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9 Attorneys for Plaintiffs
NATIONAL PUBLIC RADIO, INC., and ERIC WESTERVELT

10
11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 OAKLAND DIVISION

14 NATIONAL PUBLIC RADIO, INC., and ERIC
15 WESTERVELT,

16 Plaintiffs,

17 v.

18 FEDERAL BUREAU OF INVESTIGATION;
19 DISTRICT OF COLUMBIA ARMY
NATIONAL GUARD; and U.S. PARK POLICE,

20 Defendants.

Case No. 4:22-cv-03204

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF FOR VIOLATION
OF THE FREEDOM OF INFORMATION
ACT, 5 U.S.C. § 552 et seq.**

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1 Plaintiffs National Public Radio, Inc., and Eric Westervelt (“Plaintiffs” or “NPR”), by its
2 undersigned attorneys, allege as follows:

3 **INTRODUCTION**

4 1. In late May of 2020, protesters demonstrated in Washington, D.C., over the death
5 of George Floyd. They demonstrated near the White House, including in Lafayette Square, a park
6 across from the White House. There were reports of injuries to officers of the U.S. Park Police on
7 May 30 and 31. On June 1, President Donald Trump decided to walk across the street from the
8 White House to St. John’s Church, which had been damaged during a protest the night before. He
9 posed outside the church holding a Bible. To facilitate this event, a large crowd of protesters in
10 Lafayette Square (which abuts St. John’s Church) were forcibly removed from the area. These
11 peaceful protesters were cleared from the park (before being given any warnings to disperse) by
12 various law enforcement groups using riot shields, batons, pepper spray, and tear gas. The U.S.
13 Park Police later issued a report stating that the area had been cleared to allow a contractor to
14 install anti-scale fencing in response to the destruction of property and injury to officers on May
15 30 and 31. However the fencing materials did not arrive until hours after the park was cleared.
16 Attorney General William Barr was seen in the park late in the afternoon of June 1, and he
17 expressed surprise that the protesters had not been cleared yet. Nearly two years later, numerous
18 questions remain as to who ordered the area cleared, when, how it was communicated and carried
19 out, and for what purpose and how.

20 2. Starting on June 24, 2021, National Public Radio, Inc., Reporter Eric Westervelt
21 made FOIA requests to three governmental agencies requesting information on the incidents in
22 Lafayette Square. More than nine months after Plaintiffs made its FOIA Requests, no responsive
23 documents have been produced from the District of Columbia Army National Guard (“National
24 Guard”), the Federal Bureau of Investigation (“FBI”), and minimal documents have been
25 produced by the U.S. Park Police (“Park Police”).

26 3. Plaintiffs bring this action under the Freedom of Information Act, 5 U.S.C. § 552 *et*
27 *seq.*, as amended (“FOIA”), to enjoin the FBI, the National Guard, and the Park Police from
28 continuing to improperly withhold agency records that are responsive to the FOIA requests

1 Plaintiffs sent starting in June 2021 (the “FOIA Requests”). This FOIA action is necessary
 2 because Defendants continue to withhold responsive records since Plaintiffs made the FOIA
 3 Requests over three months ago, a constructive denial of the FOIA Requests.

4 4. The Freedom of Information Act “‘focuses on the citizens’ right to be informed
 5 about ‘what their government is up to,’” by requiring the release of “[o]fficial information that
 6 sheds light on an agency’s performance of its statutory duties.” *DOJ v. Reporters Comm. for*
 7 *Freedom of the Press*, 489 U.S. 749, 750, 773 (1989) (citation omitted). “[D]isclosure, not
 8 secrecy, is the dominant objective” of FOIA. *Dep’t of Interior v. Klamath Water Users Protective*
 9 *Ass’n*, 532 U.S. 1, 8 (2001) (internal quotation marks and citations omitted). NPR plays a critical
 10 role in providing information to citizens about “what their government is up to.” Indeed, the First
 11 Amendment’s guarantee of freedom of the press is meant to enable journalists to play an “essential
 12 role in our democracy,” to “bare the secrets of government and inform the people.” *New York*
 13 *Times. Co. v. United States*, 403 U.S. 713, 717 (1971) (Black, J. concurring).

14 5. Through its FOIA Requests, Plaintiffs seek to fulfill their journalistic function and
 15 to shine a public light on information about the clearing of Lafayette Square.

16 **PARTIES**

17 6. Plaintiff National Public Radio, Inc., is an independent, nonprofit media
 18 organization that was founded on a mission to create a more informed public. It provides non-
 19 commercial news, information and entertainment programming to the American public. NPR’s
 20 fact-based, independent journalism helps the public monitor breaking news, follow the most
 21 critical stories of the day, and track complex issues over the long term. NPR reaches
 22 approximately 53 million people on broadcast radio, podcasts, NPR apps, NPR.org and YouTube
 23 video content per week. NPR distributes its radio broadcasts through more than 1,000 non-
 24 commercial, independently operated radio stations, licensed to more than 250 NPR members and
 25 numerous other NPR-affiliated entities.

26 7. Plaintiff Eric Westervelt is a resident and citizen of the state of California and an
 27 investigative reporter who works as for NPR from an office in Berkeley, California.

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1 they requested in their FOIA Request, and there exists no “exceptional circumstances” or legal
2 basis for Defendant Park Police’s failure to fully respond to Plaintiffs’ FOIA Request and to make
3 these records available.

4 29. Defendants’ failure to make promptly available the records sought by Plaintiffs’
5 FOIA Requests violates FOIA, 5 U.S.C. § 552(a)(3)(A) and (a)(6)(A)(ii), and applicable
6 regulations promulgated thereunder.

7 30. Plaintiffs are entitled to declaratory relief finding that Defendants have violated
8 FOIA and are immediately entitled to receive all records responsive to their requests.

9 31. Plaintiffs are further entitled to injunctive relief, ordering Defendants to
10 immediately produce copies of all records responsive to Plaintiffs’ FOIA Requests without further
11 delay.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs request the Court award them the following relief:

14 A. Declare that Defendants violated FOIA in their response to Plaintiffs’ FOIA
15 Requests;

16 B. Order Defendants to immediately disclose the requested records to Plaintiffs and
17 enter an injunction prohibiting Defendants from continuing to withhold the requested records;

18 C. Order Defendants to immediately disclose any responsive records in their
19 possession or control to Plaintiffs;

20 D. Award Plaintiffs their reasonable costs and attorney’s fees;

21 E. Grant such further relief as the Court may deem just and proper.

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23 Dated: June 1, 2022

Respectfully submitted,
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26 By: /s/ Thomas R. Burke
THOMAS R. BURKE

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