

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CENTER FOR AUTO SAFETY)
1825 Connecticut Ave., N.W., Suite 330)
Washington, DC 20009,)
)
Plaintiff,)
)
v.)
)
U.S. DEPARTMENT OF TREASURY)
1500 Pennsylvania Ave., N.W.)
Washington, DC 20220,)
)
Defendant.)
_____)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act (“FOIA” or “Act”), 5 U.S.C. § 552, to obtain access to records in the possession of the U.S. Department of the Treasury (“Treasury Department”) concerning the government’s involvement in the Chrysler and General Motors (“GM”) bankruptcies, including the government’s role in supplying approximately \$80 billion in taxpayer money to finance the bankruptcies. Extraordinarily controversial and subject to intense congressional scrutiny, the multibillion-dollar bankruptcies, bankrolled by taxpayers, left consumers and personal injury victims without recourse against the companies created to replace Chrysler and GM, despite the existence of widely known safety defects in Chrysler and GM vehicles that had killed and injured drivers and passengers, and would continue to do so into the future.

2. The Center for Auto Safety (“Center” or “CAS”), a small nonprofit organization, has been the leading automobile safety organization in the nation since 1970. As such, the Center has played an active role on behalf of consumers in the public debate over the Chrysler

and GM bankruptcies – analyzing the bankruptcy filings, testifying before Congressional committees about the consequences of the bankruptcies for consumers and personal injury victims, and disseminating information about the bankruptcies to the public via its website and the news media. Nonetheless, when the Center requested e-mail correspondence that would shed light on the government’s involvement in the bankruptcies, the federal government refused to grant the Center a fee waiver for copying costs or to transmit the e-mail correspondence electronically, eliminating or greatly reducing any such copying fees. Instead, the government insisted that the Center must pay \$33,980 to obtain the requested documents – thereby erecting an impenetrable barrier to access of the very kind that the fee waiver provisions of the statute were intended to eliminate.

JURISDICTION

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

PARTIES

4. The Center for Auto Safety is a nonprofit research and advocacy organization originally founded by Consumers Union and Ralph Nader in 1970 to provide consumers with a voice for auto safety and quality and to assist owners of “lemon” vehicles in filing complaints with both the U.S. government and the auto industry and obtaining relief, including recalls of defective vehicles. It is the requester of information at issue in this case.

5. The Center achieves its mission by actively disseminating information to the public so that consumers are better informed about motor vehicle safety issues, including the role that the government plays in insuring the safety of drivers and their passengers. In addition to an active web presence – including an informative website with links to substantive source

documents – the Center engages with the news media, elected officials, and other nonprofit organizations and activists to obtain and disseminate information to the public at large.

6. Defendant Treasury Department is a federal agency. It has possession of the information requested by the Center.

STATUTORY FRAMEWORK AND FACTS GIVING RISE TO PLAINTIFFS' CLAIMS

A. Statutory Framework

7. FOIA was enacted “to establish a general philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language.” S. Rep. No. 813, at 3 (1st Sess. 1965). See also U.S. Dep’t of Justice v. Tax Analysts, 492 U.S. 136, 142 (1989); Dep’t of the Air Force v. Rose, 425 U.S. 352, 361 (1976). As the Supreme Court has reaffirmed, “Congress believed that this philosophy, put into practice, would help ‘ensure an informed citizenry, vital to the functioning of a democratic society.’” Tax Analysts, 492 U.S. at 142 (quoting NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214, 242 (1978)).

8. The Act requires each federal agency to make non-exempt records “promptly available to any person” upon request, 5 U.S.C. § 552(a)(3)(A), and limits the fees that can be assessed for the production of documents that are responsive to a request. Id. § 552(a)(4)(A). Regulations set the cost of photocopying at 20 cents per page, 31 C.F.R. § 1.7(g)(1)(i), and other types of duplication at the “actual cost.” Id. § 1.7(g)(1)(ii)-(iii).

