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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

STATE OF WASHINGTON,

Plaintiff,

v.

PUBLIC BUILDINGS REFORM BOARD,
an agency of the United States,

Defendant.

NO.

COMPLAINT

Freedom of Information Act, 5 U.S.C. § 552

I. INTRODUCTION

1. This is an action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, seeking the release of records unlawfully withheld by the Public Buildings Reform Board (PBRB) related to the potential sale of the facility that houses the National Archives at Seattle. This is the second time the Washington State Attorney General’s Office (the AGO) has sought FOIA documents on this issue.¹ Two months have passed since the AGO submitted its new FOIA request, but the PBRB has not yet provided *any* substantive response to the State’s request. The PBRB has not notified the AGO that additional time is needed to process its new FOIA Request, nor has it asked the AGO to clarify or modify its new FOIA request.

¹ The AGO initially sought FOIA documents from the PBRB on this issue on February 3, 2020. After the PBRB failed to respond to the AGO’s FOIA request, the AGO filed suit in this Court challenging the unlawful withholding. *See State of Washington v. Public Buildings Reform Board*, No. 2:20-cv-01364-RSL (W.D. Wash. 2020). After initiation of litigation and an Order of the court following summary judgment briefing, the PBRB began providing the AGO with responsive materials. That case is still pending before the court.

1 2. On January 26, 2020, the Office of Management and Budget (OMB) approved a
2 recommendation by the PBRB to sell the Federal Archives and Records Center located at
3 6125 Sand Point Way NE, Seattle, WA 98115 (the Seattle facility). The Seattle facility is
4 currently occupied by the U.S. National Archives and Records Administration (NARA) and
5 houses the National Archives at Seattle.

6 3. The National Archives at Seattle provides public access to permanent records
7 created by Federal agencies and courts in Alaska, Idaho, Oregon, and Washington. It houses a
8 significant body of tribal and treaty records relating to the federally recognized tribes and native
9 corporations in the Pacific Northwest, including records from Bureau of Indian Affairs offices
10 and Indian agencies and schools in Alaska, Idaho, Oregon, and Washington. It also maintains
11 50,000 files related to the Chinese Exclusion Act of 1882, as well as some records related to the
12 internment of Japanese-Americans in World War II. The National Archives at Seattle is routinely
13 used by researchers, historians, genealogists, and tribes in the Pacific Northwest.

14 4. The PBRB's report recommending the sale of the Seattle facility (the PBRB
15 Report²) proposed moving the federal records and archival materials at the Seattle facility to
16 other NARA facilities in Kansas City, Missouri and Riverside, California. OMB approved the
17 PBRB's decision to sell the Seattle facility and eleven other federal properties on January 26,
18 2020.

19 5. Neither PBRB nor OMB conducted outreach to state, local, or tribal officials prior
20 to publicly announcing the sale of the facility housing the National Archives at Seattle. As a
21 result, no state, local, or tribal officials were given an opportunity to present information
22 detailing how the pending sale would harm them. There were also no public hearings in
23 Washington, Idaho, Oregon, or Alaska, where members of the public could have provided input
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26 ² <https://www.pbrb.gov/pbrb/files/2021/01/20191227-High-Value-Assets-Report-as-Required-by-FASTA.pdf> (last visited April 26, 2021).

1 and information about the importance of keeping records at the Seattle facility in the
2 Pacific Northwest.

3 6. In October 2020, the PBRB posted meeting minutes on its website which
4 disclosed that the PBRB, in consultation with OMB and the Government Services
5 Administration (GSA), had decided to bundle the National Archives at Seattle with the other
6 eleven High Value Asset properties, and would bring all 12 properties to market by early 2021.³
7 PBRB officials claimed that impact of the coronavirus pandemic on the commercial real estate
8 market and the “need for certainty of sales proceeds” justified its new sales approach and
9 timeline.⁴

10 7. On January 4, 2021, the States of Washington and Oregon along with a broad
11 coalition of impacted tribes and native corporations and historical and community organizations
12 filed suit against OMB, NARA, GSA, and PBRB related to the proposed closure and sale of the
13 Seattle facility in this Court. *Washington v. Young*, Case No. 2:21-cv-00002-JCC (W.D. Wash.
14 2021).

15 8. On February 16, 2021, the Honorable John C. Coughenour granted the plaintiffs’
16 motion for preliminary injunction and preliminarily enjoined the selling of the Seattle facility
17 under the Federal Assets Sale and Transfer Act of 2016 (FASTA). *Id.* at Dkt. #45.

