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8 IN THE UNITED STATES DISTRICT COURT  
 9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 Tri-Valley Communities Against a  
 11 Radioactive Environment,

12 Plaintiff,

13 v.

14 UNITED STATES DEPARTMENT OF  
 15 ENERGY and NATIONAL NUCLEAR  
 16 SECURITY ADMINISTRATION, an  
 17 agency of the U.S. Department of Energy,

18 Defendants.

) Case No. cv-22-7195  
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**COMPLAINT FOR DECLARATORY  
 AND INJUNCTIVE RELIEF**

19  
 20 **I. INTRODUCTION**

21 1. Plaintiff Tri-Valley Communities Against a Radioactive Environment (hereinafter  
 22 “Tri-Valley CAREs”), brings this action to redress violations of the Freedom of Information Act  
 23 5 U.S.C. § 552 (1966). Congress enacted FOIA to provide members of the public the right of  
 24 access to federal agency records, except for those records (or portions thereof) that are protected  
 25 from disclosure by exemptions and exclusions. Plaintiff challenges the failure of defendants  
 26 United States Department of Energy (hereinafter “DOE”) and National Nuclear Security  
 27 Administration (hereinafter “NNSA”), to provide all responsive, non-exempt, and non-excluded  
 28 records (or portions thereof) requested by plaintiff in eight separate FOIA request made to

1 defendants, seeking agency records pertaining to DOE and NNSA operations and activities.  
2 Defendants have failed to respond to FOIA requests in a timely manner, as provided by the  
3 statute, and this conduct amounts to a constructive denial of these requests. Thus, defendants  
4 have improperly withheld agency records from the plaintiff. Additionally, by repeatedly  
5 violating FOIA's statutory requirements, defendants exhibit a pattern and practice of violating  
6 FOIA.

## 7 **II. JURISDICTION, VENUE, AND BASIS FOR RELIEF**

8 2. This Court has jurisdiction over this matter pursuant to 5 U.S.C. § 552(a)(4)(B)  
9 (FOIA citizen suit provision) and 28 U.S.C. § 1331 (federal question) because this action arises  
10 under FOIA and the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*

11 3. Venue in this Court is proper because plaintiff resides in this district. *See* 5 U.S.C. §  
12 552(a)(4)(B); 28 U.S.C. § 1391(e).

13 4. Declaratory relief is appropriate under 28 U.S.C. § 2201 and 5 U.S.C. § 552(a)(4)(F).

14 5. Injunctive relief is appropriate pursuant to 28 U.S.C. § 2202.

## 15 **III. PARTIES**

16 6. Plaintiff Tri-Valley CAREs is a non-profit public benefit corporation organized under  
17 the laws of the State of California. Tri-Valley CAREs' offices are located at 4049 First Street in  
18 Livermore, California. Tri-Valley CAREs is a community-based environmental organization  
19 that was founded in 1983 by concerned neighbors living around Lawrence Livermore National  
20 Laboratory (hereinafter "LLNL"), a DOE NNSA site where research, design, and development  
21 of nuclear weapons is conducted. Tri-Valley CAREs monitors nuclear weapons and  
22 environmental cleanup activities throughout the national nuclear weapons complex, with a  
23 special focus on LLNL and the surrounding communities. Tri-Valley CAREs' overarching  
24 mission is to promote peace, justice, and a healthy environment. Tri-Valley CAREs monitors  
25 environmental cleanup at LLNL's main site and its Site 300 Experimental Test Site, both of  
26 which are on the federal "Superfund" list of the most contaminated sites in the nation. Tri-  
27 Valley CAREs provides direct services for workers made ill by on-the-job exposures at  
28 Livermore Lab. Tri-Valley CAREs publishes and distributes a free newsletter, as well as fliers,

1 fact sheets, web content and technical reports; information derived from FOIA requests is  
2 regularly used in the preparation of these materials. Tri-Valley CAREs maintains a community  
3 “reading room” at its office in Livermore and a website at [www.trivalleycares.org](http://www.trivalleycares.org) as part of its  
4 commitment to public outreach and education. A major, founding goal of Tri-Valley CAREs is  
5 to investigate and achieve remedies for the public health and environmental threats posed by  
6 LLNL. Tri-Valley CAREs currently has approximately 5,600 members, the majority of whom  
7 reside or work in the vicinity of LLNL. Tri-Valley CAREs brings this action on its own behalf  
8 and on behalf of its adversely affected members.

9 7. Plaintiff suffers an informational harm by being denied access to the requested  
10 records. Plaintiff’s injuries can be redressed by this suit and granting of the remedies requested  
11 herein.

12 8. Defendant United States Department of Energy is a federal agency whose  
13 overarching mission is to advance the national, economic, and energy security of the nation; to  
14 promote scientific and technological innovation in support of that mission; and to ensure the  
15 environmental cleanup of the national nuclear weapons complex. DOE is in possession and  
16 control of the records sought by plaintiff. As an agency of the executive branch of the United  
17 States government, DOE is subject to FOIA pursuant to 5 U.S.C. § 552(f).

18 9. Defendant United States National Nuclear Security Administration, a separately  
19 organized agency within the U.S. Department of Energy, is responsible for the management and  
20 security of the nation’s nuclear weapons, nuclear nonproliferation, and naval reactor programs.  
21 NNSA is in possession and control of the records sought by plaintiff. As an agency of the  
22 executive branch of the United States government, NNSA is subject to FOIA pursuant to 5  
23 U.S.C. § 552(f).