9. Consistent with “the basic purpose” of the FOIA – “to open agency action to the light of public scrutiny,” U.S. Dep’t of Justice v. Reporters Comm. For Freedom of the Press, 489 U.S. 749, 772 (1989) (internal citation omitted) – Congress has provided that agencies “shall” furnish requested records without charge “if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or

activities of the government and is not primarily in the commercial interest of the requester.”

5 U.S.C. § 552(a)(4)(A)(ii)(II).

10. FOIA also provides that, in making requested records available to a requester, an agency “shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.” Id. § 552(a)(3)(B).

11. FOIA provides that a requester “shall be deemed to have exhausted his administrative remedies . . . if the agency fails to comply with the applicable time provisions” for appeals. 5 U.S.C. § 552(a)(6)(C). The Treasury Department’s FOIA regulations provide that appeals shall be decided within 20 working days of receipt. 31 C.F.R. § 1.5(i)(3)(i).

B. Facts Giving Rise to Plaintiffs’ Claims

12. In 2008, Chrysler and GM, two of the three major United States automakers, experienced significant financial difficulties, and the United States government engaged in efforts to assist the manufacturers. For example, “at GM’s request in late 2008, the U.S. Treasury determined to make available to GM billions of dollars in emergency secured financing in order to sustain GM’s operations while GM developed a new business plan.” In re General Motors Corp., 407 B.R. 463, 477 (Bkrtcy. S.D.N.Y. 2009).

13. In February 2009, recognizing the economic instability of Chrysler and GM, President Obama convened the Presidential Task Force on the Auto Industry (“Task Force”), a cabinet-level Treasury Department task force that worked on restructuring and recapitalizing the failing automobile manufacturers.

14. During this time, “Chrysler experienced deepening losses [and] received billions in bailout funds from the Federal Government” In re Chrysler, LLC, 576 F.3d 108, 111 (2d Cir. 2009), vacated by Ind. State Police Pension Trust v. Chrysler LLC, 130 S. Ct. 1015

(2009). Negotiations over the sale of Chrysler’s assets, which used billions of dollars in taxpayer funds to pay off secured creditors, were premised on the plan that the new corporate entity would retain “responsibility under state law for mechanical and design defects in vehicles that caused economic or personal injury.” Ramifications of the Auto Industry Bankruptcies: Hearing Before the House Judiciary Committee, 111th Cong. 46 (2009) (statement of Clarence M. Ditlow, Executive Director, Center for Auto Safety).

15. Chrysler filed for bankruptcy on April 30, 2009. Despite the positions publicly taken during the negotiations over the sale of the company’s assets, the actual terms of the Chrysler bankruptcy left consumers and personal injury victims without any recourse against the company created to replace Chrysler. Id. At the time, numerous safety defects were known – including the lack of break-shift interlock in 15 million Chrysler vehicles, designed to prevent the inadvertent movement of an automatic transmission from park into another gear; a fuel tank mounted behind the rear axle on the Jeep Grand Cherokee, which exploded during collisions, resulting in numerous injuries and deaths including the death of a New Jersey mother of two; and a design defect that caused the seat backs of more than 10 million Chrysler vehicles to collapse, sometimes on children riding in the back seat, resulting in more than 100 people being seriously injured. Id. at 46-47.

16. GM filed for bankruptcy on June 1, 2009. The terms of its bankruptcy had a similar effect on consumers and personal injury victims, leaving them without any recourse against the new entity created to replace the automobile manufacturer. A CBS News story accessible through the Center’s website reported that “[t]aking a page from Chrysler, GM and the government [tried] to shed hundreds of product liability cases that have [led] to injuries and

deaths.” Randall Pinkston, Accident Victims Stand to Lose in GM Deal, CBS News, June 19, 2009.

