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Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA, HELENA DIVISION**

MONTANA ENVIRONMENTAL
INFORMATION CENTER,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
ENERGY,

Defendant.

Cause No.: _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

COMES NOW Plaintiff Montana Environmental Information Center (“MEIC”), through counsel, who files this Complaint against Defendant United States Department of Energy (“DOE”) for its violation of the Freedom of Information Act (“FOIA”).

PARTIES

1. Plaintiff Montana Environmental Information Center is a non-profit organization dedicated to defending the public interest in protecting and restoring Montana’s environment. MEIC has thousands of members across Montana and works to ensure that the state transitions from fossil fuels to clean energy sources, thereby helping to provide cleaner air and water for all. The records sought in this action are requested in support of these efforts.

2. Defendant Department of Energy is a federal agency. It is in possession and control of the records sought by MEIC, and as such, it is subject to the FOIA pursuant to 5 U.S.C. § 552(f).

JURISDICTION, VENUE AND BASIS FOR RELIEF

3. This Court has jurisdiction over this matter pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331 because this action arises under the FOIA.

4. Venue is appropriate under 5 U.S.C. § 552(a)(4)(B), 5 U.S.C. § 703, and 28 U.S.C. § 1391.

5. Declaratory relief is appropriate under 28 U.S.C. § 2201.

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

FACTS

7. On or about June 5, 2019, MEIC submitted a document request, under the FOIA, to DOE, through DOE's web based FOIA request platform. The web based FOIA platform is available on the DOE website at <https://www.energy.gov/doe-headquarters-foia-request-form>, where users enter a description of the requested information and other parameters associated with the request. MEIC requested documents in DOE's files concerning carbon capture sequestration related issues at the Colstrip (Montana) coal-fired power plant; documents related to the Wyoming Integrated Test Center concerning the Colstrip plant; and communication between DOE and the State of Montana concerning the Colstrip Plant. As a non-profit, education institution, MEIC requested that the fees associated with the request be waived.

8. On June 6, 2019, DOE sent MEIC an "interim response" letter. The letter listed the documents requested by MEIC, provided information on charges for the request, and provided a contact person at the Department and reference number for the request in case MEIC had any

questions. The letter was not, and did not purport to be, the detailed response required by 5 U.S.C. 552 (a)(6)(A)(i).

9. There followed over the next several weeks a series of emails back and forth between the DOE staff member assigned to the request and MEIC. On July 1, 2019, the DOE staff member and the MEIC staff member, more than twenty (20) days following the request, had a phone conversation about the status of the request, and discussing fees and the breadth of the request. During this conversation, the FOIA request was clarified by MEIC, and it was agreed that DOE would provide an answer to the requested information. DOE's staff member sent a follow up email stating "we hope to get documents out to (you) as soon as possible."

10. On September 3, 2019, MEIC asked for an update on DOE's response to the request and was told that "I would expect that you will receive a response to your request in the next 1-2 months."

11. On October 21, 2019 the DOE staff member emailed MEIC with an update, stating "the search results are very large and therefore the processing of the request has been going slowly." DOE then asked MEIC if it could narrow down the request to allow DOE to speed up its response. Subsequently, in a phone call between DOE and MEIC staff members, MEIC did narrow down the range of the search.

12. Additionally, the October 21, 2019 email contained links to a number of Federal websites which, DOE claimed, contained some of the requested documents. MEIC reviewed each of the links provided by DOE, but none of them were responsive.

13. On March 17, 2020, MEIC again reached out to DOE's staff member to find out the status of the request. The email "bounced back", and it appeared the DOE staff member no longer worked for the Department. No one else at DOE responded to the email.

14. MEIC has not received the public records it requested of DOE, through the FOIA, over nine-months ago. MEIC has been hampered in its ongoing work on energy conservation due to DOE's lack of responsiveness. This information is critical in determining matters of importance to MEIC's membership and the general public regarding the Colstrip coal-fired power plant and the possibility of carbon capture and sequestration at the plant. The DOE has represented to the U.S. Senate, and in particular Senator Steve Daines, that it is exploring carbon capture opportunities at Colstrip.¹ If true, such documents should be readily available for dissemination to the public. MEIC has had to hire an attorney to pursue this claim.

**CAUSE OF ACTION
COUNT ONE – FOIA VIOLATION**

15. The preceding paragraphs are realleged as though set forth in full hereunder.

16. Plaintiff MEIC has a statutory right to have Defendant DOE process its FOIA request in compliance with the provisions and timelines of FOIA.

17. MEIC's rights were violated when DOE unlawfully failed to respond to MEIC's request with a determination within the deadline imposed by the FOIA. 5 U.S.C. § 552(a)(6)(A)(i).

18. Based on the nature of MEIC's organizational activities, it will undoubtedly continue to employ the FOIA's provisions in information requests to DOE in the foreseeable future.

19. MEIC's organizational activities will be adversely affected if DOE is allowed to continue violating the FOIA's response deadlines as it has in this case.

20. Unless enjoined and made subject to a declaration of MEIC's legal rights by this Court, DOE will continue to violate the rights of MEIC to receive public records under the FOIA.

¹ Lutey, Tom, *Department of Energy working with power plant owners to save Colstrip*, Billings Gazette, May 17, 2019 (Available online at: https://billingsgazette.com/news/state-and-regional/govt-and-politics/department-of-energy-working-with-power-plant-owners-to-save/article_80324947-9122-5d7e-95a5-44088d6689c2.html).

21. MEIC is entitled to reasonable costs of litigation, including attorney fees pursuant to the FOIA, for this violation. 5 U.S.C. § 552(a)(4)(E).

PRAYER FOR RELIEF

WHEREFORE, The Plaintiffs pray for the following relief:

1. Declare that Defendant DOE violated the FOIA by failing to make a timely determination on MEIC's records request;
2. Direct by injunction that DOE immediately make a determination on MEIC's records request and provide MEIC with the records responsive to its request by a date certain;
3. Award MEIC its costs and reasonable attorney fees pursuant to 5 U.S.C. § 552(a)(4)(E) and 28 U.S.C. § 2412, or any other applicable law; and
4. Grant such other and further relief as the Court may deem just and proper.

DATED this 9th day of April, 2020.

MORRISON SHERWOOD WILSON & DEOLA

By: /s/ David K. W. Wilson, Jr.
Attorneys for Plaintiff