

**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.

NATIONAL PARK SERVICE
1849 C St NW
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”), National Park Service (“NPS”) to disclose documents requested pursuant to FOIA. Specifically, PEER is seeking documents related to the involvement of the United States Park Police (“USPP”), a unit of the NPS, in violent confrontations between law enforcement and protestors in Lafayette Park in Washington, D.C., on the evening of June 1, 2020.
2. To date, Defendant has failed to make a determination on Plaintiff’s FOIA request or to disclose to the Plaintiff all of the requested documents within the time stipulated under FOIA or provide any 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 NPS is a bureau of 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 June 3, 2020, is a violation of FOIA.

STATEMENT OF FACTS

11. On June 1, 2020, days after the death of Minnesota resident George Floyd at the hands of police, protestors gathered in Lafayette Park, an area under the jurisdiction of the USPP located at the intersection of Pennsylvania Avenue and 16th Street NW in Washington, DC.
12. Shortly before the City's curfew began at 7 p.m., uniformed USPP officers participated in the forceful removal of protestors from the park, in a confrontation that became violent as law enforcement cleared a path for the President to move from the White House through the park to address the media outside St. John's Church. Reportedly, the USPP response included the use of chemical agents and less-lethal weapons against protestors and members of the press.
13. On June 3, 2020, PEER requested information from NPS via FOIA on communications concerning the handling of the Lafayette Park protests and the protestors' dispersal.

Specifically, PEER requested:

1. *Emails, notes, text messages, and any form of electronic instant messages created between May 30, 2020 and June 3, 2020, containing 31 key words and phrases including but not limited to "Lafayette," "riot," "curfew," "George Floyd," and "pepper."*
2. *Presentations or briefings provided to USPP officers deployed in the Central District between May 30, 2020 and June 3, 2020.*
3. *Current written policies and directives governing use of force, riot control, deployment of OC or pepper spray, and interactions with members of the media.*
4. *Official police reports drafted by USPP officers in the Central District between May 30, 2020 and June 3, 2020.*
5. *Any communications between May 30, 2020 and June 3, 2020 between USPP and the Office of the President, the Office of the Vice President, or the U.S. Secret Service.*

14. On June 9, 2020, NPS responded to PEER indicating the agency had received PEER's FOIA request and had assigned it control number 2020-00903. NPS stated that PEER's request had been placed in the normal processing track and that NPS's response would be due by June 30, 2020. However, the bureau failed to respond by then.
15. On July 7, 2020, PEER inquired what the status of its request was with the NPS FOIA office. The next day, NPS FOIA responded that there were 122 requests ahead of PEER's request in the office's queue. NPS also provided a link to the NPS "Frequently Requested Documents" page which hosted the NPS Use of Force policy.
16. To date, PEER's FOIA request to NPS has produced no documents that were not already publicly available and NPS has not provided any indication about when any responsive documents may be produced.

CAUSE OF ACTION

17. Plaintiff incorporates the allegations in the preceding paragraphs as though fully set forth herein.
18. 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).
19. 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). FOIA also provides that upon request, agencies are to make records “promptly available.” 5 U.S.C. § 552(a)(3)(A).

20. As acknowledged by NPS, twenty working days from June 3, 2020, (the date PEER submitted its FOIA request) was June 30, 2020. As of the date of this filing, Plaintiff has received no documents in response to its FOIA request, numbered by NPS as 2020-00903.
21. 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 exhausted its administrative remedies for its June 3, 2020 FOIA request, PEER now turns to this Court to enforce the remedies and public access to agency records guaranteed by FOIA.
22. Defendant’s conduct amounts to a denial of Plaintiff’s FOIA request. Defendant is frustrating Plaintiff’s efforts to adequately understand and educate the public regarding the USPP’s actions and policies concerning members of the public engaged in lawful protest on properties under the USPP’s jurisdiction.
23. 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.
24. Defendant’s failure to make a determination on or disclose the documents requested in Plaintiff’s June 3, 2020, 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 July 13, 2020,

s/ Paula Dinerstein
Paula Dinerstein, DC Bar # 333971

Kevin H. Bell
NY Bar No. 5448626 (pending local
admission)

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