

**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 No. _____

Scott J. Bloch
Special Counsel, and the
U.S. Office of Special Counsel
1730 M Street, NW
Washington, D.C. 20036

Defendant.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE REVIEF

1. This action is brought under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, to compel production of records lawfully requested that are not subject to any legitimate exemption.

2. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question) and FOIA, 5 U.S.C. § 552(a)(4)(B).

3. Plaintiff Public Employees for Environmental Responsibility (PEER) is a non-profit organization in the District of Columbia chartered to hold government agencies accountable for enforcing environmental laws, maintaining scientific integrity, and upholding professional ethics in the workplace. PEER has thousands of employee and citizen members nationwide, including employees in many federal agencies. PEER also provides legal representation to current and former public employees who make disclosures to the Office of Special Counsel (OSC).

4. Defendant U.S. Office of Special Counsel (OSC) is an agency of the United States. The OSC has possession and control of the records the Plaintiff seeks. Defendant Scott J. Bloch is the Special Counsel. He is being sued in his official capacity.

**COUNT I: VIOLATION OF FOIA
JUNE 23, 2004 REQUEST**

5. By letter dated June 23, 2004, PEER submitted a FOIA request to: FOIA/PA Officer, Office of Special Counsel, Legal Counsel and Policy Division, 1730 M Street, NW, Suite 218, Washington, D.C. 20036-4505.

6. PEER's June 23, 2004 FOIA request asked for the following records:
 - i. Copies of any contracts entered into between the US Office of Special Counsel and any management consulting firms and individuals, or organizational consulting firms and individuals, during the calendar year 2004.
 - ii. Copies of any expenses incurred or reimbursement made for expenses incurred by any management or organizational consulting firms and individuals in the performance of their work at the US Office of Special Counsel during the calendar year 2004.
 - iii. Copies of any work products produced by management or organizational consulting firms and individuals for the US Office of Special Counsel pursuant to such contract(s).

7. On July 1, 2004, OSC responded to PEER's request by stating that there would be "some delay" in responding to the request due to the "departure from LC&P of the FOIA/PA Officer." The OSC assigned PEER's request the following tracking number: FO-04-2195.

8. PEER received no further communication from OSC regarding its FOIA during August and most of September 2004.

9. On September 20, 2004, PEER appealed the lack of any substantive response from OSC as a denial of its FOIA request.

10. On September 28, 2004, OSC acknowledged receipt of PEER's appeal and advised that staff departures meant that "there may be some delay in responding to [PEER's] appeal."

11. As of the date of the filing of this Complaint, no further acknowledgement or response to PEER's FOIA request and appeal have been provided.

12. OSC has exceeded the statutory time periods for reaching determinations on PEER's June 23, 2004 FOIA request and appeal. Further, no records have been produced in response to PEER's request.

13. PEER has a statutory right to the records sought in its June 23, 2004 FOIA request, and there is no legal basis for the failure of the OSC to make a determination on PEER's FOIA request and appeal and/or provide the requested records.

**COUNT II: FOIA VIOLATION
JUNE 22, 2003 REQUEST**

14. By letter dated June 22, 2004, PEER submitted a FOIA request to: FOIA/PA Officer, Office of Special Counsel, Legal Counsel and Policy Division, 1730 M Street, NW, Suite 218, Washington, D.C. 20036-4505.

15. PEER's June 22, 2004 FOIA request asked for the following records:
- i. A copy of any personal service or consulting contract(s) entered into between the US Office of Special Counsel and Alan Hicks, or corporate entities directly associated with or owned by Alan Hicks, during the calendar year 2004.
 - ii. Copies of any expenses incurred or reimbursement made for expenses incurred by Alan Hicks, or corporate entities directly associated with or owned by Alan Hicks, in the performance of his work at the US Office of Special Counsel during the calendar year 2004.
 - iii. Copies of any work products produced by Alan Hicks for the US Office of Special Counsel pursuant to such contract(s).
16. On June 22, 2004, OSC responded to PEER's request by stating that there would be "some delay" in responding to the request due to the "departure from LC&P of the FOIA/PA Officer." The OSC assigned PEER's request the following tracking number: FO-04-2167.
17. PEER received no further communication from OSC regarding its FOIA during July and August 2004.
18. On September 17, 2004, PEER appealed the lack of any substantive response from OSC as a denial of its FOIA request.

19. On September 28, 2004, OSC acknowledged receipt of PEER's appeal and advised that staff departures meant that "there may be some delay in responding to [PEER's] appeal."

20. As of the date of the filing of this Complaint, no further acknowledgement or response to PEER's FOIA request and appeal have been provided.

21. OSC has exceeded the statutory time periods for reaching determinations on PEER's June 22, 2004 FOIA request and appeal. Further, no records have been produced in response to PEER's request.

22. PEER has a statutory right to the records sought in its June 22, 2004 FOIA request, and there is no legal basis for the failure of the OSC to make a determination on PEER's FOIA request and appeal and/or provide the requested records.

RELIEF REQUESTED

23. WHEREFORE, Plaintiff PEER prays that this Court:

- (a) Declare that the Defendants have violated FOIA by withholding the requested records;

- (b) Order the Defendants to immediately make the requested records available to the Plaintiff;
- (c) Award Plaintiff PEER all costs and attorneys' fees pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (d) Order such other relief as the Court may deem just and appropriate.

Respectfully submitted,

Richard E. Condit, DC Bar No. 417786
General Counsel
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Washington, D.C. 20009
(202) 265-7337

Dated: November 17, 2004