

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.

UNITED STATES GEOLOGICAL
SURVEY
12201 Sunrise Valley Drive
Reston, VA 20192

Defendant.

CIVIL ACTION NO. 22-

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 Geological Survey (“Defendant” or “USGS”) to disclose documents requested pursuant to FOIA. Specifically, PEER is seeking documents related to research into zoonotic diseases being conducted by USGS and biosafety and security protocols followed by the laboratories conducting that research.
2. PEER submitted three FOIA requests on December 9, 2021, seeking records related to research on the SARS CoV-2 virus at USGS wildlife disease laboratories, certification,

accreditation, and/or inspection of those laboratories, and specific incidents relating to effluent treatment system failures and animal welfare.

3. To date, Defendant has failed to make a final determination on Plaintiff's FOIA requests or to disclose to the Plaintiff all the requested documents within the time stipulated under FOIA.

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 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, policy that worsens or remediates climate change, 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 *PEERreview* newsletter.

10. Defendant is 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 FOIA. The Defendant's refusal to provide the Plaintiff with the records requested or make a final a determination on Plaintiff's FOIA requests within twenty working days of the date of the requests' submission is a violation of FOIA.

STATEMENT OF FACTS

12. On December 9, 2021, PEER submitted three FOIA requests to USGS via FOIAOnline.

13. PEER's First Request sought:

1. All documents, records, emails, texts, instant messages, electronic chats, memos, notes, letters, and any other records regarding James David Applegate's response letter dated April 19, 2021, sent to Peter T. Jenkins, Senior Counsel, PEER, regarding a March 21, 2021, multi-NGO letter regarding accreditation of USGS's wildlife disease laboratories;
2. Since January 19, 2021, all internal or external USGS communications regarding Association for Assessment and Accreditation of Laboratory Animal Care (AAALAC) accreditation, Association for Biosafety and

Biosecurity (ABSA) accreditation, or any other non-USGS entity involved with certification, accreditation, and/or inspection of any of the USGS wildlife disease laboratories.

14. The First Request was assigned index number DOI-USGS-2022-001065 and an estimated date of completion was indicated as January 27, 2022.
15. PEER's Second Request sought "Since January 1, 2020, all documents, records, emails, texts, instant messages, electronic chats, memos, notes, letters, and any other records describing any research on the SARS CoV-2 virus, or any related emerging coronavirus strain/variant, being conducted at any of the USGS wildlife disease labs using or assessing the virus in live animal subjects."
16. The Second Request was assigned index number DOI-USGS-2022-001067 and an estimated date of completion was indicated as January 27, 2022.
17. PEER's Third Request sought "Since January 1, 2020, all records of the Western Fisheries Research Center-Seattle, National Wildlife Health Center-Madison, and Eastern Ecology Science Center laboratories addressing: a) any inspections or evaluations of the Biosafety Level (BSL)-2 and BSL-3 facilities and laboratory operations within them by outside non-USGS entities, b) any effluent treatment system deviations or failures for the BSL-2 and BSL-3 facilities, and c) any animal welfare incidents or deviations."
18. The Third Request was assigned index number DOI-USGS-2022-001068 and an estimated date of completion was indicated as January 27, 2022.

19. Since the requests were submitted, PEER has yet to receive any responsive records or a final determination on FOIA Requests DOI-USGS-2022-001065, DOI-USGS-2022-001067, or DOI-USGS-2022-001068.
20. On January 27, 2022, PEER received three letters from USGS FOIA informing PEER that processing of each of its three requests had been delayed and would not be completed by the original estimated dates of completion. The letters explained that the search for potentially responsive material had not been conducted yet for any of the three requests and estimated that production would be complete by June 30, 2022.
21. Since January 27, 2022, PEER has received no further communications regarding any of PEER's three FOIA requests.
22. To date, PEER has received no documents in response to its FOIA requests and USGS has yet to make a final determination on any of PEER's FOIA requests.

CAUSE OF ACTION

23. Plaintiff incorporates the allegations in the preceding paragraphs as though fully set forth herein.
24. 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).

25. FOIA requires agencies to determine within twenty 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 ten 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).
26. Twenty working days from December 9, 2021, was January 10, 2022.
27. USGS has not invoked an extension of ten further working days due to any unusual circumstances.
28. As of the date of this filing, Plaintiff has not received a final determination on its FOIA requests.
29. 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 December 9, 2021, FOIA requests, PEER now turns to this Court to enforce the remedies and public access to agency records guaranteed by FOIA.
30. 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 biosafety practices at laboratories operated by USGS.
31. 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 requests, as well as other appropriate relief, including attorneys’ fees and costs.

32. 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 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 May 5, 2022,

/s/ Hudson Kingston
Hudson B. Kingston, DC Bar # 1007702

Kevin H. Bell
NY Bar No. 5448626 (pending local
admission)
Public Employees for Environmental
Responsibility
962 Wayne Ave, Suite 610
Silver Spring, MD 20910
(202) 265-7337
Attorneys for Plaintiff