

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

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

Civil Action No. 16-1076

Plaintiff,)

COMPLAINT

v.)

UNITED STATES DEPARTMENT)
OF THE INTERIOR)
NATIONAL PARK SERVICE)
1849 C St NW)
Washington, D.C. 20240)

Defendant.)

PRELIMINARY STATEMENT

1. Plaintiff Public Employees for Environmental Responsibility (“PEER” or “Plaintiff”) brings this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.*, as amended, to compel the Department of the Interior’s National Park Service (NPS) to disclose records wrongfully withheld in failing to respond within the statutory deadline to Plaintiff’s FOIA request.
2. Plaintiff is a non-profit organization dedicated to research and public education concerning the activities and operations of federal, state, and local governments.
3. On May 9, 2016, Plaintiff sent a FOIA request seeking records concerning gifts and free services that NPS Director Jonathan Jarvis received. The NPS FOIA Officer confirmed receipt of this request on the same day.
4. The 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).

5. The FOIA requires agencies to determine within 20 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 extend this time period only in “unusual circumstances” and then only for a maximum of ten additional working days. 5 U.S.C. § 552(a)(6)(B)(i).
6. To date, Defendant has failed to produce any records in response to Plaintiff’s May 9, 2016 FOIA request.
7. Defendant’s conduct amounts to a denial of Plaintiff’s FOIA request. NPS is frustrating Plaintiff’s efforts to educate the public about NPS Director Jonathan Jarvis’s compliance (or lack thereof) with NPS’s rules and standards for ethical conduct.
8. Plaintiff constructively exhausted its administrative remedies under 5 U.S.C. § 552(a)(6)(C)(i), and now seeks an order from this Court requiring Defendant to immediately produce the records sought in Plaintiff’s FOIA request, as well as other appropriate relief, including attorneys’ fees and costs.

JURISDICTION AND VENUE

9. 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.
10. This Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*
11. This Court is a proper venue because Defendant resides in the District of Columbia. *See* 28 U.S.C. § 1391(e)(1)(C). Venue is also proper under 5 U.S.C. § 552(a)(4)(B), which confers

venue in FOIA cases where the plaintiff resides, where the agency records are situated, or in the District of Columbia.

12. This Court has the authority to award reasonable attorney fees and other reasonable litigation costs under 5 U.S.C. § 552(a)(4)(E).

PARTIES

13. Plaintiff, PEER, is a non-profit public interest organization incorporated in Washington, D.C. with field offices in California, Colorado, Florida, Massachusetts, and Tennessee.

14. 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 ethics in government. PEER educates and informs the public through news releases to the media, through its web site, www.peer.org, and through publication of the PEER newsletter.

15. Defendant, NPS, is an agency of the United States as defined by 5 U.S.C. § 552(f)(1).

16. Defendant is charged with the duty to provide public access to records in its possession consistent with the requirements of the FOIA. Here, Defendant is denying Plaintiff access to its records in contravention of federal law.

STATEMENT OF FACTS

17. On May 9, 2016, PEER requested records documenting gifts and free services that Director Jarvis has received from January 1, 2010 to the present. This request was prompted by numerous reports of Director Jarvis accepting trips on corporate jets and other considerations in connection with his NPS Centennial-related and other fundraising for the NPS.

18. Specifically, PEER requested:

- a. *Records reflecting all gifts or free services, such as private jet transportation, bestowed on Director Jarvis;*
- b. *Records documenting any recusals Director Jarvis has made;*
- c. *Records itemizing or summarizing the amount and/or frequency of fundraising activity by the Director;*
- d. *Records documenting NPS policies which describe constraints on private solicitation and other fundraising activities by the Director or other senior NPS officials; and*
- e. *Any admonitions issued by the Office of Solicitor, Interior's or the NPS Office of Ethics concerning fundraising activities by the Director.*

19. On May 9, 2016, the NPS FOIA officer sent an email, carbon copied to PEER, to NPS's Washington Support Office (WASO) with the subject line "16-xxx Ruch PEER Jarivs [sic] gifts, trips & fundraising FOIA." The email states, "We received the attached FOIA today via fax" and indicates that the FOIA officer was routing it to the WASO for processing, noting, "I've cc'd the requestor so they know who will be handling their request."

20. PEER heard nothing further from anyone at NPS regarding this request.

21. Pursuant to 5 U.S.C. § 552(a)(6)(A), Defendant had twenty working days from the date of receipt to respond, or to assert the need for a ten day extension. *See also* 43 C.F.R. § 2.12.

22. Twenty working days from May 9, 2016 (the date of Plaintiff's request) was June 7, 2016. As of this June 8, 2016 filing, Plaintiff has not received any records responsive to its May 9, 2016 FOIA request, nor any word from Defendant.

23. 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 fully exhausted its administrative remedies for its May 9, 2016 FOIA request, PEER now turns to this Court to enforce the remedies and public access to agency records guaranteed by the FOIA.

CAUSE OF ACTION

Violation of the Freedom of Information Act

24. Plaintiff incorporates the allegations in the preceding paragraphs.
25. Defendant's failure to disclose the records requested within the time frames mandated by statute is a constructive denial and wrongful withholding of records in violation of FOIA, 5 U.S.C. § 552, and the Department of the Interior's regulations promulgated thereunder, 43 C.F.R. § 2.12 *et. seq.*

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that this Court:

- i. Enter an order declaring that Defendant wrongfully withheld requested agency records;
- ii. Issue a permanent injunction directing Defendant to disclose to Plaintiff all wrongfully withheld records;
- iii. Maintain jurisdiction over this action until Defendant is in compliance with the FOIA 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 June 8, 2016,

/s/ Laura Dumais
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