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12 **THE UNITED STATES DISTRICT COURT**  
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
14 **SAN FRANCISCO DIVISION**

15 CENTER FOR FOOD SAFETY, ) Case No. 20-8718  
16 )  
17 *Plaintiff,* )  
18 ) **COMPLAINT FOR DECLARATORY**  
19 *v.* ) **AND INJUNCTIVE RELIEF**  
20 )  
21 DEPARTMENT OF THE INTERIOR, )  
22 )  
23 *Defendant.* )  
24 )  
25 )  
26 )  
27 )  
28 )

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## INTRODUCTION

1  
2 1. The Center for Food Safety (CFS)—a nonprofit public interest and environmental advocacy  
3 organization working to protect public health and the environment—brings this action under the  
4 Freedom of Information Act (FOIA), 5 U.S.C. § 552, challenging Defendant Department of the  
5 Interior (DOI)’s failure and refusal to provide records to CFS in response to the request for  
6 records submitted on August 21, 2019 for which there are no applicable exemptions under FOIA.

7 2. Since its inception in 1997, CFS has closely monitored DOI’s decision-making process in  
8 regards to its regulatory authority over the cultivation of genetically engineered (GE) crops and  
9 pesticide use on national wildlife refuges in the National Wildlife Refuge System. As part of its  
10 oversight and advocacy strategy, CFS has submitted requests for records regarding DOI’s  
11 regulatory decisions to allow certain farming practices—including the use of GE crops and  
12 neonicotinoid pesticides—on national wildlife refuges under FOIA, 5 U.S.C. § 552(a)–(m). The  
13 goal of each of these requests was to open the operations and activities of government to public  
14 scrutiny and contribute significantly to the public’s understanding of the agency’s actions.

15 3. CFS filed the disputed FOIA request with DOI to gain a better understanding of the  
16 former Deputy Assistant Secretary of the Interior for Fish, Wildlife and Parks Aurelia Skipwith’s  
17 involvement in the Fish and Wildlife Service (FWS)’s 2018 decision to reverse the 2014 ban on  
18 GE crop and neonicotinoid pesticide use on national wildlife refuges in the Refuge System.<sup>1</sup>  
19 Without the requested records, CFS cannot determine whether DOI’s regulatory 2018 decision to  
20 reverse the ban on using GE crops and neonicotinoid pesticides on wildlife refuges complies with

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22 <sup>1</sup> See U.S. Fish & Wildlife Serv., Memorandum, “Withdrawal of Memorandum Titled, ‘Use of  
23 Agricultural Practices in Wildlife Management in the National Wildlife Refuge System’ (July 17,  
24 2014)” (Aug. 2, 2018), *available at*  
25 [https://www.biologicaldiversity.org/campaigns/pesticides\\_reduction/pdfs/2018-8-2-FWS-memo-  
26 GMO-Neonics-on-wildlife-refuges.pdf](https://www.biologicaldiversity.org/campaigns/pesticides_reduction/pdfs/2018-8-2-FWS-memo-GMO-Neonics-on-wildlife-refuges.pdf); U.S. Fish & Wildlife Serv., Memorandum, “Use of  
27 Agricultural Practices in Wildlife Management in the National Wildlife Refuge System,” (July 17,  
28 2014), *available at* [https://www.centerforfoodsafety.org/files/agricultural-practices-in-wildlife-  
management\\_20849.pdf](https://www.centerforfoodsafety.org/files/agricultural-practices-in-wildlife-management_20849.pdf).

1 applicable laws, such as the Endangered Species Act (ESA), 16 U.S.C. §§ 1533-44, the National  
2 Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4370f, and the National Wildlife Refuge  
3 System Administration Act (Refuge Act), as amended by the National Wildlife Refuge System  
4 Improvement Act, 16 U.S.C. §§ 668dd-668ee.

5 4. Although FOIA requires DOI to release responsive records “promptly,” DOI failed to  
6 comply with FOIA’s statutory deadlines with respect to CFS’s request. Consequently, DOI has  
7 improperly withheld responsive records, depriving CFS of its statutory right to obtain records  
8 containing crucial information concerning former Monsanto executive Aurelia Skipwith’s  
9 communications, in her official capacity as Deputy Assistant Secretary of the Interior for Fish,  
10 Wildlife and Parks, with FWS officials and employees as well as agrochemical and biotech industry  
11 officials pertaining to the 2018 reversal decision.