24 **IV. LEGAL FRAMEWORK OF FOIA RELEVANT TO CLAIM**

25 10. FOIA requires, *inter alia*, that all federal agencies must promptly provide copies of  
26 all non-exempt and non-excluded agency records (or portions thereof) to those persons who  
27 make requests for records that reasonably describe such records and are made in conformance  
28 with applicable rules and procedures. *See* 5 U.S.C. § 552(a)(3)(A).

1 11. FOIA requires a federal agency to make a final determination on all FOIA requests  
2 that it receives within twenty days (excepting Saturdays, Sundays, and legal public holidays)  
3 after the receipt of such request, unless the agency provides notice to the requester of “unusual  
4 circumstances” meriting additional time for responding to a FOIA request. 5 U.S.C. §  
5 552(a)(6)(A)-(B).

6 12. FOIA expressly provides that in instances of “unusual circumstances,” an agency  
7 may delay its response to a FOIA request or appeal for up to 10 working days, but must provide  
8 written notice and must also provide “the date on which a determination is expected to be  
9 dispatched.” 5 U.S.C. § 552(a)(6)(B)(i).

10 13. Agencies are required to establish a telephone line or Internet service for requesters  
11 to inquire about the status of FOIA requests in which the agency claims “unusual  
12 circumstances.” This service must provide requesters with an estimated date that the agency will  
13 complete their action. 5 U.S.C. §552(a)(7)(B)(ii).

14 14. FOIA expressly provides that persons shall be deemed to have exhausted their  
15 administrative remedies if the agency fails to comply with the applicable time limitations  
16 provided by 5 U.S.C. § 552(a)(6)(A)(i)-(ii). 5 U.S.C. § 552(a)(6)(C).

17 15. FOIA provides that any person who has not been provided records requested  
18 pursuant to FOIA, after exhausting their administrative remedies, may seek legal redress from  
19 an appropriate federal district court to “enjoin the agency from withholding agency records and  
20 to order the production of any agency records improperly withheld from the complainant.” 5  
21 U.S.C. § 552(a)(4)(B).

22 16. Under FOIA, a federal agency has the burden to sustain its actions. 5 U.S.C. §  
23 552(a)(4)(B).

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

26 18. Pursuant to the Equal Access to Justice Act, this Court may assess the costs of  
27 disbursements and costs of litigation, including reasonable attorney and expert witness fees  
28 against the United States if plaintiff substantially prevails in this action. 28 U.S.C. § 2412.

1           **V.       FACTUAL ALLEGATIONS FOR PLAINTIFF’S FOIA REQUEST**

2                   **Plaintiff’s June 19, 2019 FOIA Request to NNSA: FOIA 19-00254-R**

3           19. On or about June 19, 2019 plaintiff sent a FOIA request to NNSA seeking any and  
4 all documentation regarding Occurrence Report NA--LSO-LLNL-LLNL-2018-0029 from  
5 10/01/18 at Lawrence Livermore National Laboratory, (“LLNL”). Including the following;

- 6                   • Any and all documents pertaining to the missing radioactive materials.  
7  
8                   • The damage report filed by LLNL with FedEx and any FedEx responses,  
9 correspondence, emails, meeting notes, penalties, fines, or notices.  
10  
11                  • Any and all documents pertaining to potential or actual worker exposures, testing done  
12 to determine if workers were exposed, notices to workers and monitoring of worker  
13 health at FedEx facilities where the incident occurred.  
14  
15                  • Any and all documents pertaining to lessons learned and corrective actions.

16           20. On or about July 3rd, 2019, NNSA sent Tri-Valley CAREs an email acknowledging  
17 receipt of request and providing the control number: 19-00254-R.

18           21. On July 25<sup>th</sup> 2019, Tri-Valley CAREs sent the NNSA Office of General Counsel a  
19 Notice of Statutory Violation Letter regarding the request.

20           22. On November 9<sup>th</sup> 2022, Tri-Valley CAREs sent the NNSA Office of General  
21 Counsel a Notice of Statutory Violation Letter regarding the request.

22           To date, no responsive documents have been provided, nor any estimated date of  
23 completion given.

24                   **Plaintiff’s June 19, 2019 FOIA Request to NNSA: FOIA 19-00256-M**

25           23. On or about June 19, 2019 plaintiff sent a FOIA request to NNSA seeking any and  
26 all documents pertaining to Unusual Occurrence Report Number: NA--LSO-LLNL-LLNL-  
27 2018-0016 regarding Ventilation Capabilities in Building 132 at the Lawrence Livermore  
28 National Laboratory from 5/11/18.

- Any and all documents pertaining to worker complaints and/or reports related to  
ventilation issues in Building 132 since 1/1/2015.

1 • Any and all documents pertaining to the investigation mentioned in the Unusual  
2 Occurrence Report.

3 • Any and all documents pertaining to the investigation mentioned in the Unusual  
4 Occurrence Report

5 • Any and all documents pertaining to lessons learned and corrective actions that have  
6 been taken due to the reported ventilation problem in building 132.

