

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

SANTA FE FOREST COALITION  
48 Old Galisteo Way  
Santa Fe, NM 87508,

*Plaintiff,*

v.

UNITED STATES DEPARTMENT OF  
AGRICULTURE FOREST SERVICE  
1400 Independence Ave., SW  
Washington, D.C. 20250,

*Defendant.*

Civil Action No. 23-3072

**COMPLAINT**

Plaintiff Santa Fe Forest Coalition (“Plaintiff” or “SFFC” or “Coalition”) brings this judicial review and action against Defendant United States Department of Agriculture Forest Service (“Forest Service” or “Defendant”). In support thereof, SFFC states as follows:

**INTRODUCTION**

1. This is an action brought pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for declaratory, injunctive, and other appropriate relief.
2. Through FOIA, the SFFC seeks the production of responsive records concerning the Santa Fe Mountains Landscape Resiliency Project, Santa Fe National Forest, Española and Pecos-Las Vegas Ranger Districts, The Santa Fe National Forest Land Management Plan, The Gallinas Watershed Prescribed Fire, Las Dispensas Unit and the Hermit’s

Peak/Calf Canyon Wildfire, Santa Fe National Forest, Pecos-Las Vegas Ranger District, as well as two miscellaneous requests (hereinafter referred to as “The Projects”). The best representations of Plaintiff’s requests are the properly submitted requests attached to this Complaint as Exhibits 101 and 113.

3. Defendant has violated the Freedom of Information Act by failing to issue a determination within the statutory period, by failing to conduct a reasonable search, and by failing to release the responsive, non-exempt records according to law.

### **PARTIES**

4. Plaintiff, SFFC, is a section 501(c)3 tax exempt organization registered in New Mexico. The Coalition made the requests at issue in this judicial review on June 28, 2023.
5. Defendant, Forest Service, is an agency within the meaning of 5 U.S.C. § 552(f)(1). Plaintiff, upon knowledge and belief, alleges that Defendant has possession and control of the records responsive to these requests.

### **JURISDICTION AND VENUE**

6. This action arises under FOIA. This Court has subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B) & (a)(6)(C)(i). This case presents a federal question which confers jurisdiction on this Court. *See* 28 U.S.C. § 1331 and 28 U.S.C. §1346.
7. Venue is proper under 5 U.S.C. § 552(a)(4)(B).

### **FACTUAL ALLEGATIONS**

#### **Plaintiff’s First of Two FOIA Requests**

8. Plaintiff is a 501(c)(3) nonprofit conservation organization (EIN: 82-3756574) with more than 200 members and thousands of online activists dedicated to the protection of the Santa Fe National Forest.
9. Plaintiff SFFC has made two requests for records to Defendant. Plaintiff's requests concern the Santa Fe Mountains Landscape Resiliency Project, Santa Fe National Forest, Española and Pecos-Las Vegas Ranger Districts, The Santa Fe National Forest Land Management Plan, The Gallinas Watershed Prescribed Fire, Las Dispensas Unit and the Hermit's Peak/Calf Canyon Wildfire, Santa Fe National Forest, Pecos-Las Vegas Ranger District, as well as two miscellaneous requests.
10. The purpose for requesting the records is to inform and educate the public through its website and through organized events about the prescribed burning and clearing vegetation activities promoted by The Projects.
11. Plaintiff requested expedited processing for all requests and gave detailed reasons and supporting documents supporting the reasons the requests are entitled to expedited treatment.
12. Plaintiff's requests were sent to two divisions within the Forest Service.
13. Request 2023-FS-R3-05200-F was made by Plaintiff to Defendant via U.S. Postal Service ("USPS") to the Forest Service Region 3 office in Albuquerque, New Mexico, on June 28, 2023. Exhibit 101 is the FOIA Request and it is attached and made part of this Complaint.
14. Plaintiff's receipt indicates that the agency received the request on July 3, 2023. Exhibit 102 is the Receipt and it is attached and made part of this Complaint.
15. On July 25, 2023, Defendant confirmed submission of the request via email, issuing a received date of July 17, 2023, and assigning tracking number 2023-FS-R3-05200-F. In

the email, Defendant asked for clarification on the request and explained that “it may be several years before your request gets to the top of the processing queue and review is started.” Exhibit 103 is the Defendant’s Confirmation of Submission of Request and Clarification Email from July 25, 2023, and it is attached and made part of this Complaint.