12 5. DOI is also violating FOIA by failing to conduct an adequate search for responsive records,  
13 and by failing to provide CFS with both an initial determination as to the scope of the records to  
14 be produced or withheld, and an estimated date by which the agency’s search will be complete.

15 6. DOI’s unlawful withholding of public records undermines FOIA’s basic purpose of  
16 government transparency. Because prompt access to these records is necessary to effectuate FOIA’s  
17 purpose, CFS respectfully asks this Court to enjoin DOI from withholding requested records,  
18 order DOI to release improperly withheld records, and grant declaratory relief.

### 19 JURISDICTION

20 7. This Court has subject matter jurisdiction over this action because the claims arise under a  
21 federal statute. *See* 5 U.S.C. § 552(a)(4)(B); 28 U.S.C. § 1331.

22 8. This Court also has personal jurisdiction over the parties because Plaintiff CFS’s  
23 headquarters and principal place of business is located in San Francisco, California, which is in  
24 the Northern District of California. *See* 5 U.S.C. § 552(a)(4)(B).

### 25 VENUE

26 9. This Court is also the proper venue for this action because Plaintiff CFS sent its August 21,  
27 2019 FOIA Request to DOI, exchanged related correspondence, and received DOI’s responses

1 from its headquarters in San Francisco, California. Thus, a substantial part of the events giving rise  
2 to this action occurred in San Francisco, which is in the Northern District of California. 5 U.S.C.  
3 § 552(a)(4)(B); 28 U.S.C. § 1391(e); Civil L.R. 3-2(c).

#### 4 INTRADISTRICT ASSIGNMENT

5 10. Because a substantial part of the events giving rise to this action occurred in San Francisco,  
6 California, this action is properly assigned to the San Francisco Division. Civil L.R. 3-2(c), (d).

#### 7 PARTIES

8 11. Plaintiff CFS is a national 501(c)(3) nonprofit public interest and environmental advocacy  
9 organization that empowers people, supports farmers, and protects the environment. CFS is a  
10 membership based nonprofit organization with over 970,000 members that works to address the  
11 impacts of the food system on public health, animal welfare, and the environment. CFS often uses  
12 information requests to challenge government abuses and corporate wrongdoing, advocate for  
13 policy change, and educate the public about the harms of industrial agriculture. Through nearly  
14 two decades of involvement in public interest and environmental litigation and policymaking as it  
15 relates to food, CFS has demonstrated its ability to take technical information provided by  
16 government agencies and distill it into a format that is accessible to the public. CFS employs  
17 science and policy experts who have analyzed FOIA, federal environmental laws, and  
18 environmental and scientific reports for their entire careers. CFS puts out reports on a range of  
19 food and agricultural topics, including pesticides and other topics that tend to be difficult for the  
20 layperson to understand without professional assistance. CFS has been engaged in ongoing efforts  
21 to educate our members and the public about the ongoing harms of GE crops and pesticides to  
22 pollinators, public health, and the environment. CFS and its members are harmed by DOI's  
23 violations of FOIA, as such violations preclude CFS from gaining a full understanding of the  
24 decision-making process regarding the underlying agency actions, and prevent CFS from  
25 disseminating information to the public concerning DOI's oversight of one of our nation's most  
26 precious natural resources: the Refuge System.

1 12. Defendant DOI is an agency within the Executive Branch of the United States  
2 Government. DOI is in possession and control of the records that CFS seeks, and is an “agency”  
3 within the meaning of 5 U.S.C. § 552(f)(1). DOI is responsible for the oversight of the Refuge  
4 System and other public lands. Thus, DOI is the “agency” that has control and possession of the  
5 requested “record[s].” 5 U.S.C. § 552(f)(2).

#### 6 STATUTORY BACKGROUND

7 13. The basic purpose of FOIA is to promote government transparency and public oversight of  
8 agency action. *See, e.g., Dep’t of Air Force v. Rose*, 425 U.S. 352, 360-61 (1976) (noting that  
9 “disclosure, not secrecy is the dominant objective of the Act”). The statute effectuates this objective  
10 by establishing the public’s right “to pierce the veil of administrative secrecy” and access all federal  
11 agency records, *id.*, unless such records may be withheld pursuant to one of nine, narrowly  
12 construed exemptions. *See* 5 U.S.C. § 552(b)(1)-(9).

