

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

AMERICAN WILD HORSE CAMPAIGN            )  
 5613 Hoag Place                                 )  
 Davis, CA 95618                                 )  
    )  
   Plaintiff,     )  
    )  
 v.   ) Case No: 1:21-cv-00967  
    )  
 BUREAU OF LAND MANAGEMENT             )  
 760 Horizon Drive                               )  
 Grand Junction, CO 81506                     )  
    )  
    )  
   Defendant.    )  
 \_\_\_\_\_  )

**COMPLAINT**

**I. INTRODUCTION**

1. Plaintiff American Wild Horse Campaign (“AWHC”) brings this action seeking declaratory and injunctive relief to redress violations of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et. seq.*, by Defendant Bureau of Land Management (hereinafter “BLM”) in failing to provide AWHC with all non-exempt records responsive to its March 10, 2020, FOIA request to this federal agency, seeking copies of all permits, leases and applications for every grazing allotment within each

BLM wild horse Herd Management Area (HMA) in Wyoming.

## **II. JURISDICTION**

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) (FOIA citizen suit provision) and 28 U.S.C. § 1331 (federal question).

## **III. VENUE**

3. Venue in this Court is proper pursuant to 5 U.S.C. § 552(a)(4)(B).

## **IV. PARTIES**

4. Plaintiff, American Wild Horse Campaign, is a non-profit organization that, at all times relevant herein, has been headquartered in Davis, California.

5. Defendant Bureau of Land Management is federal agency of the United States, and sub-component of the United States Department of the Interior, and as such, is an agency subject to the FOIA, pursuant to 5 U.S.C. § 552(f).

## **V. LEGAL FRAMEWORK OF FOIA**

6. FOIA requires, *inter alia*, that all federal agencies must promptly provide copies of all non-exempt agency records to those persons who make a request for records that reasonably describes the nature of the records sought, and which conform with agency regulations and procedures in requesting such records. 5 U.S.C. § 552(a)(3)(A).

7. FOIA requires federal agencies to make a final determination on all FOIA requests that it receives within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such request, unless the agency expressly provides

notice to the requester of “unusual circumstances” meriting additional time for responding to a FOIA request. 5 U.S.C. § 552(a)(6)(A)(I).

8. FOIA also requires federal agencies to make a final determination on FOIA administrative appeals that it receives within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal, unless the agency expressly provides notice to the requester of “unusual circumstances” meriting additional time for responding to a FOIA request. 5 U.S.C. § 552(a)(6)(A)(ii).

9. FOIA expressly provides that a person shall be deemed to have constructively exhausted their administrative remedies if the agency fails to comply with the applicable time limitations provided by 5 U.S.C. § 552(a)(6)(A)(I) - (ii). *See* 5 U.S.C. § 552(a)(6)(C).

10. FOIA provides that any person who has not been provided the records requested pursuant to FOIA, after exhausting their administrative remedies, may seek legal redress from the Federal District Court to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.

11. Under FOIA, the federal agency has the burden to sustain its actions. 5 U.S.C. § 552(a)(4)(B).

12. Pursuant to FOIA, this Court may assess attorney fees and litigation costs against the United States if the Plaintiff prevails in this action. 5 U.S.C. § 552(a)(4)(E).

## VI. FACTUAL ALLEGATIONS

13. On or about March 10, 2020, AWHC sent a FOIA request to the Bureau of Land Management (BLM), seeking copies of all permits, leases and applications for every grazing allotment within each BLM wild horse Herd Management Area (HMA) in Wyoming.

14. On or about March 23, 2020, AWHC sent an email to BLM asking whether a tracking number had been assigned to its March 10, 2020, FOIA request.

15. On or about March 25, 2020, BLM sent an email to AWHC assigning FOIA tracking number BLM-2020-00473 to Plaintiff's March 10, 2020, FOIA request.

16. On or about April 3, 2020, sent an email to AWHC with an acknowledgment letter attached. The Defendant also asked for an address on where're to send a CD with responsive records.

17. On or about April 3, 2020, AWHC sent an email to BLM providing a mailing address and also requesting an estimated date that AWHC would provide responsive records.

18. On or about April 6, 2020, BLM sent a follow up email indicating that the Agency did not have an estimated date when it could provide responsive records.

