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***Pro hac vice application forthcoming***

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Attorneys for Plaintiff

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

**STOP GEOENGINEERING MINNESOTA**, a  
project of the non-profit Minnesota Natural Health  
Coalition, a non-profit corporation, 1041 Grand  
Avenue, #317, Saint Paul, MN 55105

Plaintiff,

vs.

**U.S. AIR FORCE**, an agency of the United States  
of America, 1000 Air Force Pentagon, Washington,  
DC 20330-1000

Defendant.

Case No. 1:19-cv-2869

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

Freedom of Information Act Case

**INTRODUCTION**

**1.** Plaintiff Stop Geoengineering Minnesota (hereinafter “Plaintiff” or “SGM”) brings this action to redress violations of the Freedom of Information Act (“FOIA” or “the Act”), 5 U.S.C. § 552 *et. seq.* Plaintiff challenges the failure of the U.S. Air Force (hereinafter “Defendant” or “Air Force”) to respond lawfully to Plaintiff’s FOIA requests.

**2.** On December 11, 2018, Plaintiff sent four different FOIA requests to the Air Force, with one request each to the Air Force Acquisition, Buying Division (“Air Force Acquisition”), the Air Force Material Command (“Air Force Material Command”), the Air Force Research Laboratory, and Air Force Contract Management. As detailed further below, these requests sought the release of documents and records pertaining generally to weather modification, weather intervention, geoengineering, climate engineering, and solar radiation management. Plaintiff requested these records to inform the public, the media and government officials about weather modification, government knowledge of weather modification and government efforts to restrict public knowledge about weather modification.

**3.** Defendant has failed to make the statutorily required determinations on Plaintiff’s FOIA requests within the time and in the manner required by FOIA. Defendant has failed to release records responsive to Plaintiff’s FOIA requests and is thus unlawfully withholding responsive records. Further, Defendant has failed to provide dates of receipt, tracking numbers and estimated dates on which Defendant will complete action on each of Plaintiff’s FOIA requests.

**4.** Because of Defendant’s FOIA violations, Plaintiff has no recourse but to seek declaratory relief establishing that Defendant has violated FOIA and seek injunctive relief directing Defendant to promptly provide Plaintiff with the requested records.

#### **JURISDICTION, VENUE AND BASIS FOR RELIEF**

**5.** This Court has jurisdiction over this action pursuant to FOIA (5 U.S.C. §552(a)(4)(B)), federal question (28 U.S.C. § 1331), and pursuant to the Declaratory Judgment Act (28 U.S.C. § 2201).

**6.** Venue properly vests in this Court pursuant to 5 U.S.C. § 552(a)(4)(B), which provides venue for all FOIA cases in the District of Columbia.

7. Declaratory relief is appropriate under 28 U.S.C. § 2201.
8. Injunctive relief is appropriate under 28 U.S.C. § 2202 and 5 U.S.C. § 552(a)(4)(B).

### **PARTIES**

9. Plaintiff STOP GEOENGINEERING MINNESOTA is an entity whose purpose is to educate the public about how geoengineering and weather modification can impact public health. Plaintiff is a project of the non-profit Minnesota Natural Health Coalition which is a 501(c)(3) tax exempt non-profit organization. SGM regularly informs, educates and counsels the public regarding weather modification and government involvement in implementing and regulating weather modification. SGM has a large and growing base of approximately 500 supporters. Plaintiff uses FOIA to request records of federal agencies and intends to do so in the future. The records requested through FOIA by Plaintiff in this matter will be used by SGM to inform interested parties in government (both elected officials and regulatory agencies), the media, other educational non-profits and the public at large about weather modification, government knowledge of weather modification, and government efforts to restrict public knowledge about weather modification. Plaintiff is adversely affected by Defendant's failure to comply with FOIA as alleged herein, *inter alia*, because Plaintiff will not be able to timely and effectively inform the public and its supporters about weather modification, government knowledge of weather modification, and government efforts to restrict public knowledge about weather modification. Further, Defendant's failure and refusal to: (1) issue timely final determinations of Plaintiff's FOIA requests and (2) provide Plaintiff with the estimated completion dates of their requests, has injured Plaintiff's interests established by FOIA as well as in public oversight of governmental operations. Unless the Court grants the requested relief, Plaintiff will continue to be adversely affected by Defendant's failure to comply with FOIA.

**10.** Defendant U.S. AIR FORCE is an agency of the executive branch of the United States government, and is in possession, custody or control of the records sought by Plaintiff, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

### **STATUTORY BACKGROUND**

**11.** FOIA was enacted “to establish a general philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language.” S. Rep. No. 813, at 3 (1st Sess. 1965). As the Supreme Court has affirmed, “Congress believed that this philosophy, put into practice, would help ‘ensure an informed citizenry, vital to the functioning of a democratic society.’” *Dep’t of Justice v. Tax Analysts*, 492 U.S. 136, 142 (1989) (quoting *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978)). Accordingly, “the basic purpose” of FOIA is “to open agency action to the light of public scrutiny.” *Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 772 (1989) (quoting *Dep’t of the Air Force v. Rose*, 425 U.S. 352, 372 (1976)).

**12.** An “agency record” subject to a FOIA request is any record that is (1) created or obtained by an agency, and (2) under agency control at the time of a FOIA request. *See, e.g., United States Dep’t of Justice v. Tax Analysts*, 492 U.S. 136, 144-45 (1989).

