Respectfully Submitted,

Howard M. Crystal (D.C. Bar No. 446189)
Kimberly D. Ockene (D.C. Bar No. 461191)
Meyer and Glitzenstein
1601 Connecticut Ave., N.W.
Suite 700
Washington, D.C. 20009
(202) 588-5206

Sharon Buccino (D.C. Bar No. 432073)
Jon Devine (D.C. Bar No. 474582)
1200 New York Ave., NW, Suite 400
Washington, DC 20005
(202) 289-6868

December 11, 2001

Attorneys for Plaintiff