

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

Civil Action No. _____

FRIENDS OF ANIMALS,

Plaintiff,

v.

UNITED STATES FISH AND WILDLIFE SERVICE,
an agency of the United States,

Defendant

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

INTRODUCTION

1. Plaintiff, Friends of Animals, brings this action to remedy violations of the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et. seq.* Specifically, Friends of Animals challenges the failure of Defendant, the United States Fish & Wildlife Service (FWS), to respond to Friends of Animals' January 18, 2018 FOIA request seeking records "regarding who has applied for and been granted permits in 2017 and 2018 to bring to the U.S. trophy hunted lion parts from Zimbabwe and Zambia." (hereinafter "FOIA Request").

2. As of the date on this Complaint, FWS has not provided any information in response to Friends of Animals' FOIA Request.

3. FWS failed to comply with the statutory mandates and deadlines imposed by FOIA by failing to provide a final determination resolving Friends of Animals' FOIA Request within the time required by law. By failing to make a determination on Friends of Animals'

FOIA Request, FWS is unlawfully impeding Friends of Animals' access to government information that it is entitled to receive under FOIA. Accordingly, Friends of Animals seeks declaratory relief establishing that FWS has violated FOIA. Plaintiff also seeks injunctive relief directing FWS to promptly provide Friends of Animals with the requested material free of cost.

JURISDICTION AND VENUE

4. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) (Freedom of Information Act) and 28 U.S.C. § 1331 (federal question). This Court may grant the declaratory relief under 28 U.S.C. §§ 2201, *et seq.* (Declaratory Judgment Act) and injunctive relief under 5 U.S.C. § 552(a)(4)(B) (Freedom of Information Act). An actual, justiciable controversy exists within the meaning of the Declaratory Judgment Act between Friends of Animals and FWS. The Court has jurisdiction, upon receipt of a complaint, "to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(B).

5. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B), which provides venue for FOIA cases in a judicial district where the complainant resides or has a principle place of business. Here, Friends of Animals' Wildlife Law Program, which submitted the FOIA Request, resides in Colorado and has a principle place of business in Centennial, Colorado.

PARTIES

6. Friends of Animals is a non-profit international advocacy organization with nearly 200,000 members. Friends of Animals is incorporated in the state of New York since 1957, and has offices in Darien, Connecticut, and Centennial, Colorado. Friends of Animals'

Wildlife Law Program was established in 2013. The Wildlife Law Program is located in offices at 7500 E. Arapahoe Road, Suite 385, Centennial, Colorado.

7. Friends of Animals seeks to free animals from cruelty and exploitation around the world and to promote a respectful view of non-human, free-living and domestic animals. Friends of Animals engages in a variety of advocacy programs in support of these goals. Friends of Animals informs its members about animal advocacy issues as well as the organization's progress in addressing these issues through its magazine called ActionLine, its website, and other reports. Friends of Animals has published articles and information advocating for the protection of species so that they can live unfettered in their natural habitats. As part of its mission to inform its members about issues affecting animals, Friends of Animals has submitted several FOIA requests in the past, and Friends of Animals plans to continue submitting FOIA requests in the future.

8. Friends of Animals qualifies as a noncommercial requester under the standard established by Congress in FOIA.

9. Friends of Animals seeks information requested in its FOIA Request in order to more fully understand and inform the public and its members about the process employed by FWS in issuing threatened species permits for lion sport-hunted trophies from Zimbabwe and Zambia under 50 C.F.R. § 17.32. *See* 81 Fed. Reg. 36388 (June 6, 2016). This data will help Friends of Animals to further its mission and deepen public understanding of the current crisis lions are facing in these countries, and the effect sport-hunting has on lion populations. This issue is relevant not only in Africa, but also at home in the United States. Disclosure of the requested information will also contribute to the public's understanding of the operations of the government and how it processes permits to import African sport-hunted trophies. Friends of Animals can distribute this information to its

members and other interested members of the public through its website, its quarterly journal *ActionLine*, and through outreach to other media outlets. FWS's failure to provide the requested records impedes Friends of Animals' access to government information and hinders Friends of Animals' ability to carry out its organizational mission. The production of these records will redress the harm and enable Friends of Animals to finally communicate to their members and to the public a fuller understanding of FWS's permitting decisions.