19. On or about May 3, 2020, AWHC sent an email to BLM requesting a status update to AWHC's March 10, 2020, FOIA request.

20. On or about June 3, 2020, AWHC emailed BLM again requesting the status

of its March 10, 2020, FOIA request.

21. On or about June 9, 2020, Defendant BLM sent an email to AWHC indicating that the agency was nearly done processing Plaintiff's March 10, 2020, FOIA request and that the records were being sent to the Solicitor's Office for review.

22. On or about June 11, 2020, BLM sent a final response letter along with a CD containing records to AWHC.

23. On or about July 7, 2020, AWHC sent an email to BLM informing BLM that BLM had made an error in its communications with AWHC by mixing up FOIA numbers from two of AWHC's FOIA requests.

24. On or about July 7, 2020, BLM sent an email to AWHC indicating that they would review any error and respond accordingly.

25. On or about July 7, 2020, AWHC sent a follow up email to BLM with previous email correspondences illustrating the errors for help in the Agency's review.

26. On or about July 9, 2020, BLM sent an email to AWHC clarifying the confusion caused by the Agency in mixing up Plaintiff's multiple FOIA requests.

27. On or about July 17, 2020, AWHC sent an email to BLM thanking the agency for clarifying the issue.

28. On or about July 21, 2020, AWHC filed an administrative appeal of Agency's June 11, 2020, final decision.

29. On or about July 21, 2020, Department of Interior (DOI) appeals officer sent

an email to AWHC with questions regarding the appeal.

30. On or about July 22, 2020, AWHC sent an email to DOI appeals officer answering the questions and providing a shorter version of the administrative record.

31. On or about October 1, 2020, AWHC sent an email to DOI appeals office requesting an estimated date when AWHC could expect to receive an administrative decision and any additional responsive records to its March 10, 2020, FOIA request.

32. As of the date of the filing of this action Plaintiff AWHC has not received an appeal decision or all of the records which it requested in its March 10, 2020, FOIA request to the BLM.

## **VII. CLAIMS FOR RELIEF**

33. AWHC realleges, as if fully set forth herein, paragraphs 1-32 previously set forth herein.

34. Defendant BLM has violated FOIA by failing to provide AWHC with all non-exempt responsive records for its March 10, 2020, FOIA request.

35. By failing to provide AWHC with all non-exempt responsive record to its March 10, FOIA request as described in paragraph 13 above, Defendant BLM has denied AWHC's right to this information, as provided by the Freedom of Information Act.

36. Defendant BLM has violated FOIA by failing to perform an adequate search reasonably calculated to locate all responsive records to AWHC's March 10, 2020, FOIA request.

37. By failing to perform an adequate search reasonably calculated to locate all responsive records to AWHC's March 10, 2020, FOIA request, Defendant BLM has denied AWHC's right to this information, as provided by law under the Freedom of Information Act.

38. Unless enjoined by this Court, Defendant BLM will continue to violate AWHC's legal rights to be provided with copies of the records that it has requested in its FOIA request described in paragraph 13 above.

39. AWHC is directly and adversely affected and aggrieved by Defendant BLM's failure to provide responsive records to its March 10, 2020, FOIA request described above.

40. AWHC has been required to expend costs and to obtain the services of a law firm, consisting of attorneys, law clerks, and legal assistants, to prosecute this action.

41. AWHV is entitled to reasonable costs of litigation, including attorney fees pursuant to FOIA 5 U.S.C. § 552(a)(4)(E).

### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court enter Judgment for AWHC, providing the following relief:

1. Declare Defendant BLM has violated FOIA by failing to provide AWHC with all non-exempt records responsive to its March 10, 2020, FOIA request.
2. Declare Defendant BLM has violated FOIA by failing to complete an adequate

search for records responsive to AWHC's March 10, 2020, FOIA request.

3. Direct, by injunction, that Defendant BLM perform an adequate search for records responsive to its March 10, 2020, FOIA request, and provide AWHC with all non-exempt responsive records to AWHC's March 10, 2020, FOIA request.

4. Grant AWHC's costs of litigation, including reasonable attorney fees, as provided by FOIA, 5 U.S.C. § 552(a)(4)(E); and,

5. Provide such other relief as the Court deems just and proper.

DATED: This 8th day of April, 2021.

Respectfully submitted,

/s/ Sean T. Malone  
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