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

STATE OF WASHINGTON,

Plaintiff,

v.

U.S. NATIONAL ARCHIVES AND  
RECORDS ADMINISTRATION, 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 U.S. National Archives and Records Administration (NARA) 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.<sup>1</sup> Two months have passed since the AGO submitted its new FOIA request, but NARA has not yet provided *any* substantive response to the

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<sup>1</sup> The AGO initially sought FOIA documents from NARA on this issue on February 3, 2020. After NARA 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. National Archives and Records Administration*, No. 2:20-cv-01232-RSL (W.D. Wash. 2020). Following initiation of litigation, NARA began providing the AGO with responsive materials. That case is still pending before the court.

1 State's request. NARA has not notified the AGO that additional time is needed to process the  
2 FOIA Request, nor has it asked the AGO to clarify or modify its FOIA request.

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

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

15 4. The PBRB's report recommending the sale of the Seattle facility (the PBRB  
16 Report<sup>2</sup>) proposed moving the federal records and archival materials at the Seattle facility to  
17 other NARA facilities in Kansas City, Missouri, and Riverside, California. OMB approved the  
18 PBRB's decision to sell the Seattle facility and eleven other federal properties on January 26,  
19 2020.

20 5. Neither PBRB nor OMB conducted outreach to state, local, or tribal officials prior  
21 to publicly announcing the sale of the facility housing the National Archives at Seattle. As a  
22 result, state, local, and tribal officials were not given the opportunity to present information  
23 detailing how the pending sale would harm them. There were also no public hearings in  
24 Washington, Idaho, Oregon, or Alaska, where members of the public could have provided input

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26 <sup>2</sup> <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 Pacific  
2 Northwest.

3 6. The PBRB Report states that NARA “indicated its willingness and desire to  
4 consolidate operations at more modern existing NARA facilities.” Regarding the effect that  
5 closing the facility might have on the public’s “access to services,” the PBRB Report states that  
6 “NARA ha[d] determined that it can fulfill its mission needs at the target relocation facilities.”

7 7. In October 2020, the PBRB posted meeting minutes on its website which  
8 disclosed that the PBRB had decided to bundle the National Archives at Seattle with the other  
9 eleven High Value Asset properties, and would bring all 12 properties to market by early 2021.<sup>3</sup>  
10 PBRB officials claimed that impact of the coronavirus pandemic on the commercial real estate  
11 market and the “need for certainty of sales proceeds” justified its new sales approach and  
12 timeline.<sup>4</sup>

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

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

21 10. Following that ruling, on April 8, 2021, OMB withdrew its January 24, 2020  
22 decision approving the PBRB’s recommendation to sell the Seattle facility. *Id.* at Dkt. #52-1. In  
23 its letter rescinding its approval, OMB stated that “the decision to approve the sale of the Federal  
24 Archives and Records Center is contrary to this Administration’s tribal-consultation policy.” *Id.*

25 <sup>3</sup> See PBRB website, Materials and Transcript of PBRB Meeting held on Oct. 1, 2020,  
26 <https://www.pbrb.gov/pbrb/files/2021/01/October-1-2020-Public-Meeting-Agenda-and-Presentation.pdf>.

<sup>4</sup> *Id.*

1           11.     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 the Seattle facility in the future. *See id.*

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

6           13.     The AGO's February 25, 2021 FOIA request sought various types of records  
7 including "[a]ll records and communications related to the potential consolidation or closure of  
8 any of the 14 regional NARA facilities, including but not limited to the National Archives at  
9 Seattle and the National Archives at San Francisco (San Bruno), from January 1, 2017 to  
10 February 24, 2021." The AGO sought such records because it learned from documents produced  
11 in response to a prior FOIA request that NARA, at least under the prior Administration, intended  
12 to allow both the National Archives at Seattle and the National Archives at San Francisco (San  
13 Bruno) to be sold under FASTA and consolidated with the National Archives at Riverside,  
14 leaving only one public NARA facility on the entire West Coast. *See, e.g., Ex. B.*

15           14.     The AGO's February 25, 2021 FOIA request also sought records regarding the  
16 condition of the Seattle facility based on statements by NARA that significant repairs must occur  
17 to the facility in order to ensure the long-term safety of the records at that facility.