17. The federal government took an active role in negotiating the terms of both Chrysler’s and GM’s bankruptcies, and in helping to finance those bankruptcies. The details of these negotiations are not readily available and thus are not widely understood by the public.

18. On June 8, 2009, the Center filed a request pursuant to FOIA requesting “[a]ll e-mail correspondence since January 1, 2009, in any way related to the Chrysler and General Motors bankruptcies, the events preceding those bankruptcies, and the federal government’s roles in and deliberations concerning those matters.” The Center sought these records in order to contribute significantly to the public’s understanding of the government’s activities related to these bankruptcies.

19. The Center specified that its FOIA request included, but was not limited to, all e-mail generated or received by six enumerated officials: Brian Deese, special assistant to the president for economic policy and the only full-time staff member of the Presidential Task Force on the Auto Industry; Ed Montgomery, director of recovery for auto communities and workers and a member of the Task Force; Ron Bloom, senior advisor to the Secretary of the Treasury and member of the Task Force; Steven Rattner, counselor to the Secretary of the Treasury and lead auto advisor (commonly known as the “car czar”); Matthew Feldman, chief legal advisor to the Task Force; and Timothy Geithner, Secretary of the Treasury and member of the Task Force.

20. The Center requested a waiver of the fees and costs associated with processing its request because the “highly specific” information requested would contribute significantly to the public’s understanding of the government’s role in the bankruptcies, the records had “no commercial value whatsoever,” and the Center had “no commercial purpose or interest in

requesting them.” Because of its unparalleled public advocacy on auto safety issues for several decades, the Center has routinely been granted fee waivers by federal agencies during the last thirty years.

21. In support of its fee waiver request, the Center attached a document describing the mission of the organization. The Center described its activities – including research and public education – and explained that a “key pillar” of the Center’s mission is “actively to disseminate the information CAS gathers to the public so that consumers are better informed about motor vehicle safety issues.” The Center further described how it disseminates information through its website, newsletter, and op-ed pieces in newspapers, refers the media to auto safety experts, and shares information with “the nation’s leading individual and organizational advocates for motor vehicle safety,” who are encouraged to “disseminate the information gathered and produced by CAS to their memberships and contacts.”

22. On July 1, 2009, the Treasury Department responded by asking the Center to agree to pay the fees associated with the processing of its request. On August 7, 2009, the Center responded, stating that it agreed to pay \$25 in fees but reiterating its request for a fee waiver.

23. On March 2, 2011 – nearly two years later – the Center received an undated letter from the Treasury Department that identified 170,000 pages of records that are responsive to the Center’s request. The Treasury Department’s letter acknowledged both that the Center sought “records [concerning] the operations or activities of the government” and that the Center had no “overriding commercial interest in the records.” However, the Treasury Department refused to grant the Center a fee waiver. Rather, citing the photocopying rate set by regulation, the

Treasury Department demanded that the Center pre-pay the estimated fees associated with duplicating the records at an expense of \$33,980.

24. The Center filed appeals of the Treasury Department's fee waiver denial on April 6, 2011 and April 15, 2011. As a preliminary matter, the Center pointed out that its request "specifically ask[ed] for emails, which could feasibly be transmitted . . . electronically," eliminating any duplication cost, and the Center suggested that, accordingly, Treasury simply provide the responsive records on a compact disc.

25. The Center also objected to the denial of the fee waiver, explaining that because its request for agency communications related to the GM and Chrysler bankruptcies – "in which the government played an extremely active role" – disclosure of the information to the Center was likely to contribute significantly to the public understanding of the operations or activities of the government. First, the Center pointed out that the Treasury Department had itself acknowledged that the records sought concern the operations or activities of the federal government and that the request was not in the Center's commercial interest. Second, the Center explained how the extensive "correspondence involving key government officials" would "provide a far greater understanding of the government's role in negotiating the terms of the bankruptcies" than the bankruptcy court filings publicly available, which "detail[ed] very little of the government's role in negotiating the terms of the bankruptcies." Third, the Center emphasized that disclosure would benefit the public's understanding of government activities, describing both the overwhelming public interest in the topic, as demonstrated by Congressional hearings and news articles on the matter that the Center cited, and the Center's ability to disseminate information to the public through its website, testimony at Congressional hearings on the bankruptcies, a legal text that it publishes, its interactions with coalition partners

