

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

SUSAN B. LONG)
Transactional Records Access Clearinghouse)
Syracuse University)
360 Newhouse II)
Syracuse, NY 13244,)

and)

DAVID BURNHAM)
Transactional Records Access Clearinghouse)
3016 Tilden Street, N.W.)
Washington, DC 20008,)

Plaintiffs,)

v.)

Civil Action No. _____

DEPARTMENT OF JUSTICE)
950 Pennsylvania Avenue, N.W.)
Washington DC 20530,)

and)

ENVIRONMENTAL PROTECTION AGENCY)
1200 Pennsylvania Avenue, N.W.)
Washington, DC 20460,)

Defendants.)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, Susan B. Long and David Burnham, bring this action for declaratory and injunctive relief, alleging as follows:

NATURE OF ACTION

1. This is an action for violation of plaintiffs’ rights under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, as amended by the Freedom of Information Reform Act of 1986 (“FIRA”), the Electronic Freedom of Information Act Amendments of 1996 (“E-FOIA”), the

Openness Promotes Effectiveness in our National Government Act of 2007 (“OPEN Government Act”), and the FOIA Improvement Act of 2016, against defendants Department of Justice (“DOJ”) and Environmental Protection Agency (“EPA”).

2. Defendants DOJ and EPA have improperly withheld from disclosure agency records requested by plaintiffs under the FOIA.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 2201, and 5 U.S.C. § 552(a)(4)(B).

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 and 5 U.S.C. § 552(a)(4)(B).

PARTIES

5. Plaintiff Susan B. Long is an Associate Professor of Managerial Statistics at the Martin J. Whitman School of Management at Syracuse University. Professor Long serves as Co-Director of the Transactional Records Access Clearinghouse (“TRAC”), a Syracuse University data gathering, data research, and data distribution organization. TRAC was established in 1989 as a university center and has several offices including those on Syracuse University’s main campus and in Washington, D.C. The purpose of TRAC is to provide the American people and institutions of oversight, such as Congress, news organizations, public interest groups, businesses, scholars, and lawyers, with comprehensive information about the staffing, spending, and enforcement activities of the federal government.

6. Plaintiff David Burnham is Co-Director of TRAC, a long-time journalist, and an Associate Research Professor at the S.I. Newhouse School of Public Communications at Syracuse University.

7. Defendant DOJ is a department of the executive branch of the United States Government. Defendant DOJ is an “agency” within the meaning of 5 U.S.C. § 552(f).

8. Defendant EPA is an independent agency of the executive branch of the United States Government. Defendant EPA is an “agency” within the meaning of 5 U.S.C. § 552(f).

BACKGROUND

9. Plaintiffs have undertaken a research project to assess federal agency compliance with the processing requirements under FOIA. The ultimate goal of plaintiffs’ research is to receive, validate, and make accessible on the website foiaproject.org case-by-case data and statistics, regularly updated, on the current backlog, processing and wait times for responses to FOIA requests by the largest federal agencies. Because plaintiffs’ requests for this data are standardized, the agencies’ responses can be compared and evaluated. An initial report, based upon the responses received by many agencies, is available at <http://foiaproject.org/2015/04/24/agencies-rated/>. A further report, with an accompanying online interactive tool based upon the data received from agencies in response to these requests that allows users to view each responding agency’s current backlog and response times, is available at: <http://foiaproject.org/2015/08/24/new-tool-reveals-agencies-struggling-to-keep-up/>. As additional agencies respond, their data is added to the tool and additional reports are published. *See, e.g.*, <http://foiaproject.org/2019/12/15/foia-suits-rise-because-agencies-dont-respond-even-as-requesters-wait-longer-to-file-suit/>. Plaintiffs’ FOIA requests to defendant DOJ and EPA, which are at issue in this action, were submitted in furtherance of their research into agency compliance with the statutory requirements.

**Plaintiffs' FOIA Request to DOJ Dated October 14, 2019 and
DOJ's Denial of Plaintiffs' Request**

10. By letter submitted to defendant DOJ's component Office of Information Policy ("OIP") on October 14, 2019, plaintiffs requested disclosure of agency records under the FOIA. Specifically, plaintiffs requested the following records:

[A] case-by-case listing of all FOIA requests received by the FOIA office from October 1, 2012 – September 30, 2019, with the following data fields:

- (a) Assigned request tracking number
- (b) Office (where multiple components)
- (c) Date of request
- (d) Date request was received
- (e) Track assigned
- (f) Date closed (where closure has occurred at the time you process this request)

11. In their letter to OIP submitted on October 14, 2019, plaintiffs requested that, for purposes of fee assessment, they "be classified as a representative of the news media under the provisions of the Freedom of Information Act, and as representatives of an educational or noncommercial scientific institution, whose purpose includes scholarly, scientific research." Plaintiffs further requested that all applicable processing fees be waived.