13 14. FOIA imposes stringent deadlines on federal agencies with regard to making initial  
14 determinations in response to FOIA requests. Within twenty working days of receiving a FOIA  
15 request, an agency must determine whether it will release the requested records, and must notify  
16 the requester of its determination, the reasons for its decision, and the requester’s right to appeal  
17 an adverse decision to the head of the agency. *Id.* § 552(a)(6)(A).

18 15. Congress has specified certain limited instances in which federal agencies may extend this  
19 twenty-working-day deadline. First, an agency may toll the deadline to seek additional information  
20 or clarification from a requester, but that tolling period ends when the agency receives such  
21 information or clarification. *Id.* § 552(a)(6)(A)(ii). Second, in “unusual circumstances” an agency  
22 may extend the deadline no more than ten additional working days by providing written notice to  
23 the requester that sets forth the circumstances justifying the extension. *Id.* § 552(a)(6)(B)(i).

24 16. FOIA requires that an initial determination under 5 U.S.C. § 552(a)(6)(A) “must be more  
25 than just an initial statement that the agency will generally comply with a FOIA request and will  
26 produce non-exempt documents and claim exemptions in the future.” *Citizens for Responsibility &*  
27 *Ethics in Wash. v. Fed. Election Comm’n (CREW)*, 711 F.3d 180, 188 (D.C. Cir. 2013).

1 17. If an agency does not comply with “FOIA’s explicit timelines [for making an initial  
2 determination], the penalty is that the agency cannot rely on the administrative exhaustion  
3 requirement to keep cases [out of] court.” *Id.* at 190-91; *see also* 5 U.S.C. § 552(a)(6)(C)(i) (stating  
4 that if an agency fails to respond within the applicable time limits under FOIA, the requester  
5 “shall be deemed to have exhausted his administrative remedies.”). The requester thus has  
6 “immediate recourse to the courts to compel the agency’s response to [her] FOIA request[s].”  
7 *Oglesby v. Dep’t of Army*, 920 F.2d 57, 64 (D.C. Cir. 1990).

8 18. For a determination to “trigger the administrative exhaustion requirement,” the agency  
9 must complete “at least” three substantive requirements: “(1) gather and review the documents; (2)  
10 determine and communicate the scope of the documents it intends to produce and withhold, and  
11 the reasons for withholding any documents; and (3) inform the requester that it can appeal  
12 whatever portion of the ‘determination’ is adverse.” *CREW*, 711 F.3d at 188; *see also* *Oglesby*, 920  
13 F.2d at 67 (finding that an agency’s response did not trigger the exhaustion requirement because  
14 “merely inform[ing] [the requester] that he could call the agency for further information...did not  
15 qualify as notice of...right to appeal”).

16 19. With regard to production of responsive records, “FOIA requires that the agency make the  
17 records ‘promptly available,’ which depending on the circumstances typically would mean within  
18 days or a few weeks of a ‘determination,’ not months or years.” *CREW*, 711 F.3d at 188 (citing 5  
19 U.S.C. § 552(a)(3)(A), (6)(C)(i)); *see also* *Long v. IRS*, 693 F.2d 907, 910 (9th Cir. 1982) (holding  
20 that an agency’s unreasonable delay in disclosing nonexempt records violated FOIA, and “courts  
21 have a duty to prevent these abuses”).

22 20. FOIA also requires that the agency provide requestors “information about the status of a  
23 request...including...an estimated date on which the agency will complete action on the request.” 5  
24 U.S.C. § 552(a)(7)(B)(ii).

25 21. In addition, FOIA provides a waiver for fees associated with the procurement of  
26 documents subject to FOIA requests. FOIA requires agencies to waive fees “if disclosure of the  
27 information is in the public interest because it is likely to contribute significantly to public  
28

1 understanding of the operations or activities of the government and is not primarily in the  
2 commercial interest of the requester.” *Id.* § 552(a)(4)(A)(iii).

