

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

PUBLIC EMPLOYEES FOR
ENVIRONMENTAL RESPONSIBILITY,
962 Wayne Ave, Suite 610
Silver Spring, MD 20910

Plaintiff,

v.

BUREAU OF LAND MANAGEMENT
Department of the Interior
1839 C Street, N.W.
Washington, DC 20240

Defendant.

CIVIL ACTION NO.

COMPLAINT

PRELIMINARY STATEMENT

1. Plaintiff Public Employees for Environmental Responsibility (“Plaintiff” or “PEER”) brings this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.*, as amended, to compel the United States Department of the Interior (“DOI”)’s Bureau of Land Management (“BLM”) to disclose documents requested pursuant to FOIA. Specifically, PEER is seeking documents related to the initial appointment of Mr. William Perry Pendley as the Deputy Director of the BLM.
2. To date, Defendant has failed to make a determination on Plaintiff’s FOIA request or to disclose to the Plaintiff the requested documents within the time stipulated under FOIA or provide an accurate date when such documents will be disclosed.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action under 5 U.S.C. § 552(a)(4)(B). This Court also has federal question jurisdiction over this action under 28 U.S.C. § 1331.
4. This Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*
5. This Court is a proper venue under 5 U.S.C. § 552(a)(4)(B) (providing for venue in FOIA cases where the plaintiff resides, or in the District of Columbia).
6. This Court has the authority to award reasonable costs and attorneys' fees under 5 U.S.C. § 552(a)(4)(E).

PARTIES

7. Plaintiff, PEER, is a non-profit public interest organization incorporated in Washington, D.C. and headquartered in Silver Spring, Maryland, with field offices in California, Colorado, Florida, Massachusetts, and Tennessee.
8. 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, including the regulation and remediation of toxic substances, public lands and natural resource management, public funding of environmental and natural resource agencies, and governmental accountability. PEER educates and informs the public through news releases to the media, through its web site, www.peer.org, and through publication of the *PEER Review* newsletter.
9. Defendant BLM is a bureau within the DOI and an agency of the United States under 5 U.S.C. § 552(f)(1).

10. Defendant is charged with the duty to provide public access to records in its possession consistent with the requirements of the FOIA. The Defendant's refusal to provide the Plaintiff with the records requested on July 25, 2019, is a violation of the FOIA, a federal law.

STATEMENT OF FACTS

11. On or before July 15, 2019, Mr. William Perry Pendley was initially appointed as the Deputy Director for Policy and Management of BLM. PEER was concerned that the details of Mr. Pendley's initial appointment were hidden; further, that his appointment may have been illegal and that he was not qualified for the position. On July 19, 2019, PEER requested information from BLM's Headquarters via FOIA concerning Mr. Pendley. Specifically, PEER requested:

All documents and communications regarding: a) who appointed William Perry Pendley as BLM's Deputy Director for Policy and Management, b) how he was appointed, and c) why he was appointed.

12. On August 29, 2019, PEER submitted a follow-up to its request asking when responsive materials would be provided and whether BLM had confirmed receipt of PEER's FOIA request.
13. On Aug. 30, 2019, BLM responded to PEER indicating the agency "received your follow up August 29, 2019 and will honor the original date of the July 19 submission and placed it in the proper track accordingly. We have assigned it control number 2019-01135." BLM stated it would respond under the "Complex" processing track, that is, "for requests that can be processed in twenty-one to sixty workdays". That would have resulted in BLM production by Oct. 16, 2019. However, the bureau failed to produce by then.
14. On Oct. 21, PEER urged BLM to respond, but without success. To date, BLM has produced no documents. PEER has received no further communications from BLM regarding this request.

CAUSE OF ACTION

15. Plaintiff incorporates the allegations in the preceding paragraphs.
16. The FOIA requires federal agencies to respond to public requests for records, including files maintained electronically, to increase public understanding of the workings of government and to provide access to government information. FOIA reflects a “profound national commitment to ensuring an open Government” and agencies must “adopt a presumption in favor of disclosure.” Presidential Mem., 74 Fed. Reg. 4683 (Jan. 21, 2009).
17. The FOIA requires agencies to determine within 20 working days after the receipt of any FOIA request whether to comply with the request. 5 U.S.C. § 552(a)(6)(A)(i). Agencies may only extend this time period for an additional 10 working days in “unusual circumstances.” 5 U.S.C. § 552(a)(6)(B)(i). The FOIA also provides that upon request, agencies are to make records “promptly available.” 5 U.S.C. § 552(a)(3)(A).
18. Twenty working days from July 19, 2019, (the date BLM states it received PEER’s FOIA request) was Aug. 19. As of the date of this filing, Plaintiff has received no documents responsive to its July 19 request, BLM’s FOIA number 2019-01135.
19. Administrative remedies are deemed exhausted when an agency fails to comply with the applicable time limits. 5 U.S.C. § 552(a)(6)(C)(i). Having fully exhausted its administrative remedies for its July 19, 2019 FOIA request, PEER now turns to this Court to enforce the remedies and public access to agency records guaranteed by the FOIA.
20. Defendant’s conduct amounts to a denial of the Plaintiff’s FOIA request. Defendant is frustrating Plaintiff’s efforts to adequately understand and educate the public regarding the activities of DOI, BLM, and Mr. Pendley.

21. Plaintiff has constructively exhausted its administrative remedies under 5 U.S.C. § 552(a)(6)(C)(i), and now seeks an order from this Court requiring the Defendant to immediately produce the records sought in Plaintiff's FOIA request, as well as other appropriate relief, including attorneys' fees and costs.
22. Defendant's failure to make a determination on or disclose the documents requested in Plaintiff's July 19, 2019, FOIA request within the time frame mandated under FOIA is a denial and wrongful withholding of records in violation of 5 U.S.C. § 552.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that this Court:

- i. Enter an order declaring that Defendant wrongfully withheld requested agency documents;
- ii. Issue a permanent injunction directing Defendant to disclose to Plaintiff all wrongfully withheld documents;
- iii. Maintain jurisdiction over this action until Defendant is in compliance with the 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.

Respectfully submitted on November 5 2019,

/s/ Peter Jenkins
Peter Jenkins, DC Bar # 477229
Public Employees for Environmental Responsibility
962 Wayne Ave, Suite 610
Silver Spring, MD 20910
(202) 265-4189
pjenkins@peer.org

Counsel for Plaintiff