10. The United States Fish and Wildlife Service (FWS) is an agency housed within the Department of Interior. FWS is an agency within the meaning of 5 U.S.C. § 552(f). FWS has possession and control of the requested records and is responsible for fulfilling Friends of Animals' FOIA Request.

LEGAL FRAMEWORK: FREEDOM OF INFORMATION ACT

11. Congress enacted FOIA to ensure public access to U.S. government records. FOIA carries a presumption of disclosure. The burden is on the government—not the public—to substantiate why information may not be released. Upon written request, agencies of the United States government are required to disclose those records, unless they can be lawfully withheld from disclosure under one of nine specific exemptions in FOIA. 5 U.S.C. § 552(b)(1)-(9); 5 U.S.C. § 552(a)(4)(B).

12. FOIA imposes mandatory deadlines on federal agencies when they receive a request for records pursuant to FOIA. FOIA requires agencies to respond within twenty working days after the receipt of any such request with their determination and must immediately notify the person making such request of such determination and the reasons therefore, and of the right of such person to appeal to the head of the agency any adverse determination. 5 U.S.C. § 552(a)(6)(A).

13. Upon determination by an agency to comply with the request, the records shall be made “promptly available.” 5 U.S.C. § 552(a)(6)(C).

14. In “unusual circumstances” an agency may extend the time limits for up to ten working days by providing written notice to the requester setting forth the unusual circumstance and the date on which the determination is expected to be dispatched. 5 U.S.C. § 552(a)(6)(B).

15. With respect to a request for which a written notice purports to apply the “unusual circumstances,” the agency must: (1) notify the requester if the request cannot be processed within the time limit; (2) provide the requester with an opportunity to limit the scope of the request so that it may be processed within that time limit or provide an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request; and (3) make available its FOIA Public Liaison to assist in the resolution of any disputes between the requester and the agency. 5 U.S.C. § 552(a)(6)(B)(ii).

16. As a general matter, a FOIA requester must exhaust administrative appeal remedies before seeking judicial redress. However, if an agency does not adhere to certain statutory timelines (twenty workdays or thirty workdays in “unusual circumstances”), then by statute the requester is deemed to have fulfilled the exhaustion requirement. 5 U.S.C. § 552(a)(6)(C)(i).

17. Additionally, if the agency fails to comply with the statutory time limit it cannot assess search fees. 5 U.S.C. § 552(a)(4)(A)(viii).

18. Department FOIA regulations provide for a tracked response process that distinguishes requests based on the estimated number of workdays needed to respond. 43 C.F.R. § 2.15(a). “Simple” requests take one to five workdays to process; “normal” requests

take six to twenty workdays; “complex” requests take between twenty-one and sixty workdays; and “exceptional/voluminous” requests, which involve “very complex processing challenges” and potentially include a large number of responsive records, take over sixty workdays to process. 43 C.F.R. § 2.15(c)(1)-(4).

19. The multi-track processing system does not alter FOIA’s statutory deadline for an agency to determine whether to comply with the FOIA request. 43 C.F.R. § 2.15. An agency must make a determination whether to comply with the request, and notify the requester accordingly, within the mandatory deadlines described above.

20. The United States district courts have jurisdiction “to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” 5 U.S.C. § 552(a)(4)(B).

FACTUAL BACKGROUND

21. Friends of Animals submitted its FOIA Request to FWS on January 18, 2018.

22. On January 18, 2018, Ms. Fran Silverman, Friends of Animals’ Director of Communications, received an email confirming that FWS’s Headquarters FOIA office received the FOIA Request.

