

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

INFORMED CONSENT ACTION NETWORK,
2025 Guadalupe Street, Suite 260
Austin, Texas 78705

Plaintiff,

-against-

NATIONAL OCEANIC AND ATMOSPHERIC
ADMINISTRATION,
1401 Constitution Avenue NW, Room 5128
Washington, DC 20230

Defendant.

Civil Action No. 1:24-cv-02744

COMPLAINT

Plaintiff Informed Consent Action Network (“**ICAN**” or “**Plaintiff**”) brings this action against defendant National Oceanic and Atmospheric Administration (“**NOAA**” or “**Defendant**”) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“**FOIA**”). As grounds therefor, Plaintiff alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
2. Venue is proper in this district pursuant 5 U.S.C. § 522(a)(4)(B) and 28 U.S.C. § 1331.

PARTIES

3. Plaintiff ICAN is a not-for-profit organization formed and existing under the laws of the state of Texas, with its principal office located at 2025 Guadalupe Street, Suite 260, Austin, Texas 78705. Plaintiff is in good standing with the Texas Secretary of State.

4. Defendant NOAA is an agency within the Executive Branch of the United States Government, organized within the Department of Commerce. NOAA is an agency within the meaning of 5 U.S.C. § 552(f). NOAA has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. On November 20, 2023, Plaintiff sent a FOIA request to NOAA seeking copies of the following records:

All records concerning the economy act interagency agreement between NOAA and NASA's Aircraft Operations Division at Johnson Space Center for the use of the WB-57 aircraft in NOAA SABRE field missions.

(Exhibit 1.)

6. Defendant NOAA acknowledged Plaintiff's FOIA request on January 26, 2024, and the request was assigned DOC-NOAA-2024-000241. **(Exhibit 2.)**

7. On May 30, 2024, NOAA sent Plaintiff its final determination letter, which stated in relevant part:

We have located **17** records responsive to your request. **Nine (9)** of the records are being released to you in their entirety. We are releasing **eight (8)** records responsive to your request that contain redactions under exemption 6 of 5 U.S.C. 552 (b)(6) which prohibits disclosure of records related solely to information that, if disclosed, would invade another individual's personal privacy. This completes your request.

(Exhibit 3.)

8. Plaintiff submitted its appeal to NOAA's final determination on August 23, 2024, challenging NOAA's improper withholding of records under FOIA Exemption 6. **(Exhibit 4.)** As of the date of this filing, Plaintiff has not received a response to the appeal.

9. As of the date of this Complaint, Defendant has failed to: (i) notify Plaintiff of the determination of its appeal, or (ii) produce the requested records or otherwise demonstrate that the requested records are exempt from disclosure.

COUNT I
FAILURE TO MAKE DETERMINATION BY REQUIRED DEADLINE
(VIOLATION OF FOIA, 5 U.S.C. § 552)

10. Plaintiff realleges the previous paragraphs as if fully stated herein.

11. Defendant is in violation of FOIA.

12. Defendant was required to make a final determination on Plaintiff's appeal no later than twenty (20) business days from acknowledgement of the appeal. Because Defendant failed to make a final determination on Plaintiff's request within the time limits set by FOIA, Plaintiff is deemed to have exhausted its administrative appeal remedies.

13. Plaintiff is being irreparably harmed by reason of Defendant's violation of FOIA and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to comply with the law.

14. Plaintiff has no adequate remedy at law.

COUNT II
FAILURE TO PROVIDE AN ESTIMATED COMPLETION DATE
(VIOLATION OF FOIA, 5 U.S.C. § 552)

15. Plaintiff realleges the previous paragraphs as if fully stated herein.

16. Defendant is in violation of FOIA.

17. Despite Plaintiff's request for an estimated date on which the agency would complete its action on the request, the agency never provided one.

COUNT III
IMPROPER WITHHOLDING OF INFORMATION AND DATA
(VIOLATION OF FOIA, 5 U.S.C. § 552)

18. Plaintiff realleges the previous paragraphs as if fully stated herein.

19. Defendant has failed to establish that it adequately applied an exemption to the withheld information and data.

20. Defendant is in violation of FOIA.

COUNT IV
ENTITLEMENT TO WAIVER OF SEARCH FEES

21. Plaintiff realleges the previous paragraphs as if fully stated herein.

22. Defendant is in violation of FOIA.

23. Plaintiff sought a waiver of fees. Defendant failed, within 20 days, to produce the requested records and otherwise failed to comply with the statutory requirements of 5 U.S.C. § 522 within the time limits set forth therein.

24. Plaintiff is entitled to a waiver of fees pursuant to 5 U.S.C. § 552(a)(4)(A)(viii).

REQUESTED RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

a. Declare that Defendant's current and continued delay in processing Plaintiff's FOIA Request is unlawful under FOIA;

b. Order Defendant to conduct searches for any and all records responsive to Plaintiff's FOIA request and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA request;

c. Order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA request and a *Vaughn* index of any responsive records withheld under any claimed exemption;

- d. Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA request;
- e. Maintain jurisdiction over this action until Defendant complies with FOIA and all orders of this Court;
- f. Grant Plaintiff an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E);
- g. Grant Plaintiff a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(viii); and
- h. Grant Plaintiff such other relief as the Court deems just and proper.

Dated: September 25, 2024

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