

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

<b>DAVID HARPER,</b>	:	
<b>601 Pioneer Mountain Loop</b>	:	
<b>Jerome, Idaho 83338</b>	:	
	:	
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>U.S. DEPARTMENT OF INTERIOR,</b>	:	
<b>2201 C Street, NW</b>	:	
<b>Washington, DC 20520</b>	:	
	:	
<b>Defendant.</b>	:	

**COMPLAINT FOR INJUNCTIVE RELIEF**

**INTRODUCTION**

1. This is an action under the Freedom of Information Act (FOIA), 5 U.S.C. §552, for injunctive and other appropriate relief and seeking the disclosure and release of agency records improperly withheld from Plaintiff, David Harper, by Defendant, the U.S. Department of Interior (“Department of Interior”).

**JURISDICTION AND VENUE**

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §552(a)(4)(B) and 5 U.S.C. §552(a)(6)(C)(i). This Court also has jurisdiction over this action pursuant to 28 U.S.C. §1331. Venue lies in the district under 5 U.S.C. §552(a)(4)(B).

**PARTIES**

3. Plaintiff is an employee of the Department of Interior and a resident of Idaho.

4. Defendant, Department of Interior, is a Department of the Executive Branch of the United States Government. The Department of Interior is an agency within the meaning of 5 U.S.C. §552(f).

## **FACTUAL ALLEGATIONS**

### First FOIA Request

5. By electronic filing on June 26, 2019 with the FOIA Office of the Department of Interior Bureau of Land Management Washington Office (“the BLM Washington FOIA Office”), Plaintiff requested copies of “any and all documents (including draft and official), all communications, and interviews pertaining to disciplinary actions regarding myself from June 1, 2017 to the present from throughout the Bureau of Land Management and the Department of Interior.”
6. By email on July 3, 2019, the BLM Washington FOIA Office advised Plaintiff that it had received his FOIA request and that his FOIA request was placed on the “Normal” track. The “Normal” track is for requests that can be processed in 6 to 20 workdays. The BLM Washington FOIA Office also assigned Plaintiff’s request control number 2019-00907.
7. By email on August 7, 2019, the BLM Washington FOIA Office informed Plaintiff that the track for his request had been changed from “Normal” to “Complex.” The “Complex” track is for requests that can be processed in 21 to 60 workdays.
8. By email dated August 27, 2019, the Washington Office FOIA Coordinators informed Plaintiff that they had located documents belonging to both the BLM Washington FOIA Office and the Office of the Inspector General (“OIG”). The email further explained the BLM Washington FOIA Office and the OIG would separately review the documents belonging to their offices and would separately respond to Plaintiff.

9. On August 30, 2019, the Office of the Inspector General provided a narrative response and responsive documents to Plaintiff.
10. To date, the BLM Washington FOIA Office has not provided a response to Plaintiff.
11. More than twenty days have passed since the Department of Interior received Plaintiff's FOIA request, and it has not notified Plaintiff as to whether it will fully comply with his request. Thus, under 5 U.S.C. §552(a)(6)(A) and 5 U.S.C. §552(a)(6)(C), Plaintiff has exhausted the applicable administrative remedies with respect to his FOIA request.
12. Plaintiff has a right of prompt access to the requested records under 5 U.S.C. §552(a)(3)(A) and the Department of Interior has wrongfully withheld the sought-after documents.

#### Second FOIA Request

13. By email on October 2, 2019 to Kristine King, State FOIA Coordinator for the BLM Idaho State Office ("Idaho Office"), Plaintiff submitted a second FOIA request for the following documents related to Plaintiff's July 15, 2019 administrative grievance: "(1) investigation materials and the written report by Howard Hedrick, (2) draft decision letters and/or documents prepared towards a decision written by Idaho State Director John Ruhs, (3) investigative materials, reports, decision letters or documents dated between July 15, 2019 and September 20, 2019."
14. By letter on October 4, 2019, Ms. King acknowledged receipt of Plaintiff's FOIA request and assigned it control number FOIA No. ID 2020-01. Ms. King also sent Plaintiff a Certification of Identity.
15. Plaintiff submitted his completed Certification of Identity by email to Ms. King on October 7, 2019.