concerned with automobile safety, and the frequent appearance of its staff members on television, radio, and at conferences, and in the print media. Fourth, the Center demonstrated that the release of these records would result in a significant contribution to public understanding: “The rarity of the type of government action seen in these bankruptcies means that very little is known about how the government operates in similar situations, or has historically conducted such activities. . . . Disclosure of records pertaining to this unique situation is critical to an understanding of the government’s role in such a rare event. The email correspondence would allow the public to see the role that the Treasury Department plays in supporting the nation’s industries. Additionally, it would provide the public with an insight into the terms of the final negotiated bankruptcy terms, many of which have proved to be problematic for owners of vehicles produced by G.M. and Chrysler prior to the bankruptcies.”

26. In addition to providing links to a multitude of news articles and written testimonies to Congress on the Chrysler and GM bankruptcies, and the citations of the bankruptcy court decisions for the two auto companies, the Center attached several documents to its appeal, including the testimony of its executive director, Clarence Ditlow, before the House Judiciary Committee on May 21, 2009. The Center also submitted Google search results for the Chrysler and GM bankruptcies, each having more than 5.5 million hits, and for the Center, which showed more than 330,000 hits. Finally, the Center attached a print-out of its Chrysler and GM Bailouts and Bankruptcies webpage, which in turn provides links to important documents relevant to the bankruptcies, including bankruptcy filings, a contract related to the GM bankruptcy, a petition to the Federal Trade Commission regarding Chrysler’s product liability waiver, and correspondence from the Center, other organizations, and elected officials to the Task Force.

27. In its supplement, the Center reiterated its position – that the e-mails could be provided to it electronically, to avoid the costs of duplication.

28. On May 16, 2011, having received no response to its appeal, the Center sent a letter to the Treasury Department, inquiring into the status of the appeal.

29. To date, the Treasury Department has not responded to the Center’s appeal, and the time for a response has long since expired.

PLAINTIFF’S CLAIM FOR RELIEF

30. There is no statutory basis for the Treasury Department’s denial of the Center’s fee waiver request, and its refusal to provide the requested records to the Center without charge.

31. There is no statutory basis for the excessive duplication fee the Treasury Department has assessed for the production of documents that are currently in electronic form, and therefore should be “readily reproducible” at no to little cost. 5 U.S.C. § 552(a)(3)(B).

32. The Center has exhausted its administrative remedies with respect to its request.

WHEREFORE, plaintiff prays that this Court:

(1) Declare that defendant has violated FOIA by refusing to provide the requested records unless the plaintiff gives the agency more than \$33,000;

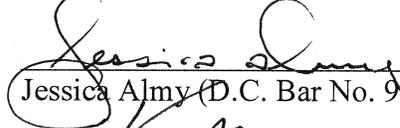
(2) Declare that defendant has violated FOIA by denying plaintiff’s fee waiver request;

(3) Declare that defendant has violated FOIA by charging excessive fees for the duplication of e-mail that should be readily reproducible in electronic format;

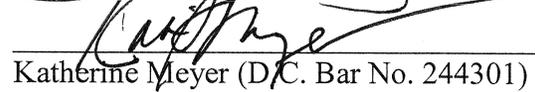
(4) Order defendant to make all of the requested records immediately available to plaintiff at no charge;

- (5) Award plaintiff its costs and reasonable attorneys' fees in this action; and
- (6) Grant such other and further relief as the Court may deem just and proper.

Respectfully Submitted,



Jessica Almy (D.C. Bar No. 996921)



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