

**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. )

NATIONAL PARK SERVICE )  
1849 C Street, NW )  
Washington, DC 20240 )

and )

NATIONAL PARK FOUNDATION )  
1201 Eye Street NW, Suite 550B )  
Washington, DC 20005 )

Defendants. )

**COMPLAINT**

**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 National Park Service ("NPS") and the National Park Foundation ("NPF") to disclose records withheld wrongfully after FOIA requests 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 recent rejection of a proposed ban on plastic bottles at Grand Canyon National Park. Plaintiff sought these records through three separate FOIA requests to the NPS, Grand Canyon National Park (“GCNP”), and the NPF. Plaintiff sought documents and communications reflecting what top level NPS and NPF officials communicated regarding the proposed ban and rejection, final decision documents regarding the decision and rationale, records reflecting Coca Cola Company’s position on the proposed ban of plastic bottles, documents summarizing the conservation or other resource benefits expected from the proposed plastic bottle ban, documents summarizing how much GCNP spent on water filling stations to facilitate the proposed ban, and records detailing Coca Cola money donations to NPF and communications Coca Cola had with the NPF.
3. The communications are a matter of public concern because they address the decisions made by NPS to reject resource protection and conservation plans at the behest of outside influences and a major corporation.
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 NPS’s decision-making process on conservation and resource protection issues and whether outside parties influenced the decision.
5. On August 25, 2011, Plaintiff filed a FOIA request with the NPS requesting: 1) Any communications between National Park Foundation (NPF) President Neil Mulholland or other NPF representative and National Park Service (NPS) Director Jon Jarvis and/or

Regional Director John Wessels concerning the proposed plastic bottle ban at Grand Canyon National Park; 2) Any records reflecting the position of the Coca Cola Company or any of its affiliates concerning the proposed plastic bottle ban at Grand Canyon National Park, including whether the ban would influence its willingness to donate money to NPF; and 3) Any decision documents reflecting the final decision on the proposed plastic bottle ban at Grand Canyon National Park, including the deciding official and the rationale for the action.

6. On September 22, 2011, Plaintiff received a letter from GCNP apparently responding to the FOIA request sent to NPS. This letter assigned the request number GRCA-2011-0200 and purportedly responded to the August 25, 2011 FOIA request by providing some communications from GCNP Superintendent Steve Martin to local concessionaires regarding the proposed plastic water ban.
7. On October 12, 2011, Plaintiff appealed the September 22, 2011 response as a constructive denial on the grounds that NPS had failed to provide documents responsive to Items 1 and 2 of its August 25, 2011 request, and failed to fully respond to Item 3. It has now been more than twenty work days since Plaintiff filed this appeal and NPS has not responded to the appeal or provided the requested records.
8. On August 26, 2011, Plaintiff submitted a FOIA request to GCNP. Specifically, Plaintiff sought: 1) Any documents relating to the decision not to go forward with the proposed plastic bottle ban at GCNP, including the deciding official and the rationale for the action; 2) Documents summarizing the conservation or other resource benefits expected to be derived from the proposed plastic bottle ban; and 3) Documents summarizing the total amount spent

by GCNP on water filling stations or other measures to implement or facilitate the plastic bottle ban in the park.

9. By a letter dated October 3, 2011, GCNP responded to Plaintiff's August 26, 2011 request and assigned it tracking number GRCA-2011-0023. This letter also responded to Plaintiff's August 26 request by stating that it provided documents responsive to the August 25 request and that it did not have documents responsive to the items listed in the August 26 request. But, the letter nonetheless provided information on how much GCNP spent on water filling stations.
10. Plaintiff did not administratively appeal the GCNP's October 3, 2011 response and does not challenge it here.
11. On September 29, 2011, Plaintiff submitted a FOIA request to the NPF. Specifically, Plaintiff sought: 1) Records of all money donations and their terms by Coca Cola Corporation or its subsidiaries to the NPF, for use by the NPF in support of the programs in the national park system; 2) Records detailing the transfer of Coca Cola-donated monies by the NPF to the NPS and showing the specific programs to which the funds were dedicated; and 3) Any communications by Coca Cola Corporation or its subsidiaries to the NPF concerning attempts to ban sale of single use plastic water bottles within units of the national park system.

12. To date, NPF has not acknowledged or provided responsive documents to the September 29, 2011 request. In so doing it has constructively denied Plaintiff's request and is in violation of FOIA by failing to respond within twenty work days. 5 U.S.C. § 552(a)(6)(C)
13. The actions of NPS and NPF are arbitrary and capricious and amount to a denial of Plaintiff's FOIA requests. NPS's and NPF's conduct frustrates Plaintiff's efforts to educate the public regarding ongoing activities at the agencies and is a violation of the FOIA.
14. Plaintiff seeks a court order requiring NPS and NPF to produce immediately the documents sought in the August 25, 2011 and September 29, 2011 FOIA requests, as well as other appropriate relief.