**13.** FOIA imposes strict deadlines on federal agencies. The Act requires a federal agency that receives a FOIA request to determine whether the requested records are exempt from disclosure under 5 U.S.C. § 552(b) and to communicate that determination to the requester within 20 business days. 5 U.S.C. § 552(a)(6)(A)(i). The 20-business-day period commences on the date on which the request is first received by the appropriate component of the agency, “but in any event not later than ten days after the request is first received by any component of the agency” that is designated in the agency’s regulations to receive requests under FOIA. *Id.* If the agency

determines the records are not exempt from public disclosure, the agency is required to make the requested records “promptly available” to the requester. 5 U.S.C. § 552(a)(3)(A).

**14.** Within the relevant time period, the agency must notify the requester of the scope of the documents that the agency will produce, the scope of the documents that the agency plans to withhold under any FOIA exemptions, the reasons for any withholdings, and of the requester’s right to appeal to the head of the agency any adverse determination. *Id.*; 5 U.S.C. § 552(a)(6)(A)(i). “The requirement that the agency notify the requester about administrative appeal rights [] indicates that the ‘determination’ must be substantive, not just a statement of a future intent to produce non-exempt responsive documents.” *Citizens for Responsibility and Ethics in Wash. v. Federal Election Com’n*, 711 F.3d 180, 186 (D.C. Cir. 2013) (“*CREW*”).

**15.** If the requester appeals an agency’s determination, the agency must make a determination with respect to that appeal within 20 business days. 5 U.S.C. § 552(a)(6)(A)(ii).

**16.** In determining whether to comply with an initial request, an agency must first gather and review the requested documents. *CREW*, 711 F.3d at 188. Then, the agency making the determination “must determine whether to comply with a request—that is, whether a requester will receive all the documents the requester seeks. It is not enough that, within the relevant time period, the agency simply decides to later decide.” *CREW*, 711 F.3d at 186.

**17.** Congress set forth the circumstances in which federal agencies may take longer than 20 business days to make the initial determination. The agency may toll the 20-business-day deadline for up to ten additional business days if the agency is waiting for information that it has reasonably requested from the requester. 5 U.S.C. § 552(a)(6)(A)(ii)(I).

**18.** The agency may also toll the 20-business-day deadline for up to ten additional business days if it needs to clarify with the requester any issues regarding fee assessment. 5 U.S.C. §

552(a)(6)(A)(ii)(II). If the agency faces “unusual circumstances,” the agency may extend the 20-business-day deadline if the agency sets forth in writing “the unusual circumstances for such extension and the date on which a determination is expected to be dispatched.” 5 U.S.C. § 552(a)(6)(B)(i). No extension may exceed 10 business days unless the agency: (1) provides written notice to the requester explaining the “unusual circumstances” requiring an extension; (2) establishes the date on which the agency expects to make the determination; and (3) gives the requester “an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request.” 5 U.S.C. § 552(a)(6)(B)(ii).

**19.** Under FOIA, “unusual circumstances” are defined as “the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request[,]” or “the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request,” or “the need for consultations . . . with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.” 5 U.S.C. § 552(a)(6)(B)(iii).

**20.** An untimely determination or response is a violation of FOIA, regardless of the final outcome of the request. *Gilmore v. U.S. Dept. of Energy*, 33 F. Supp. 2d 1184, 1188 (N.D. Cal. 1998), *Or. Natural Desert Ass’n v. Gutierrez*, 409 F. Supp. 2d 1237, 1248 (D. Or. 2006).

**21.** Administrative remedies are deemed exhausted when an agency fails to comply with applicable time limits. 5 U.S.C. § 552(a)(6)(C)(i); *CREW*, 711 F.3d at 277.

**22.** If the agency fails to meet FOIA’s disclosure deadlines, including the deadline to determine within 20 business days whether to respond to the request, the agency may not charge

the requester for the costs incurred in searching for or duplicating the requested documents unless unusual or exceptional circumstances apply. 5 U.S.C. § 552(a)(4)(A)(viii).

**23.** Unless an agency subject to FOIA properly establishes a different timeline for disclosing responsive records, FOIA’s mandate to make public records “promptly available” to a requester requires federal agencies to provide responsive records to a requester within or shortly after the 20-business-day deadline set forth in 5 U.S.C. § 552(a)(6)(A)(i).

**24.** FOIA requires federal agencies to provide the requester with information about the status of the agency’s response to the request, including the date it originally received a request, an individualized tracking number for each request, and an estimated date on which the agency will complete action on the request. 5 U.S.C. § 552(a)(7).

**25.** An agency may avoid disclosure of information responsive to a FOIA request only if the agency proves that the requested documents fall within one of the nine enumerated exemptions to the general disclosure requirement. *See* 5 U.S.C. § 552(b)(1)–(9). FOIA requires an agency withholding information responsive to a FOIA request must provide the requester with “the reasons therefore.” 5 USC § 552(a)(6)(A)(i).

**26.** Consistent with encouraging disclosure, the exemptions under § 552(b) are discretionary, not mandatory. *Chrysler Corp. v. Brown*, 441 U.S. 281, 291 (1979). “Subsection (b), 5 U.S.C. § 552(b), which lists the exemptions, simply states that the specified material is not subject to the disclosure obligations set out in subsection (a). By its terms, subsection (b) demarcates the agency’s obligation to disclose; it does not foreclose disclosure.” *Id.* at 292.

