

**IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA**

**Center for Media and Democracy, a
Wisconsin corporation,**

Plaintiff,

v.

Case No. CV-2017-223

**Scott Pruitt, in his official capacity as
Attorney General of the State of
Oklahoma,**

Defendant.

PLAINTIFF'S STATUS REPORT TO THE COURT

In anticipation of the Court's scheduled hearing on February 16, 2017, the plaintiff, Center for Media and Democracy ("CMD"), presents this Status Report to the Court regarding the events that have taken place since the time of the filing of CMD's Petition on February 7, 2017.

FACTS

1. The plaintiff petitioned the Court to temporarily and permanently enjoin the defendant, Scott Pruitt, the Attorney General of Oklahoma, as well as his agents ("Pruitt" or the "AG"), from continuing to deny access to specific requested public records in violation of the Oklahoma Open Records Act, OKLA. STAT. tit. 51, §§24A.1, *et seq.* ("ORA"). On February 7, 2017, the Court heard arguments of counsel for CMD and Pruitt regarding CMD's request for a Temporary Restraining Order preventing Pruitt from deleting or disposing of any responsive or potentially responsive documents or records related to CMD's several ORA requests. At the hearing, counsel for the AG agreed that, consistent with existing requirements regarding agency document retention, no documents potentially responsive to CMD's ORA requests would be destroyed pending the outcome of this case. In light of that agreement, the Court denied CMD's

motion for a temporary restraining order.¹

2. On February 10, 2017, Pruitt’s general counsel, Sarah Greenwalt, sent a letter to CMD purporting to be a full and final response to CMD’s January 2015 ORA request (the “January 2015 Request”). A copy of the letter is attached as Exhibit 1. Ms. Greenwalt’s letter stated that, “The Office has determined that the documents enclosed with this letter are the records that are responsive to your request.”

3. Notably, the records provided by Pruitt on February 10 pertain only to CMD’s January 2015 Request, and not to the other *eight* ORA requests (from November 11, 2015 through January 2, 2017) that have been submitted by CMD. In addition, the records provided cover only the time period of January 1, 2013 through the date the request was filed—January 5, 2015—despite the fact that ORA request is for responsive documents up until “the date of [the AG’s] response being completed.” *See* Affidavit of Nick Surgey (“Surgey Affd.”), attached as Exhibit 2, at ¶11.

4. The February 10 response appears intentionally to omit responsive documents. *See* Surgey Affd., ¶¶6–11.

(a) The number of records provided falls far short of what Pruitt’s office previously said it had located. In particular, on August 24, 2016, Pruitt’s office sent an email to CMD staff saying that, “I have gathered all of the material, and I am now going thru all of it. All of the documents that came from the search have been over 3000 documents.” *See* Exhibit 2 attached to CMD’s Petition, and Surgey Affd., ¶3. Then, on January 17, 2017, Ms. Greenwalt sent a letter to CMD staff reiterating that, “the number of documents currently in Mr. Surgey’s response is over 3,000.” *See* Exhibit 6 attached to CMD’s Petition, and Surgey Affd., ¶4.

¹ The parties have exchanged proposed drafts of an agreed order on the February 7 hearing but have not yet reached agreement on the language of the order.

Nevertheless, only 411 records, totaling just under 1,100 pages, have been provided to CMD. *See* Surgey Affd., ¶7. Pruitt’s office offered no explanation for the dramatic decrease in the number of responsive documents, nor did it claim any exemptions or any privilege under the ORA. *See* Exhibit 1.

(b) In addition, CMD has been able to identify at least 27 records that Pruitt’s office provided to investigative reporter Eric Lipton at the *New York Times* in 2014 and that are clearly responsive to CMD’s request, yet were not included in the current ORA response. *See* Surgey Affd., ¶9. (The documents provided to Lipton and responsive to CMD’s January 2015 Request, but not included in Pruitt’s February 10 response, are attached as Exhibit B to Surgey Affd.)

(c) Very few of the records provided are emails directly to or from Pruitt’s official email account. CMD has concern that Pruitt’s office did not conduct a thorough search including Pruitt’s personal email accounts. At his confirmation hearing, Pruitt testified under oath that he did use any private email accounts for official state business. *See* Hearing transcript excerpt, attached as Exhibit C to Surgey Affd. A few of the records provided, however, have a redacted email address for Pruitt, suggesting that they were sent to a personal email account.

REQUEST FOR RELIEF AT FEBRUARY 16, 2017 HEARING

1. ORA §24A.5(5) mandates that a public body or an official such as Pruitt “must provide prompt, reasonable access to its records.” CMD submits, however, that failing to respond to its ORA request for a period in excess of twenty-four (24) months violates CMD’s right to prompt, reasonable access to public records, especially if the failure to provide the access promptly and reasonably is willful.² Withholding non-exempt records and providing an incomplete response to an ORA request is no less a violation of the Act.

² A willful violation of the ORA is a misdemeanor. ORA § 24A.17(A).

2. Pursuant to ORA §24A.17(B), and as requested in its Petition, CMD requests that at the February 16, 2017 hearing, the Court:

a. Declare that Pruitt has violated the ORA by (i) failing to provide prompt and reasonable access to public documents and (ii) improperly withholding responsive public records; and

b. Grant injunctive relief in the form of an order requiring (i) the immediate release of all records responsive to CMD's multiple ORA requests dating from January, 2015 through January, 2017; and (ii) a complete search of all private email accounts used by Pruitt to conduct public business or discuss matters involving the office of the AG.

3. CMD further requests that Pruitt be required to show cause as to why certain documents were not produced pursuant to CMD's January 2015 Request, though such documents must have been known to be responsive thereto (*see* Fact ¶4(b), *supra*); and why documents were not produced within the date range prescribed by CMD's January 2015 Request (January 1, 2013, through "the date of your response being completed") (*see* Fact ¶3, *supra*).

4. The AG's February 10 response makes no claim that any records withheld are subject to some exemption from production under the ORA. However, should the AG now make such a claim, CMD requests a prompt *in camera* review of any such records as well as any redactions to documents already produced.

5. CMD requests that it be grant such further relief as the Court determines to be just.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on this 14th day of February, 2017, a true and correct copy of the above and foregoing Plaintiff's Status Report to the Court was sent electronically and by U.S. Mail, with proper postage thereon fully paid, to:

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