3 22. FOIA further requires each agency to “make reasonable efforts to search for [responsive]  
4 records,” *id.* § 552(a)(3)(C)-(D), in a manner that is “reasonably calculated to uncover *all* relevant  
5 documents.” *Zemansky v. EPA*, 767 F.2d 569, 571 (9th Cir. 1985) (emphasis added); *see also Oglesby*,  
6 920 F.2d at 68 (An “agency cannot limit its search to only one record system if there are others  
7 that are likely to turn up the information requested.”).

8 23. Similarly, “if an agency has reason to know that certain places may contain responsive  
9 documents,” the agency is required to search those places. *Valencia-Lucena v. U.S. Coast Guard*, 180  
10 F.3d 321, 327 (D.C. Cir. 1999); *Our Children’s Earth Found. v. Nat’l Marine Fisheries Serv.*, 85 F.  
11 Supp. 3d 1074, 1083 (N.D. Cal. 2015) (holding that an agency’s search was inadequate because of  
12 its failure to search places it “had reason to know...contained responsive documents”).

13 24. An agency bears the burden to demonstrate with reasonable detail that the “search terms  
14 and type of search performed” was likely to uncover *all* responsive records. *Oglesby*, 920 F.2d at 68;  
15 *see also Our Children’s Earth Found.*, 85 F. Supp. 3d at 1082 (holding that an agency must provide  
16 affidavits explaining “what records were searched, by whom, and through what process” to satisfy  
17 the agency’s burden).

18 25. The agency must also demonstrate that the scope of the agency’s search was adequate.  
19 When tailoring the scope of the search, an agency “ha[s] a duty to construe FOIA records requests  
20 liberally.” *Yagman v. Pompeo*, 868 F.3d 1075, 1079 (9th Cir. 2017) (holding that the scope of a  
21 request is clear if it provides “*some* reasonable description” of the requested records, such as times,  
22 dates, locations, types of documents, or types of information) (emphasis in original); *see also Law.*  
23 *Comm. for Civ. Rights of S.F. Bay Area v. Dep’t of Treasury*, 534 F. Supp. 2d 1126, 1130-31 (N.D. Cal.  
24 2008) (“[A]n agency cannot withhold a record that is reasonably within the scope of the request on  
25 the grounds that the record has not been specifically named by the requester.”).

26 26. After an agency identifies a responsive record, the agency must disclose the entire record  
27 “as a unit,” unless a statutory exemption allows the agency “to redact specific information within  
28

1 [the record].” *Am. Immigr. Law. Ass’n v. Exec. Off. for Immigr. Rev.*, 830 F.3d 667, 677 (D.C. Cir.  
2 2016); *see also* 5 U.S.C. § 552(a)(3)(A), (d). The agency may not “redact particular information  
3 within the responsive record on the basis that the information is non-responsive.” *Am. Immigr.*  
4 *Law. Ass’n*, 830 F.3d at 678.

5 27. In certain limited instances, an agency may withhold records or portions of records  
6 pursuant to nine specific exemptions. 5 U.S.C. § 552(b). These exemptions “were explicitly made  
7 exclusive” and “must be narrowly construed” in keeping with FOIA’s presumption in favor of  
8 disclosure. *Milner v. Dep’t of Navy*, 562 U.S. 562, 566 (2011).

9 28. An agency can only withhold information in a responsive record “if the agency reasonably  
10 foresees that disclosure would harm an interest protected by an exemption described in [FOIA]” or  
11 “disclosure is prohibited by law.” 5 U.S.C. § 552(a)(8)(A).

12 29. FOIA places the burden on the agency to prove that it may withhold responsive records or  
13 portions of records from a requester. *Id.* § 552(a)(4)(B). In order to satisfy this burden, the agency  
14 must submit affidavits with “reasonably detailed descriptions of the [withheld] documents” and  
15 “allege facts sufficient to establish an exemption.” *Lewis v. IRS*, 823 F.2d 375, 378 (9th Cir. 1987).

16 30. Moreover, if information contained in a document falls within one of FOIA’s enumerated  
17 exemptions, an agency may not simply withhold the entire document. *See Hamdan v. DOJ*, 797  
18 F.3d 759, 778-79 (9th Cir. 2015) (observing that courts must “make a specific finding that no  
19 information contained in each document or substantial portion of a document withheld is  
20 segregable”). An agency is required to take reasonable steps to segregate and disclose “all  
21 reasonably segregable portions of a [withheld] document.” *Id.*; 5 U.S.C. § 552(a)(8)(A)(ii).