**27.** An agency bears the burden of proving that a requested document falls within one of the nine exemptions. *See Schiller v. NLRB*, 964 F.2d 1205, 1207 (D.C. Cir. 1992) (“Under FOIA, ‘the burden is on the agency to sustain its action.’”); *Assembly of State of California v. U.S.*

*Dep't of Commerce*, 968 F.2d 916, 920 (9th Cir. 1992) (“The government has the burden to prove that a requested document falls within one of FOIA’s exemptions.”).

**28.** Given the policy behind the FOIA, the federal courts have consistently refused to allow agencies to meet their burden of proving the requested documents fall within one of the FOIA’s exemptions by making conclusory and generalized allegations of confidentiality. *Coastal States Gas Corp. v. Department of Energy*, 617 F.2d 854, 861 (D.C. Cir. 1980); *see also Anderson v. Dep't of Health & Human Servs.*, 907 F.2d 936, 941 (10th Cir. 1990) (“The district court must determine whether all of the requested materials fall within an exemption to the FOIA and may not simply conclude that an entire file or body of information is protected without consideration of the component parts.”).

**29.** “Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.” *Anderson*, 907 F.2d at 941. An agency cannot simply redact entire records or pages if a small portion is subject to an exemption. *Oglesby v. U.S. Dep't of the Army*, 79 F.3d 1172, 1176 (D.C. Cir. 1996) (“If a document contains exempt information, the agency must still release ‘any reasonably segregable portion’ after deletion of the nondisclosable portions.”) (quoting 5 U.S.C. § 552(b)). “[T]he exemptions to the FOIA do not apply wholesale. An item of exempt information does not insulate from disclosure the entire file in which it is contained, or even the entire page on which it appears.” *Arieff v. Dep't of the Navy*, 712 F.2d 1462, 1466 (D.C. Cir. 1983). Only information falling within one of FOIA’s statutory exemptions may be redacted from a responsive record; there is no exemption under FOIA for “non-responsive” information. *Am. Immigration Lawyers Ass'n v. Exec. Office for Immigration Review*, 830 F.3d 667, 676-79 (D.C. Cir 2016).



**30.** A U.S. district court has 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). If the government can show that “exceptional circumstances” exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. 5 U.S.C. § 552(a)(6)(C)(i). Notably, the term “exceptional circumstances” does *not* include a delay that results from a predictable agency workload of FOIA requests, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests. 5 U.S.C. § 552(a)(6)(C)(ii).

**31.** Under FOIA, the federal agency has the burden to sustain its action. 5 U.S.C. § 552(a)(4)(B).

**32.** The Court may assess attorney fees and litigation costs against the United States if Plaintiff substantially prevails in this action. 5 U.S.C. § 552(a)(4)(E).

## STATEMENT OF FACTS

### **SGM Request to Air Force Acquisition**

**33.** On December 11, 2018, by email and U.S. Mail, Plaintiff sent a FOIA request to the Air Force Acquisition requesting release of records from January 1, 2016 to the date a FOIA search is conducted - discussing, documenting, memorializing, or otherwise concerning (1) confidentiality agreement(s) executed by the Air Force with any and all contractors who build, design, or maintain aircraft, (2) list(s) of acquisitions pertaining to weather modification or any weather intervention techniques, (3) list(s) of contractors involved with weather modification or any weather intervention techniques, (4) list(s) of acquisitions pertaining to geoengineering or climate engineering, (5) list(s) of contractors pertaining to geoengineering, (6) list(s) of

acquisitions pertaining to solar radiation management, and (7) list(s) of contractors pertaining to solar radiation management. Plaintiff also requested a public interest waiver of fees. The FOIA request was sent to the addresses and emails provided by the Air Force FOIA website.

**34.** No acknowledgment was received by Plaintiff regarding this FOIA request, nor was any tracking number assigned by Defendant.

**35.** On January 14, 2019, by email, Plaintiff wrote to Air Force Acquisition stating that the response period had elapsed and requesting a completion date for the FOIA request and fee waiver. This email included the December 11, 2018 initial email and its attached FOIA request and fee waiver request. No response was received by Plaintiff.

**36.** On February 22, 2019, Plaintiff submitted an appeal by U.S. Mail, certified mail, return receipt requested to two addresses for the Office of the Secretary of the Air Force on the grounds that that Air Force Acquisition had not made a timely determination on the merits of the FOIA request and fee waiver, had not notified Plaintiff of its determination, and had not notified Plaintiff of the date when a complete response would be provided by the Air Force. The appeal letters were delivered on February 27, 2019 and March 1, 2019.

**37.** No acknowledgment of this FOIA appeal was received by Plaintiff to this FOIA appeal, nor was any tracking number assigned by Defendant.

**38.** On March 29, 2019, Plaintiff sent a reminder letter to Defendant regarding the appeal of the Air Force Acquisition request.

