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**UNITED STATES DISTRICT COURT, DISTRICT OF MONTANA  
BUTTE DIVISION**

<p>Edward Jordan Holdings, LLC,  Plaintiff vs.  United States Forest Service, an agency of the United States Department of Agriculture,  Defendant.</p>	<p>Cause No. CV-24-72-BU-JTJ           <b>COMPLAINT</b></p>
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1. Plaintiff Edward Jordan Holdings, LLC, for its complaint against the defendant, states as follows:

**PARTIES**

2. Edward Jordan Holdings, LLC (“EJH”), is a limited liability company organized and existing under the laws of the state of Montana.

3. The defendant, United States Forest Service (the “Forest Service”), is an agency of the United States Department of Agriculture which is part of the United States of America.

4. By this complaint, EJH seeks to obtain certain documents and information pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.

### **JURISDICTION AND VENUE**

5. This court has jurisdiction over this matter pursuant to 5 U.S.C. § 552(a)(4)(B), 5 U.S.C. § 552(a)(6)(C), and 28 U.S.C. § 1331.

6. Venue is proper in this court because the documents were requested within, and were to be provided within, Gallatin County, Montana, which is a part of the Butte division of this district.

### **GENERAL ALLEGATIONS**

7. On or about February 13, 2024, EJH’s attorney, acting on its behalf, submitted a FOIA request to the United States Forest Service. Exhibit 1 hereto is a true and correct copy of that request. Hereafter, this complaint refers to that FOIA request as the “FOIA Request.”

8. The request sought a copy of the Special Use Permit for Outfitting and Guiding issued to Canyon Adventures, LLC (the “Permit”).

9. The Forest Service responded on February 14, 2024, producing a copy of the Permit, but redacting certain portions based upon 5 U.S.C. § 552(b)(4) and (6). A true and correct copy of the response (the “Forest Service Response”) is attached hereto as Exhibit 2. A true and correct copy of the document that the Forest Service produced (the “Redacted Permit”) is attached hereto as Exhibit 3.

10. EJH appealed on February 16, 2024. Exhibit 4 hereto is a true and correct copy of EJH’s appeal, except that Exhibit 4 hereto omits the attachments to that appeal, which were the same documents that are attached hereto as exhibits 1, 2, and 3.

11. The Forest Service acknowledged receipt of the appeal on February 20, 2024. Exhibit 5 hereto is a true and correct copy of the Forest Service’s email acknowledging receipt of EJH’s appeal.

12. The deadline for the Forest Service to act on the appeal expired no later than March 19, 2024.

13. On March 26, 2024, EJH emailed the Forest Service, inquiring about the status of the matter and when the Forest Service would announce its decision on the appeal. Exhibit 6 hereto is a true and correct copy of that email.

14. As of the date of filing of this complaint, the Forest Service has not announced any decision or determination regarding EJH's appeal and has not responded to EJH's inquiry about the status of the appeal.

15. EJH has exhausted all its administrative remedies. *See* 5 U.S.C. § 552(a)(6)(C)(i).

16. The FOIA Request did not specifically state that it was made on behalf of EJH. Nonetheless, the Forest Service has acknowledged that the FOIA Request was made on behalf of EJH. Specifically:

- a. EJH later submitted a request through its counsel, explicitly acting on behalf of EJH. That request (the "Second FOIA Request") also sought a copy of the Permit. *Id.*, at Item 1. Exhibit 7 hereto is a true and correct copy of the Second FOIA Request.
- b. The Forest Service responded with an email in which, among other things, it stated as follows:

For item 1 of your request, you were provided the Special Use Permit in our February 14, 2024 response to *your previous request* (case number 2024-FS-R1-02712-F). That record was properly reviewed and processed, therefore this item of your request is considered to be *duplicative of your February 13, 2024 request* and no further action will be taken.

Email from Forest Service dated July 3, 2024 (the “Forest Service Response to Second FOIA Request”) (emphasis added), a true and correct copy of which is attached hereto as Exhibit 8.

- c. EJH, through counsel, responded that the Forest Service was “correct, sort of,” before explaining that, although the initial FOIA Request had been submitted on behalf of EJH, it had not explicitly so stated, and questioning whether the Forest Service could refuse to respond to Item 1 on the Second FOIA Request based upon its response to the initial FOIA Request. Exhibit 9 hereto is a true and correct copy of that communication from EJH to the Forest Service.
- d. Although the Forest Service replied to that communication (Exhibit 10 hereto is a true and correct copy of an email from the Forest Service by which it responded to the communication that is attached as Exhibit 9), it did not withdraw its refusal to provide the Permit again.

17. The Forest Service has correctly elected to treat the FOIA Request as having been made on behalf of EJH. On that basis, it has refused to provide the Permit in response to the Second FOIA Request.

18. The Forest Service may not now change position and challenge EJH's standing to bring this suit notwithstanding that the original FOIA Request did not explicitly state that it was made on EJH's behalf.

19. EJH is the real party in interest, and has standing to bring this action.

### **COUNT ONE - INJUNCTIVE RELIEF**

20. EJH incorporates the foregoing allegations as if set forth in full herein.

21. Pursuant to 5 U.S.A. § 552(a)(4)(B), this Court may enjoin the Forest Service from continuing to withhold the portions of the Permit that it redacted and order production of that material.

22. This Court should do so because the redacted information does not fall within the exceptions cited by the Forest Service. In particular:

- a. The Forest Service withheld the address of the permittee, invoking the exception in 5 U.S.C § (b)(6) pertaining to "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." *See* Exhibit 3.
- b. The Forest Service withheld the number of Priority Use Service Days that the Permit granted to the permittee, invoking the exception in 5 U.S.C § (b)(4) pertaining to "trade secrets and commercial or

financial information obtained from a person and privileged or confidential.” *See id.*

23. The cited sections do not apply to exempt the withheld information from disclosure.

24. This Court should also assess costs and attorney fees against the Forest Service. *See* 5 U.S.C. § 552(a)(4)(F)(i).

### **PRAYER FOR RELIEF**

Plaintiff Edward Jordan Holdings, LLC, prays for judgment as follows:

1. Enjoining the United States Forest Service from withholding from EJH the information that the Forest Service redacted from the Permit;
2. Ordering the United States Forest Service to provide to EJH an unredacted copy of the Permit;
3. Awarding costs and attorneys’ fees to EJH; and
4. Granting EJH such other and further relief to which it may be entitled.

Dated July 30, 2024.

BALDWIN LAW, PLLC



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Robert K. Baldwin