

**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.

U.S. FOREST SERVICE
201 14th St SW
Washington, DC 20227

Defendant.

CIVIL ACTION NO. 20-2874

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 Agriculture (“USDA”)’s Forest Service (“USFS”) to disclose documents requested pursuant to FOIA. Specifically, PEER is seeking documents related to an audit conducted in 2018-2019 of the Tongass National Forest timber sale program.
2. PEER submitted a FOIA request in August 2020 seeking a copy of the USFS audit report, which on information and belief was completed in 2019 but never released.
3. 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

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

PARTIES

8. 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.
9. 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.
10. Defendant USFS is a bureau of the USDA and an agency of the United States under 5 U.S.C. § 552(f)(1).

11. 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 August 10, 2020, is a violation of FOIA.

STATEMENT OF FACTS

12. On August 10, 2020 PEER submitted a FOIA request to USFS seeking "a copy of the above-referenced audit report, including its findings, recommendations, and any exhibits or appendices." The USDA FOIA Service Center confirmed receipt of PEER's FOIA request and assigned it FOIA request tracking # '2020-FS-WO-05724-F' by email.

13. Since August 10, 2020, PEER has received no further communications regarding its FOIA request 2020-FS-WO-05724-F.

14. October 7, 2020, the date of this complaint, is 42 working days after the date of PEER's FOIA request.¹

15. To date, USFS has not made a determination about PEER's FOIA request or invoked unusual circumstances that would require longer to respond.

CAUSE OF ACTION

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

17. 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

¹ Counting all weekdays excluding September 7, 2020.

to ensuring an open Government” and agencies must “adopt a presumption in favor of disclosure.” Presidential Mem., 74 Fed. Reg. 4683 (Jan. 21, 2009).

18. 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).
19. Twenty working days from August 10, 2020, (the date PEER submitted its FOIA request) was September 4, 2020.
20. Defendant’s failure to make a determination on or disclose the documents requested in Plaintiff’s 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.
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 August 10, 2020 FOIA request # 2020-FS-WO-05724-F, 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 USFS timber sale activities in the Tongass National Forest.
23. Plaintiff now seeks an order from this Court requiring the Defendant to immediately produce the records sought in Plaintiff’s FOIA requests, as well as other appropriate relief, including attorneys’ fees and costs.

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 October 7, 2020,

s/ Paula Dinerstein
Paula Dinerstein, DC Bar # 333971

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

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