

**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 #
)	
U. S. DEPARTMENT OF THE INTERIOR))	
Office of Inspector General))	
1849 C Street, NW))	
Washington, DC 20240))	<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. Department of the Interior Office of Inspector General (OIG) 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. 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 clarify and document the basis for the OIG's reasoning and conclusions contained in its February 2007 report entitled "Assessment of the U.S. Fish & Wildlife Service Office of Law Enforcement." The requested information will help the public understand the effectiveness and integrity of the Fish & Wildlife Service's (FWS) law enforcement program. The public trust is well served by knowing whether public land management decisions are made strictly according to the best available information and in conformance with applicable laws, and whether special interests influence FWS law enforcement investigations and other activities.

3. Plaintiff submitted a FOIA request to OIG dated March 5, 2007 (OIG FOIA # 07-FPA-00027). By letter dated April 3, 2007, OIG acknowledged receipt of Plaintiff's FOIA request and granted Plaintiff's request for a fee waiver. OIG also stated that it could not respond within established time limits, but that Plaintiff's request was "being handled as equitably as possible" and that OIG would update Plaintiff and provide an estimated completion date after it received "the responsive documents." In the ensuing months OIG did not contact Plaintiff and did not respond to Plaintiff's telephone inquiries about when to expect a cogent response. On November 9, 2007, Plaintiff appealed the constructive denial of its FOIA request (Appeal Number 2008-036). The Department of the Interior Office of the Solicitor (Solicitor) acknowledged the appeal by letter dated November 28, 2007. By letter dated January 4, 2008, the Solicitor informed Plaintiff that the Solicitor had not responded to Plaintiff's appeal within the required 20 days due to various factors and notified Plaintiff of the right to seek judicial review.

4. In its January 4, 2008 letter, the Solicitor also asked if Plaintiff would delay filing a lawsuit. OIG has had ample time beyond that legally required to respond to Plaintiff's FOIA request and subsequent appeal. In a show of good faith, Plaintiff waited over seven (7) months to file an appeal after OIG acknowledged receipt of Plaintiff's FOIA request and stated it needed more time to respond. It has been well over one (1) month since the Solicitor acknowledged Plaintiff's appeal, yet there is no indication a decision is forthcoming in the foreseeable future.
5. OIG's conduct is arbitrary and capricious and amounts to a denial of Plaintiff's FOIA request. OIG's conduct frustrates Plaintiff's efforts to educate the public regarding FWS law enforcement activities and is a violation of the FOIA.
6. Plaintiff seeks a court order requiring OIG to immediately produce the documents sought in the March 5, 2007 FOIA request, as well as other appropriate relief.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action under the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction over this action under 28 U.S.C. § 1331 (federal question jurisdiction).
8. This Court has the authority to grant declaratory relief under the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*
9. 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).

10. Venue is properly vested in this Court under 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

11. Plaintiff PEER is a non-profit public interest organization, with its main office located Washington, D.C., and field offices located in California, Colorado, Florida, Massachusetts, New Mexico, 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, focusing on the environment, public lands and natural resource management, 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, 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.

14. Defendant OIG 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

15. On March 5, 2007, Plaintiff filed a FOIA request, seeking agency records. OIG designated this request OIG FOIA # 07-FPA-00027.
16. Plaintiff's OIG FOIA # 07-FPA-00027 sought the following records related to OIG's February 2007 report entitled "Assessment of the U.S. Fish & Wildlife Service Office of Law Enforcement": (1) Copies of correspondence, documentary materials, letters or other communications submitted to the OIG by members of the FWS law enforcement program in preparation of this report, (2) Interview notes from OIG staff interviews with members of the FWS law enforcement program in preparation of this report, (3) Documents relating to the removal of Kevin Adams as the head of the FWS Office of Law Enforcement, (4) Information concerning interactions of the Safari Club affecting investigations or other activities of the FWS law enforcement program, and (5) An index itemizing and describing any documents or portions of documents OIG chose to withhold, commonly referred to as a *Vaughn* Index. *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974).
17. OIG acknowledged receipt of Plaintiff's FOIA request in a letter dated April 3, 2007, and granted Plaintiff's fee waiver request. In that same letter OIG stated that it could not

respond within FOIA-mandated time limits, *see* 5 U.S.C. § 552(a)(6)(A)(i), but that it would update Plaintiff on the status of Plaintiff's request when it received the responsive documents and would provide Plaintiff with an estimated completion date.

18. Contrary to the assurances OIG made to Plaintiff in its April 3, 2007 letter, OIG did not update Plaintiff on the status of Plaintiff's request and did not provide Plaintiff an estimated completion date. Nor did OIG respond to Plaintiff's subsequent telephone inquiries about when Plaintiff could expect a cogent response to the FOIA request.
19. By letter dated November 9, 2007, Plaintiff filed an administrative appeal of OIG's constructive denial of Plaintiff's FOIA request, citing Defendant's inordinate delay and ultimate lack of response.
20. The Department of the Interior Office of the Solicitor acknowledged receipt of Plaintiff's appeal in a letter dated November 28, 2007.
21. By letter dated January 4, 2008, the Solicitor acknowledged that it had failed to meet the twenty (20) day limit for responding to Plaintiff's appeal. *See* 5 U.S.C. § 552(a)(6)(A)(ii). The Solicitor advised Plaintiff of the right to seek judicial review under 5 U.S.C. § 552(a)(4)(B), but also stated "we hope that you will delay filing a lawsuit so that the Department can thoroughly review the issues in your appeal and make a determination."
22. OIG did not adequately respond to Plaintiff's November 9, 2007 appeal, nor did it provide the requested documents. In so doing, OIG failed to meet the twenty (20) day limit FOIA imposes for responding to an appeal. *See* 5 U.S.C. § 552(a)(6)(A)(ii).
23. It has been over ten (10) months since Plaintiff initiated its March 5, 2007 FOIA request. Plaintiff waited over seven (7) months to file a FOIA appeal after OIG acknowledged receipt of Plaintiff's FOIA request and asked for more time to respond. It has now been

well over one month since Defendant acknowledged Plaintiff's appeal, yet there is no indication a decision is forthcoming in the foreseeable future.

24. 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.

CAUSES OF ACTION

Count I: Violation of the Freedom of Information Act

25. Plaintiff repeats the allegations in paragraphs 1 through 24.
26. OIG'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. OIG'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. OIG'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 OIG has wrongfully withheld the requested agency records;
- ii. Issue a permanent injunction directing OIG to disclose to Plaintiff all wrongfully withheld documents;
- iii. Maintain jurisdiction over this action until OIG 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: Washington, D.C.
January 9, 2008

Respectfully submitted,

/s/

Paula Dinerstein, DC Bar No. 333971
Senior Counsel
Public Employees for Environmental Responsibility
2000 P Street, NW, Suite 240
Washington, D.C. 20036
(202) 265-7337

/s/

Adam E. Draper, DC Bar No. 974880
Staff Counsel
Public Employees for Environmental Responsibility
2000 P Street, NW, Suite 240
Washington, D.C. 20036
(202) 265-7337

Attorneys for Plaintiff