**39.** On May 31, 2019, Plaintiff sent Defendant correspondence notifying the Air Force of SGM's intent to file suit over FOIA violations pertaining to the Air Force Acquisition request and appeal, wherein Plaintiff again requested that SGM be provided with the date when a complete response to the FOIA request and the FOIA appeal would be provided by the Air

Force. Plaintiff stated that unless responsive records were received by July 1, 2019, Plaintiff would consider filing suit in federal district court alleging FOIA violations related to (1) failure to timely respond, (2) failure to search for responsive records, (3) failure to timely respond to a FOIA appeal, (4) failure to provide an estimated completion date, (5) the Air Force's pattern and practice of failing to provide an estimated completion date for FOIA requests, (6) failure to provide the date the Air Force received the FOIA request, and (7) failure to provide the date the Air Force received the FOIA appeal.

**40.** Defendant failed to make a final determination resolving the Air Force Acquisition FOIA request within 20 business days from receipt.

**41.** Defendant failed to make a final determination resolving the Air Force Acquisition FOIA appeal within the deadline of 20 business days from receipt.

**42.** Defendant did not provide the date of receipt, a tracking number or an estimated completion date for the Air Force Acquisition request.

**43.** Defendant did not provide the date of receipt, a tracking number or an estimated completion date for the Air Force Acquisition appeal.

**44.** None of FOIA's nine exemptions to mandatory disclosure apply to the records, currently being withheld by Defendant, which are responsive to the Air Force Acquisition request.

**45.** Plaintiff has been required to expend costs and to obtain the services of a law firm to prosecute this claim.

**46.** Plaintiff's claims presented herein are not insubstantial within the meaning of 5 U.S.C. § 552(a)(4)(E)(ii)(II).

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**SGM Request to Air Force Material Command**

47. On December 11, 2018, by email and U.S. Mail, Plaintiff sent a FOIA request to the Air Force Material Command requesting release of records from January 1, 2016 to the date a FOIA search is conducted - discussing, documenting, memorializing, or otherwise concerning (1) confidentiality agreement(s) executed by the Air Force with any and all contractors who build, design, or maintain aircraft, (2) all records concerning discovery, development and integration of technologies concerning weather modification or any weather intervention techniques, (3) all records concerning testing and evaluation of technologies concerning weather modification or any weather intervention techniques; (4) all records concerning installation and operation of technologies concerning weather modification or any weather intervention techniques, (5) all records concerning discovery, development and integration of technologies concerning geoengineering or climate engineering, (6) all records concerning testing and evaluation of technologies concerning geoengineering or climate engineering, (7) all records concerning installation and operation of technologies concerning geoengineering or climate engineering, (8) all records concerning discovery, development and integration of technologies concerning solar radiation management, (9) all records concerning testing and evaluation of technologies concerning solar radiation management, (10) all records concerning installation and operation of technologies concerning solar radiation management, (11) all records concerning any Weather Force Support Element (WFSE) as defined in the report written by House, Col. T.J.; Near, Lt. Col. J.B; Shields, LTC W.B. *Weather As a Force Multiplier: Owning the Weather in 2025* (August, 1995). Plaintiff also requested a public interest waiver of fees. The FOIA request was sent to the addresses and emails provided by the Air Force FOIA website.

**48.** No acknowledgment was received by Plaintiff regarding this FOIA request, nor was any tracking number assigned by Defendant.

**49.** On January 14, 2019, by email, Plaintiff wrote to Air Force Material Command stating that the response period had elapsed and requesting a completion date for the FOIA request and fee waiver. This email included the December 11, 2018 initial email and its attached FOIA request and fee waiver request. No response was received by Plaintiff.

**50.** On February 22, 2019, Plaintiff submitted an appeal by U.S. Mail, certified mail, return receipt requested to two addresses for the Office of the Secretary of the Air Force on the grounds that that Air Force Material Command had not made a timely determination on the merits of the FOIA request and fee waiver, had not notified Plaintiff of its determination, and had not notified Plaintiff of the date when a complete response would be provided by the Air Force. The appeal letters were delivered on February 27, 2019 and March 1, 2019.

**51.** No acknowledgment was received by Plaintiff regarding this FOIA appeal, nor was any tracking number assigned by Defendant.

**52.** On March 29, 2019, Plaintiff sent a reminder letter regarding the appeal of the Air Force Material Command request.

**53.** On May 31, 2019, Plaintiff sent Defendant correspondence notifying the Air Force of SGM's intent to file suit over FOIA violations pertaining to the Air Force Material Command request and appeal, wherein Plaintiff again requested that be provided with the date when a complete response to the FOIA request and the FOIA appeal would be provided by the Air Force. Plaintiff stated that unless responsive records were received by July 1, 2019, Plaintiff would consider filing suit in federal district court alleging FOIA violations related to (1) failure to timely respond, (2) failure to search for responsive records, (3) failure to timely respond to a

FOIA appeal, (4) failure to provide an estimated completion date, (5) the Air Force's pattern and practice of failing to provide an estimated completion date for FOIA requests, (6) failure to provide the date the Air Force received the FOIA request, and (7) failure to provide the date the Air Force received the FOIA appeal.

**54.** Defendant failed to make a final determination resolving the Air Force Material Command FOIA request within 20 business days from receipt.

**55.** Defendant failed to make a final determination resolving the Air Force Material Command FOIA appeal within the deadline of 20 business days from receipt.

**56.** Defendant did not provide the date of receipt, a tracking number or an estimated completion date for the Air Force Material Command request.