7 • Any and all documents pertaining to the current status of building 132

8 24. On or about June 25, 2019, NNSA sent Tri-Valley CAREs an email acknowledging  
9 receipt of request and providing the control number: 19-00256-M.

10 25. On July 25<sup>th</sup> 2019, Tri-Valley CAREs sent the NNSA Office of General Counsel a  
11 Notice of Statutory Violation Letter regarding the request.

12 26. On September 20, 2022, Tri-Valley CAREs sent the NNSA Office of General  
13 Counsel a Notice of Statutory Violation Letter regarding the request.

14 To date, no responsive documents have been provided, nor any estimated date of  
15 completion given.

16 **Plaintiff's June 19, 2019 FOIA Request to NNSA: 19-00285-M**

17 27. On or about July 24, 2019 plaintiff sent a FOIA request to NNSA seeking any and  
18 all documents pertaining to Occurrence Report Number: NA--LSO-LLNL-LLNL-2018-0031  
19 regarding the failure of a Tritium room monitor in building 331 and the potential exposure of  
20 workers to this radioactive material from 10/25/18.

21 • Any and all documents, reports, communications, emails, and investigations pertaining  
22 to the 10/25/18 incident.

23 • Any and all documents about lessons learned and follow up to the incident.

24 • Any and all documents pertaining to the cleanup of the incident and the possibility or  
25 potential for worker exposures to radioactive or toxic substances.

26 • Any and all documents pertaining to actual worker exposures due to the incidents to  
27 any toxic or radioactive substances.

28 28. On or about June 25, 2019, NNSA sent Tri-Valley CAREs an email acknowledging

1 receipt of request and providing the control number: 19-00256-M.

2 29. On July 25<sup>th</sup> 2019, Tri-Valley CAREs sent the NNSA Office of General Counsel a  
3 Notice of Statutory Violation Letter regarding the request.

4 30. On September 20, 2022, Tri-Valley CAREs sent the NNSA Office of General  
5 Counsel a Notice of Statutory Violation Letter regarding the request.

6 To date, no responsive documents have been provided, nor any estimated date of  
7 completion given.

8 **Plaintiff's January 30, 2020 FOIA Request to NNSA: 20-00077-M**

9 31. On or about January 30, 2020 plaintiff sent a FOIA request to NNSA  
10 seeking; 1) any and all documents relating to the two air shipments of special nuclear  
11 material, including, but not limited to plutonium, from Los Alamos National Laboratory  
12 in June 2017. One shipment was sent to Lawrence Livermore National Laboratory and  
13 on to Savannah River Site. 2) Any and all information pertaining to what the  
14 programmatic need for the special nuclear material led to it being shipped with such  
15 haste. 3) This request includes, but is not limited to:

16 a) Any and all follow up investigations;

17 b) Interagency communications about the shipments (both pre and post  
18 shipment), with other agencies about the shipments including the USDOT for example  
19 (both pre and post shipment), communications with the shipper (FedEx) about the  
20 shipments (both pre and post shipment);

21 c) Lessons learned, corrective actions, Contractor disciplinary actions, Employee  
22 Disciplinary actions.”

23 32. On or about February 7, 2020 NNSA sent Tri-Valley CAREs an email  
24 acknowledging receipt of request and providing the control number: 20-00077-M.

25 33. On September 20, 2022, Tri-Valley CAREs sent the NNSA Office of General  
26 Counsel a Notice of Statutory Violation Letter regarding the request.

27 To date, no responsive documents have been provided, nor any estimated date of  
28 completion given.

**Plaintiff's February 23, 2022 FOIA Request to NNSA: 22-00122-LB**

34. On or about February 23, 2022 plaintiff sent a FOIA request to NNSA seeking; "Full FY2021 Performance Evaluation Reports for all of the sites reviewed, including but not limited to: Lawrence Livermore National Laboratory, Los Alamos National Laboratory, Nevada National Security Site, Kansas City National Security Campus, NNSA Production Office, Sandia National Laboratories (NM and CA), and Savannah River Site."

35. On or about February 24, 2022 NNSA sent Tri-Valley CAREs an email acknowledging receipt of request and providing the control number: 22-00122-LB.

36. On August 10, 2022, Tri-Valley CAREs sent the NNSA Office of General Counsel a Notice of Statutory Violation Letter regarding the request.

37. On August 18, 2022. Lora Bright, FOIA/PA Analyst DOE/NNSA responded via email thanking Tri-Valley CAREs for their "inquiry about FOIA 22-00122-LB." She further stated, "The 2021 PERS documents you requested are currently under review and are part of a litigation in another matter. We're working through the legal issues and hope to resolve them soon. I will be out of the office for the next two weeks and will check the status of these PERS upon my return. I'll try to give you another update by September 9, 2022."

To date, no responsive documents have been provided, nor any estimated date of completion given.

**Plaintiff's March 24, 2022 FOIA Request to NNSA: 22-00148-R**

38. On or about March 24, 2022 plaintiff sent a FOIA request to NNSA seeking the following; "In the FY 2021 Performance evaluation Summary for Lawrence Livermore National Security LLC, it is noted that the Contained Firing Facility (CFF) has been down since June 2021. We request any and all documents related to the CFF from March 2021 to the date of search."

39. On or about March 31, 2022 NNSA sent Tri-Valley CAREs an email acknowledging receipt of request and providing the control number: 22-00148-R.

