

constructive or actual withholding of responsive information and/or documents in violation of Defendant's obligations.

PARTIES

4. Plaintiff Power the Future is a non-profit organization incorporated in the State of Delaware dedicated to "disseminating research, sharing facts and truths, engaging at the local level and interacting with the media," specifically relating to energy and environmental public policy.
5. Defendant U.S. Environmental Protection Agency is a federal agency headquartered in Washington, DC, and it has possession and control over the records that Plaintiff seeks.

JURISDICTION AND VENUE

6. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
7. Venue is proper in this Court under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).
8. Plaintiff is not required to further pursue administrative remedies before seeking relief in this Court because Defendant neither produced records nor made a timely "determination" as that term is defined in *Citizens for Responsibility & Ethics in Wash. v. Federal Election Commission*, 711 F.3d 180, 188 (D.C. Cir. 2013). See also, e.g., *Citizens for Responsibility & Ethics in Wash. v. U.S. Dept. of Justice*, 436 F. Supp. 3d 354, 359 (D.D.C. 2020) (citing various other cases and holding that the statutory text of FOIA relieves similarly situated plaintiffs of any exhaustion requirement).

PLAINTIFF'S FOIA REQUEST

9. On May 29, 2024, Plaintiff submitted by internet portal a FOIA request to Defendant seeking described records, specifically calendar invitations of one named senior official (Jennifer Macedonia) over a specified period of time.

10. Records responsive to this request will shed light on USEPA's involvement in the current administration's declared "whole of government" approach to imposing a never-enacted "climate" agenda. Specifically, and further, records responsive to this request will shed light on USEPA's involvement with, *inter alia*, outside activist groups including meetings hosted by outside groups which, other FOIA litigation has documented, create and hold "chat" for meetings with administration officials (federal records) outside of the custody of the creating agency.
11. The information sought is plainly public information subject to release under FOIA, and is of great public interest.
12. On May 29, 2024, Defendant acknowledged the request and assigned it request number 2024-EPA-04476.
13. On June 11, 2024, Defendant informed Plaintiff that it combined the search with another request for records, which request specifically implicated certain correspondence but expressly excluded calendar invitations, and that this combined search created "unusual circumstances — voluminous." Defendant therefore claimed that it was entitled to take ten extra working days to provide the required determination, and stated it expected to do so "within the next few days."
14. On June 12, 2024, Defendant specified that it was taking ten extra working days to provide the required determination, this time stating that the time was necessary to allow Defendant to consult with the White House.
15. The FOIA provides that a requesting party is entitled to a substantive agency response within twenty working days, including a determination of whether the agency intends to comply with the request. 5 U.S.C. § 552(a)(6)(A)(i). Within that deadline, the agency must also "determine and communicate the scope of the documents it intends to produce and withhold, and the reasons for withholding any

documents,” and “inform the requester that it can appeal whatever portion of” the agency’s “determination” is adverse to the requestor. *CREW v. FEC*, 711 F.3d 180, 188 (D.C. Cir. 2013).

16. 5 U.S.C. § 552(a)(6)(A) prescribes that the 20-day time limit shall not be tolled by the agency except in two narrow scenarios: The agency may make one request to the requester for information and toll the 20-day period while it is awaiting such information that it has reasonably requested from the requester, 5 U.S.C. § 552(a)(6)(A)(ii)(I), and agencies may also toll the statutory time limit if necessary to clarify with the requester issues regarding fee assessment. 5 U.S.C. § 52(a)(6)(A)(ii)(II). In either case, the agency’s receipt of the requester’s response to the agency’s request for information or clarification ends the tolling period.
17. Assuming *arguendo* that the agency was entitled to claim FOIA’s ten-working-day extension of time, USEPA owed Plaintiff a “determination” as that term is defined in *CREW v. FEC*, 711 F.3d 180, 188 (D.C. Cir. 2013), no later than July 12, 2024.
18. However, USEPA has provided no substantive response or “determination” with respect to the request.
19. USEPA is now past its statutory period for issuing such a determination on the above-described request without providing any substantive response to Plaintiff’s request in violation of its obligations under FOIA.