16. By email on October 8, 2019, Ms. King acknowledged receipt of Plaintiff's Certification of Identity and informed Plaintiff that her office was moving forward with processing his request.
17. By email on October 22, 2019 to the Idaho FOIA Office, Mr. Harper requested an update on the status of his FOIA requests.
18. By letter on November 4, 2019, the Ms. King advised Plaintiff that his request fell under the definition of "unusual circumstances" because it required coordination with the Field Solicitor's Office Attorney/Advisor and, therefore, the BLM would be taking a 10-workday extension. Ms. King further wrote that the BLM was anticipating mailing the final response to Plaintiff's FOIA request no later than November 19, 2019.
19. By letter on November 18, 2019, John Ruhs, State Director, informed Plaintiff that the BLM Idaho State Office had no responsive records to items 2 and 3 of his request. Mr. Ruhs wrote that, for item 1, the BLM Idaho State Office located 121 potentially responsive records, 78 of which concern the Washington Office and 43 of which concern the OIG. Mr. Ruhs further explained that the BLM Idaho State Office was transferring the respective pages to the Washington Office and OIG for each office to provide a response directly to Plaintiff. Mr. Ruhs also provided Plaintiff with two points of contact in the Washington Office, Keiosha Alexander and Ryan Witt.
20. By letter on November 25, 2019, the OIG sent its final response to Plaintiff.
21. Plaintiff did not receive any response from the Washington Office.
22. By email on December 17, 2019 to Ms. Alexander, Plaintiff explained that he had not received any response from the Washington Office. Plaintiff requested a timeline as to when he could expect to see a response to his request.

23. Ms. Alexander did not respond to Plaintiff's email.
24. By email on January 9, 2020 to Mr. Witt, Plaintiff request an update on his FOIA request.
25. Mr. Witt did not respond to Plaintiff's email.
26. More than twenty days have passed since the Department of Interior received Plaintiff's FOIA request and the Department has not notified Plaintiff as to whether it will fully comply with his request. Thus, under 5 U.S.C. §552(a)(6)(A) and 5 U.S.C. §552(a)(6)(C), Plaintiff has exhausted the applicable administrative remedies with respect to his FOIA request.
27. Plaintiff has a right of prompt access to the requested records under 5 U.S.C. §552(a)(3)(A) and the Department of Interior has wrongfully withheld the sought-after documents.
28. On January 21, 2020, Plaintiff, through undersigned counsel, sent a letter to the Washington Office FOIA Coordinators requesting a date by which Plaintiff could expect to receive responses to his FOIA requests Nos. FOIA 2019-00907 and FOIA ID 2020-01.
29. By email on January 22, 2020, the Washington Office FOIA Coordinators responded, stating it could not give an exact date of when its response and document production will be completed. The Washington Office FOIA Coordinators further explained that the Washington FOIA Office has almost 700 backlogged requests and is responding in the order each request was received.
30. On January 23, 2020, the undersigned contacted the Washington Office by telephone and requested information regarding where on the list of 700 requests the Plaintiff's requests fell. During the telephone call, the FOIA Coordinator was unable to provide the requested information.

**COUNT ONE**

31. Paragraphs 1-30 above are hereby incorporated by reference as if set forth fully herein.
32. The Interior Department's response to Plaintiff's FOIA requests violated the statutory deadlines imposed by FOIA, including the deadlines set forth in 5 U.S.C. §552(a)(6)(A).
33. Plaintiff has exhausted the applicable administrative remedies with respect to his FOIA request number 2019-00907.
34. Plaintiff is entitled to injunctive relief compelling the disclosure of the requested documents and reasonable attorneys' fees and costs.

**COUNT TWO**

35. Paragraphs 1-34 above are hereby incorporated by reference as if set forth fully herein.
36. The State Department's response to Plaintiff's FOIA requests violated the statutory deadlines imposed by FOIA, including the deadlines set forth in 5 U.S.C. §552(a)(6)(A).
37. Plaintiff has exhausted the applicable administrative remedies with respect to his FOIA request FOIA No. ID 2020-01.
38. Plaintiff is entitled to injunctive relief compelling the disclosure of the requested documents and reasonable attorneys' fees and costs.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in his favor and against Defendant, and award the following relief:

- a. Order Defendant to produce all responsive agency records within ten business days of the Court's Order in this matter;

- b. Award Plaintiff his costs and reasonable attorneys' fees incurred in this action pursuant to 5 U.S.C. §552(a)(4)(E); and
- c. Grant such other relief as the Court may deem just and proper.

Dated: January 30, 2020

Respectfully submitted,

/s/ Meghan A. Droste

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/s/ Lauren E. Naylor

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