40. On or about April 6, 2022, Roberto Marquez, Government Information Specialist



1 Team Lead from the NNSA Office of General Counsel emailed Tri-Valley CAREs Staff  
2 Attorney, Scott Yundt, requesting that plaintiff “Narrow the Scope of Your Request.” The email  
3 further stated that, “The request for records is overly broad.”

4 41. On or about April 13, 2022 Tri-Valley CAREs Staff Attorney responded to the  
5 request via email narrowing the request to “any and all documents relating to the closure of CFF  
6 within the stated timeframe. (Rather than just and all documents relating to CFF).”

7 42. On or about April 14, 2022, Mr. Marquez responded via email stating, “I have  
8 forwarded your response to the site office conducting the search for records.”

9 43. On or about July 6, 2022, Mr. Marquez again emailed Mr. Yundt stating, “Regarding  
10 ‘Narrowing the Search for Records,’ the site office states the following:

11 • “The program believes it is too burdensome to just try to find any and all documents”  
12 regarding the closure of the CFF, but wanted to offer the Incident Analysis (IA) report, which  
13 pulls together a variety of sources and deals with both the events leading up to the closure and  
14 the aftermath of that closure. This report also contains a number of attachments.

15 • The program was hoping the requester would accept this IA report as a responsive  
16 document with the option they could then ask for follow-up documents in a more targeted way.

17 44. On or about July 6, 2022, Mr. Yundt responded via email stating, “This sounds like a  
18 good place to start. It is hard to know if it will satisfy our inquiry without seeing the document  
19 first. Will asking for follow up documents in a more targeted way be done with new FOIA  
20 requests or will this request remain open while we review the aforementioned documents until  
21 we communicate that we are satisfied with the document production?”

22 45. On or about July 6, 2022, Mr. Marquez responded via email, “Thank you for the  
23 quick response. I have forwarded your question to the site office. More to follow!”

24 To date, no responsive documents have been provided, nor any estimated date of  
25 completion given.

26 **Plaintiff’s April 14, 2022 FOIA Request to NNSA: 22-00168-LB**

27 46. On or about April 14, 2022 plaintiff sent a FOIA request to NNSA seeking;  
28 “Documents regarding Lawrence Livermore National Security, LLC’s failure to ‘meet

1 some W-80-4 milestones and W87-1 Scope and deliverables' according to the Fiscal  
2 year 2021 Performance Evaluation Report Summary.”

3 47. On or about April 14, 2022 NNSA sent Tri-Valley CAREs an email acknowledging  
4 receipt of request and providing the control number: 20-00168-LB.

5 48. On or about August 10, 2022, Tri-Valley CAREs sent the NNSA Office of General  
6 Counsel a Notice of Statutory Violation Letter regarding the request.

7 49. On or about August 18, 2022. Lora Bright, FOIA/PA Analyst DOE/NNSA  
8 responded via email thanking Tri-Valley CAREs for their “inquiry about FOIA 22-00168-LB.”  
9 She further stated, “I reached out to the Livermore Field Office for a status update and will  
10 follow up again upon my return from leave. As with other request, I’ll try to give you another  
11 update by September 9, 2022.”

12 To date, no responsive documents have been provided, nor any estimated date of  
13 completion given.

14 **Plaintiff’s June 29, 2022 FOIA Request to NNSA: 22-00235-AG**

15 50. On or about June 29, 2022 plaintiff sent a FOIA request to NNSA seeking a  
16 specific document titled; “Lawrence Livermore National Laboratory, Packaging  
17 Requirements, for Storage of LANL and LLNL Pits (U), RM257919, Issue J, November  
18 6, 2018.”

19 51. On or about July 5, 2022 NNSA sent Tri-Valley CAREs an email acknowledging  
20 receipt of request and providing the control number: 22-00235-AG.

21 To date, no responsive documents have been provided, nor any estimated date of  
22 completion given.

23 **VI. CLAIMS FOR RELIEF**

24 **Count I: Violation of the Freedom of Information Act: FOIA 19-00254-R**

25  
26 52. The allegations made in all preceding paragraphs are realleged and incorporated by  
27 reference herein.

28 53. Defendants violated FOIA by failing to provide plaintiff with the responsive, non-

1 exempt records, and non-excluded records (or portions thereof), requested by plaintiff in their  
2 June 19, 2019 FOIA request to NNSA in a manner consistent with the 20-day statutory period,  
3 or within 10 additional days if defendant claimed unusual circumstances existed.

4 54. By failing to provide plaintiff with any records responsive to the June 19, 2019  
5 FOIA request to NNSA, defendants have denied plaintiff's right to this information provided by  
6 law under the Freedom of Information Act.

7 55. Unless enjoined by this Court, defendants will continue to violate plaintiff's legal  
8 rights to access the records requested in plaintiff's June 19, 2019 FOIA request to NNSA.

9 56. Plaintiff is directly and adversely affected and aggrieved by defendants' failure to  
10 provide all non-exempt and non-excluded records (or portions thereof) responsive to its June  
11 19-2019 FOIA request to NNSA.

12 57. Defendants violated FOIA by failing to provide plaintiff with an estimated date of  
13 dispatch of the record as requested by plaintiff in their June 19, 2019 correspondence. 5 U.S.C.  
14 §552(a)(6)(B)(i).