**57.** Defendant did not provide the date of receipt, a tracking number or an estimated completion date for the Air Force Material Command appeal.

**58.** None of FOIA's nine exemptions to mandatory disclosure apply to the records, currently being withheld by Defendant, which are responsive to the Air Force Material Command request.

**59.** Plaintiff has been required to expend costs and to obtain the services of a law firm to prosecute this claim.

**60.** Plaintiff's claims presented herein are not insubstantial within the meaning of 5 U.S.C. § 552(a)(4)(E)(ii)(II).

**SGM Request to Air Force Research Laboratory**

**61.** On December 11, 2018, by email and U.S. Mail, Plaintiff sent a FOIA request to the Air Force Research Laboratory at Wright-Patterson Air Force Base and the Air Force Research Laboratory Rome FOIA Office, requesting release of records from January 1, 2016 to the date a FOIA search is conducted - discussing, documenting, memorializing, or otherwise concerning

(1) confidentiality agreement(s) executed by the Air Force with any and all contractors who build, design, or maintain aircraft, (2) all records concerning weather modification or any weather intervention techniques, (3) all records concerning techniques and/or technology to modify weather patterns, (4) all records concerning techniques and/or technology for geoengineering or climate engineering, (5) all records concerning techniques and/or technology for solar radiation management, (6) all records concerning weather modification or any weather intervention techniques, (7) all reports concerning geoengineering or climate engineering, (8) all reports concerning solar radiation management, (9) all reports concerning High Frequency Active Auroral Research Program (HAARP), (10) all reports concerning Project Stormfury, (11) all reports concerning Project Cloverleaf, (12) copy of the report written by House, Col. T.J.; Near, Lt. Col. J.B.; Shields, LTC W.B., *Weather As A Force Multiplier: Owning the Weather in 2025* (August, 1995), and (13) copies of forty-three articles referenced in House, Col. T.J.; Near, Lt. Col. J.B.; Shields, LTC W.B., *Weather As A Force Multiplier: Owning the Weather in 2025* (August, 1995). Plaintiff also requested a public interest waiver of fees. The FOIA request was sent to the addresses and emails provided by the Air Force FOIA website.

**62.** On December 18, 2018, the Wright-Patterson Air Force Base RSC FOIA office informed Plaintiff by email that FOIA control number 2019-01211-F had been assigned to this FOIA request, but did not mention each of the thirteen categories of information sought by SGM, and stated that the FOIA request was being forwarded to Air Force Installation and Mission Support Center FOIA in Lackland, Texas. The date that this Air Force Research Laboratory FOIA request was received at the Wright-Patterson Air Force Base and at the Air Force Research Laboratory Rome FOIA Office was not provided by the Air Force.

**63.** On January 14, 2019, by email, Plaintiff wrote to Air Force Research Laboratory at the Wright-Patterson Air Force Base and at the Air Force Research Laboratory Rome FOIA Office stating that the response period had elapsed and requesting a completion date for the FOIA request and fee waiver. This email included the December 11, 2018 initial email and its attached FOIA request and fee waiver request.

**64.** By letter date December 18, 2018 but postmarked mailed on January 24, 2019, the Wright-Patterson Air Force Base RSC FOIA office wrote to Plaintiff that FOIA control number 2019-01211-F had been assigned to this FOIA request, but did not mention each of the thirteen categories of information sought by SGM, and stated that a search of records at the Wright-Patterson Air Force Base and at the Air Force Research Laboratory Rome FOIA Office did not produce any responsive records. This letter did not mention that the Air Force Research Laboratory request had been forwarded to the Air Force Installation and Mission Support Center FOIA in Lackland, Texas. The date that this Air Force Research Laboratory FOIA request was received at the Wright-Patterson Air Force Base and at the Air Force Research Laboratory Rome FOIA Office was not provided by the Air Force.

**65.** On February 8, 2019 Plaintiff wrote to the Air Force Installation and Mission Support Center FOIA in Lackland, Texas inquiring when Plaintiff could expect a response to the request for records and request for fee waiver. No response was received by Plaintiff from Air Force Installation and Mission Support Center FOIA in Lackland, Texas. Defendant did not provide the date of receipt, a tracking number or an estimated completion date for the Air Force Research Laboratory request forwarded to Air Force Installation and Mission Support Center FOIA in Lackland, Texas.



**66.** On March 14, 2019, Plaintiff submitted an appeal (“First Research Laboratory Appeal”) by U.S. Mail, certified mail, return receipt requested to the Office of the Secretary of the Air Force on the grounds that that Air Force Research Laboratory had not made a timely determination on the merits of the FOIA request and fee waiver, had not notified Plaintiff of its determination, and had not notified Plaintiff of the date when a complete response would be provided by the Air Force. The appeal letter was delivered on March 19, 2019.

**67.** No acknowledgment was received by Plaintiff regarding the First Research Laboratory Appeal, nor was any tracking number assigned by Defendant.

**68.** On May 2, 2019, Plaintiff sent a reminder letter regarding the lack of response to the First Research Laboratory Appeal.

