

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

PUBLIC EMPLOYEES FOR ENVIRONMENTAL))	
RESPONSIBILITY,))	
2001 S Street, NW, Suite 570))	
Washington, D.C. 20009))	
)	
Plaintiff,))	
)	
v.))	Civil Action #
)	
U. S. ENVIRONMENTAL PROTECTION))	
AGENCY,))	
Office of Inspector General))	
1200 Pennsylvania Avenue, NW))	
Washington, DC 20460))	<u>COMPLAINT</u>
)	
Defendant.))	

PRELIMINARY STATEMENT

1. This action is brought under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq.*, as amended, in order to compel the U.S. Environmental Protection Agency ("EPA") to disclose records withheld wrongfully after a FOIA request and subsequent appeal from Plaintiff. FOIA requires that federal agencies respond to public requests for documents, including files maintained electronically, in order to increase public understanding of the workings of government and access to government information.

2. The sought records reflect on the safety and completeness of EPA's removal of deadly vermiculite from the town of Libby, Montana asbestos cleanup. Specifically, Plaintiff sought a report completed by the EPA Office of Inspector General ("OIG") investigator

Cory Rumple assesses the public health implications of the manner in which EPA conducted the cleanup in Libby as well as the culpability of responsible EPA officials.

3. The report is a matter of public concern because it contains not only facts and assessments of the status of the Libby cleanup, but also policy and action recommendations by Cory Rumple regarding criminal acts and investigations relating to the mishandling of the Libby cleanup.
4. Plaintiff Public Employees for Environmental Responsibility (“PEER”) is a non-profit organization with tax-exempt status dedicated to research and public education concerning the activities and operations of the federal government. Plaintiff requested the subject records in order to learn about a report completed by EPA OIG investigator Cory Rumple regarding the status of EPA’s risk assessment and cleanup at Libby, Montana.
5. On January 23, 2009, Plaintiff submitted a FOIA request (RIN # 00596-09) to the EPA OIG. The agency constructively denied the January 2009 request by failing to respond within forty five (45) business days. Plaintiff appealed the constructive denial of its FOIA request on March 12, 2009 (Appeal # 00073-09). EPA has acknowledged, via telephone communication, that it received the March 2009 appeal but failed to respond to it within 20 working days as required by law.
6. EPA’s conduct is arbitrary and capricious and amounts to a denial of Plaintiff’s FOIA request. EPA’s conduct frustrates Plaintiff’s efforts to educate the public regarding ongoing activities at EPA and is a violation of the FOIA.

7. Plaintiff seeks a court order requiring EPA to produce immediately the documents sought January 23, 2009 FOIA request, as well as other appropriate relief.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction).
9. This Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*
10. This Court has the authority to award costs and attorneys' fees under 28 U.S.C. § 2414 and 5 U.S.C. § 552(a)(4)(E).
11. Venue is properly vested in this Court pursuant to 28 U.S.C. § 1391(e), because the Defendant resides in this district and a substantial part of the events and omissions which gave rise to this action occurred in this district. Venue is also proper under 5 U.S.C. § 552(a)(4)(B).

PARTIES

12. Plaintiff PEER is a non-profit public interest organization, with its main office located in Washington, D.C., and field offices located in California, Colorado, Florida, Massachusetts, Arizona, New York and Tennessee.
13. PEER is not a commercial enterprise for purposes of the fee waiver provisions of FOIA. *See* 5 U.S.C. § 552(a)(4)(A)(iii). 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, focusing on the environment, public lands and natural resource management, public funding of environmental and natural resource agencies, and ethics in government.

14. Informing the public about these important public policy issues is central to PEER's mission. PEER educates and informs the public through news releases to the media, PEER's web site www.peer.org, which draws between 1,000 and 10,000 viewers per day, and PEER's newsletter which has a circulation of approximately 20,000, including 1,500 environmental journalists.
15. Defendant EPA is an agency of the United States as defined by 5 U.S.C. § 552(f)(1), and is charged with the duty to provide public access to documents in its possession consistent with the requirements of the FOIA and is denying Plaintiff access to its records in contravention of federal law.

FACTS

16. On January 23, 2009, Plaintiff filed a FOIA request with the EPA OIG (Request # HQ-RIN-00596-09), seeking the agency's records regarding its assessments of the Libby, Montana asbestos cleanup. Specifically, Plaintiff sought "a report completed by the EPA OIG investigator Cory Rumble which discusses the status of the EPA cleanup in Libby." Plaintiff stated that it did not seek names of individuals subject to EPA or other investigations, nor did it seek policy or action recommendations by Mr. Rumble.

Plaintiff sought only to obtain those parts of the report which contain statements of fact or assessments of the status of the Libby cleanup site.

17. EPA acknowledged receipt of Plaintiff's FOIA request in a letter dated January 29, 2009. After the statutory period for responding to the FOIA request had elapsed, in a letter dated March 9, 2009, the EPA OIG indicated that it did not expect to make even an "initial determination" about whether to release the requested documents until June 30, 2009.
18. On March 12, 2009, Plaintiff filed an administrative appeal of EPA's constructive denial of its FOIA request (Appeal # 00073-09).
19. To date, EPA has not sent an acknowledgement, responded to, or provided the requested documents in response to Plaintiff's March 12, 2009, appeal. In so doing, EPA failed to meet the twenty (20) day limit imposed by FOIA for responding to an appeal. *See* 5 U.S.C. § 552(a)(6)(A)(ii).
20. Plaintiff has fully exhausted its administrative remedies under 5 U.S.C. § 552(a)(6)(C) for its FOIA request, and now turns to this Court to enforce the remedies and public access to agency records guaranteed by FOIA.
21. On January 21, 2009 President Barack Obama issued an Executive Memo declaring the following policy: "The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears....All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era

of open Government. The presumption of disclosure should be applied to all decisions involving FOIA.”

CAUSES OF ACTION

Count I: Violation of the Freedom of Information Act

22. Plaintiff repeats the allegations in paragraphs 1 through 18.
23. EPA’s failure to disclose the requested documents is a violation of FOIA, 5 U.S.C. § 552, and the agency’s own regulations promulgated thereunder.

Count II: Violation of the Administrative Procedure Act

24. Plaintiff repeats the allegations in paragraphs 1 through 18.
25. EPA’s failure to disclose documents responsive to Plaintiff’s request constitutes agency action unlawfully withheld and unreasonably delayed, in violation of the Administrative Procedure Act (APA), 5 U.S.C. §§ 701-706. EPA’s failure in this matter is arbitrary, capricious, an abuse of discretion, not in accordance with the law and without observance of procedure required by law, all in violation of the APA.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests and prays that this Court:

- i. Enter an Order declaring that EPA has wrongfully withheld the requested agency records;
- ii. Issue a permanent injunction directing EPA to disclose to Plaintiff all wrongfully withheld documents;

- iii. Maintain jurisdiction over this action until EPA is in compliance with FOIA, APA and every order of this Court;
- iv. Award Plaintiff its 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.

Dated: April 21, 2009

Respectfully submitted,

Paula Dinerstein

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