15 58. Defendants violated FOIA by failing to establish a telephone line or Internet service  
16 for plaintiff to inquire about the status of this FOIA request that would specifically provide  
17 plaintiff with an estimated date by which the agency would complete its action on this request. 5  
18 U.S.C. §552(a)(7)(B)(ii).

19 59. Plaintiff has fully exhausted all administrative remedies required by FOIA prior to  
20 seeking judicial review of defendants' failure to provide all non-exempt and non-excluded  
21 records (or portions thereof) responsive to their June 19, 2019 FOIA request to NNSA.

22 60. Plaintiff has suffered a legal wrong as a result of defendants' failure to comply with  
23 the mandates of FOIA. Defendants' failure to disclose all non-exempt and non-excluded records  
24 (or portions thereof) responsive to plaintiff's June 19, 2019 request to NNSA has injured  
25 plaintiff's interests in public oversight of governmental operations.

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

28 62. Plaintiff is entitled to costs of disbursements and costs of litigation, including

1 reasonable attorney and expert witness fees, under the Equal Access to Justice Act, 28 U.S.C. §  
2 2412.

3 **Count II: Violation of the Freedom of Information Act: FOIA 19-00256-M**

4 63. The allegations made in all preceding paragraphs are realleged and incorporated by  
5 reference herein.

6 64. Defendants violated FOIA by failing to provide plaintiff with the responsive, non-  
7 exempt records, and non-excluded records (or portions thereof), requested by plaintiff in their  
8 June 19, 2019 FOIA request to NNSA in a manner consistent with the 20-day statutory period,  
9 or within 10 additional days if defendant claimed unusual circumstances existed.

10 65. By failing to provide plaintiff with any records responsive to their June 19, 2019  
11 FOIA request to NNSA, defendants have denied plaintiff's right to this information provided by  
12 law under the Freedom of Information Act.

13 66. Unless enjoined by this Court, defendants will continue to violate plaintiff's legal  
14 rights to access the records requested in plaintiff's June 19, 2019 FOIA request to NNSA.

15 67. Plaintiff is directly and adversely affected and aggrieved by defendants' failure to  
16 provide all non-exempt and non-excluded records (or portions thereof) responsive to the June  
17 19, 2019 FOIA request to NNSA.

18 68. Defendants violated FOIA by failing to provide plaintiff with an estimated date of  
19 dispatch of the record as requested by plaintiff in their June 19, 2019 correspondence. 5 U.S.C.  
20 §552(a)(6)(B)(i). 33.

21 69. Defendants violated FOIA by failing to establish a telephone line or Internet service  
22 for plaintiff to inquire about the status of this FOIA request that would specifically provide  
23 plaintiff with an estimated date by which the agency would complete its action on this request. 5  
24 U.S.C. §552(a)(7)(B)(ii).

25 70. Plaintiff has fully exhausted all administrative remedies required by FOIA prior to  
26 seeking judicial review of defendants' failure to provide all non-exempt and non-excluded  
27 records (or portions thereof) responsive to their June 19, 2019 FOIA request to NNSA.

28 71. Plaintiff has suffered a legal wrong as a result of defendants' failure to comply with

1 the mandates of FOIA. Defendants' failure to disclose all non-exempt and non-excluded records  
2 (or portions thereof) responsive to plaintiff's June 19, 2019 request to NNSA has injured  
3 plaintiff's interests in public oversight of governmental operations.

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

6 73. Plaintiff is entitled to costs of disbursements and costs of litigation, including  
7 reasonable attorney and expert witness fees, under the Equal Access to Justice Act, 28 U.S.C. §  
8 2412.

9 **Count III: Violation of the Freedom of Information Act: FOIA 19-00285-M**

10 74. The allegations made in all preceding paragraphs are realleged and incorporated by  
11 reference herein.

12 75. Defendants violated FOIA by failing to provide plaintiff with the responsive, non-  
13 exempt records, and non-excluded records (or portions thereof), requested by plaintiff in their  
14 July 24, 2019 FOIA request to NNSA in a manner consistent with the 20-day statutory period,  
15 or within 10 additional days if defendant claimed unusual circumstances existed.

16 76. By failing to provide plaintiff with any records responsive to the July 24, 2019  
17 FOIA request to NNSA, defendants have denied plaintiff's right to this information provided by  
18 law under the Freedom of Information Act.

19 77. Unless enjoined by this Court, defendants will continue to violate plaintiff's legal  
20 rights to access the records requested in plaintiff's July 24, 2019 FOIA request to NNSA.

21 78. Plaintiff is directly and adversely affected and aggrieved by defendants' failure to  
22 provide all non-exempt and non-excluded records (or portions thereof) responsive to their July  
23 24, 2019 FOIA request to NNSA.

24 79. Defendants violated FOIA by failing to establish a telephone line or Internet service  
25 for plaintiff to inquire about the status of this FOIA request that would specifically provide  
26 plaintiff with an estimated date by which the agency would complete its action on this request. 5  
27 U.S.C. §552(a)(7)(B)(ii).

28 80. Plaintiff has fully exhausted all administrative remedies required by FOIA prior to

1 seeking judicial review of defendants' failure to provide all non-exempt and non-excluded  
2 records (or portions thereof) responsive to the July 24, 2019 FOIA request to NNSA.

