

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

	)	
LOST PADRES FORESTWATCH,	)	
1900 State Street, Suite E	)	
Santa Barbara, CA 93101	)	CIV # 20-1911
	)	
Plaintiff,	)	<b>COMPLAINT FOR</b>
v.	)	<b>DECLARATORY AND</b>
	)	<b>INJUNCTIVE RELIEF</b>
U.S. FOREST SERVICE	)	
201 14th St, SW	)	
Washington, D.C. 20024	)	
	)	
	)	
Defendant.	)	
	)	

**I. INTRODUCTION**

1. Defendant the United States Forest Service (“USFS” or “Agency”) has violated the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”) by unlawfully failing to timely issue determinations in response to a request for records by Plaintiff, Los Padres ForestWatch (“LPGW”), pertaining to Parks Management Company’s Special Use Permit (“SUP”) to manage recreation sites throughout the Los Padres National Forest, by unlawfully withholding such documents, by failing to issue estimated dates of completion for the requests, and by failing to conduct an adequate search for responsive records. This lawsuit requests an order declaring that Defendant has violated FOIA and enjoining Defendant to issue a final determination and provide Plaintiff with the records it has requested.

## II. JURISDICTION AND VENUE

2. This Court has jurisdiction over this action, including the power “to enjoin [agencies] from withholding agency records and to order the production of any agency records improperly withheld from the complainant” pursuant to 5 U.S.C. § 552(a)(4)(B).

3. Venue in this Court is proper under 5 U.S.C. § 552(a)(4)(B), which provides venue for FOIA cases in this district.

## III. PARTIES

4. Plaintiff LOS PADRES FORESTWATCH, founded in 2004, is a non-profit membership organization headquartered in Santa Barbara, California, devoted to protecting wildlife, wilderness, and water, and promoting sustainable access, throughout the Los Padres National Forest and the Carrizo Plain National Monument through citizen education, community engagement, legal advocacy, and scientific collaboration. Plaintiff has more than 26,000 members and supporters in California and other states.

5. As part of its organizational mission, Plaintiff advocates for the protection and sustainable management of the Los Padres National Forest by reviewing and commenting on proposed projects to ensure consistency with scientific principles and environmental laws, monitoring forest conditions and activities to reduce or eliminate impacts to forest resources, consulting with scientists to ensure that land managers are relying on the best available science to

make decisions, engaging members, supporters, and the general public about critical land management decisions and forest conditions, and educating the public regarding the importance of Los Padres National Forest lands in contributing to the economy, quality of life, and ecological integrity of central California's communities. In addition, Los Padres ForestWatch organizes outings with youth and families from underserved communities to spark an appreciation for the outdoors and inspire the next generation of environmental stewards.

6. Plaintiff and its members derive benefits from agencies' compliance with FOIA and from its receipt of public records.

7. One of Plaintiff's core programs is ensuring equitable access to the outdoors. To this end, Plaintiff has worked with landowners to preserve historic routes that the public has used for many decades to access adjacent public lands and monitor the operation of private concessionaires contracted by the Forest Service to manage certain recreation sites in the Los Padres National Forest. In 2016, Plaintiffs submitted comments on a controversial proposal from the U.S. Forest Service to transfer management of most camping and day use sites in the Los Padres National Forest to a private concessionaire known as Parks Management Company. The company manages these sites pursuant to an agreement with the Forest Service known as a Special Use Permit ("SUP"). The Forest Service issued the SUP in 2016, and it sets forth requirements for the company to follow as it manages these recreation sites.

8. Plaintiff submitted a FOIA request to Defendant USFS seeking records

related to Parks Management Company's SUP to manage recreation sites throughout the Los Padres National Forest, including a list of specific records that are part of or related to the SUP.

9. The records requested are necessary to support Plaintiff's efforts to ensure sustainable management of the Los Padres National Forest and ensure agency and concessionaire compliance with applicable laws, regulations, and administrative procedures. Disclosure would significantly enhance public understanding of Los Padres National Forest's management practices.

10. Defendant U.S. FOREST SERVICE ("USFS") is a federal agency within the United States Department of Agriculture. Defendant is in possession and control of the records that Plaintiff seeks and so is subject to FOIA pursuant to 5 U.S.C. § 552(f). Defendant is responsible for fulfilling Plaintiff's FOIA requests to it.

11. The interests and organizational purposes of Plaintiff are directly and irreparably injured by Defendant's violations of law as described in this complaint.

12. Defendant's violations of law have denied Plaintiff the information to which it is entitled, thereby preventing Plaintiff from fulfilling its organizational mission and objectives, including from ensuring sustainable management and compliance, as well as meaningfully engaging its members, supporters and the general public regarding management of the Los Padres National Forest.

13. Defendant has further injured Plaintiff by the deprivation of government information to which Plaintiff is entitled by law.

#### **IV. STATUTORY FRAMEWORK**

14. "The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978).

15. FOIA ensures governmental accountability and transparency by requiring agencies to disclose records and imposing firm deadlines for releasing records in response to FOIA requests. 5 U.S.C. §§ 552(a)(3)(A), (6)(A).

