

**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. 20-

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 telecommunications proposals and installations across five National Park Service units: Bryce Canyon (BRCA), Crater Lake (CRLA), Grand Teton (GRTE), and Olympic (“ONP” or “OLYM”) National Parks, and the Lake Mead National Recreation Area (LAME).
2. PEER’s May 2020 FOIA requests referenced previous requests submitted between 2017 and 2019 on similar subject matter that have still yet to be fully responded to, so in some cases

PEER is owed documents that go back several years. This complaint seeks to end years of non-compliance by NPS.

3. PEER previously submitted FOIA requests to GRTE on March 25, 2019, to BRCA on October 29, 2018, to ONP on October 17, 2017, and to LAME on November 7, 2017.
4. To date, Defendant has failed to make a determination on Plaintiff's FOIA requests 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

5. 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.
6. This Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*
7. 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).
8. This Court has the authority to award reasonable costs and attorneys' fees under 5 U.S.C. § 552(a)(4)(E).

PARTIES

9. 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.
10. 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.

11. Defendant NPS is a bureau of the DOI and an agency of the United States under 5 U.S.C. § 552(f)(1).
12. 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 or make a determination on Plaintiff's FOIA request within 20 working days of May 27, 2020, is a violation of FOIA.

STATEMENT OF FACTS

Olympic National Park

13. On October 17, 2017, PEER submitted a FOIA request to ONP seeking ten categories of records related to the installation of communications equipment in the park. NPS assigned that FOIA request tracking number NPS-2018-00087.
14. ONP partially responded to FOIA Request NPS-2018-00087 by letter on April 2, 2018, providing materials responsive to nine of the ten requests and stating that it was "continuing to review additional records that are responsive to Item 8 of [PEER's] request."
15. Since April 2, 2018, PEER has received no further communications regarding request NPS-2018-00087.
16. On May 27, 2020, PEER requested further information from NPS via FOIA concerning planned and installed telecommunications equipment at ONP. That request was routed to the FOIA Office for the Pacific Western Region by email on May 28, 2020.

17. To date, NPS has not assigned a tracking number to this request or otherwise communicated with PEER about its status.

Crater Lake National Park

18. On January 30, 2018, PEER submitted a FOIA request to CRLA seeking records relating to the installation of communications equipment in the park.

19. CRLA assigned PEER's FOIA request the tracking number NPS-2018-00427 in a confirmation letter it delivered to PEER on February 5, 2018.

20. In March 2018, the Acting Superintendent of CRLA requested an additional 6 to 8 weeks of time before the Park could produce any records.

21. On October 1, 2018, the FOIA Office for the Pacific Western Region informed PEER by email that its request was waiting behind four other "complex" requests in its processing queue and added that it anticipated delivering responsive documents by January 18, 2019.

22. PEER has yet to receive any responsive records or a final determination on FOIA Request NPS-2018-00427.

23. On May 27, 2020, PEER requested further information from NPS via FOIA concerning planned and installed telecommunications equipment at CRLA. That request was routed to the FOIA Office for the Pacific Western Region by email on May 28, 2020.

24. To date, NPS has not assigned a tracking number to this request or otherwise communicated with PEER about its status.

Grand Teton National Park

25. On May 27, 2020, PEER filed a FOIA request with GRTE seeking records relating to the installation of communications equipment in the park produced between 2017 and the date of that request.

26. On June 9, 2020, NPS acknowledged receipt of PEER's FOIA request and assigned it tracking number NPS-2020-00926.

27. To date, PEER has received no documents in response to this FOIA request and NPS has yet to make a final determination in response to PEER's FOIA request.

Bryce Canyon National Park

28. On October 29, 2018, PEER filed a FOIA request with BRCA seeking records relating to the installation of communications equipment in the park.

29. On November 13, 2018, NPS acknowledged receipt of PEER's FOIA request and assigned it tracking number NPS-2019-00201.

30. To date, PEER has received no further communications regarding FOIA request NPS-2019-00201 and NPS has yet to make a final determination in response to PEER's FOIA request.

31. On May 27, 2020, PEER filed a second FOIA request with BRCA seeking records relating to the installation of communications equipment in the park.

32. On June 29, 2020 NPS acknowledged receipt of PEER's FOIA request and assigned it tracking number NPS-2020-00978.

33. To date, PEER has received no documents in response to FOIA request NPS-2020-00978 and NPS has yet to make a final determination in response to PEER's FOIA request.

Lake Mead National Recreation Area

34. On May 27, 2020, PEER filed a FOIA request with LAME, seeking records relating to the installation of communications equipment in the park.

35. On June 25, 2020, NPS emailed PEER seeking clarification on the scope of the FOIA Request sent to LAME, which had been assigned tracking number NPS-2020-00852. PEER agreed to limit the scope of its request and to eliminate certain unnecessary duplicative records from any ultimate production.

36. To date, PEER has received no documents in response to its FOIA request and NPS has yet to make a final determination on PEER's FOIA request.

CAUSE OF ACTION

37. Plaintiff incorporates the allegations in the preceding paragraphs as though fully set forth herein.

38. 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).

39. 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).

40. Twenty working days from May 27, 2020, (the date PEER submitted its five most recent FOIA requests) was June 24, 2020. The applicable time limits for PEER's earlier FOIA requests, numbered NPS-2018-00087, NPS-2018-00427, and NPS-2019-00201, expired months or years ago.

41. As of the date of this filing, Plaintiff has not received a final determination on any of its eight FOIA requests.

42. As of the date of this filing, PEER has only received partial responses to one of its eight FOIA requests, NPS-2018-00087, but has been waiting for more than two years for a final production in response to that request.
43. 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 May 27, 2020 FOIA requests, PEER now turns to this Court to enforce the remedies and public access to agency records guaranteed by FOIA.
44. 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 NPS's actions and policies concerning construction of telecommunications equipment on NPS properties.
45. 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.
46. Defendant's failure to make determinations on or disclose the documents requested in Plaintiff's FOIA requests 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 23, 2020,

s/ Paula Dinerstein
Paula Dinerstein, DC Bar # 333971

Kevin H. Bell
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admission)

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