

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

PUBLIC EMPLOYEES FOR)
 ENVIRONMENTAL RESPONSIBILITY,)
 2000 P Street, NW Suite 240)
 Washington, D.C. 20036)
)
 Plaintiff,)
)
 v.)
)
 U.S. FISH & WILDLIFE SERVICE)
 1849 C Street NW)
 Washington, D.C. 22203)
)
 Defendant.)

Civil Action #

COMPLAINT

PRELIMINARY STATEMENTS

1. This action is brought under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.*, as amended, in order to compel the U.S. Fish & Wildlife Service (“FWS” or “Defendant”) to disclose records wrongfully withheld in failing to respond within the statutory deadline to Plaintiff’s, Public Employees for Environmental Responsibility (“PEER”), FOIA request.
2. FWS’ statutory production period expired and it failed to produce any records in response to Plaintiff’s FOIA request (Request No. FWS-2012-00774).
3. FOIA requires that federal agencies respond to public requests for records, including files maintained electronically, in order to increase public understanding of the workings of government and for access to government information. FOIA reflects a “profound national commitment to ensuring an open Government” and directs agencies to “adopt a presumption in favor of disclosure.” Presidential Mem., 74 Fed. Reg. 4683 (Jan. 21, 2009).

4. Plaintiff, PEER, is a non-profit organization with tax-exempt status dedicated to research and public education concerning the activities and operations of the federal government.
5. Plaintiff's FOIA request, submitted on April 30, 2012, sought records related to FWS' interactions with state officials in August 2010 regarding the development of a National Wolf Strategy through the use of "Structured Decision Making" ("SDM"). Namely, Plaintiff requested records pertaining to federal-state exchanges concerning the gray wolf and its subspecies.
6. Defendant's failure to provide any responsive documents is arbitrary and capricious and amounts to a denial of Plaintiff's FOIA request. This conduct frustrates Plaintiff's efforts to educate the public regarding FWS' decision-making process with respect to the gray wolf and its subspecies, as well as the government's use of the SDM process in general.
7. Plaintiff constructively exhausted its administrative remedies under FOIA, 5 U.S.C. § 552(a)(6)(C), and now seeks an order from this Court requiring Defendant to immediately produce the records sought in its FOIA requests as well as other appropriate relief.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action under FOIA, 5 U.S.C. § 552(a)(4)(B). This Court also has federal question jurisdiction over this action under 28 U.S.C. § 1331.
9. This Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*
10. This Court is a proper venue because Plaintiff resides in the District of Columbia. *See* 28 U.S.C. § 1391(e)(1)(C) (where defendant is the government or a government agent, a civil action may be brought in the district where the plaintiff resides if there is no real property at issue). Venue is also proper under 5 U.S.C. § 552(a)(4)(B).

11. This Court has the authority to award costs and attorneys' fees under 28 U.S.C. § 2412 and 5 U.S.C. § 552(a)(4)(E).

PARTIES

12. Plaintiff, PEER, is a non-profit public interest organization, with its main office located in Washington, D.C., and field offices located in California, Colorado, Florida, Massachusetts, Arizona, New Jersey, and Tennessee.
13. PEER is not a commercial enterprise for purposes of the fee waiver provisions of FOIA. *See* 5 U.S.C. § 552(a)(4)(A)(iii). Among other public interest projects, PEER engages in advocacy, research, education, and litigation relating to the promotion of public understanding and debate concerning key current public policy issues. PEER focuses on the environment, public lands and natural resource management, public funding of environmental and natural resource agencies, and ethics in government.
14. Informing the public about these important public policy issues is central to PEER's mission. PEER educates and informs the public through news releases to the media, its web site, www.peer.org, which draws between 1,000 and 10,000 viewers per day, and its newsletter which has a circulation of approximately 20,000, including 1,500 environmental journalists.
15. Defendant, FWS, is an agency of the United States as defined by 5 U.S.C. § 552(f)(1).
16. FWS is charged with the duty to provide public access to records in its possession consistent with the requirements of FOIA. Here, FWS is denying Plaintiff access to its records in contravention of federal law.