16. Upon receipt of a request, FOIA requires agencies to issue a "determination" within 20 workdays, absent unusual circumstances, and to make requested records "promptly available" thereafter. 5 U.S.C. §§ 552(a)(3)(A), (a)(6)(A)(i), (a)(6)(B).

17. A determination "must at least inform the requester of the scope of the documents that the agency will produce, as well as the scope of the documents that the agency plans to withhold under any FOIA exemptions." *Citizens for Responsibility & Ethics in Wash. v. Fed. Election Comm'n*, 771 F.3d 180, 186 (D.C. Cir. 2013) ("*CREW*").

18. Failure to provide a timely determination in response to a FOIA request is a violation of FOIA, irrespective of the final outcome of the request. *Or. Natural Desert Ass'n v. Gutierrez*, 409 F. Supp. 2d 1237, 1248 (D. Or. 2006).

19. FOIA also requires agencies to provide "an estimated date on which the agency will complete action on the request" for requests that require "longer than ten days to process." 5 U.S.C. § 552(a)(7).

20. FOIA requires that agencies release reasonably segregable portions of requested records that are not lawfully exempt. 5 U.S.C. § 552(b)(9).

21. FOIA requires federal agencies to respond to FOIA requests by conducting a search reasonably calculated to uncover all relevant documents. An agency must take into account leads and other positive indications that suggest other records might be located outside the scope of its original search.

22. When an agency fails to respond to a FOIA request within the statutory timeframe, it has constructively denied the request. Requestors are then deemed to have exhausted any administrative remedies and may seek judicial relief. 5 U.S.C. § 552(a)(6)(C)(i); *CREW*, 711 F.3d at 277.

23. A FOIA requester may seek injunctive and declaratory relief from the court for an agency's continued withholding of public records. 5 U.S.C. § 552(a)(4)(B).

24. Pursuant to FOIA, this Court may assess attorney fees and litigation costs against Defendant if the Plaintiff prevails in this action. 5 U.S.C. § 552(a)(4)(E).

## V. STATEMENT OF FACTS

25. On August 15, 2019, Plaintiff submitted a FOIA request to Andrew Madsen, the FOIA Coordinator for the Los Padres National Forest, seeking:

- All documents contained in the administrative record pertaining to Parks Management Company's Special Use Permit ("SUP") to manage recreation sites throughout the Los Padres National Forest. The administrative record should include all

documentation related to this permit, including but not limited to written records, emails, photos, maps, specialist reports, operating plans, surveys, fee documentation, work documentation, notices, and facility lists, etc.

- Annual operating plan (as required by Section II(A)(1))
- Annual condition survey of water system (as required by Section II(A)(3))
- Maintenance, reconditioning, or renovation plan (as required by Section II(D))
- Notifications of all serious accidents (as required by Section III(G))
- Proof of insurance (as required by Section III(J))
- Performance bond (as required by Section III(K))
- All permit fees paid to the Forest Service (as required by Section IV(A))
- Annual Granger-Thye fee offset agreements (as required by Section IV(D)(2))
- Documentation of offset work (as required by Section IV(E))
- All bills submitted to the concessionaire, and any payments and supporting information provided to the Forest Service
- Requests for pesticide use (as provided in Section V(D))
- Water conservation plan (as required by Section V(K)(3))
- Notices of violations or corrective actions, and any responses thereto.

26. On August 16, 2019, Defendant, through Mr. Andrew Madsen at the Los Padres National Forest, sent an email to Plaintiff confirming receipt.

27. On September 20, 2019, Plaintiff sent an email inquiring as to the status of the FOIA request and offering to provide assistance to enable Defendant to respond to the request.

28. On September 23, 2019, Plaintiff learned that its FOIA request had been forwarded to the Forest Service's Regional Office when it received an email from Defendant, through Latanga Rush, Pacific Southwest Region FOIA

Coordinator, USFS Region 5, stating:

Your request was sent here to the Regional Office for processing. I apologize for not sending you an acknowledgement. Sometimes administrative tasks fall through the cracks because I'm focused on trying to get records reviewed to keep the caseload moving along. Your request has been assigned tracking number 2019-FS-R5-03280-F and is currently number 17 of 19 cases pending in the complex processing queue.

I'm sure you are aware that agencies cannot charge search fees for requesters in the "other" fee category if they are unable to meet the FOIA's 20 workday processing time. Therefore, there is no need for fees to be waived in your case because we have not met the 20 workday processing time. You will not be charged search fees.

I've already requested that a search be performed for your request and spoke with the staff last Thursday and was advised that they are pulling the records. In the future, you can contact me if you have any questions about this request or would like a status update.

29. Plaintiff sent a second follow up email to Defendant on October 24, 2019, inquiring as to the status of the FOIA request.

30. On October 25, 2019, Ms. Rush responded stating that Plaintiff's request was "15 of 21 cases in the queue."

31. On February 6, 2020, Plaintiff sent a third follow up letter stating "I wanted to check in on the status of our FOIA request submitted last August. You mentioned in October that we were number 15 of 21 cases in the queue. Can you please give us an update?"

