

**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)
Bureau of Land Management)
1849 C Street, NW)
Washington, DC 20240)

Defendant.)

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 U.S. Department of the Interior Bureau of Land Management (BLM) 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 all internal and external communications or documents, including legal opinions, concerning (1) whether or not the language in S. 1139 and/or H.R. 2016 includes the CDCA within its provisions, (2) whether the BLM or the Interior Department officially considers CDCA as a part of the NLCS, and (3) whether the CDCA should or should not be a part of the NLCS.

3. Plaintiff sought the subject records in order to clarify and document BLM's decision to exclude much of the California Desert Conservation Area (CDCA) from the National Landscape Conservation System (NLCS) and its related conclusion that the legal status of the CDCA relative to inclusion within the NLCS was unclear. The requested information will help the public understand the status of the CDCA and why BLM excluded much of it from the NLCS, reveal whether BLM is honestly and forthrightly communicating its position to members of Congress and the public, and assist in addressing concerns over whether BLM is capable of administering monuments and other special areas. The public trust is well served by ensuring transparency in BLM's decision-making and fostering understanding of the CDCA's status under the NLCS.

4. Plaintiff submitted a FOIA request dated March 24, 2008, which BLM assigned FOIA control number 2008-27. By letter dated May 22, 2008, BLM acknowledged receipt of Plaintiff's FOIA request, transmitted eight (8) pages of documents in their entirety, and withheld portions of thirteen (13) pages, citing FOIA Exemptions 2 and 5. BLM failed to produce or even address the final opinion or decision document regarding its exclusion of

much of the CDCA from the NLCS. Plaintiff knows that the final opinion/decision document(s) exists because it is repeatedly referenced in transmitted e-mails from BLM press officials.

5. On June 5, 2008, Plaintiff appealed BLM's withholding of requested documents (Appeal Number 2008-148). The Department of the Interior Office of the Solicitor (Solicitor) acknowledged the appeal by letter dated June 26, 2007. By letter dated July 11, 2008, the Solicitor acknowledged that it had not responded to Plaintiff's appeal within the required twenty (20) and notified Plaintiff of the right to seek judicial review.
6. In a show of good faith, Plaintiff has allowed BLM substantial time beyond that legally required to properly respond to Plaintiff's FOIA request and appeal. It has now been over seven (7) months since Plaintiff's request and over five (5) months since Plaintiff's appeal, yet there is no indication a decision is forthcoming in the foreseeable future.
7. BLM's conduct is arbitrary and capricious and amounts to a denial of Plaintiff's FOIA request. BLM's conduct frustrates Plaintiff's efforts to educate the public regarding BLM's interpretation of the NLCS and evaluation of the CDCA, and is a violation of FOIA.
8. Plaintiff seeks a court order requiring BLM to immediately produce the documents sought in the March 24, 2008 FOIA request and subsequent appeal, as well as other appropriate relief.

JURISDICTION AND VENUE

9. 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).
10. This Court has the authority to grant declaratory relief under the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*
11. 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).
12. Venue is properly vested in this Court under 28 U.S.C. § 1391(e)(1), because the Defendant resides in this district. Venue is also proper under 5 U.S.C. § 552(a)(4)(B).

PARTIES

13. 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.
14. 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.

15. 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.
16. Defendant BLM 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

17. On March 24, 2008 Plaintiff filed a FOIA request, seeking agency records. BLM designated this request control number 2008-27.
18. Plaintiff's FOIA 2008-27 specifically sought all internal and external communications or documents, including legal opinions, concerning (1) whether or not the language in S. 1139 and/or H.R. 2016 includes the CDCA within its provisions, (2) whether the BLM or the Interior Department officially considers CDCA as a part of the NLCS, and (3) whether the CDCA should or should not be a part of the NLCS.
19. BLM responded to Plaintiff's FOIA request in a letter dated May 22, 2008. In that letter, BLM transmitted eight (8) pages of records in their entirety and withheld portions of

approximately thirteen (13) pages of records, citing FOIA Exemptions 2 and 5. BLM did not address Plaintiff's fee waiver request due to minimal search and duplication requirements (43 CFR, Part 2 §2.18(a)).

20. BLM's response was inadequate because it did not include or address Plaintiff's request for records of BLM's legal opinions/decisions regarding the NLCS and whether the CDCA is included within the NLCS. Plaintiff is aware that such a document(s) exists as it is repeatedly referenced in transmitted e-mails from BLM press officials, yet the decision document or legal opinion itself was utterly absent from BLM's FOIA response.
21. Following BLM's inadequate response, Plaintiff tried several times to contact BLM FOIA Coordinator Barbara Brown in an attempt to resolve the matter informally. Plaintiff's efforts were not reciprocated.
22. By letter dated June 5, 2008, Plaintiff filed an administrative appeal of BLM's exclusion of requested documents, citing BLM's complete failure to produce or even address the final opinion or decision document excluding much of the CDCA from inclusion within the NLCS. Plaintiff's appeal made clear that this opinion/decision document was at the heart of its FOIA request and would not be covered by Exemption 2 or 5.
23. The Department of the Interior Office of the Solicitor acknowledged receipt of Plaintiff's appeal in a letter dated June 26, 2008 and assigned it Appeal Number 2008-148.
24. By letter dated July 11, 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.”

25. In a show of good faith, Plaintiff delayed filing a lawsuit in order to allow BLM additional time to respond to Plaintiff’s appeal or produce the requested documents. Despite the extra time, BLM has not responded further to Plaintiff’s appeal, nor has it produced the documents at issue. In so doing, BLM 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).
26. BLM has had substantial time beyond that legally required to adequately respond to Plaintiff’s FOIA request. It has been over seven (7) months since Plaintiff initiated its March 24, 2008 FOIA request, and it has been over five (5) months since the Solicitor acknowledged Plaintiff’s appeal, yet there is no indication a decision is forthcoming in the foreseeable future.
27. 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

28. Plaintiff repeats the allegations in paragraphs 1 through 27.
29. BLM’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

30. Plaintiff repeats the allegations in paragraphs 1 through 27.
31. BLM's failure to disclose the primary 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. BLM'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.

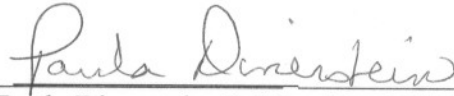
RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that this Court:

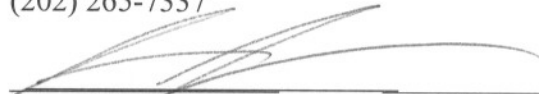
- i. Enter an Order declaring that BLM has wrongfully withheld the requested agency records;
- ii. Issue a permanent injunction directing BLM to disclose to Plaintiff all wrongfully withheld documents;
- iii. Maintain jurisdiction over this action until BLM is in compliance with FOIA, APA and every order 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.
November 18, 2008

Respectfully submitted,



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