

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

RICHARD STEINER)	
9138 Arlon Street, Suite A3)	
Anchorage, Alaska 99507)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
)	
BUREAU OF SAFETY AND)	
ENVIRONMENTAL ENFORCEMENT)	
3801 Centerpoint Drive, Suite 500)	
Anchorage, Alaska 99503)	
)	<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 Bureau of Safety and Environmental Enforcement ("BSEE") to disclose records withheld wrongfully after a FOIA request by 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 test results of Shell's well-head capping stack, which would be used in response to a well-head blowout in Shell's Arctic drilling program. Plaintiff sought these records through a FOIA request to BSEE. Plaintiff's request sought

“any and all reports, formal or informal, regarding the testing of the capping stack, and any concerns regarding its potential performance in Arctic conditions.”

3. The records are a matter of public concern because they will show whether BSEE’s review of Shell’s Arctic drilling program was adequate to ensure human safety and limit environmental harm by preventing blowouts. BSEE claims that the well-head capping stack were successful. Disclosure of the sought records would allow the public to view for itself whether the results were indeed successful and that Shell’s well-head capping stack will be able to stop a well-head blowout. Given the difficulties encountered by BP in the Deepwater Horizon disaster, the public deserves to know the results of Shell’s capping stack tests before it is used.
4. Plaintiff Richard Steiner is a retired professor who taught marine conservation at the University of Alaska. Plaintiff has conducted marine conservation outreach programs through the University of Alaska for decades and since retirement, continued outreach as an educational consultant at Oasis Earth, a nonprofit consultancy organization. Plaintiff requested the subject records in order to learn the results of the well-head capping stack to ensure oil spill prevention preparedness.
5. On July 16, 2012, Plaintiff submitted his FOIA request to BSEE’s Freedom of Information Act Officer. Specifically, Plaintiff requested “any and all documents and other records pertaining to results of Shell oil company’s testing of its well-head capping stack that would be used in response to a well-head blowout in its Arctic drilling program. This request should include any and all reports, formal or informal, regarding the testing of the capping stack, and any concerns regarding its potential performance in Arctic conditions.” Plaintiff

also requested a fee waiver because the request was for records solely in the public interest, for non-commercial uses, and the records would be broadly distributed to the public.

6. In a letter dated July 18, 2012, BSEE's Alaska OCS Region Acting FOIA Officer, Natasha Alcantara, acknowledged Plaintiff's request and assigned it Request No. BSEE-2012-00203.
7. In a separate letter dated July 18, 2012, Ms. Alcantara also asked Plaintiff to elaborate further on his fee waiver request so that BSEE could determine whether a fee waiver was warranted.
8. On July 23, 2012, Plaintiff submitted further justification for his fee waiver request. Through an email dated August 14, 2012, Ms. Alcantara informed Plaintiff that his fee waiver request had been granted. On August 24, 2012, Plaintiff sent an email to Ms. Alcantara asking for an update on the status of his July 16, 2012 FOIA request. Plaintiff has received no further communications from BSEE regarding his request.
9. It has now been more than twenty work days since Plaintiff filed his FOIA request and BSEE has not provided the requested records. In so doing, BSEE 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)(A).
10. The actions of BSEE are arbitrary and capricious and amount to a denial of Plaintiff's FOIA request. BSEE's conduct frustrates Plaintiff's efforts to educate the public regarding ongoing activities of BSEE's oversight of Shell's Arctic drilling program and is a violation of the FOIA.
11. Plaintiff seeks a court order requiring BSEE to produce immediately the documents sought in the July 16, 2012 FOIA request as well as other appropriate relief.

JURISDICTION AND VENUE

12. 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).
13. This Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*
14. 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).
15. Venue is properly vested in this Court under 5 U.S.C. § 552(a)(4)(B), which permits FOIA actions to be filed in the United States District Court for the District of Columbia.

PARTIES

16. Plaintiff Richard Steiner is a retired marine conservation professor who has, for decades, conducted marine conservation outreach programs, including teaching twenty years at the University of Alaska Marine Advisory Program and currently as an educational consultant to Earth Oasis. Plaintiff advises on oil spill prevention and response issues globally, including advising on BSEE's oversight of Shell's Arctic drilling projects.
17. Plaintiff sought the records to shed light on the BSEE's oversight of Shell's proposal to drill in the Arctic. Informing the public about these important public policy issues is a primary focus and Plaintiff intends to release the test results to the public.
18. Defendant BSEE, a bureau within the United States Department of Interior, 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