22 31. If an agency cannot adequately justify withholding records in full or in part, FOIA provides  
23 this Court jurisdiction “to enjoin the agency from withholding agency records and to order the  
24 production of any agency records improperly withheld from the complainant.” 5 U.S.C. §  
25 552(a)(4)(B).

26 32. Finally, this Court also “has the authority to oversee and supervise the agency’s progress in  
27 responding to the request.” *Seavey v. Dep’t of Justice*, 266 F. Supp. 3d 241, 244 (D.D.C. 2017)



1 (citing *CREW*, 711 F.3d at 189); *see also Clemente v. FBI*, 71 F. Supp. 3d 262, 269 (D.D.C. 2014) (a  
2 court “may use its equitable powers to require the agency to process documents according to a  
3 court-imposed timeline.”).

#### 4 FACTUAL BACKGROUND

5 33. CFS, through its Pollinators & Pesticides Campaign, works to protect pollinators, public  
6 health, and the environment from the harms associated with industrial agriculture, including GE  
7 crop and neonicotinoid pesticide use on national wildlife refuges. To fulfill such objectives, CFS  
8 submitted to DOI a FOIA request on August 21, 2019, concerning the nature of then Deputy  
9 Assistant Secretary of the Interior for Fish, Wildlife and Parks Aurelia Skipwith’s involvement in  
10 the 2018 decision to reverse the 2014 ban on the use of GE crops and neonicotinoid pesticides in  
11 the Refuge System.

12 34. On August 21, 2019, CFS submitted to DOI a FOIA request for “[a]ny and all documents,  
13 from January 1, 2017 to present, regarding: (1) Aurelia Skipwith’s involvement in the Fish and  
14 Wildlife Service (FWS)’s 2018 decision to reverse the 2014 neonicotinoid pesticides and  
15 genetically modified organism (GMO) or genetically engineered (GE) crop ban in the National  
16 Wildlife Refuge System...; and (2) Communications between Aurelia Skipwith, in her official  
17 capacity as Deputy Assistant Secretary of the Interior for Fish, Wildlife, and Parks, and FWS  
18 officials and employees and agrochemical and biotech industry officials pertaining to FWS’s 2018  
19 reversal of the 2014 ban on neonicotinoid pesticides and GMO or GE crops on national wildlife  
20 refuges.”

21 35. An initial determination on the August 21, 2019 FOIA Request was due by September 19,  
22 2019, twenty working days after the date CFS submitted the request.

23 36. On August 23, 2019, DOI sent an email acknowledging the receipt of CFS’s August 21,  
24 2019 FOIA Request, and assigned the request Tracking Number OS-2019-01236.

25 37. DOI also sent via the same August 23, 2019 email an acknowledgement letter dated  
26 August 22, 2019, which stated that “[CFS’s] request was received in the Office of the Secretary  
27 FOIA office on August 21, 2019,” and that CFS could “expect to hear from [DOI] promptly  
28

1 regarding the outcome of [DOI's] search." DOI advised CFS that the agency was in "the process of  
2 determining whether or not [CFS's] entitlements are sufficient to enable [DOI] to process [CFS's]  
3 request, or if [DOI] will need to issue a formal determination on [CFS's] request for a fee waiver."  
4 The letter also stated that "[b]ecause [DOI] will need to consult with one or more bureaus of the  
5 Department in order to properly process [CFS's] request, the Office of the Secretary FOIA office is  
6 taking a 10-day extension under 43 C.F.R. § 2.19."

7 38. On September 26, 2019, CFS emailed DOI stating that the response and accompanying  
8 letter on August 23, 2019 did "not qualify as an initial determination under 5 U.S.C. §  
9 552(a)(6)(A)." CFS requested that the agency provide "an adequate initial determination,"  
10 including: "(1) 'the agency's determination of whether or not to comply with the request,' (2) 'the  
11 reasons for its decision,' and (3) 'notice of the right of the requester to appeal to the head of the  
12 agency if the initial agency decision is adverse.'" (Citing *Oglesby*, 920 F.2d at 65; *CREW*, 711 F.3d  
13 at 188 (holding that a determination under 5 U.S.C. § 552(a)(6)(A) "must be more than just an  
14 initial statement that the agency will generally comply with a FOIA request and will produce non-  
15 exempt documents and claim exemptions in the future.")). In addition, CFS further requested  
16 "that the agency provide an estimated completion date as required by FOIA, 5 U.S.C. §  
17 552(a)(7)(B)(ii)."