18 9. Following that ruling, on April 8, 2021, OMB withdrew its January 24, 2020
19 decision approving the PBRB’s recommendation to sell the Seattle facility. *Id.* at Dkt. #52-1. In
20 its letter rescinding its approval, OMB stated that “the decision to approve the sale of the Federal
21 Archives and Records Center is contrary to this Administration’s tribal-consultation policy.” *Id.*
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25 ³ See PBRB website, Materials and Transcript of PBRB Meeting held on Oct. 1, 2020,
26 <https://www.pbrb.gov/assets/uploads/October%201%202020%20Public%20Meeting%20-%20Agenda%20and%20Presentation.pdf>.

⁴ *Id.*

1 10. OMB did not, however, preclude any future sale of the Seattle facility under
2 FASTA. Instead, OMB advised the PBRB of certain steps it would have to take before being
3 able to recommend the sale of Seattle facility in the future. *See id.*

4 11. On February 25, 2021, the AGO submitted a request for certain documents to the
5 PBRB (the FOIA Request), via both electronic mail and the U.S. Postal Service. *See Ex. A.*

6 12. The AGO’s February 25, 2021 FOIA Request sought “[a]ll records and
7 communications related to the Federal Archives and Records Center . . . located at 6125 Sand
8 Point Way NE, Seattle, WA 98115” between PBRB and “the Office of Management and Budget;
9 the General Services Administration; the National Archives and Records Administration;
10 individuals at Coldwell Banker Richard Ellis” as well as others. *Ex. A.*

11 13. The AGO is aware from documents produced in response to prior FOIA requests
12 that the PBRB was previously coordinating with NARA, at least under the prior Administration,
13 to sell both the National Archives at Seattle and the National Archives at San Francisco (San
14 Bruno) under FASTA, leaving only one public NARA facility on the entire West Coast—in
15 Southern California. *See, e.g., Ex. B.* In light of the critical regional importance of the records
16 held at the National Archives of Seattle, Washingtonians and all residents of the Pacific
17 Northwest, including the many federally-recognized tribes and native corporations in this region,
18 deserve to fully understand the federal government’s views of the Seattle facility and whether
19 such consolidation efforts are still underway.

20 **II. JURISDICTION AND VENUE**

21 14. This Court has jurisdiction over this action under the Freedom of Information
22 Act, 5 U.S.C. § 552(a)(4)(B), and under 28 U.S.C. § 1331, because this action arises under the
23 laws of the United States, including FOIA and the Declaratory Judgment Act, 28 U.S.C. § 2201.

24 15. Venue is proper in this court under 5 U.S.C. § 552(a)(4)(B), as the FOIA Request
25 was issued from a State of Washington office in Seattle, in the Western District of Washington.
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1 16. Because PBRB failed to respond to the FOIA Request, or even to notify the AGO
2 of an extension of time, within 20 business days, no administrative appeal is required under
3 5 U.S.C. § 552(a)(6)(C).

4 III. PARTIES

5 17. Plaintiff State of Washington is a sovereign entity and brings this action to protect
6 its own sovereign and proprietary rights, and as *parens patriae* on behalf of its affected citizens
7 and residents. The Attorney General is the chief legal adviser to the State of Washington. The
8 Attorney General's powers and duties include acting in federal court on matters of public
9 concern. This challenge is brought pursuant to the Attorney General's independent
10 constitutional, statutory, and common law authority to bring suit and obtain relief on behalf of
11 the State of Washington.

12 18. Defendant Public Buildings Reform Board is an agency of the United States. The
13 PBRB has possession of and control over the records sought by the AGO in its February 25,
14 2021 FOIA Request.

15 IV. STATUTORY BACKGROUND

16 19. FOIA requires agencies to "make available to the public information."
17 5 U.S.C. § 552(a). Any information subject to FOIA must be disclosed. "[E]ach agency, upon
18 any request for records . . . shall make the records promptly available to any person."
19 *Id.* § 552(a)(3).

20 20. "[U]pon any request for records made under [§ 552(a)](1), (2), or (3)," an agency
21 has 20 business days to determine whether to comply. *Id.* § 552(a)(6)(A).

22 21. An agency may only withhold documents that fall within one of the enumerated
23 exemptions from FOIA. If an agency withholds documents, it must provide a "*Vaughn* Index"
24 that adequately identifies the specific documents withheld. *See Vaughn v. Rosen*, 484 F.2d 820,
25 827 (D.C. Cir. 1973). "A withholding agency must describe *each* document or portion thereof
26 withheld, and for *each* withholding it must discuss the consequences of disclosing the

1 sought-after information.” *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987)
2 (emphasis in original); *see also Wiener v. FBI*, 943 F.2d 972, 978 (9th Cir. 1991) (requiring a
3 *Vaughn* Index and finding it inadequate); *Andrus v. United States Dep’t of Energy*, 200 F. Supp.
4 3d 1093, 1105 (D. Idaho 2016) (same).

