

DAVID W. SMILEY, SBN 226616  
Email: dsmiley@marksfinch.com

**MARKS, FINCH, THORNTON & BAIRD, LLP**

ATTORNEYS AT LAW  
4747 EXECUTIVE DRIVE – SUITE 700  
SAN DIEGO, CALIFORNIA 92121-3107  
TELEPHONE: (858) 737-3100  
FACSIMILE: (858) 737-3101

(Pro Hac Vice Application Pending)

R. HUNTER BITNER II, SBN 011146  
Email: hunter@slindenelson.com

**SLINDE NELSON STANFORD**

111 SW FIFTH AVENUE – SUITE 1940  
PORTLAND, OREGON 92704  
TELEPHONE: (503) 417-7777  
FACSIMILE: (503) 417-4250

Attorneys for Plaintiff Spearhead Roofing, LLC

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

SPEARHEAD ROOFING, LLC, an  
Oregon limited liability corporation,

Plaintiff,

v.

UNITED STATES DEPARTMENT  
OF VETERANS AFFAIRS,

Defendant.

CASE NO:

COMPLAINT FOR INJUNCTIVE  
RELIEF

1. Plaintiff Spearhead Roofing, LLC (“Spearhead”) brings this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for injunctive and other appropriate relief, seeking release of documents in the Defendant’s possession that the Defendant has improperly withheld.

JURISDICTION

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and U.S.C. § 552(a)(4)(B), as this action arises under FOIA.

//////



1 claims and defenses of the parties in the Action.

2 10. The VA has failed and refused to provide the Eagle Point  
3 Documents pursuant to the FOIA request. By failing to produce the requested  
4 Eagle Point Documents, the VA violated the production requirements stated in  
5 the FOIA request.

6 FIRST CAUSE OF ACTION FOR INJUNCTIVE RELIEF AGAINST THE VA

7 11. Spearhead incorporates by reference paragraphs 1 through 10  
8 inclusive, as though set forth in full at this point.

9 12. Pursuant to 5 U.S.C. § 552(a)(3), Spearhead has a right of access to  
10 the Eagle Point Documents and the VA is required to make them promptly  
11 available.

12 13. The Eagle Point Documents do not fall within any of FOIA’s  
13 exemptions from disclosure under 5 U.S.C. § 552(b), including without limitation  
14 Exemption 7(A), and the VA has no legal basis for withholding them.

15 14. Pursuant to 5 U.S.C. § 552(b), even if it were established that any of  
16 the Eagle Point Documents contained information exempt from disclosure, the  
17 VA is required to provide to Spearhead all reasonably segregable non-exempt  
18 portions of the Eagle Point Documents. As they do not fall within any of the  
19 FOIA’s exemptions from required disclosure, the VA has no legal basis for  
20 withholding such portions of the Eagle Point Documents.

21 15. Spearhead has exhausted applicable statutory and administrative  
22 remedies with regard to its FOIA request, or was excused from compliance due  
23 to the VA’s failure to timely respond to the FOIA request.

24 16. Spearhead is entitled to expedited injunctive relief with respect to  
25 the processing of the requested documents.

26 / / / /

27 / / / /

28

PRAYER FOR RELIEF

WHEREFORE, Spearhead requests that this Court:

- A. Enjoin the VA from withholding the Eagle Point Documents, and order their immediate disclosure to Plaintiff;
- B. Establish a date certain for the VA to prepare and file a *Vaughn* Index;
- C. Establish a date certain for the VA to file any dispositive motion on the merits;
- D. Provide for expeditious processing in this action;
- E. Grant Spearhead its costs and attorneys' fees in this action, as provided under 5 U.S.C. § 552(a)(4)(E); and
- F. Grant such other and further relief as the Court deems just and proper.

DATED: January 28, 2015

Respectfully submitted,

MARKS, FINCH, THORNTON &  
BAIRD, LLP

By: s/ David W. Smiley  
DAVID W. SMILEY  
Attorneys for Plaintiff Spearhead Roofing,  
LLC  
Email: dsmiley@marksfinch.com

DATED: January 28, 2015

Respectfully submitted,

SLINDE NELSON STANFORD

By: s/ R. Hunter Bitner II  
R. HUNTER BITNER II  
Attorneys for Plaintiff Spearhead Roofing,  
LLC  
Email: nelson@slindenelson.com

2028.002/37U4342.DOCX.cdc