23. In a letter dated February 20, 2018, FWS provided Friends of Animals a formal acknowledgment that the Division of Management Authority had received the FOIA request. The letter further stated that FWS was placing the request into the “Complex” processing track and would be processed in “twenty-one to sixty” days. The letter also invoked a ten day extension and estimated that the total fees associated with the request would be \$60.15. A copy of the letter is attached hereto as “Exhibit A.”

24. Although the February 20, 2018 letter claims that the request falls under the “Complex” processing track, the letter specifically states that there are a mere 501 pages

for responsive materials that must be duplicated. The letter also states that the request would be processed by “1 individual at the Professional level” and would require “2 hrs.” of review time.

25. On March 1, 2018, Ms. Silverman sent an email to FWS seeking an update regarding the status of the FOIA request.

26. On March 7, 2018, Ms. Brenda Tapia of FWS sent an email to Ms. Silverman stating “I apologize for the delay in replying [sic] your email and voicemail, but I was out of the office for the past two weeks. I will continue processing your FOIA request. Like all FOIA requests, we will need to send it to [sic] the response packets to the Solicitor's office for review since there are [sic] privacy information on [sic] the documents. As soon as I receive your FOIA back, I will be [sic] able to finalize it.”

27. As of the date of this complaint, FWS has failed to make a determination on Friends of Animals' FOIA Request, failed to produce responsive records to the FOIA request, and failed to provide a date when Friend of Animals could expect a final determination on its FOIA Request.

28. The deadline for making a determination on Friends of Animals' FOIA Request, inclusive of the 10-workday extension, passed on or about February 8, 2018.

29. FWS did not make the required determination by February 8, 2018, and to this date has still not made a determination on Friends of Animals' FOIA Request.

30. FWS is unlawfully withholding public access of information sought by Friends of Animals, information to which Friends of Animals is entitled to receive, and for which FWS has not provided a valid disclosure exemption.

31. FWS has offered no reasonable explanation for its delay, and it has not provided an estimated timetable of when it will comply with its obligations under FOIA.

CAUSE OF ACTION

(Violation of Freedom of Information Act)

32. Friends of Animals herein incorporates all allegations contained in the proceeding paragraphs.

33. Friends of Animals properly requested records within FWS's control on January 18, 2018 in the FOIA Request.

34. FWS failed to make a determination on Friends of Animals' FOIA Request within the time required by FOIA.

35. As of the date of this Complaint, FWS has not made any determination on Friends of Animals' FOIA Request.

36. As of the date of this Complaint, FWS has not made any claims of statutory exemption with regard to the documents requested in the FOIA Request.

37. Accordingly, Friends of Animals is entitled to injunctive and declaratory relief with respect to the release and disclosure of the records requested in the FOIA Request.

REQUEST FOR RELIEF

Friends of Animas respectfully requests that the Court enter judgment providing the following relief:

1. Declare that FWS violated FOIA by failing to make a determination on Friends of Animals' FOIA Request and promptly providing responsive records within the time required by law;
2. Order FWS to process and immediately release all records responsive to the FOIA Request at no cost to Friends of Animals;
3. Retain jurisdiction of this action to ensure the processing of the FOIA Request and ensure that no agency records are wrongfully withheld;

4. Award Friends of Animals costs, including reasonable attorney fees and litigation costs in this action, pursuant to FOIA, 5 U.S.C. § 552(a)(4)(E); and
5. Grant Friends of Animals any other relief that the Court deems just and proper.

Dated: May 24, 2018

Respectfully Submitted,

/s/ Michael Ray Harris

Michael Ray Harris

Director, Wildlife Law Program

Friends of Animals

7500 E. Arapahoe Road, Suite 385

Centennial, CO 80112

Telephone: (720) 949-7791

E-mail: michaelharris@friendsofanimals.org

Attorney for Plaintiff