18           15.     On March 1, 2021, the AGO received an electronic mail message from  
19 susan.gillett@nara.gov confirming NARA "received your new FOIA request . . . on February  
20 25, 2021." The electronic mail message listed an internal tracking number NGC21-311 in  
21 addition to a FOIA online tracking number NARA-NGC-2021-000575. The communication also  
22 referenced the AGO's request for a fee waiver and noted that the AGO's narrative provided  
23 sufficient information about the basis of its fee waiver request.

24           16.     The AGO has received no communication from NARA regarding the FOIA  
25 Request since the agency's initial electronic email messages confirming receipt.  
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1 17. In light of the critical regional importance of the records held at the National  
2 Archives of Seattle, Washingtonians and all residents of the Pacific Northwest, including the  
3 many federally-recognized tribes and native corporations in this region, deserve to know whether  
4 there are plans to consolidate NARA facilities and limit public access to federal archival records  
5 for the entire West Coast to one facility in Southern California. In addition, Washingtonians and  
6 all residents of the Pacific Northwest likewise deserve to understand the conditions of the Seattle  
7 facility and what repairs must be made in order to ensure the long-term safety of the documents  
8 held there, so that interested stakeholders can lobby and/or conduct outreach for the  
9 appropriations of such funds.

10 **II. JURISDICTION AND VENUE**

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

14 19. Venue is proper in this court under 5 U.S.C. § 552(a)(4)(B), as the FOIA Request  
15 was issued from a State of Washington office in Seattle, in the Western District of Washington.

16 20. Because NARA failed to respond to the FOIA Request, or even to notify the AGO  
17 of an extension of time, within 20 business days, no administrative appeal is required under  
18 5 U.S.C. § 552(a)(6)(C).

19 **III. PARTIES**

20 21. Plaintiff State of Washington is a sovereign entity and brings this action to protect  
21 its own sovereign and proprietary rights, and as *parens patriae* on behalf of its affected citizens  
22 and residents. The Attorney General is the chief legal adviser to the State of Washington. The  
23 Attorney General’s powers and duties include acting in federal court on matters of public  
24 concern. This challenge is brought pursuant to the Attorney General’s independent  
25 constitutional, statutory, and common law authority to bring suit and obtain relief on behalf of  
26 the State of Washington.

1           22. Defendant National Archives and Records Administration is an agency of the  
2 United States. NARA has possession of and control over the records sought by the AGO in its  
3 February 25, 2021 FOIA Request.

#### 4                                   IV. STATUTORY BACKGROUND

5           23. FOIA requires agencies to “make available to the public information.”  
6 5 U.S.C. § 552(a). Any information subject to FOIA must be disclosed. “[E]ach agency, upon  
7 any request for records . . . shall make the records promptly available to any person.”  
8 *Id.* § 552(a)(3).

9           24. “[U]pon any request for records made under [§ 552(a)](1), (2), or (3),” an agency  
10 has 20 business days to determine whether to comply. *Id.* § 552(a)(6)(A). NARA’s FOIA  
11 regulations also require a response within 20 days or notification to the requester that  
12 “complicating factors” prevent NARA from making a decision within 20 working days.  
13 36 C.F.R. § 1250.26.

14           25. An agency may only withhold documents that fall within one of the enumerated  
15 exemptions from FOIA. If an agency withholds documents, it must provide a “*Vaughn* Index”  
16 that adequately identifies the specific documents withheld. *See Vaughn v. Rosen*, 484 F.2d 820,  
17 827 (D.C. Cir. 1973). “A withholding agency must describe *each* document or portion thereof  
18 withheld, and for *each* withholding it must discuss the consequences of disclosing the  
19 sought-after information.” *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987)  
20 (emphasis in original); *see also Wiener v. FBI*, 943 F.2d 972, 978 (9th Cir. 1991) (requiring a  
21 *Vaughn* Index and finding it inadequate); *Andrus v. United States Dep’t of Energy*, 200 F. Supp.  
22 3d 1093, 1105 (D. Idaho 2016) (same).