FIRST CLAIM FOR RELIEF
Duty to Produce Records – Declaratory Judgment

20. Plaintiff restates and incorporates by reference each of the foregoing paragraphs as if fully set forth herein.
21. Plaintiff has sought and been denied production of responsive records reflecting the conduct of official business.

22. Plaintiff has a statutory right to the information it seeks, and Defendant has unlawfully withheld the information.
23. Plaintiff is not required to further pursue administrative remedies.
24. Plaintiff asks this Court to enter a judgment declaring that:
 - a. Plaintiff was statutorily entitled to a determination on the request at issue no later than July 12, 2024;
 - b. Plaintiff is entitled to records responsive to its FOIA request described above, and any attachments thereto, but Defendant has failed to provide the records;
 - c. USEPA's processing of Plaintiff's FOIA request described above is not in accordance with the law, and does not satisfy USEPA's obligations under FOIA;
 - d. USEPA must now produce records responsive to Plaintiff's request, and must do so without cost to the Plaintiff.

SECOND CLAIM FOR RELIEF
Duty to Produce Records – Injunctive Relief

25. Plaintiff restates and incorporates by reference each of the foregoing paragraphs as if fully set forth herein.
26. Plaintiff is entitled to injunctive relief compelling Defendant to produce the records responsive to the FOIA request described herein.
27. Plaintiff asks the Court to enter an injunction ordering Defendant to produce to Plaintiff, within 20 business days of the date of the order, the requested records sought in Plaintiff's FOIA request described above, and any attachments thereto, at no cost to the Plaintiff.
28. Plaintiff asks the Court to order the Parties to consult regarding withheld documents and to file a status report to the Court within 30 days after Plaintiff receives the last of the produced

documents, addressing Defendant's preparation of a *Vaughn* log and a briefing schedule for resolution of remaining issues associated with Plaintiff's challenges to USEPA's withholdings, if any, and any other remaining issues.

THIRD CLAIM FOR RELIEF
Costs And Fees

29. Plaintiff restates and incorporates by reference each of the foregoing paragraphs as if fully set forth herein.
30. Pursuant to 5 U.S.C. § 552(a)(4)(E), the Court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.
31. This Court should enter an injunction or other appropriate order requiring the Defendant to pay reasonable attorney's fees and other litigation costs reasonably incurred in this case.

PRAYER FOR RELIEF

Power the Future respectfully requests this Court:

1. Assume jurisdiction in this matter, and maintain jurisdiction until the Defendant complies with FOIA and every order of this Court;
2. Declare Defendant has violated FOIA by failing to provide Plaintiff with the requested records, and/or by failing to notify Plaintiff of final determination within the statutory time limit;
3. Declare that the documents sought by the requests, as described in the foregoing paragraphs, are public records under 5 U.S.C. § 552 *et seq.* and must be disclosed;
4. Order Defendant to expeditiously provide the requested records to Plaintiff within 20 business days of the Court's order and without cost to the Plaintiff;

5. Award Plaintiff's attorneys their fees and other litigation costs reasonably incurred pursuant to 5 U.S.C. § 552(a)(4)(E); and
6. Grant such other relief as this Court deems just and proper.

Respectfully submitted this the 29th day of July, 2024,

POWER THE FUTURE

By Counsel:

/s/Matthew D. Hardin

Matthew D. Hardin, D.C. Bar No. 1032711

Hardin Law Office

1725 I Street NW, Suite 300

Washington, DC 20006

Phone: (202) 802-1948

Email: MatthewDHardin@protonmail.com

/s/Christopher Horner

Christopher Horner, D.C. Bar No. 440107

Max Will, PLLC

1725 I Street NW, Suite 300

Washington, DC 20006

Phone: (202) 262-4458

Email: Chris@CHornerLaw.com