18 39. One year, three months, and eighteen days has passed since CFS submitted its August 21,  
19 2019 FOIA request, and the agency has not provided an initial determination in response to the  
20 August 21, 2019 FOIA Request, supplied an estimated date of completion, or produced any  
21 responsive records. DOI has failed to provide a determination describing the scope of the records  
22 it intends to produce or withhold, the reasons for withholding any records, or informed CFS that  
23 it may appeal any specific adverse determination within the relevant time period in 5 U.S.C. §  
24 552(a)(6)(A)(i) or 5 U.S.C. § 552(a)(6)(B).

25 40. CFS is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. §  
26 552(a)(6)(C)(i).

27 41. As of the date of this complaint, CFS has received no further communication from DOI.  
28

1 42. None of FOIA's nine exemptions to the statute's disclosure mandate apply to the records  
2 that are responsive to the August 21, 2019 FOIA Request.

3 43. CFS has been required to expend resources to prosecute this action.

4 **FIRST CLAIM FOR RELIEF:**

5 **VIOLATION OF THE FREEDOM OF INFORMATION ACT**

6 **Failure to Comply with FOIA's Mandatory Determination Deadline for CFS's FOIA Request**

7 44. Plaintiff realleges and incorporates by reference the allegations made in all preceding  
8 paragraphs.

9 45. DOI violated FOIA by failing to make a determination on CFS's August 21, 2019 FOIA  
10 Request, Tracking Number OS-2019-01236. 5 U.S.C. § 552(a)(6).

11 46. CFS has a statutory right to receive a determination within the congressionally mandated  
12 deadline of twenty working days. *Id.*

13 47. Over fifteen months has passed since CFS filed the August 21, 2019 FOIA Request. To  
14 date, DOI has not provided a determination, notwithstanding the requirement of 5 U.S.C. §  
15 552(a)(6)(A) of an agency response within twenty working days detailing the scope of the records  
16 the agency intends to produce and withhold, the reasons for making that determination, and an  
17 explanation of the process by which a requester can administratively appeal that determination.

18 48. Even accounting for a ten-working-day extension, DOI has still failed to meet the deadline  
19 by which an initial determination is required.

20 49. DOI's failure to make an initial determination with regard to the August 21, 2019 FOIA  
21 Request, thus unlawfully delaying its response beyond the deadline that FOIA mandates, has  
22 prejudiced CFS's ability to timely obtain public records. *Id.* § 552(a)(6)(A)(i).

23 50. As such, CFS has exhausted the applicable administrative remedies with respect to the  
24 August 21, 2019 FOIA Request pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

25 51. Due to the nature of CFS's organizational activities, it will undoubtedly continue to  
26 employ FOIA's provisions in record requests to DOI in the foreseeable future.

1 52. CFS's organizational activities will be adversely affected if DOI continues to violate FOIA  
2 by failing to disclose responsive records as it has in this case.

3 53. Unless enjoined and made subject to a declaration of CFS's legal rights by this Court, DOI  
4 will continue to violate CFS's rights to receive public records under FOIA.

5 54. CFS is entitled to reasonable costs of litigation, including attorney fees, pursuant to FOIA.  
6 *Id.* § 552(a)(4)(E).

7 **SECOND CLAIM FOR RELIEF:**

8 **VIOLATION OF THE FREEDOM OF INFORMATION ACT**

9 **Failure to Conduct an Adequate Search for Responsive Records to CFS's FOIA Request**

10 55. Plaintiff realleges and incorporates by reference the allegations made in all preceding  
11 paragraphs.

12 56. DOI violated FOIA by failing to conduct an adequate search for responsive records  
13 pursuant to 5 U.S.C. § 552(a)(3)(C)-(D).

14 57. CFS has a statutory right to have DOI process its August 21, 2019 FOIA Request, OS-  
15 2019-01236, in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3)(C)-(D).

16 58. DOI violated CFS's right when it unlawfully failed to undertake a search that is reasonably  
17 calculated to locate all records that are responsive to the August 21, 2019 FOIA Request, thus  
18 prejudicing CFS's ability to timely obtain public records.

