

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PUBLIC EMPLOYEES FOR
ENVIRONMENTAL RESPONSIBILITY,
962 Wayne Ave, Suite 610
Silver Spring, MD 20910

Plaintiff,

v.

UNITED STATES FOREST SERVICE
201 14th St SW,
Washington, DC 20227

Defendant.

CIVIL ACTION NO. 23-1029

COMPLAINT

PRELIMINARY STATEMENT

1. Public Employees for Environmental Responsibility (“Plaintiff” or “PEER”) brings this action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, *et seq.*, as amended, to compel the United States Department of Agriculture’s sub-agency the United States Forest Service (“Defendant” or “USFS”) to disclose documents requested pursuant to FOIA. Specifically, PEER is seeking documents regarding USFS’s development of a Climate Adaptation Plan in accordance with Executive Order (EO) 14008 and applicable agency standards for information quality, quality assurance, and scientific integrity.

2. PEER submitted a FOIA request in May 2022 seeking documents related to USFS's development of a Climate Adaptation Plan. This complaint seeks to end continued non-compliance by USFS with FOIA.
3. To date, Defendant has failed to make a final determination on Plaintiff's FOIA request or to disclose to Plaintiff any of the requested documents within the time stipulated under FOIA.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action under 5 U.S.C. § 552(a)(4)(B). This Court also has federal question jurisdiction over this action under 28 U.S.C. § 1331.
5. This Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*
6. This Court is a proper venue under 5 U.S.C. § 552(a)(4)(B) (providing for venue in FOIA cases where the plaintiff resides, or in the District of Columbia).
7. This Court has the authority to award reasonable costs and attorneys' fees under 5 U.S.C. § 552(a)(4)(E).

PARTIES

8. Plaintiff, PEER, is a non-profit public interest organization incorporated in Washington, D.C., and headquartered in Silver Spring, Maryland, with field offices in California, Colorado, Massachusetts, Minnesota, New York, and Tennessee.
9. Among other public interest projects, PEER engages in advocacy, research, education, and litigation relating to the promotion of public understanding and debate concerning key current public policy issues. PEER focuses on the

environment, including the regulation and remediation of toxic substances, public lands and natural resource management, public funding of environmental and natural resource agencies, and governmental accountability. PEER educates and informs the public through news releases to the media, through its web site, www.peer.org, and through publication of the *PEERreview* newsletter.

10. Defendant, USFS, is an agency of the United States as defined by 5 U.S.C. § 552(f)(1).
11. Defendant is charged with the duty to provide public access to records in its possession consistent with the requirements of FOIA. Defendant's refusal to provide Plaintiff with the records requested or make a final determination on Plaintiff's FOIA request within twenty working days of May 2, 2022, is a violation of FOIA.

STATEMENT OF FACTS

12. In January 2021, President Biden issued EO 14008 on "Tackling the Climate Crisis at Home and Abroad." Among other things, EO 14008 required federal agencies to develop Climate Adaptation Plans.
13. On May 2, 2022, PEER submitted a FOIA request to USFS seeking:
 1. Drafts and versions of the Climate Adaptation Plan disseminated to persons or offices outside of the Office of Sustainability and Climate. Please include all records of dissemination as well as attached drafts—e.g. both an email transferring a draft/version as well as the attachments to that communication.
 2. Records regarding any research reviews of the Climate Adaptation Plan or drafts of the plan, and records of reconciliation of comments on drafts of the plan.
 3. Records regarding whether the Climate Adaptation Plan's development followed USFS policies, including:

- A. USFS's policy on scientific integrity;
 - B. USFS's quality assurance or quality control policies; and
 - C. the Information Quality Act, and OMB, USDA,[] or USFS guidance on information quality.[]
4. Records of any surveys conducted by the Office of Sustainability and Climate regarding the Climate Adaptation Plan or environmental justice, including any solicitation of potential participants, survey participants, and survey materials provided to them.
 5. Records of any workshops or meetings hosted by the Office of Sustainability and Climate regarding the Climate Adaptation Plan or environmental justice, including attendees and their affiliations and documentation of comments from attendees.
13. The request also cited directly to USDA and USFS information quality resources providing access to the applicable information quality guidance documents.
 14. USFS assigned PEER's FOIA request the tracking number 2022-FS-WO-03414-F in an email confirmation it delivered to PEER on May 2, 2022.
 15. On May 5, 2022, USFS again confirmed the request's contents and the tracking number and gave contact information for the FOIA Specialist assigned to the request.
 16. On June 3, 2022, PEER contacted the assigned FOIA Specialist by email but received no response to its request for an update on the status of the request.
 17. On June 14, 2022, PEER again contacted the USFS FOIA Specialist asking for an update and confirmation that the emails were reaching the right person. On the same day the FOIA Specialist responded, made general statements about how USFS responds to FOIA requests, and stated: "I am estimating a response date of

approximately one year but please know we will certainly strive to provide you with a response sooner if at all possible.”

18. On March 15, 2023, PEER again contacted the FOIA Specialist by email asking for an update on the status of the request. PEER received no response.
19. On April 10, 2023, PEER again contacted the FOIA Specialist by email asking for an update on the status of the request and noting that there was no information available from the agency upon which PEER could rely. On April 11, 2023, the FOIA Specialist responded, repeating the same general information as ten months earlier and stating: “I am estimating a response date of one year, March 15, 2024, but please know we will certainly strive to provide you with a response sooner if at all possible.”
20. PEER has yet to receive any responsive records or a final determination on FOIA Request 2022-FS-WO-03414-F.

CAUSE OF ACTION

21. Plaintiff incorporates the allegations in the preceding paragraphs as though fully set forth herein.
22. FOIA requires federal agencies to respond to public requests for records, including files maintained electronically, to increase public understanding of the workings of government and to provide access to government information. FOIA reflects a “profound national commitment to ensuring an open Government” and agencies must “adopt a presumption in favor of disclosure.” Presidential Mem., 74 Fed. Reg. 4683 (Jan. 21, 2009).

23. FOIA requires agencies to determine within twenty working days after the receipt of any FOIA request whether to comply with the request. 5 U.S.C. § 552(a)(6)(A)(i). Agencies may only extend this time period for an additional ten working days in “unusual circumstances.” 5 U.S.C. § 552(a)(6)(B)(i). FOIA also provides that upon request, agencies are to make records “promptly available.” 5 U.S.C. § 552(a)(3)(A).
24. Twenty working days from May 2, 2022, was May 31, 2022.
25. With an additional ten working days for “unusual circumstances,” which USFS has not clearly invoked or proven, that date would be June 14, 2022.
26. As of the date of this filing, Plaintiff has not received a final determination on its FOIA request.
27. Administrative remedies are deemed exhausted when an agency fails to comply with the applicable time limits. 5 U.S.C. § 552(a)(6)(C)(i). Having exhausted its administrative remedies for its May 2022 FOIA request, PEER now turns to this Court to enforce the remedies and public access to agency records guaranteed by FOIA.
28. Defendant’s conduct amounts to a denial of Plaintiff’s FOIA request. Defendant is frustrating Plaintiff’s efforts to adequately understand and educate the public regarding USFS’s development of a Climate Action Plan, and how it has complied with various applicable standards in doing so.
29. Plaintiff has constructively exhausted its administrative remedies under 5 U.S.C. § 552(a)(6)(C)(i), and now seeks an order from this Court requiring the Defendant to immediately produce the records sought in Plaintiff’s FOIA request, as well as other appropriate relief, including attorneys’ fees and costs.

30. Defendant's failure to make determinations on or disclose the documents requested in Plaintiff's FOIA request within the time frame mandated under FOIA is a denial and wrongful withholding of records in violation of 5 U.S.C. § 552.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that this Court:

- i. Enter an order declaring that Defendant wrongfully withheld requested agency documents;
- ii. Issue a permanent injunction directing Defendant to disclose to Plaintiff all wrongfully withheld documents;
- iii. Maintain jurisdiction over this action until Defendant is in compliance with FOIA, the Administrative Procedure Act, and every order of this Court;
- iv. Award Plaintiff attorney fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E); and
- v. Grant such additional and further relief to which Plaintiff may be entitled.

Respectfully submitted on April 13, 2023,

/s/ Hudson Kingston

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