

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DISTRICT

Committee to Save The Huletts,)
A division of Citizens' Vision)
28400 S. Woodland Rd.)
Pepper Pike, OH 44124-5546)

Plaintiff)

vs.)

US Army Corps of Engineers)
1776 Niagra St.)
Buffalo, NY 14207-3199)

And)

Lieutenant General Todd T. Semonite)
Comd'r Gen., USACE)
441 G. Street NW)
Washington, DC 20314-1000)

And)

United States of America)
c/o Justin E. Herdman, US Attorney Gen.)
801 W. Superior Ave., #400)
Cleveland, OH 44113)

Defendants)

CASE NO.

JUDGE:

COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF

JURISDICTION AND VENUE

1. This case arises under the laws of the United States within the meaning of 28 USC 1331, as well as under 5 U.S.C. §552, the Freedom of Information Act (“FOIA”), and the Administrative Procedure Act of 1964, 5 USC 500 et seq. Venue lies in this district pursuant to 5 U.S.C. 552 (a)(4)(B).

CAUSE OF ACTION

2. The plaintiff is an Ohio not-for-profit corporation with its principal place of business in Cuyahoga County, Ohio, interested in preserving the Hulett Ore Loaders that once stood at the mouth of the Cuyahoga River (“Save the Hulett”).

3. The defendant, US Army Corps of Engineers, is an agency subject to 5 U.S.C. §552, The Freedom of Information Act (“FOIA”). Defendant Semonite is an officer responsible for the acts complained of. Defendant United States of America is a necessary or indispensable party.

4. On May 17, 2018, in connection with defendant’s proposal to grant a certain permit for work within Cleveland Harbor that will have an adverse affect on the Hulett, Save the Hulett requested information from the defendants within the scope of FOIA via email, as set forth in Exhibit “A”.

5. This information is deemed necessary for protecting the Hulett under 54 U.S.C §300101 et seq., the National Historical Preservation Act and 5 U.S.C. ch. 5, subch. I §500 et seq., the Administrative Procedures Act.

6. On May 21, 2018, defendant responded via email that the request would be handled in accordance with the provisions of FOIA. While it informed Save the Hulett of the costs and it requested Save the Hulett provide correspondence agreeing to pay the costs, it failed to notify whether the information would be provided or its reasoning for its determination.

7. On June 1, 2018, Save the Hulett responded via email that it agreed to pay the costs.

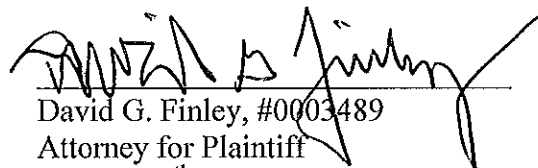
8. Despite Save the Hulett’s compliance with its demands, defendant failed or refused to notify Save the Hulett whether it would comply with the request, or the reasons therefore, within 20 days of the request, as required by §522(6)(A).

9. Although Save the Hulett has contacted defendant several times subsequently, defendant has continued to fail or refuse to notify of any determination, or to supply any information requested by this records seeker.

10. Save the Hulett has exhausted all administrative remedies, and without an injunction ordering defendant to comply with its request for information, together with a tolling of any statute of limitation for action under the Administrative Procedures Act and the National Historic Preservation Act, it will be irreparably harmed by defendant’s violation of FOIA.

WHEREFORE, plaintiff demands an injunction and a declaratory judgment declaring defendant USACE in violation of FOIA in regards to plaintiff's request and enjoining defendant from further failure to comply with Save the Hulett's FOIA request, an order tolling any statute of limitation for action to preserve the Hulett's under the NHPA and the ADA for a reasonable time after compliance with said FOIA request, together with a declaration that since defendant has failed to respond to Save the Hulett's FOIA request within applicable time limits, defendant shall not assess search fees against Save the Hulett's, plus an award of reasonable attorney fees, and for such other relief that the Court deems just, including costs.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David G. Finley", is written over a horizontal line.

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