**69.** On May 31, 2019, Plaintiff sent Defendant correspondence notifying the Air Force of SGM’s intent to file suit over FOIA violations pertaining to the Air Force Research Laboratory request and appeal, wherein Plaintiff again requested that be provided with the date when a complete response to the FOIA request and the FOIA appeal would be provided by the Air Force. Plaintiff stated that unless responsive records were received by July 1, 2019, Plaintiff would consider filing suit in federal district court alleging FOIA violations related to (1) failure to timely respond, (2) failure to search for responsive records, (3) failure to timely respond to a FOIA appeal, (4) failure to provide an estimated completion date, (5) the Air Force’s pattern and practice of failing to provided an estimated completion date for FOIA requests, (6) failure to provide the date the Air Force received the FOIA request, and (7) failure to provide the date the Air Force received the FOIA appeal.

**70.** On July 10, 2019, the Air Force 557<sup>th</sup> Weather Wing emailed Plaintiff that a response would be provided by mid-August 2019 and referenced two new case numbers: 2019-01352-F

and also 2019-0132-F-F, but did not reference FOIA control number 2019-01211-F. The Air Force 557<sup>th</sup> Weather Wing did not provide the date of receipt of the Air Force Research Laboratory request or reference the Air Force Installation and Mission Support Center FOIA in Lackland, Texas.

**71.** On July 17, 2019 the Air Force 557<sup>th</sup> Weather Wing provided one responsive document and a cover letter which did not reference any of the three case numbers assigned to the Air Force Research Laboratory request.

**72.** On August 1, 2019, Plaintiff filed another appeal (“Second Research Laboratory Appeal”) on the grounds that the Air Force had failed to conduct an adequate search as Plaintiff had requested records under thirteen categories, the July 17 2019 cover letter did not even mention Category 12 or Category 13 as records the Air Force searched for, and no response was ever provided by Air Force Installation and Mission Support Center FOIA in Lackland, Texas

**73.** No acknowledgment was received by Plaintiff regarding this Second Research Laboratory Appeal, nor was any tracking number assigned by Defendant.

**74.** Defendant failed to make a final determination resolving the First Research Laboratory Appeal or Second Research Laboratory Appeal within the deadline of 20 business days from receipt.

**75.** Defendant did not provide an estimated completion date for the Air Force Research Laboratory FOIA request.

**76.** Defendant did not provide the date of receipt, a tracking number or an estimated completion date for the First Research Laboratory Appeal or Second Research Laboratory Appeal.

**77.** None of FOIA's nine exemptions to mandatory disclosure apply to the records, currently being withheld by Defendant, which are responsive to the Air Force Research Laboratory request.

**78.** Plaintiff has been required to expend costs and to obtain the services of a law firm to prosecute this claim.

**79.** Plaintiff's claims presented herein are not insubstantial within the meaning of 5 U.S.C. § 552(a)(4)(E)(ii)(II).

**SGM Request to Air Force Contract Management**

**80.** On December 11, 2018, by email and U.S. Mail, Plaintiff sent a FOIA request to Air Force Contract Management requesting release of records from January 1, 2016 to the date a FOIA search is conducted - discussing, documenting, memorializing, or otherwise concerning (1) confidentiality agreement(s) executed by the Air Force with any and all contractors who build, design, or maintain aircraft, (2) all contracts with American Elements, a company with offices at 1093 Broxton Avenue, Los Angeles, CA 90024, (3) all contracts with Raytheon, a company with offices at 870 Winter Street, Waltham, MA 02451, (4) all Requests for Proposal (RFPs) concerning weather modification or any weather intervention techniques, (5) all Statements of Work (SOWs) concerning weather modification or any weather intervention techniques, (6) all RFPs concerning cloud generation and seeding operations, (7) all SOWs concerning cloud generation and seeding operations, (8) all RFPs concerning geoengineering or climate engineering, (9) all SOWs concerning geoengineering or climate engineering, (10) all RFPs concerning solar radiation management, and (11) all SOWs concerning solar radiation management. Plaintiff also requested a public interest waiver of fees. The FOIA request was sent to the addresses and emails provided by the Air Force FOIA website.

**81.** No acknowledgment was received by Plaintiff regarding this FOIA request, nor was any tracking number assigned by Defendant.

**82.** On January 14, 2019, by email, Plaintiff wrote to Air Force Contract Management stating that the response period had elapsed and requesting a completion date for the FOIA request and fee waiver. This email included the December 11, 2018 initial email and its attached FOIA request and fee waiver request. No response was received by Plaintiff.

**83.** On February 22, 2019, Plaintiff submitted an appeal by U.S. Mail, certified mail, return receipt requested to two addresses for the Office of the Secretary of the Air Force on the grounds that that Air Force Contract Management had not made a timely determination on the merits of the FOIA request and fee waiver, had not notified Plaintiff of its determination, and had not notified Plaintiff of the date when a complete response would be provided by the Air Force.

**84.** No acknowledgment was received by Plaintiff regarding this FOIA appeal, nor was any tracking number assigned by Defendant.

**85.** On March 29, 2019, Plaintiff sent a reminder letter regarding the appeal of the Air Force Contract Management request.