5 22. A court may review an agency’s decision to withhold documents, and “the burden
6 is on the agency to sustain its action.” 5 U.S.C. § 552(a)(4)(B). An agency cannot justify its
7 withholding by offering nothing more than “[c]onclusory and generalized allegations.”
8 *Nat’l Parks & Conservation Ass’n v. Kleppe*, 547 F.2d 673, 680 (D.C. Cir. 1976). When the
9 agency fails to sustain its burden, the court may “order the production of any agency records
10 improperly withheld from the complainant.” 5 U.S.C. § 552(a)(4)(B).

11 V. STATEMENT OF FACTS

12 23. On February 25, 2021, the AGO submitted a request for certain documents to the
13 PBRB, via both electronic mail and the U.S. Postal Service. *See* Ex. A.

14 24. The AGO’s February 25, 2021 FOIA Request sought “[a]ll records and
15 communications related to the Federal Archives and Records Center (including the National
16 Archives at Seattle) located at 6125 Sand Point Way NE, Seattle, WA 98115,” including
17 “communications regarding the above identified property with the Office of Management and
18 Budget; the General Services Administration; the National Archives and Records
19 Administration; individuals at Coldwell Banker Richard Ellis; members of the press; members
20 of the public; and/or any public officials in the States of Washington, Oregon, Alaska, and/or
21 Idaho (including those at the federal, state, and/or local level).” Ex. A. The request was limited
22 in time from January 29, 2020 through the date of the request.

23 25. On March 10, 2021, the AGO received an electronic mail response from
24 courtney.d.johnson@pbrb.gov with an attached letter from PBRB Executive Director Adam
25 Bodner stating “[y]our request was received by the PBRB on February 25, 2021 . . . and assigned
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1 control number PBRB-2021-01.” The letter further stated “[t]he PBRB is in the process of
2 identifying records responsive to this request,” but it provided no additional information.

3 26. The PBRB was required by FOIA to respond to the FOIA Request by March 26,
4 2021.

5 27. The AGO has received no communication from the PBRB regarding its February
6 25, 2021 FOIA Request since the PBRB’s March 10, 2021 communication.

7 28. The PBRB has not notified the AGO that additional time is needed to process the
8 February 25, 2021 FOIA Request, nor has the PBRB asked the AGO to clarify or modify the
9 FOIA Request.

10 **VI. FIRST CLAIM FOR RELIEF**

11 **Violation of the Freedom of Information Act – Failure to Respond**
12 **5 U.S.C. § 552(a)(3), (a)(4)(B)**

13 29. Plaintiff realleges and incorporates by reference each of the allegations set forth
14 in the preceding paragraphs.

15 30. The PBRB violated FOIA by failing to respond to the FOIA Request for records
16 within 20 business days.

17 **VII. SECOND CLAIM FOR RELIEF**

18 **Violation of the Freedom of Information Act – Failure to Produce Records**
19 **5 U.S.C. § 552(a)(3), (a)(4)(B)**

20 31. Plaintiff realleges and incorporates by reference each of the allegations set forth
21 in the preceding paragraphs.

22 32. The PBRB further violated FOIA by failing to conduct searches reasonably
23 calculated to locate the requested records, and promptly provide records, or reasonably
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1 segregable portions of lawfully exempt responsive records, in response to the AGO's request for
2 records.

3 **VIII. PRAYER FOR RELIEF**

4 The State of Washington respectfully requests that this Court:

5 1. Declare that the PBRB violated FOIA by failing to make a determination on the
6 FOIA Request within the time period prescribed by law;

7 2. Declare that the PBRB violated FOIA by failing to conduct searches reasonably
8 calculated to locate the requested records, and promptly provide all responsive records;

9 3. Declare that the PBRB waived its right to request fees for processing the AGO's
10 request by failing to respond timely to the request;

11 4. Order the PBRB to provide a determination on the FOIA Request, at no cost to
12 the State of Washington;

13 5. Order the PBRB to conduct searches reasonably calculated to locate the requested
14 records, and release all records responsive to the FOIA Request within 20 days of this Court's
15 order, at no cost to the State of Washington;

16 6. Enjoin the PBRB from withholding agency records and order the production of
17 all agency records improperly withheld from the State of Washington;

18 7. Retain jurisdiction over this action to ensure the processing of the FOIA Request
19 is in compliance with FOIA and any orders of this Court;

20 8. Award Plaintiff its costs of litigation, including reasonable attorney fees as
21 provided by FOIA, and any other applicable provision of law; and

22 9. Grant such other relief as the Court may deem just and proper.
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1 RESPECTFULLY SUBMITTED this 27th day of April, 2021.

2
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Attorney General

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