

**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 # )

UNITED STATES DEPARTMENT OF )  
AGRICULTURE, UNITED STATES FOREST )  
SERVICE )  
1400 Independence Ave., SW )  
Washington, DC 20250 )

**COMPLAINT** )

Defendant. )

**PRELIMINARY STATEMENTS**

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 Defendant, U.S. Department of Agriculture, United States Forest Service ("USFS" or "Defendant"), to disclose records wrongfully withheld by failing to respond within the statutory deadline to two FOIA requests submitted by Plaintiff, Public Employees for Environmental Responsibility ("PEER" or "Plaintiff").
2. FOIA requires that federal agencies respond to public requests for records, including files maintained electronically, in order to increase public understanding of the workings of government and for access to government information.
3. 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.

4. PEER submitted two FOIA requests on February 14, 2014 and February 26, 2014, respectively, to the USFS. The February 14, 2014 request sought records relating to incidents of violence or threats against USFS employees in 2013. The February 26, 2014 request sought records concerning non-law enforcement usage of U.S. Forest Service Law Enforcement & Investigations (“LE&I”) personnel. To date, PEER has not received any records responsive to either request.
5. USFS’s conduct is arbitrary and capricious and amounts to a denial of PEER’s FOIA requests. USFS’s conduct frustrates PEER’s efforts to educate the public regarding the extent of violence and intimidation directed at public resource employees and the extent and nature of how LE&I personnel are spending their time on non-criminal law enforcement matters.
6. PEER constructively exhausted its administrative remedies under FOIA, 5 U.S.C. § 552(a)(6)(C), and seeks a court order requiring USFA to immediately produce the records sought in its FOIA requests as well as other appropriate relief.

#### **JURISDICTION AND VENUE**

7. This Court has jurisdiction over this action under FOIA, 5 U.S.C. § 552(a)(4)(B). This Court also has federal question jurisdiction over this action under 28 U.S.C. § 1331.
8. This Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*
9. This Court is a proper venue because Plaintiff resides in this district. 28 U.S.C. § 1391(e)(1)(C) (where defendant is the government or a government agent, a civil action may be brought in the district where the plaintiff resides if there is no real property at issue). Venue is also proper under 5 U.S.C. § 552(a)(4)(B).

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).

### PARTIES

11. 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.
12. 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 and the activities of federal government agencies. PEER focuses on the environment, public lands and natural resource management and agencies, public funding of environmental and natural resource agencies, and ethics in government.
13. 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, its web site, [www.peer.org](http://www.peer.org), which draws between 1,000 and 10,000 viewers per day, and its newsletter which has a circulation of approximately 20,000, including 1,500 environmental journalists.
14. Defendant USFS is an agency of the United States as defined by 5 U.S.C. § 552(f)(1). USFS is charged with the duty to provide public access to records in its possession consistent with the requirements of the FOIA. Here, USFS is denying PEER access to its records in contravention of federal law.

## FACTS

15. PEER has been submitting the FOIA request relating to threats of violence against federal employees since the Oklahoma City bombing in 1995. PEER submits these requests to seven of the natural resources agencies, including the USFS. The intent of this request is to educate the public about the nature and extent to which federal natural resource professionals are the victims of workplace violence. For nearly twenty years now, USFS has routinely and quickly provided the requested information.
16. As PEER does every year, it submitted its violence in the workplace FOIA request to USFS on February 14, 2014. The request was acknowledged by USFS on February 14, 2014 and assigned FOIA request number 2014-FS-WO-02076-F. This request specifically sought “A summary of all incidents of violence or threats against USFS employees that occurred between January 1 and December 31, 2013. The summary should include the date, location and nature of the incident or threat together with a summary of what, if any, outcomes stemmed from the incident or threat (e.g., arrest, conviction, ongoing investigation).” As PEER does every year, it sought a public interest fee waiver in conjunction with this request.
17. By a letter dated February 20, 2014 from USFS FOIA Analyst Willa Prato, USFS sought additional information from PEER regarding its fee waiver request. Despite PEER being granted a fee waiver routinely in previous years for this exact same request, USFS asked PEER to elaborate more on the criteria for public interest fee waivers and suggested that PEER submit copies of its articles of incorporation, bylaws, and PEER publications, including newsletters, membership brochures and fundraising solicitations. On February 24, 2014, PEER provided USFS additional information explaining that a fee waiver was justified because PEER more than met the criteria for a fee waiver. PEER included a 20-page

sampling of news clippings generated from the requested workplace violence information in previous years clearly demonstrating how the information significantly contributes to the public's understanding the violence against USFS employees.

18. USFS acknowledged the additional information relating to the fee waiver on March 24, 2014, but PEER has not received a formal letter stating whether the fee waiver has been granted or not.

