

William L. Miller (D.C. Bar No. 443191)  
The William Miller Group, PLLC  
1666 Connecticut Avenue, NW  
Suite 500  
Washington, DC 20009  
(202) 256-2306  
(202) 318-2427 FAX

Attorney for Plaintiffs

UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA

ENVIRONMENTAL DEFENSE, Inc. )  
257 Park Avenue South, New York, NY 10010 )  
)  
NEIGHBORS FOR NEIGHBORS, Inc., )  
P.O. Box 661, Elgin, TX 78621 )  
)  
Plaintiffs, )  
)  
v. )  
)  
U.S. DEPARTMENT OF JUSTICE, )  
950 Pennsylvania Ave., NW )  
Washington, D.C. )  
)  
Defendant. )  
\_\_\_\_\_ )

Case No. \_\_\_\_\_

**COMPLAINT**

**I. STATEMENT OF THE CASE**

1. Plaintiffs Environmental Defense and Neighbors for Neighbors, (collectively, “plaintiffs”) bring this civil action against the Department of Justice (“DOJ”) for declaratory and injunctive relief under the federal Freedom of Information Act, (“FOIA”), 5 U.S.C. § 552, as amended, that seeks an order requiring DOJ to produce to plaintiffs all agency records improperly withheld.

## II. JURISDICTION AND VENUE

2. This court has subject matter jurisdiction over the claims set forth in this complaint pursuant to 5 U.S.C. § 552(a)(4)(B) (Freedom of Information Act), 28 U.S.C. § 1331 (federal question statute) and 28 U.S.C. § 1361 (mandamus statute).

3. Pursuant to 5 U.S.C. § 552(a)(4)(B), venue is proper in the District of the District of Columbia.

## III. PARTIES

4. Environmental Defense is a non-profit environmental organization. Environmental Defense has over 9,000 members in Texas. Environmental Defense is dedicated to protecting the environmental and informational rights of its members.

5. Neighbors for Neighbors is a Texas-based membership organization. Neighbors for Neighbors has approximately 150 members in Texas. Its mission is to protect its members' interests in environmental protection the open access to information.

6. Defendant Department of Justice is an agency of the federal government. The Freedom of Information Act applies to the DOJ. The DOJ has promulgated regulations to guide the administration of its duties under the FOIA. 28 C.F.R. § 16.1 *et seq.*

## IV. STATEMENT OF FACTS

7. On February 16, 2007, counsel for plaintiffs electronically served a Freedom of Information Act request ("plaintiffs' FOIA request") on the DOJ seeking, *inter alia*, copies of written communications since June, 2005, from or to any DOJ political appointee regarding the prosecution and settlement of the case *United States of America v. Alcoa, Inc.*, Civil Action No.

A-03-CA-222-SS, pending in the United States District Court for the Western District of Texas.

A true and accurate copy of such request is attached hereto as Exhibit A.

8. DOJ received plaintiffs' FOIA request electronically on February 16, 2007.

9. In a letter to plaintiffs' counsel, DOJ stated it received plaintiffs' FOIA request on February 21, 2007.

10. Plaintiffs' FOIA request was consistent with the requirements of Department of Justice FOIA procedures as set forth at 28 C.F.R. § 16.1 *et seq.*, and the statutory FOIA request procedures set forth at 5 U.S.C. § 552(a).

11. Pursuant to 5 U.S.C. § 552(a)(6), DOJ was required to respond to plaintiffs' FOIA request within 20 business days. More than 20 business days have passed since DOJ acknowledged it received plaintiffs' FOIA request. As of the date of this complaint, DOJ has not responded to plaintiffs' FOIA request.

12. Pursuant to 5 U.S.C. § 552(a)(6)(C), plaintiffs are deemed to have exhausted their administrative remedies with respect to their FOIA request due to DOJ's failure to respond to such request within 20 business days.

13. DOJ did not claim it was unable to meet the 20-day time limit due to "unusual circumstances."

## V. CAUSE OF ACTION

14. Plaintiffs incorporate by reference and reallege the allegations contained in paragraphs 1 through 13 for the cause of action set forth below.

15. 5 U.S.C. § 552(a)(6) and 28 C.F.R. § 16.6 require DOJ to provide a response to any FOIA request within 20 days of receipt.

16. 5 U.S.C. § 552(a)(6) and 28 C.F.R. § 16.6 also require DOJ to provide a reason for not providing any agency record requested, to make a reasonable effort to segregate non-exempted information, and to provide opportunity to appeal the partial or entire withholding of any agency record.

17. 5 U.S.C. § 552(a)(6)(C) provides that if an agency fails timely to comply with the requirements immediately above, the person requesting agency records is considered to have exhausted his administrative records regarding such request.

18. DOJ has violated, and continues to violate, the Freedom of Information Act and its own regulations by failing timely to provide to plaintiffs, in whole or in part, documents responsive to plaintiffs' FOIA request.