23           26. A court may review an agency’s decision to withhold documents, and “the burden  
24 is on the agency to sustain its action.” 5 U.S.C. § 552(a)(4)(B). An agency cannot justify its  
25 withholding by offering nothing more than “[c]onclusory and generalized allegations.”  
26 *Nat’l Parks & Conservation Ass’n v. Kleppe*, 547 F.2d 673, 680 (D.C. Cir. 1976). When the

1 agency fails to sustain its burden, the court may “order the production of any agency records  
2 improperly withheld from the complainant.” 5 U.S. C. § 552(a)(4)(B).

3 **V. STATEMENT OF FACTS**

4 27. On February 25, 2021, the AGO submitted a request for certain documents to  
5 NARA, via both electronic mail and the U.S. Postal Service. *See* Ex. A.

6 28. The AGO’s February 25, 2021 FOIA Request sought:

7 a. “All records and communications related to the Federal Archives and  
8 Records Center (including the National Archives at Seattle) located at 6125 Sand Point  
9 Way NE, Seattle, WA 98115.

10 i. “This request includes, but is not limited to, communications regarding  
11 the above identified property with the Public Buildings Reform Board;  
12 the General Services Administration; the Office of Management and  
13 Budget; individuals at Coldwell Banker Richard Ellis; members of the  
14 press; members of the public; and/or any public officials in the States of  
15 Washington, Oregon, Alaska, and/or Idaho (including those at the federal,  
16 state, and/or local level).

17 ii. “This request applies to records created or transmitted at any time from  
18 January 29, 2020 through the date of this request.

19 b. “All records and communications related to tribal consultation from  
20 January 29, 2020 through the date of this request.

21 c. “All records and communications related to the 2017 Facility Condition  
22 Assessment conducted by the General Services Administration on the Federal Archives  
23 and Records Center (including the National Archives at Seattle) located at 6125 Sand  
24 Point Way NE, Seattle, WA 98115 from January 1, 2017 to May 10, 2019.

25 d. “All records and communications related to the conditions of the  
26 building(s) and/or facility(ies) of the Federal Archives and Records Center (including the

1 National Archives at Seattle) located at 6125 Sand Point Way NE, Seattle, WA 98115,  
2 from January 1, 2017 to May 10, 2019.

3 e. “All records and communications, including but not limited to  
4 communications with the National Archives and Records Administration (NARA),  
5 related to options to allow for NARA’s continued presence in the Seattle area and/or  
6 Washington State and/or the Pacific Northwest region, from January 1, 2017 to May 10,  
7 2019.

8 f. “All records and communications related to the potential consolidation or  
9 closure of any of the 14 regional NARA facilities, including but not limited to the  
10 National Archives at Seattle and the National Archives at San Francisco (San Bruno),  
11 from January 1, 2017 to February 24, 2021.”

12 29. On March 1, 2021, the AGO received an electronic mail message from  
13 susan.gillett@nara.gov confirming NARA “received your new FOIA request . . . on February  
14 25, 2021” with the “FOIAonline tracking number NARA-NGC-2021-000575.”

15 30. NARA was required by FOIA to respond to the FOIA Request by March 30,  
16 2021.

17 31. The AGO has received no communication from NARA regarding the FOIA  
18 Request since the initial March 1, 2021 electronic email message confirming receipt.

19 32. NARA has not notified the AGO that additional time is needed to process the  
20 February 25, 2021 FOIA Request, nor has NARA asked the AGO to clarify or modify the FOIA  
21 request.



**VI. FIRST CLAIM FOR RELIEF**

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

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

34. NARA violated FOIA by failing to respond to the FOIA Request for records within 20 business days.

**VII. SECOND CLAIM FOR RELIEF**

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

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

36. NARA further violated FOIA by failing to conduct searches reasonably calculated to locate the requested records, and promptly provide records, or reasonably segregable portions of lawfully exempt responsive records, in response to the AGO's request for records.

**VIII. PRAYER FOR RELIEF**

The State of Washington respectfully requests that this Court:

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

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

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

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

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

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

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

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

9. Grant such other relief as the Court may deem just and proper.

RESPECTFULLY SUBMITTED this 27th day of April 2021.

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