19. On March 18, 2014, USFS's FOIA Analyst Ms. Prato sent PEER a letter stating that it would be unable to respond to the request within FOIA's 20-day statutory deadline due to "unusual circumstances." USFS alleged that the "unusual circumstances" were the "wide area of offices to search" for records responsive to this request. The letter stated that PEER's request was placed in the "complex processing queue and will be worked in the order the request was received." In previous years, USFS has easily and quickly responded to this request. Last year, for example, USFS received PEER's violence in the workplace FOIA request on January 18, 2013 and fully responded by January 30, 2013. USFS is able to respond so quickly because it keeps a central database of the requested information and need only run a query for the data.

20. To date, PEER has not received the information requested in its February 14, 2014 request. It has been well over the 20-day statutory deadline for responding to this request. USFS is unlawfully withholding information in what should be a routine and simple request.

21. PEER's second request was dated and submitted to USFS on February 26, 2014.

Specifically, PEER sought:

1. For calendar years 2008-2013, the number of USDA Hotline/Whistleblower complaints or internally-generated cases involving allegations of illegal acts committed by any employee of the U.S. Forest Service that were investigated by GS-1811 Criminal Investigators assigned to the LE&I staff broken down by year into

the following sub-categories:

- A. Total number of cases opened to be investigated;
- B. Total number of person-hours involved;
- C. Total number of cases referred to the Department of Justice, State Attorney General, or local District Attorney for prosecution;
- D. Total number of cases that resulted in a conviction, plea of guilty, pre-trial diversion, or a "first offender" adjudication withhold for each subject investigated; and
- E. Total number of the above cases that were approved to be investigated by the Chief of the Forest Service.

2. For calendar years 2008-2013, the number of USDA Hotline/Whistleblower complaints or internally-generated cases involving allegations of an administrative nature against any employee of the Law Enforcement and Investigations unit that were investigated by GS-1811 Criminal Investigators assigned to the LE&I staff broken down by year into the following sub-categories:

- A. Total number of cases opened to be investigated;
- B. Total number of person-hours involved;
- C. Total number of cases that were referred to an Employee Relations specialist working for the USDA Forest Service;
- D. Total number of cases that lead to a formal action of suspension, removal, or Alternative Discipline for each employee(s) investigated; and
- E. Total number of the above cases that were approved to be investigated by the Chief.

3. Records reflecting the protocols or agreements governing use of LE&I personnel for internal affairs or non-criminal investigations of U.S. Forest Service personnel;

4. Records reflecting the justification for using LE&I personnel for internal affairs investigations together with any analyses of the impact that usage will have on LE&I capabilities for criminal investigations; and

5. The number and grade of LE&I personnel who have undergone the Internal Affairs Investigations Training Program (IAITP) since January 1, 2011, together with the cost of travel and the tuition for that training.

22. PEER also requested a public interest fee waiver in conjunction with its February 26, 2014

FOIA request.

23. By an email dated February 26, 2014, USFS acknowledged this FOIA request and assigned it

FOIA request number 2014-FS-WO-02262-F. To date, PEER has received no further communications relating to this request nor has it received responsive documents.

24. PEER has afforded USFS ample time beyond the twenty work-day timeframe by which it is legally required to respond to these two FOIA requests. USFS has given no indication that it will produce responsive documents within a reasonable period of time.
25. PEER has fully exhausted its administrative remedies for its February 14, 2014 and February 26, 2014 requests. Administrative remedies are deemed exhausted whenever an agency fails to comply with the applicable time limits, as stated by 5 U.S.C. § 552(a)(6)(C)(i). PEER now turns to this Court to enforce the remedies and public access to agency records guaranteed by FOIA.

### **CAUSE OF ACTION**

#### **Count 1: Violation of the Freedom of Information Act**

26. Plaintiff incorporates the allegations in paragraphs 1 through 25.
27. USFS's failure to disclose all requested records in response to the February 14, 2014 request (request number 2014-FS-WO-02076-F) is a constructive denial and wrongful withholding of records in violation of FOIA, 5 U.S.C. § 552, and the Agency's own regulations promulgated thereunder.
28. USFS's failure to disclose the requested records in response to the February 26, 2014 request (request number 2014-FS-WO-02262-F) is a constructive denial and wrongful withholding of records in violation of FOIA, 5 U.S.C. § 552, and the Agency's own regulations promulgated thereunder.
29. USFS's failure to respond to PEER's FOIA requests within the statutory deadline is a violation of FOIA, 5 U.S.C. § 552, and the Agency's own regulations promulgated thereunder.

**Relief Requested**

WHEREFORE, PEER respectfully requests that this Court:

- i. Enter an Order declaring that USFS has wrongfully withheld the requested Agency records;
- ii. Issue a permanent injunction directing USFS to disclose to PEER all wrongfully withheld records;
- iii. Maintain jurisdiction over this action until USFS is in compliance with FOIA, the Administrative Procedure Act, and every order of this Court;
- iv. Award PEER 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 the PEER may be entitled.

Dated: April 10, 2014

Respectfully submitted,



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