**86.** On May 31, 2019, Plaintiff sent Defendant correspondence notifying the Air Force of SGM's intent to file suit over FOIA violations pertaining to the Air Force Contract Management request and appeal, wherein Plaintiff again requested that be provided with the date when a complete response to the FOIA request and the FOIA appeal would be provided by the Air Force. Plaintiff stated that unless responsive records were received by July 1, 2019, Plaintiff would consider filing suit in federal district court alleging FOIA violations related to (1) failure to timely respond, (2) failure to search for responsive records, (3) failure to timely respond to a FOIA appeal, (4) failure to provide an estimated completion date, (5) the Air Force's pattern and

practice of failing to provided an estimated completion date for FOIA requests, (6) failure to provide the date the Air Force received the FOIA request, and (7) failure to provide the date the Air Force received the FOIA appeal.

**87.** Defendant failed to make a final determination resolving this Air Force Contract Management request within 20 business days from receipt.

**88.** Defendant failed to make a final determination resolving the Air Force Contract Management appeal within the deadline of 20 business days from receipt.

**89.** Defendant did not provide the date of receipt, a tracking number or an estimated completion date for the Air Force Contract Management request.

**90.** Defendant did not provide the date of receipt, a tracking number or an estimated completion date for the Air Force Contract Management appeal.

**91.** None of FOIA's nine exemptions to mandatory disclosure apply to the records, currently being withheld by Defendant, which are responsive to the Air Force Contract Management request.

**92.** Plaintiff has been required to expend costs and to obtain the services of a law firm to prosecute this claim.

**93.** Plaintiff's claims presented herein are not insubstantial within the meaning of 5 U.S.C. § 552(a)(4)(E)(ii)(II).

## **CAUSES OF ACTION**

### **COUNT I**

#### **VIOLATION OF THE FREEDOM OF INFORMATION ACT: CONSTRUCTIVE DENIAL/UNLAWFUL WITHHOLDING**

**94.** The allegations made in all preceding paragraphs are re-alleged and incorporated by reference herein.

- 95.** Plaintiff has a statutory right to the records they seek, which are “agency records” within the meaning of FOIA, and there is no legal basis for Defendant to assert that any of FOIA’s nine disclosure exemptions apply. *See* 5 U.S.C. § 552(b)(1)-(9).
- 96.** Defendant violated Plaintiff’s rights under FOIA by failing to comply with FOIA’s decision deadlines and thus constructively withholding information responsive to Plaintiff’s four FOIA requests and five appeals.
- 97.** Based on the nature of Plaintiff’s professional activities, they will undoubtedly continue to employ FOIA’s provisions in information requests to Defendant in the foreseeable future.
- 98.** Plaintiff’s professional activities will be adversely affected if Defendant is allowed to continue violating FOIA’s disclosure provisions as it has in this case.
- 99.** Unless enjoined and made subject to a declaration of Plaintiff’s legal rights by this Court, Defendant will continue to violate the rights of Plaintiff to receive public records under FOIA.
- 100.** Plaintiff is entitled to reasonable costs of litigation, including attorneys’ fees and costs pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

**COUNT II**  
**VIOLATION OF THE FREEDOM OF INFORMATION ACT:**  
**DECISION DEADLINE VIOLATION**

- 101.** The allegations made in all preceding paragraphs are re-alleged and incorporated by reference herein.
- 102.** Plaintiff has a statutory right to have Defendant process their FOIA requests and appeals in a manner which complies with FOIA. Plaintiff’s rights in this regard were violated when the Defendant unlawfully delayed its responses to Plaintiff’s information requests and appeals beyond the determination deadlines imposed by FOIA. 5 U.S.C. §§ 552(a)(6)(A)(i), (ii).
- 103.** Defendant is unlawfully withholding public disclosure of records sought by Plaintiff, to

which Plaintiff is entitled, and for which no valid disclosure exemption applies.

**104.** Based on the nature of Plaintiff's professional activities, they will undoubtedly continue to employ FOIA's provisions in information requests to Defendant in the foreseeable future.

**105.** Plaintiff's professional activities will be adversely affected if Defendant is allowed to continue violating FOIA's decision deadlines as it has in this case.

**106.** Unless enjoined and made subject to a declaration of Plaintiff's legal rights by this Court, Defendant will continue to violate the rights of Plaintiff to have SGM's information requests processed as required by FOIA.

**107.** Plaintiff is entitled to reasonable costs of litigation, including attorney fees pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

**COUNT III  
VIOLATION OF THE FREEDOM OF INFORMATION ACT:  
FAILURE TO INFORM PLAINTIFF OF THE DATE OF REQUEST & APPEAL  
RECEIPT, PROVIDE TRACKING NUMBER OR AN ESTIMATED DATE ON WHICH  
DEFENDANT WILL COMPLETE ACTION ON EACH OF  
PLAINTIFF'S FOIA REQUESTS AND APPEALS**

**108.** The allegations made in all preceding paragraphs are re-alleged and incorporated by reference herein.

**109.** FOIA requires federal agencies to acknowledge receipt of requesters' requests and appeals of FOIA determinations, provide requesters with the date upon which the agency received FOIA requests and appeals, and provide an individualized tracking number for each request and appeal received that will take longer than ten days to process. 5 U.S.C. §§ 552(a)(7)(A), (B).

**110.** FOIA requires that each agency must provide information about the status of a request to the person making an information request including an estimated date on which the agency will complete action on the request. 5 U.S.C. § 552(a)(7)(B)(ii).

**111.** Plaintiff asked Defendant numerous times for the date it received Plaintiff's requests and appeals as well as for tracking numbers and for estimated dates of completion for SGM's pending FOIA requests and appeals. In so doing, Plaintiff invoked 5 U.S.C. § 552(a)(7)(A), (B).