19. DOJ has violated, and continues to violate, the Freedom of Information Act and its own regulations, by failing timely to provide to plaintiffs an explanation of its reasons for denying disclosure of such records, for failing to make any effort to segregate non-exempt information within such records, and for failing timely to provide an appeal of any such determination.

## **VI. RELIEF REQUESTED**

WHEREFORE, plaintiffs respectfully request this Court to grant the following relief:

- A. EXPEDITE this matter on the court's docket to ensure prompt review;
- B. DECLARE that DOJ's failure to provide the records requested by plaintiffs to be unlawful;
- C. ORDER DOJ to make the requested records available immediately to plaintiffs;

- D. ORDER DOJ to prepare an index of any documents withheld from plaintiffs within ten days of the Court's order, consistent with the requirements of *Vaughn v. Rosen*, 484 F.2d 520 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974);
- E. ORDER DOJ to pay plaintiffs their costs of litigation, including but not limited to reasonable attorney fees, as authorized by 5 U.S.C. § 552(a)(4)(E); and
- F. GRANT such other relief as the Court deems necessary and proper.

DATED this 29<sup>th</sup> day of March, 2007.

ENVIRONMENTAL DEFENSE,  
and NEIGHBORS FOR NEIGHBORS,  
Plaintiffs



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The William Miller Group, PLLC  
1666 Connecticut Avenue, NW  
Suite 500  
Washington, DC 20009  
(202) 256-2306  
(202) 318-2427 FAX

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REED ZARS  
*Motion pro hac vice pending*  
Wyoming Bar No. 6-3224  
Attorney at Law  
910 Kearney Street  
Laramie, WY 82070  
307-745-7979  
307-745-7999 (fax)

Attorneys for Plaintiffs

**Attachment to Complaint**

**Attachment A:** Plaintiffs' February 16, 2007 FOIA request to Department of Justice.

Environmental Defense  
257 Park Avenue South  
New York, NY 10010

Neighbors for Neighbors  
P.O. Box 661  
Elgin, TX 78621

**George E. Hays**  
Attorney at Law  
236 West Portal Avenue #110  
San Francisco, CA 94127  
Office: (415) 566-5414 Fax: (415) 731-1609

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February 16, 2007

**Via Electronic Mail:**

Attachment A to FOIA complaint

Matthew W. Morrison, Sr. Counsel  
United States Department of Justice  
Env. & Natural Resources Division  
Environmental Enforcement Section  
P.O. Box 7611 Ben Franklin Station  
Washington, D.C. 20044

RE: Freedom of Information Act Request

Dear Mr. Morrison:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 and the rules of the United States Department of Justice (“DOJ”), set forth in 28 C.F.R. part 16, subpart A, I am writing on behalf of my clients, Environmental Defense, Public Citizen, and Neighbors for Neighbors to request the following information:

All documents

(1) relating directly to *United States of America v. Alcoa, Inc.*, Civil Action No. A-03-CA-222-SS, consolidated with *Neighbors for Neighbors v. Alcoa, Inc.*, Civil Action No. A-01-CA-881-SS, pending in the United States District Court for the Western District of Texas, that:

(2) that were created since June 2005; and

(3) that

(a) went to, came from, or were prepared by Sue Ellen Wooldridge, Alberto Gonzales, or any other political appointee or acting official at

Matthew W. Morrison, Sr. Counsel  
February 16, 2007  
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the political appointee level at the United States Department of Justice,

(b) went to, came from, or were prepared by Grant Nakayama, Bill Wehrum, Stephen L. Johnson, or any other political appointee or acting official at the political appointee level at the United States Environmental Protection Agency, or

(c) went to, came from, or were prepared by any employee of the White House.

This request includes, but is not limited to, any records (including calendars) of meetings, telephone calls or other communications **between** (1) Ms. Wooldridge or the other individuals identified above **and** (2) representatives of TXU or its subsidiaries **or** representatives of Alcoa, Inc. and its subsidiaries regarding the above-mentioned case. This request also includes, but is not limited to, any e-mails and attachments, and any other electronic media transmitted between (1) Ms. Wooldridge or the other individuals identified above **and** (2) representatives of TXU or its subsidiaries **or** representatives of Alcoa, Inc. and its subsidiaries regarding the above-mentioned case.

I request that to the extent that DOJ can do so, we be furnished with electronic copies of the above documents (to minimize the expense and burden of copying).

My clients hereby request a fee waiver for all copying costs, mailing costs, and other costs related to locating and tendering the documents. I would note, however, that we expect that copying costs should be avoidable under the approach to document review we request.

Thank you for your prompt attention to this matter.

Yours Sincerely,

s/ George E. Hays



Matthew W. Morrison, Sr. Counsel

February 16, 2007

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CC:

Ben Fisherow, DOJ

Tom Mariani, DOJ

Adam Kushner, EPA

Richard Alonso, EPA

Josh Olszewski, EPA

Raymond Magyar, EPA