#### **JURISDICTION AND VENUE**

15. 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).
16. This Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*
17. 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).
18. 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**

19. 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.
20. PEER is not a commercial enterprise for purposes of the fee waiver provisions of FOIA. *See* 5 U.S.C. § 552(a)(4)(A). 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.
21. 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](http://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.
22. Defendant NPS 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.

23. Defendant NPF was chartered by an act of Congress in 1967 and was established to accept and administer charitable contributions to benefit NPS. NPF 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**

24. On August 25, 2011, Plaintiff filed a FOIA request with the NPS requesting: 1) Any communications between National Park Foundation (NPF) President Neil Mulholland or other NPF representative and National Park Service (NPS) Director Jon Jarvis and/or Regional Director John Wessels concerning the proposed plastic bottle ban at Grand Canyon National Park; 2) Any records reflecting the position of the Coca Cola Company or any of its affiliates concerning the proposed plastic bottle ban at Grand Canyon National Park, including whether the ban would influence its willingness to donate money to NPF; and 3) Any decision documents reflecting the final decision on the proposed plastic bottle ban at Grand Canyon National Park, including the deciding official and the rationale for the action.
25. On September 22, 2011, Plaintiff received a letter from GCNP apparently responding to the August 25, 2011 FOIA request sent to NPS. This letter assigned the request number GRCA-2011-0200 and purports to be the NPS's final response to the August 25, 2011 FOIA request. The letter stated that "all documents responsive to your request" were enclosed and included

six identical letters from GCNP Superintendent Steve Martin to concessionaires at GCNP. Three of these announced the ban on selling individual plastic water bottles effective January 1, 2011. The other three letters, dated just days before the ban was to take effect, informed the concessionaires that the proposed bottle ban was delayed pending personal review by the NPS Director.

26. Plaintiff did not receive any other documents responsive to its August 25, 2011 FOIA request.
27. On October 12, 2011, Plaintiff appealed the September 22, 2011 response as a constructive denial on the grounds that NPS had failed to provide documents responsive to Items 1 and 2 of its August 25, 2011 request, and failed to fully respond to Item 3. Subsequent e-mail communication with NPS FOIA staff indicates that they are still trying to assemble responsive documents but Plaintiff has yet to receive a further response.
28. It has now been more than twenty work days since Plaintiff filed its October 12, 2011 appeal and NPS has not responded to the appeal or provided the requested records.
29. On August 26, 2011, Plaintiff submitted a FOIA request to GCNP. Specifically, Plaintiff sought: 1) Any documents relating to the decision not to go forward with the proposed plastic bottle ban at GCNP, including the deciding official and the rationale for the action; 2) Documents summarizing the conservation or other resource benefits expected to be derived from the proposed plastic bottle ban; and 3) Documents summarizing the total amount spent



by GCNP on water filling stations or other measures to implement or facilitate the plastic bottle ban in the park.

30. By a letter dated October 3, 2011, GCNP responded to Plaintiff's August 26, 2011 request and assigned it tracking number GRCA-2011-0023. This letter responded to Plaintiff's August 26 request by stating that it provided documents responsive to the August 25 request and that it did not have documents responsive to the items listed in the August 26 request. However, by this letter, GCNP nonetheless provided information regarding how much it spent on water filling stations. Specifically, the letter stated that GCNP did not have documents summarizing the amount spent on the water filling stations, but that by looking at contracts for construction and installation of the stations, GCNP could determine the amount it spent. GCNP thus informed Plaintiff that it spent \$310,041.96 on the water filling stations.
31. Plaintiff did not administratively appeal the GCNP's October 3, 2011 response and does not challenge it here.
32. On September 29, 2011, Plaintiff submitted a FOIA request to the NPF. Specifically, Plaintiff sought: 1) Records of all money donations and their terms by Coca Cola Corporation or its subsidiaries to the NPF, for use by the NPF in support of the programs in the national park system; 2) Records detailing the transfer of Coca Cola-donated monies by the NPF to the NPS and showing the specific programs to which the funds were dedicated; and 3) Any communications by Coca Cola Corporation or its subsidiaries to the NPF concerning attempts to ban sale of single use plastic water bottles within units of the national park system.

33. To date, NPF has not acknowledged or provided responsive documents to the September 29, 2011 request. In so doing it has constructively denied Plaintiff's request and is in violation of FOIA by failing to respond within twenty work days. 5 U.S.C. § 552(a)(6)(C)
34. 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.
35. 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."

### **CAUSE OF ACTION**

#### **Violation of the Freedom of Information Act**

36. Plaintiff repeats the allegations in paragraphs 1 through 35.
37. NPS'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.

38. NPF's failure to disclose the requested documents is a violation of FOIA, 5 U.S.C. § 552.

**RELIEF REQUESTED**

WHEREFORE, Plaintiff respectfully requests and prays that this Court:

- i. Enter an Order declaring that NPS and NPF have wrongfully withheld the requested agency records;
- ii. Issue a permanent injunction directing NPS and NPF to disclose to Plaintiff all wrongfully withheld documents;
- iii. Maintain jurisdiction over this action until NPS and NPF 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: November 10, 2011

Respectfully submitted,

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