19 59. CFS has exhausted the applicable administrative remedies with respect to the August 21,  
20 2019 FOIA Request pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

21 60. Due to the nature of CFS's organizational activities, it will undoubtedly continue to  
22 employ FOIA's provisions in record requests to DOI in the foreseeable future.

23 61. CFS's organizational activities will be adversely affected if DOI continues to violate FOIA  
24 by failing to disclose responsive records as it has in this case.

25 62. Unless enjoined and made subject to a declaration of CFS's legal rights by this Court, DOI  
26 will continue to violate CFS's rights to receive public records under FOIA.

1 63. CFS is entitled to reasonable costs of litigation, including attorney fees, pursuant to FOIA.  
2 *Id.* § 552(a)(4)(E).

3 **THIRD CLAIM FOR RELIEF:**

4 **VIOLATION OF THE FREEDOM OF INFORMATION ACT**

5 **Failure to Disclose All Responsive Records to CFS's FOIA Request**

6 64. Plaintiff realleges and incorporates by reference the allegations made in all preceding  
7 paragraphs.

8 65. DOI violated FOIA by failing to promptly disclose records that are responsive to CFS's  
9 August 21, 2019 FOIA Request, OS-2019-01236. 5 U.S.C. § 552(a)(4)(B).

10 66. CFS has a statutory right to the records it seeks, and there are no applicable exemptions  
11 under FOIA that provide a legal basis for DOI to withhold these records from CFS. *See id.* §  
12 552(b)(1)-(9).

13 67. To date, DOI has not provided any records requested by CFS in the August 21, 2019  
14 FOIA Request, notwithstanding the requirement of 5 U.S.C. § 552(a)(3)(A) and 5 U.S.C. §  
15 552(a)(6)(C) to make agency records "promptly available."

16 68. As such, DOI is wrongfully withholding disclosure of information sought by CFS,  
17 information to which it is entitled and for which no valid disclosure exemption has been claimed.  
18 DOI's unlawful withholding prejudices CFS's ability to timely obtain public records.

19 69. CFS has exhausted the applicable administrative remedies with respect to the August 21,  
20 2019 FOIA Request pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

21 70. Due to the nature of CFS's organizational activities, it will undoubtedly continue to  
22 employ FOIA's provisions in record requests to DOI in the foreseeable future.

23 71. CFS's organizational activities will be adversely affected if DOI continues to violate FOIA  
24 by failing to disclose responsive records as it has in this case.

25 72. Unless enjoined and made subject to a declaration of CFS's legal rights by this Court, DOI  
26 will continue to violate CFS's rights to receive public records under FOIA.

1 73. CFS is entitled to reasonable costs of litigation, including attorney fees, pursuant to FOIA.  
2 *Id.* § 552(a)(4)(E).

3 **FOURTH CLAIM FOR RELIEF:**

4 **VIOLATION OF THE FREEDOM OF INFORMATION ACT**

5 **Failure to Provide Reasonably Segregable Portions of Any Lawfully Exempt Records to CFS's**  
6 **FOIA Request**

7 74. Plaintiff realleges and incorporates by reference the allegations made in all preceding  
8 paragraphs.

9 75. DOI violated FOIA by failing to take reasonable steps to segregate and release nonexempt  
10 portions of lawfully exempt records in response to the August 21, 2019 FOIA Request, OS-2019-  
11 01236. 5 U.S.C. § 552(a)(8)(A)(ii)(II).

12 76. CFS has a statutory right to any reasonably segregable portion of a record that contains  
13 information that is subject to any of FOIA's exemptions. *Id.*

14 77. To date, DOI has failed to disclose any records to CFS, including nonexempt information  
15 that could be reasonably segregated and released in response to the August 21, 2019 FOIA  
16 Request, thus prejudicing CFS's ability to timely obtain public records.

17 78. CFS has exhausted the applicable administrative remedies with respect to the August 21,  
18 2019 FOIA Request pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

19 79. Due to the nature of CFS's organizational activities, it will undoubtedly continue to  
20 employ FOIA's provisions in record requests to DOI in the foreseeable future.

