

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

PUBLIC EMPLOYEES FOR ENVIRONMENTAL))	
RESPONSIBILITY,))	
2000 P Street NW, Suite 240))	
Washington, D.C. 20036))	
)	
Plaintiff,))	
)	
v.))	Civil Action No.
)	
OFFICE OF SCIENCE AND TECHNOLOGY))	
POLICY,))	
725 17 TH Street, NW))	
Washington, DC 20502))	<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 Office of Science and Technology Policy ("OSTP") 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 records sought concern the promulgation of proposed policies to "restore scientific integrity in government decision making," that were directed by President Obama's March 9, 2009, Executive Memorandum. OSTP was directed in the Executive Memorandum to develop proposed policies for Presidential action by July 9, 2009. Specifically, Plaintiff

sought all comments, communications and recommendations developed between OSTP and executive departments and agencies, related to the proposed policies and any explanations of OSTP's delay in publishing these policies in accordance with the President's timeline.

3. The communications are a matter of public concern because they address the manner in which OSTP is developing the scientific integrity policy, why the proposed policy has been delayed significantly beyond the timeline set forth in the Executive Memorandum, and whether the proposed policy will insure that scientific data from federal agencies will be trustworthy and credible .
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 how the scientific integrity policy is being developed and why it has been delayed, and whether OSTP's proposed policy reforms will protect scientific integrity in government decision making, including specifically whether or not the proposed policies will address the concerns articulated by various agencies about scientific integrity in the government.
5. On August 11, 2010, Plaintiff submitted a FOIA request (No. 10-26) to the OSTP. The agency constructively denied the August 11 request by failing to respond within twenty (20) working days. Plaintiff appealed the constructive denial of its FOIA request on September 10, 2010 (No. 10-26A). In a letter dated September 20, 2010, OSTP acknowledged that it received the August 11, 2010 request, as well as the September 10, 2010 appeal. OSTP

indicated that it was granting the appeal but that it did not believe it could complete a search for documents in the time required by FOIA. To date, OSTP has not provided a response to the FOIA request or appeal as required by law.

6. OSTP's conduct is arbitrary and capricious and amounts to a denial of Plaintiff's FOIA request. OSTP's conduct frustrates Plaintiff's efforts to educate the public regarding ongoing activities at OSTP and is a violation of the FOIA.
7. Plaintiff seeks a court order requiring OSTP to produce immediately the documents sought in the August 11, 2010 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. § 2412 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 Jersey, 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 website 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 OSTP 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 August 11, 2010, Plaintiff filed a FOIA request with the OSTP's FOIA Officer (Request No. 10-26), seeking the agency's records regarding promulgation of new scientific integrity policies. Specifically, Plaintiff sought "(1) all communications received by OSTP from executive departments and agencies, including the Office of Management and Budget and offices and agencies within the Executive Office of the President concerning the content of these proposed policies, (2) all draft recommendations developed by the interagency panel created by OSTP with representatives from all of the major science offices and agencies, and (3) all decision memoranda, e-mails or other communications discussing the reasons for delay in publication of policies for presidential action as laid out in the March 9, 2009 Executive Memorandum."
17. OSTP did not acknowledge receipt of or substantively respond to Plaintiff's FOIA request within the twenty-business day timeframe required by law.
18. On September 10, 2010, the Plaintiff appealed the OSTP's constructive denial of its FOIA request, (Request No. 10-26A). *See* 5 U.S.C. § 552(a)(6)(A)(ii).
19. On September 20, 2010, the OSTP sent Plaintiff a letter acknowledging the receipt of both the FOIA request and the FOIA appeal.
20. The acknowledgment letter informed the Plaintiff that due to the "extensive nature" of the FOIA request, including documents that other agencies may have a substantial interest in,

OSTP would not be able to respond to the Plaintiff's FOIA request within the response period.

21. During a telephonic conference with OSTP's General Counsel on October 13, 2010, the agency indicated that they could not give Plaintiff an expected delivery date for any of the requested documents.
22. To date, OSTP has yet to provide the Plaintiff with any of the requested information.
23. 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.
24. 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

25. Plaintiff repeats the allegations in paragraphs 1 through 24.

26. OSTP'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

27. Plaintiff repeats the allegations in paragraphs 1 through 24.
28. OSTP'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. OSTP'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 OSTP has wrongfully withheld the requested agency records;
- ii. Issue a permanent injunction directing OSTP to disclose to Plaintiff all wrongfully withheld documents;
- iii. Maintain jurisdiction over this action until OSTP 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: October 19, 2010

Respectfully submitted,

/s/ Paula Dinerstein

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