3 81. Plaintiff has suffered a legal wrong as a result of defendants' failure to comply with  
4 the mandates of FOIA. Defendants' failure to disclose all non-exempt and non-excluded records  
5 (or portions thereof) responsive to plaintiff's July 24, 2019 request to NNSA has injured  
6 plaintiff's interests in public oversight of governmental operations.

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

9 83. Plaintiff is entitled to costs of disbursements and costs of litigation, including  
10 reasonable attorney and expert witness fees, under the Equal Access to Justice Act, 28 U.S.C. §  
11 2412.

12 **Count IV: Violation of the Freedom of Information Act: FOIA 20-00077-M**

13 84. The allegations made in all preceding paragraphs are realleged and incorporated by  
14 reference herein.

15 85. Defendants violated FOIA by failing to provide plaintiff with the responsive, non-  
16 exempt records, and non-excluded records (or portions thereof), requested by plaintiff in their  
17 January 30, 2020 FOIA request to NNSA in a manner consistent with the 20-day statutory  
18 period, or within 10 additional days if defendant claimed unusual circumstances existed.

19 86. By failing to provide plaintiff with any records responsive to the January 30, 2020  
20 FOIA request to NNSA, defendants have denied plaintiff's right to this information provided by  
21 law under the Freedom of Information Act.

22 87. Unless enjoined by this Court, defendants will continue to violate plaintiff's legal  
23 rights to access the records requested in plaintiff's January 30, 2020 FOIA request to NNSA.

24 88. Plaintiff is directly and adversely affected and aggrieved by defendants' failure to  
25 provide all non-exempt and non-excluded records (or portions thereof) responsive to their  
26 January 30, 2020 FOIA request to NNSA.

27 89. Defendants violated FOIA by failing to provide plaintiff with an estimated date of  
28 dispatch of the record as requested by plaintiff in their January 30, 2020 correspondence. 5

1 U.S.C. §552(a)(6)(B)(i).

2 90. Defendants violated FOIA by failing to establish a telephone line or Internet service  
3 for plaintiff to inquire about the status of this FOIA request that would specifically provide  
4 plaintiff with an estimated date by which the agency would complete its action on this request. 5

5 U.S.C. §552(a)(7)(B)(ii).

6 91. Plaintiff has fully exhausted all administrative remedies required by FOIA prior to  
7 seeking judicial review of defendants' failure to provide all non-exempt and non-excluded  
8 records (or portions thereof) responsive to their January 30, 2020 FOIA request to NNSA.

9 92. Plaintiff has suffered a legal wrong as a result of defendants' failure to comply with  
10 the mandates of FOIA. Defendants' failure to disclose all non-exempt and non-excluded records  
11 (or portions thereof) responsive to plaintiff's January 30, 2020 request to NNSA has injured  
12 plaintiff's interests in public oversight of governmental operations.

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

15 94. Plaintiff is entitled to costs of disbursements and costs of litigation, including  
16 reasonable attorney and expert witness fees, under the Equal Access to Justice Act, 28 U.S.C. §  
17 2412.

18 **Count V: Violation of the Freedom of Information Act: FOIA 22-000122-LB**

19 95. The allegations made in all preceding paragraphs are realleged and incorporated by  
20 reference herein.

21 96. Defendants violated FOIA by failing to provide plaintiff with the responsive, non-  
22 exempt records, and non-excluded records (or portions thereof), requested by plaintiff in their  
23 August 10, 2022 FOIA request to NNSA in a manner consistent with the 20-day statutory  
24 period, or within 10 additional days if defendant claimed unusual circumstances existed.

25 97. By failing to provide plaintiff with any records responsive to the August 10, 2022  
26 FOIA request to NNSA, defendants have denied plaintiff's right to this information provided by  
27 law under the Freedom of Information Act.

28 98. Unless enjoined by this Court, defendants will continue to violate plaintiff's legal

1 rights to access the records requested in plaintiff's August 10, 2022 FOIA request to NNSA.

2 99. Plaintiff is directly and adversely affected and aggrieved by defendants' failure to  
3 provide all non-exempt and non-excluded records (or portions thereof) responsive to their  
4 August 10, 2022 FOIA request to NNSA.

5 100. Defendants violated FOIA by failing to provide plaintiff with an estimated date of  
6 dispatch of the record as requested by plaintiff in their August 10, 2022 correspondence. 5  
7 U.S.C. §552(a)(6)(B)(i).

8 101. Defendants violated FOIA by failing to establish a telephone line or Internet service  
9 for plaintiff to inquire about the status of this FOIA request that would specifically provide  
10 plaintiff with an estimated date by which the agency would complete its action on this request. 5  
11 U.S.C. §552(a)(7)(B)(ii).

12 102. Plaintiff has fully exhausted all administrative remedies required by FOIA prior to  
13 seeking judicial review of defendants' failure to provide all non-exempt and non-excluded  
14 records (or portions thereof) responsive to their August 10, 2022 FOIA request to NNSA.

15 103. Plaintiff has suffered a legal wrong as a result of defendants' failure to comply  
16 with the mandates of FOIA. Defendants' failure to disclose all non-exempt and non-excluded  
17 records (or portions thereof) responsive to plaintiff's August 10, 2022 request to NNSA has  
18 injured plaintiff's interests in public oversight of governmental operations.