**112.** Defendant has repeatedly failed to provide the dates of receipt as well as tracking numbers and estimated dates of completion for of SGM's FOIA requests and appeals at issue in this case.

**113.** Upon information and belief, Defendant's failure to provide the dates of receipt as well as tracking numbers and a specific estimated date of completion for SGM's FOIA requests and appeals represents an ongoing policy, practice, and standard operating procedure.

**114.** A policy, practice, or "standard operating procedure" of refusing to provide estimated dates of completion to requesters is in violation of FOIA. Such a practice constitutes outrageous conduct for purposes of the broad equitable powers provided by FOIA to the Court. Such a policy is arbitrary, capricious, an abuse of discretion, and otherwise contrary to law.

**115.** Based on the nature of Plaintiff's professional activities, they will undoubtedly continue to employ FOIA's provisions in information requests to Defendant in the foreseeable future.

**116.** Plaintiff's professional activities will be adversely affected if Defendant is allowed to continue violating FOIA's requirement to provide the dates of receipt as well as tracking numbers and estimated completion dates as it has in this case.

**117.** Unless enjoined and made subject to a declaration of Plaintiff's legal rights by this Court, Defendant will continue to violate the rights of Plaintiff to have their information requests processed as required by FOIA.

**118.** Plaintiff is entitled to reasonable costs of litigation, including attorney fees pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).



**COUNT IV  
VIOLATIONS OF FOIA:  
ENGAGING IN A PATTERN OR PRACTICE OF UNLAWFUL CONDUCT**

**119.** The allegations made in all preceding paragraphs are re-alleged and incorporated by reference herein.

**120.** On information and belief, Defendant has a pattern, practice, or policy of not providing requesters with dates of receipt as well as tracking numbers and estimated completion dates for FOIA requests and appeals.

**121.** In this case, Defendant has engaged in a pattern or practice of violating FOIA in responding to Plaintiff's FOIA requests and appeals. Defendant's policies, practices, and standard operating procedures for responding to FOIA requests and appeals by failing to provide dates of receipt as well as tracking numbers and estimated completion dates have resulted in violations of Plaintiff's rights as alleged above. Additionally, Defendant's policies, practices, and standard operating procedures for responding to FOIA requests are likely to result in future violations of FOIA that will harm Plaintiff because they are likely to continue seeking public documents from Defendant.

**122.** Defendant's patterns, practices, or policies of not providing requesters with dates of receipt as well as tracking numbers and estimated completion dates for FOIA requests and appeals violates the intent and purpose of FOIA.

**123.** Defendant's patterns, practices, or policies for processing FOIA requests and appeals have resulted in violations of Plaintiff's rights to the lawful implementation of FOIA as alleged above.

**124.** Additionally, Defendant's patterns, practices, or policies for processing FOIA requests and appeals are likely to result in future violations of FOIA that will harm Plaintiff because

Plaintiff is likely to continue seeking public records from Defendant.

**125.** Defendant's patterns, practices, or policies exist, whether formal or informal in nature.

**126.** FOIA imposes no limits on courts' equitable power to enforce its terms, and this Court should exercise its equitable powers to compel Defendant to comply with the clear requirements of FOIA and prevent Defendant from continuing to apply its unlawful FOIA patterns, practices, or policies.

**127.** Even if Defendant fully discloses all documents responsive to Plaintiff's FOIA requests and appeals, Plaintiff is entitled to a declaration that Defendant's actions violated FOIA, and to an injunction barring Defendant from violating FOIA in the future when responding to FOIA requests. Declaratory and injunctive relief will clarify and settle the legal relations at issue and afford relief from the uncertainty and controversy giving rise to these proceedings.

**128.** Defendant's unlawful pattern and practice of violating FOIA when responding to Plaintiff's FOIA requests and appeals entitles Plaintiff to an award of reasonable attorney fees and other litigation costs pursuant to 5 U.S.C. § 552(a)(4)(E).

### **REQUESTS FOR RELIEF**

WHEREFORE, Plaintiff prays that this Court:

- 1.** Order Defendant in the form of injunctive relief to promptly provide Plaintiff all of the records sought in this action;
- 2.** Declare Defendant's failure to disclose the information requested by Plaintiff to be unlawful under FOIA, 5 U.S.C. § 552(a)(3);
- 3.** Declare Defendant's failure to make a timely determination on each of SGM's FOIA requests and appeals to be unlawful under FOIA, 5 U.S.C. § 552(a)(6)(A)(i);
- 4.** Declare Defendant's failure to provide Plaintiff with dates of receipt, provide tracking

numbers, and provide estimated completion dates for each of SGM's FOIA requests and appeals, to be unlawful under FOIA, 5 U.S.C. § 552(a)(7)(B)(ii);

5. Award Plaintiff their costs and reasonable attorney fees pursuant to 5 U.S.C. § 552(a)(4)(E) or any other applicable law;
6. Expedite this action in every way pursuant to 28 U.S.C. § 1657(a); and
7. Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted for the Court's consideration, this 24<sup>th</sup> day of September, 2019.

/s/ Brian Gaffney

Brian Gaffney (California Bar No. 168778)

***Pro hac vice application forthcoming***

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/s/ David Bahr

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