12. By letter to plaintiffs dated November 12, 2019, OIP denied plaintiffs' FOIA request and stated, *inter alia*:

Please be advised this Office does not have the capability to compile the quarterly FOIA data which you are seeking. In the past, we have been provided this data by the Environmental Protection Agency (EPA), who administers the FOIAonline tracking system. Since an update to the FOIAonline system in the summer of 2018, EPA has not been able to provide this quarterly FOIA data to this Office. As such, we cannot provide you with the data you are seeking.

To the extent you are interested in records related to the EPA's administration of FOIAonline, you can submit a FOIA request to the EPA, contact information for which can be found on www.foia.gov.

OIP further advised plaintiffs of their right to appeal the denial of their FOIA request to the Director of OIP.

13. By letter to the Director of OIP dated January 8, 2020, plaintiffs appealed the refusal of the agency to process their FOIA request submitted on October 14, 2019.

14. To date, defendant DOJ has not responded to plaintiffs' appeal, nor has it disclosed the agency records requested by plaintiffs.

**Plaintiffs' FOIA Request to EPA Dated January 8, 2020 and
EPA's Failure to Respond**

15. By email to defendant EPA dated January 8, 2020, plaintiffs requested disclosure of agency records under the FOIA. Plaintiffs explained their FOIA request as follows:

We previously submitted the enclosed FOIA request dated October 14, 2019 to the Department of Justice's Office of Information Policy for specific items of information concerning its receipt and processing of FOIA requests contained in the agency's FOIA database system. In the attached November 12, 2019 FOIA response, OIP directed that our request for OIP's records should not be directed to them, but instead be directed to the Environmental Protection Agency (EPA), which administers the FOIAonline tracking system and contains the records we are seeking. We were told that EPA had previously furnished OIP with similar OIP FOIA records covering earlier time periods. Accordingly, we are submitting this FOIA request asking that the EPA provide us with the records requested in the attached October 14, 2019 FOIA letter that we originally sent to OIP. Please let us know if you need any additional information, or if we can assist you in any way in processing this request.

Plaintiffs enclosed with their FOIA request copies of their October 14, 2019 FOIA request to OIP and the November 12, 2019 OIP response.

16. By email to plaintiffs dated January 10, 2020, EPA acknowledged receipt of plaintiffs' FOIA request and assigned it request number EPA-HQ-2020-002160.

17. To date, defendant EPA has not disclosed the agency records requested by plaintiffs.

PLAINTIFFS' CLAIM FOR RELIEF

CAUSE OF ACTION

**Violation of the Freedom of Information Act for
Improper Withholding of Agency Records**

18. Plaintiffs repeat and reallege paragraphs 1-17.

19. More than twenty (20) working days have passed since plaintiffs submitted to defendant DOJ their administrative appeal challenging DOJ's failure to comply with plaintiffs' FOIA request submitted to OIP by letter dated October 14, 2019. To date, defendant DOJ has not responded to plaintiffs' appeal, nor has it disclosed the agency records requested by plaintiffs.

20. Defendant DOJ has wrongfully withheld the agency records requested by plaintiffs.

21. Plaintiffs have exhausted the applicable administrative remedies with respect to Defendant DOJ's wrongful withholding of the requested records.

22. More than twenty (20) working days have passed since plaintiffs submitted to defendant EPA their FOIA request dated January 8, 2020. To date, defendant EPA has not disclosed the agency records requested by plaintiffs.

23. Defendant EPA has wrongfully withheld the agency records requested by plaintiffs.

24. Plaintiffs have exhausted the applicable administrative remedies with respect to Defendant EPA's wrongful withholding of the requested records.

25. Plaintiffs are entitled to injunctive relief with respect to the release and disclosure of the requested records.

Requested Relief

WHEREFORE, plaintiffs pray that this Court:

- A. order defendants DOJ and EPA to disclose the requested records in their entirety and make copies available to plaintiffs;

- B. order defendants DOJ and EPA to waive all fees associated with plaintiffs' FOIA requests at issue in this action;
- C. provide for expeditious proceedings in this action;
- D. award plaintiffs their costs and reasonable attorneys' fees incurred in this action; and
- E. grant such other relief as the Court may deem just and proper.

Respectfully submitted,

/s/ *David L. Sobel*

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