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

21 105. Plaintiff is entitled to costs of disbursements and costs of litigation, including  
22 reasonable attorney and expert witness fees, under the Equal Access to Justice Act, 28 U.S.C. §  
23 2412.

24 **Count VI: Violation of the Freedom of Information Act: FOIA 22-000148-R**

25 106. The allegations made in all preceding paragraphs are realleged and incorporated by  
26 reference herein.

27 107. Defendants violated FOIA by failing to provide plaintiff with the responsive, non-  
28 exempt records, and non-excluded records (or portions thereof), requested by plaintiff in their



1 March 31, 2022 FOIA request to NNSA in a manner consistent with the 20-day statutory  
2 period, or within 10 additional days if defendant claimed unusual circumstances existed.

3 108. By failing to provide plaintiff with any records responsive to the March 31, 2022  
4 FOIA request to NNSA, defendants have denied plaintiff's right to this information provided by  
5 law under the Freedom of Information Act.

6 109. Unless enjoined by this Court, defendants will continue to violate plaintiff's legal  
7 rights to access the records requested in plaintiff's March 31, 2022 FOIA request to NNSA.

8 110. Plaintiff is directly and adversely affected and aggrieved by defendants' failure to  
9 provide all non-exempt and non-excluded records (or portions thereof) responsive to their  
10 March 31, 2022 FOIA request to NNSA.

11 111. Defendants violated FOIA by failing to provide plaintiff with an estimated date of  
12 dispatch of the record as requested by plaintiff in their March 31, 2022 correspondence. 5  
13 U.S.C. §552(a)(6)(B)(i).

14 112. Defendants violated FOIA by failing to establish a telephone line or Internet service  
15 for plaintiff to inquire about the status of this FOIA request that would specifically provide  
16 plaintiff with an estimated date by which the agency would complete its action on this request. 5  
17 U.S.C. §552(a)(7)(B)(ii).

18 113. Plaintiff has fully exhausted all administrative remedies required by FOIA prior to  
19 seeking judicial review of defendants' failure to provide all non-exempt and non-excluded  
20 records (or portions thereof) responsive to their March 31, 2022 FOIA request to NNSA.

21 114. Plaintiff has suffered a legal wrong as a result of defendants' failure to comply  
22 with the mandates of FOIA. Defendants' failure to disclose all non-exempt and non-excluded  
23 records (or portions thereof) responsive to plaintiff's March 31, 2022 request to NNSA has  
24 injured plaintiff's interests in public oversight of governmental operations.

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

27 116. Plaintiff is entitled to costs of disbursements and costs of litigation, including  
28 reasonable attorney and expert witness fees, under the Equal Access to Justice Act, 28 U.S.C. §

1 2412.

2 **Count VII: Violation of the Freedom of Information Act: FOIA 22-000168-LB**

3 117. The allegations made in all preceding paragraphs are realleged and incorporated by  
4 reference herein.

5 118. Defendants violated FOIA by failing to provide plaintiff with the responsive, non-  
6 exempt records, and non-excluded records (or portions thereof), requested by plaintiff in their  
7 April 14, 2022 FOIA request to NNSA in a manner consistent with the 20-day statutory period,  
8 or within 10 additional days if defendant claimed unusual circumstances existed.

9 119. By failing to provide plaintiff with any records responsive to the April 14, 2022  
10 FOIA request to NNSA, defendants have denied plaintiff's right to this information provided by  
11 law under the Freedom of Information Act.

12 120. Unless enjoined by this Court, defendants will continue to violate plaintiff's legal  
13 rights to access the records requested in plaintiff's April 14, 2022 FOIA request to NNSA.

14 121. Plaintiff is directly and adversely affected and aggrieved by defendants' failure to  
15 provide all non-exempt and non-excluded records (or portions thereof) responsive to their April  
16 14, 2022 FOIA request to NNSA.

17 122. Defendants violated FOIA by failing to provide plaintiff with an estimated date of  
18 dispatch of the record as requested by plaintiff in their April 14, 2022 correspondence. 5 U.S.C.  
19 §552(a)(6)(B)(i).

20 123. Defendants violated FOIA by failing to establish a telephone line or Internet service  
21 for plaintiff to inquire about the status of this FOIA request that would specifically provide  
22 plaintiff with an estimated date by which the agency would complete its action on this request. 5  
23 U.S.C. §552(a)(7)(B)(ii).

24 124. Plaintiff has fully exhausted all administrative remedies required by FOIA prior to  
25 seeking judicial review of defendants' failure to provide all non-exempt and non-excluded  
26 records (or portions thereof) responsive to their April 14, 2022 FOIA request to NNSA.

27 125. Plaintiff has suffered a legal wrong as a result of defendants' failure to comply  
28 with the mandates of FOIA. Defendants' failure to disclose all non-exempt and non-excluded

1 records (or portions thereof) responsive to plaintiff's April 14, 2022 request to NNSA has  
2 injured plaintiff's interests in public oversight of governmental operations.

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

5 127. Plaintiff is entitled to costs of disbursements and costs of litigation, including  
6 reasonable attorney and expert witness fees, under the Equal Access to Justice Act, 28 U.S.C. §  
7 2412.

8 **Count VIII: Violation of the Freedom of Information Act: FOIA 22-000235-AG**

9 128. The allegations made in all preceding paragraphs are realleged and incorporated by  
10 reference herein.