FACTS

17. In 2008, FWS embarked on an effort to develop a National Wolf Strategy through the use of SDM. *See* 76 Fed. Reg. 26086 at 26089. FWS described the SDM process as follows:

“[F]ollowing [FWS’] development of a satisfactory decision-making framework, representatives from several States involved with gray wolf conservation joined [FWS] to further explore alternative units that could qualify for future status review (Tribal representatives declined to participate). After acquainting state participants with the decision-making framework, [FWS] convened a State-Federal workshop in August 2010 to generate and assess alternative taxonomic and population units at various scales and in various configurations . . . Workshop participants also explored the different values that drive wolf decision-making . . .”

Id.

18. Plaintiff’s FOIA request, dated and submitted to Defendant on April 30, 2012, sought records related to FWS’ interactions with state officials during the SDM process conducted regarding the gray wolf and its subspecies.

19. Plaintiff’s April 30, 2012, request specifically sought: (1) all meeting notes or other meeting outcome documents from the August 2010 SDM meeting and all subsequent SDM meetings; and (2) all materials distributed at those SDM meetings.

20. Plaintiff’s request would help serve the public because the records sought will shed direct light on how federal officials cooperate with other stakeholders in implementing the requirements of the Endangered Species Act. While a certain segment of the population has a keen interest in wildlife and predator protections, Plaintiff’s FOIA request also serves the

broader public interest concerning the candor, consistency, and accuracy with which federal officials communicate with respect to politically-sensitive management issues involving the gray wolf.

21. Plaintiff believes that disclosure of the requested information will offer the general public a textbook example of how SDM works in practice.
22. In a letter dated May 1, 2012, FWS Alternate FOIA Officer, E. Ray McLaughlin acknowledged receipt of Plaintiff's FOIA request and assigned it request number FWS-2012-00774.
23. On October 4, 2012, Mary Klee, a FWS Biologist, replied to an inquiry from Plaintiff, dated September 26, 2012, regarding the status of the FOIA request. In her reply letter, Klee indicated that FWS was processing the request and reviewing its files for responsive documents. Likewise, on February 26, 2013, Klee replied to Plaintiff's February 12, 2013, inquiry, indicating that FWS was "continuing to search for documents that may be responsive" to the request and that "an additional response [was] forthcoming."
24. To date, Plaintiff has not received any records responsive to its April 30, 2012 request and FWS has given no indication that production is imminent.
25. Plaintiff has afforded FWS ample time beyond that which is legally required to respond to the request. More than one year has passed since Plaintiff submitted its April 30, 2012 FOIA request to FWS. The twenty work-day time frame for responding to FOIA requests has long since passed.
26. Because administrative remedies are deemed exhausted whenever an agency fails to comply with the applicable time limits, 5 U.S.C. § 552(a)(6)(C)(i), Plaintiff has constructively exhausted all administrative remedies.

27. Plaintiff now turns to this Court to enforce FOIA's remedies and its guarantee of public access to agency records.

CAUSE OF ACTION

Violation of the Freedom of Information Act

28. Plaintiff incorporates the allegations in paragraphs 1 through 27.

29. Defendant's failure to disclose the records requested under Request No. FWS-2012-00774 is a constructive denial and wrongful withholding of records in violation of FOIA, 5 U.S.C. § 552, and the Agency's own regulations promulgated thereunder.

30. Defendant's failure to disclose the requested records within the time frames mandated by statute is a violation of FOIA, 5 U.S.C. § 552, and the Agency's own regulations promulgated thereunder.

Relief Requested

WHEREFORE, Plaintiff respectfully requests that this Court:

- i. Enter an order declaring that FWS has wrongfully withheld the requested agency records;
- ii. Issue a permanent injunction directing FWS to disclose to Plaintiff all wrongfully withheld records;
- iii. Maintain jurisdiction over this action until FWS is in compliance with FOIA, the Administrative Procedure Act, and every order of this Court;
- iv. Award Plaintiff attorney fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E); and
- v. Grant such additional and further relief to which Plaintiff may be entitled.

Dated: May 22, 2013

Respectfully submitted,

/s/
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