21 80. CFS's organizational activities will be adversely affected if DOI continues to violate FOIA  
22 by failing to disclose responsive records as it has in this case.

23 81. Unless enjoined and made subject to a declaration of CFS's legal rights by this Court, DOI  
24 will continue to violate CFS's rights to receive public records under FOIA.

25 82. CFS is entitled to reasonable costs of litigation, including attorney fees, pursuant to FOIA.  
26 *Id.* § 552(a)(4)(E).

**FIFTH CLAIM FOR RELIEF:**

**VIOLATION OF THE FREEDOM OF INFORMATION ACT**

**Failure to Provide an Estimated Date of Completion as Required by FOIA for CFS's FOIA Request**

83. Plaintiff realleges and incorporates by reference the allegations made in all preceding paragraphs.

84. DOI violated FOIA by failing to provide CFS with an estimated date of completion as required by 5 U.S.C. § 552(a)(7)(A)-(B).

85. CFS has a statutory right to have DOI process its August 21, 2019 FOIA Request, OS-2019-01236, in a manner which complies with FOIA. DOI has violated Plaintiff's rights in this regard by its failure to provide—by any means—an estimated completion date for its response to the August 21, 2020 FOIA Request as required by FOIA. 5 U.S.C. § 552(a)(7)(A)-(B).

86. DOI's failure to inform CFS of an estimated completion date for the August 21, 2019 FOIA Request has prejudiced CFS's ability to timely obtain public records.

87. CFS has exhausted the applicable administrative remedies with respect to the August 21, 2019 Request pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

88. Due to the nature of CFS's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to DOI in the foreseeable future.

89. CFS's organizational activities will be adversely affected if DOI continues to violate FOIA by failing to disclose responsive records as it has in this case.

90. Unless enjoined and made subject to a declaration of CFS's legal rights by this Court, DOI will continue to violate CFS's rights to receive public records under FOIA.

91. CFS is entitled to reasonable costs of litigation, including attorney fees, pursuant to FOIA. *Id.* § 552(a)(4)(E).

1 **REQUEST FOR RELIEF**

2 WHEREFORE, Plaintiffs respectfully requests this Court:

3 1. Declare that Defendant violated the Freedom of Information Act by failing to lawfully  
4 satisfy Plaintiff's August 21, 2019 FOIA Request;

5 2. Declare that Defendant failed to make and communicate an initial determination  
6 regarding Plaintiff's August 21, 2019 FOIA Request;

7 3. Declare that Defendant failed to conduct an adequate search for agency records responsive  
8 to Plaintiff's August 21, 2019 FOIA Request;

9 4. Declare that Defendant unduly delayed actual production of records responsive to  
10 Plaintiff's August 21, 2019 FOIA Request;

11 5. Declare that Defendant unlawfully failed to provide reasonably segregable portions of  
12 records which may be lawfully subject to a FOIA exemption to Plaintiff's August 21, 2019 FOIA  
13 Request;

14 6. Declare that Defendant unlawfully failed to provide Plaintiff with an estimated date of  
15 completion as to the search and production of Plaintiff's August 21, 2019 FOIA Request;

16 7. Order Defendant to provide a lawful initial determination on Plaintiff's August 21, 2019  
17 FOIA Request;

18 8. Order Defendant to conduct searches that are reasonably calculated to locate all records  
19 responsive to Plaintiff's August 21, 2019 FOIA Request using search methods reasonably likely to  
20 lead to discovery of all responsive records;

21 9. Order Defendant to produce, by a date certain, any and all nonexempt responsive records  
22 or segregable portion of the records and a *Vaughn* index of any responsive records or portion of  
23 responsive records withheld under a claim of exemption, at no cost to Plaintiff;

24 10. Enjoin Defendant from continuing to withhold any and all nonexempt responsive records  
25 or segregable portion of the records;

26 11. Retain jurisdiction of this action to ensure the processing of Plaintiff's FOIA request and  
27 that no agency records or portion of the records are improperly withheld;



1 12. Award Plaintiff its costs and reasonable attorney fees pursuant to 5 U.S.C. § 552(a)(4)(E)  
2 or 28 U.S.C. § 2412; and

3 13. Grant such other and further relief as the Court may deem just and proper.  
4

5 Respectfully submitted this 9th Day of December, 2020.  
6

7 /s/ Victoria A. Yundt

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