11 129. Defendants violated FOIA by failing to provide plaintiff with the responsive, non-  
12 exempt records, and non-excluded records (or portions thereof), requested by plaintiff in their  
13 June 29, 2022 FOIA request to NNSA in a manner consistent with the 20-day statutory period,  
14 or within 10 additional days if defendant claimed unusual circumstances existed.

15 130. By failing to provide plaintiff with any records responsive to the June 29, 2022  
16 FOIA request to NNSA, defendants have denied plaintiff's right to this information provided by  
17 law under the Freedom of Information Act.

18 131. Unless enjoined by this Court, defendants will continue to violate plaintiff's legal  
19 rights to access the records requested in plaintiff's June 29, 2022 FOIA request to NNSA.

20 132. Plaintiff is directly and adversely affected and aggrieved by defendants' failure to  
21 provide all non-exempt and non-excluded records (or portions thereof) responsive to their June  
22 29, 2022 FOIA request to NNSA.

23 133. Defendants violated FOIA by failing to provide plaintiff with an estimated date of  
24 dispatch of the record as requested by plaintiff in their June 29, 2022 correspondence. 5 U.S.C.  
25 §552(a)(6)(B)(i).

26 134. Defendants violated FOIA by failing to establish a telephone line or Internet service  
27 for plaintiff to inquire about the status of this FOIA request that would specifically provide  
28 plaintiff with an estimated date by which the agency would complete its action on this request. 5

1 U.S.C. §552(a)(7)(B)(ii).

2 135. Plaintiff has fully exhausted all administrative remedies required by FOIA prior to  
3 seeking judicial review of defendants' failure to provide all non-exempt and non-excluded  
4 records (or portions thereof) responsive to their June 29, 2022 FOIA request to NNSA.

5 136. Plaintiff has suffered a legal wrong as a result of defendants' failure to comply  
6 with the mandates of FOIA. Defendants' failure to disclose all non-exempt and non-excluded  
7 records (or portions thereof) responsive to plaintiff's June 29, 2022 request to NNSA has  
8 injured plaintiff's interests in public oversight of governmental operations.

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

11 138. Plaintiff is entitled to costs of disbursements and costs of litigation, including  
12 reasonable attorney and expert witness fees, under the Equal Access to Justice Act, 28 U.S.C. §  
13 2412.

14 **Count IX: Pattern and Practice of Violating FOIA**

15 139. The allegations made in all preceding paragraphs are realleged and incorporated by  
16 reference herein.

17 140. Plaintiff is injured by defendants' pattern and practice of disregarding the statutory  
18 timeframe set out in FOIA for the production of requested records. This pattern and practice is  
19 not in accordance with the law, and without observance of procedure required by law, all in  
20 violation of FOIA.

21 141. Plaintiff is injured by defendants' pattern and practice of disregarding the statutory  
22 requirement to provide an estimated date on which the agency will complete action when the  
23 agency has claimed "unusual circumstances." This pattern and practice is not in accordance  
24 with the law, and without observance of procedure required by law, all in violation of FOIA.

25 142. Plaintiff is injured by defendants' pattern and practice of disregarding the statutory  
26 requirement to establish a telephone line or Internet service for requesters to inquire about the  
27 status of their FOIA request, when the agency has claimed "unusual circumstances," that would  
28 specifically provide plaintiff with an estimated date by which the agency would complete its

1 action on this request. 5 U.S.C. §552(a)(7)(B)(ii).. This pattern and practice is not in accordance  
2 with the law, and without observance of procedure required by law, all in violation of FOIA.

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

5 144. Plaintiff is entitled to costs of disbursements and costs of litigation, including  
6 reasonable attorney and expert witness fees, under the Equal Access to Justice Act, 28 U.S.C. §  
7 2412.

## 8 **VII. REQUEST FOR RELIEF**

9 WHEREFORE, plaintiff respectfully requests that this Court enter Judgment for plaintiff  
10 providing the following relief:

11 1. Expedite this case in accordance with 28 U.S.C. §1657(a) so as to resolve this case in  
12 time for plaintiff to use the requested information in furtherance of its legitimate objectives.

13 Good cause is shown because “a right under...a Federal Statute would be maintained”. 28  
14 U.S.C. §1657(a).

15 2. Declare that defendants have violated FOIA by failing to fully respond to the eight  
16 FOIA requests that are the subject of this complaint.

17 3. Direct by injunction that defendants immediately provide plaintiff with all non-  
18 exempt and non-excluded records (or portions thereof), responsive to the FOIA requests that are  
19 the subject of this complaint (FOIA 19-00254-M, FOIA 19-00256-M, FOIA 19-00285-M,  
20 FOIA 20-00077-M, FOIA 22-00122-LB, FOIA 22-00148-R, FOIA 22-00168-LB, and FOIA  
21 22-00235-AG.)

22 4. Order the Special Counsel to commence an investigation to determine whether  
23 disciplinary action is warranted against any federal employee for the defendants’ unlawful  
24 pattern and practice of withholding information sought pursuant to FOIA. See 5 U.S.C. §  
25 552(a)(4)(F).

26 5. Direct by injunction that defendants comply with the time requirements of FOIA, as  
27 provided by both case law and statute, for the production of requested documents to plaintiff.  
28