32. On February 6, 2020, Defendant responded by email stating that the request was 7 of 29 "cases in the queue."

33. On May 18, 2020, Plaintiff sent a fourth follow up letter inquiring as to the status of the FOIA request.



34. On May 19, 2020, Defendant sent an email stating that the request was 7 of 25 “pending cases.”

35. The statutory deadline for Defendant to issue a determination on this FOIA request passed on September 13, 2019.

36. As of the date of the filing of this complaint, Defendant has not provided Plaintiff with an estimated date of completion for Plaintiff’s FOIA request 2019-FS-R5-03280-F.

37. As of the date of the filing of this complaint, no documents have been provided to Plaintiff in response to Plaintiff’s FOIA request 2019-FS-R5-03280-F.

38. Defendant has not conducted a search for records responsive to Plaintiff’s FOIA request 2019-FS-R5-03280-F.

39. The filing of this lawsuit is required to compel Defendant to disclose all records that are responsive to Plaintiff’s FOIA request 2019-FS-R5-03280-F.

40. Plaintiff has been required to expend costs and obtain the services of attorneys to initiate legal action.

## **VI. CAUSES OF ACTION**

### **COUNT I**

#### **VIOLATION OF THE FREEDOM OF INFORMATION ACT: FAILURE TO TIMELY RESPOND**

41. Plaintiff realleges and incorporates the allegations in the above paragraphs by reference.

42. Defendant USFS is an “agency” under FOIA. 5 U.S.C. § 552(f)(1).

43. Defendant USFS is in possession and has control of the requested records.

44. Defendant USFS did not invoke a 10-work day extension due to “unusual circumstances.”

45. Defendant USFS failed to provide a determination in response to FOIA Request No. 2019-FS-R5-03280-F within 20 working days (September 13, 2019). 5 U.S.C. § 552(a)(6)(B)(i).

46. Defendant USFS failed to provide an estimated date “on which the agency [would] complete action on the request.” 5 U.S.C. § 552(a)(7)(B)(ii).

47. Defendant failed to comply with these deadlines and so has violated FOIA.

48. Plaintiff has constructively and completely exhausted all administrative remedies required by FOIA. 5 U.S.C. § 552(a)(6)(c).

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

## COUNT II

### **VIOLATION OF THE FREEDOM OF INFORMATION ACT: FAILURE TO DISCLOSE RESPONSIVE RECORDS**

50. Plaintiff realleges and incorporates the allegations in the above paragraphs by reference.

51. Plaintiff has a statutory right to the records it has requested, which are “agency records” within the meaning of the FOIA, and Defendant has no legal

basis for failure to disclose them. 5 U.S.C. § 552(a)(3)(A).

52. FOIA requires Defendant to promptly process requests and release records or reasonably segregable portions of records that are not subject to exemption. 5 U.S.C. § 552(a)(3), (b)(9).

53. Defendant has not provided any responsive documents for request Plaintiff's FOIA request 2019-FS-R5-03280-F as the date of the filing of this complaint.

54. Defendant has violated FOIA by failing to promptly provide responsive records to Plaintiff and failing to provide reasonably segregable portions of requested records that are not lawfully exempt. 5 U.S.C. §§ 552 (a)(3)(A), (b)(9).

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

### **COUNT III**

#### **VIOLATION OF THE FREEDOM OF INFORMATION ACT: FAILURE TO CONDUCT AN ADEQUATE SEARCH**

56. Plaintiff realleges and incorporates the allegations in the above paragraphs by reference.

57. Defendant violated FOIA by failing to perform an adequate search reasonably calculated to locate records in response to Plaintiff's FOIA request.

58. By failing to perform an adequate search reasonably calculated to locate all responsive records, Defendant has denied Plaintiff's right to this information as provided by law under the Freedom of Information Act.

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

## VI. REQUEST FOR RELIEF

FOR THESE REASONS, the Plaintiff respectfully requests that this Court enter judgment providing the following relief:

1. Declare that Defendants violated FOIA by failing to issue determinations for Plaintiff's FOIA requests within statutory deadlines mandated by FOIA, by failing to produce responsive records or reasonably segregable portions of responsive records that are not lawfully exempt, by failing to provide estimated dates of completion, and by failing to conduct an adequate search;
2. Direct by injunction that Defendants immediately issue determinations for Plaintiff's FOIA requests and provide Plaintiff with the records it has requested;
3. Grant the Plaintiff its costs incurred with this litigation, including reasonable attorney fees, as provided by FOIA, 5 U.S.C. § 552(a)(4)(E); and
4. Provide such other relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED July 15, 2020.

/s/Maya Kane  
Maya Kane, D.D.C. Bar # CO45894  
Southwest Water and Property Law LLC  
10 Town Plaza, No. 422  
Durango, CO 81301  
(970) 946-5419  
[mkane@swpropertylaw.com](mailto:mkane@swpropertylaw.com)  
*Attorney for Plaintiff*