19. BSEE is responsible for oversight and enforcement of offshore oil drilling programs in Alaska. In late June 2012, BSEE oversaw the testing of Shell's proposed Arctic-ready capping system to ensure that the capping stack complied with the new standards established since the 2010 Deepwater Horizon oil spill. The capping stack is a vital piece of safety equipment that Shell must have in place for the oil exploration activities it has planned for Fall 2012.
20. Shell has been granted conditional approval by the Department of Interior to drill up to 5 exploratory wells on the Alaska Arctic Outer Continental Shelf ("OCS") in 2012, but has had delays in complying with several requirements. Shell's drilling rigs are presently in-route to, and only days away from, the Arctic drilling sites in the Chukchi Sea and the Beaufort Sea. Shell has asked Interior for well-specific permits to drill at least one well at each location, beginning as soon as possible, potentially within days. The wellhead capping stack would be the first line of defense in responding to a wellhead blowout (such as in the 2010 Deepwater Horizon in the Gulf of Mexico). The readiness of the capping stack is a much more significant issue than the readiness of the oil spill response barge, that is still undergoing retrofitting and testing in Washington State. BSEE and Shell have asserted that the testing of the capping stack was rigorous, and proved the equipment would work as designed to stop a wellhead blowout. But the results of these tests have not been made public. Given the level of public concern regarding the safety of Shell's Arctic offshore drilling projects, the

wellhead testing results must be released to the public, so that the public can judge for itself whether the testing was indeed rigorous, and whether the tests prove the capping stack will work as intended.

21. On July 16, 2012, Plaintiff submitted his FOIA request to BSEE's Freedom of Information Act Officer. Specifically, Plaintiff requested "any and all documents and other records pertaining to results of Shell oil company's testing of its well-head capping stack that would be used in response to a well-head blowout in its Arctic drilling program. This request should include any and all reports, formal or informal, regarding the testing of the capping stack, and any concerns regarding its potential performance in Arctic conditions." Plaintiff also requested a fee waiver because the request was for records solely in the public interest, for non-commercial uses, and would be broadly distributed to the public.
22. In a letter dated July 18, 2012, BSEE's Alaska OCS Region Acting FOIA Officer, Natasha Alcantara, acknowledged Plaintiff's request and assigned it Request No. BSEE-2012-00203. Ms. Alcantara went on to state that BSEE would advise Plaintiff of the "status of our response within 20 workdays if we anticipate a delay."
23. In a separate letter dated July 18, 2012, Ms. Alcantara also asked Plaintiff to elaborate further on his fee waiver request so that BSEE could determine whether a fee waiver was warranted.
24. On July 23, 2012, Plaintiff submitted further justification for his fee waiver request. Plaintiff stated that the records are likely to significantly contribute to the public's understanding of government activities because they will show BSEE's oversight and testing of Shell's well-head capping stack. Such information is in the public interest because the public has a right to see for itself the test results and whether the capping stack will prevent a blowout.

25. Plaintiff also stated that his fee waiver request was justified because he requested the records solely for educational purposes and planned to release the records to the public through the media.
26. In an email dated August 14, 2012, Ms. Alcantara informed Plaintiff that his fee waiver request had been granted.
27. On August 24, 2012, Plaintiff sent an email to Ms. Alcantara asking for an update on the status of this July 16, 2012 FOIA request. Plaintiff has received no further communications from BSEE regarding his request.
28. To date, Plaintiff has received no records responsive to his July 16, 2012 FOIA request. It has also been over twenty work days since Plaintiff submitted further information justifying his fee waiver request. In so doing BSEE 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)(A), (C).
29. Plaintiff has fully exhausted his administrative remedies because pursuant to 5 U.S.C. § 552(a)(6)(C)(i) because administrative remedies are deemed exhausted where the agency does not respond to a FOIA request within the statutory deadline. Plaintiff now turns to this Court to enforce the remedies and public access to agency records guaranteed by FOIA.
30. 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

31. Plaintiff repeats the allegations in paragraphs 1 through 30.
32. BSEE’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.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests and prays that this Court:

- i. Enter an Order declaring that BSEE has wrongfully withheld the requested agency records;
- ii. Issue a permanent injunction directing BSEE to disclose to Plaintiff all wrongfully withheld documents;
- iii. Maintain jurisdiction over this action until BSEE is in compliance with FOIA, APA and every order of this Court;
- iv. Award Plaintiff 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: August 30, 2012

Respectfully submitted,

/s/ Kathryn Douglass

Kathryn Douglass

DC Bar No. 995841

Staff Counsel

Public Employees for Environmental Responsibility

2000 P Street, NW Suite 240

Washington, D.C. 20036

(202) 265-7337