16. On July 25, 2023, Defendant also emailed Plaintiff a letter denying Plaintiff’s request for expedited processing. Exhibit 104 is the Denial of Expedited Processing from July 25, 2023, and it is attached and made part of this Complaint.
17. On August 4, 2023, Plaintiff made an estimated completion date (“ECD”) demand via email. Plaintiff’s email included two attachments: a letter providing clarification on its request and a list of employees who “may be able to reasonably search for requested information.” Exhibit 105 is the ECD Email, Clarification Letter, and Employee List from August 4, 2023, and it is attached and made part of this Complaint.
18. On August 4, 2023, Defendant responded to Plaintiff’s clarification via email. Defendant stated that the request would “remain with the clock stopped” until the request was “perfected,” and asked for further clarification. Exhibit 106 is Defendant’s Clarification Email from August 4, 2023, and it is attached and made part of this Complaint.
19. On August 4, 2023, Plaintiff provided further clarification on its request and made another ECD demand. Exhibit 107 is Plaintiff’s Second Clarification and ECD Demand from August 4, 2023, and it is attached and made part of this Complaint.
20. On August 15, 2023, via email, Plaintiff appealed “the denial of the application for expedited process, the failure to provide Estimated Completion Dates and the failure to make a ‘determination’ on the requested records, all violations of FOIA.” Exhibit 108 is

the Administrative Appeal and Exhibits and it is attached and made part of this Complaint.

21. On August 16, 2023, and August 17, 2023, Defendant sent two separate emails acknowledging receipt of Plaintiff's appeal and assigning the appeal tracking number 2023-FS-WO-00103-A. Exhibit 109 is the Appeal Acknowledgments and Breakdown of Requests from August 16, 2023, and August 17, 2023, and it is attached and made part of this Complaint.
22. More than 20 working days have expired since the Plaintiff's appeal was received.
23. On August 24, 2023, Defendant sent another email seeking clarification on the request and provided potential estimated completion dates of "January 31, 2025," or "June 30, 2025." Exhibit 110 is Defendant's Clarification Email from August 24, 2023, and Plaintiff's Clarification Email and ECD from August 29, 2023, and it is attached and made part of this Complaint.
24. On August 29, 2023, Plaintiff emailed Defendant to provide clarification on its request and made an ECD demand. Exhibit 110 at 1.
25. On September 12, 2023, Defendant sent another email seeking clarification on the request. Defendant stated, "you will need to clarify or withdraw a couple of items before we can start the clock on your request." Exhibit 111 is Defendant's Clarification Email from September 12, 2023, Plaintiff's Clarification and ECD Demand Email from September 13, 2023, and Defendants Response from September 18, 2023, and it is attached and made part of this Complaint.
26. On September 13, 2023, Plaintiff provided further clarification and made another ECD demand. Exhibit 111 at 2.

27. On September 15, 2023, Plaintiff sent Defendant another ECD demand via email. Exhibit 112 is Plaintiff's ECD Demand Email from September 15, 2023, and it is attached and made part of this Complaint.
28. On September 18, 2023, via email, Defendant provided an ECD of "around December 2025." Exhibit 111 at 1.
29. More than 20 working days have elapsed since Plaintiff's first request was received by Defendant.
30. Concerning Plaintiff's first request, Plaintiff has constructively exhausted all administrative remedies and this matter is ripe for judicial review.

#### **Plaintiff's Second of Two FOIA Requests**

31. Plaintiff realleges paragraphs 1 through 30 above as if fully set forth herein.
32. Request 2023-FS-WO-05759-F was made to the Forest Service Washington Office and national headquarters in Washington, D.C., on June 28, 2023. Exhibit 113 is the Second FOIA Request and it is attached and made part of this Complaint.
33. USPS records show that the request was received on July 5, 2023. Exhibit 114 is the USPS Tracking and it is attached and made part of this Complaint.
34. On August 7, 2023, Plaintiff mailed Defendant an ECD demand letter. Exhibit 115 is the ECD Demand Letter from August 7, 2023, and it is attached and made part of this Complaint.
35. On August 17, 2023, via email, Defendant confirmed submission of the request and clarified the correct assigned tracking number for the request: 2023-FS-WO-05759-F. Exhibit 109.
36. On August 22, 2023, Defendant confirmed submission of the request, via email, and issued a received date of August 2, 2023. In the email, Defendant sought clarification

on the request, and stated that the agency was “expecting a final response package to go out for FOIA #2023-FS-WO-05759-F anytime between six months to twelve months from the date of this email.” Exhibit 116 is Defendants Confirmation of Submission of Second Request and Clarification Email from August 22, 2023, and it is attached and made part of this Complaint.

37. On September 6, 2023, via email, Defendant sought clarification on the request, specifically regarding search dates, and explained that the agency placed the request “on hold awaiting the search dates.” Exhibit 117 is Defendant’s Clarification Email from September 6, 2023, and it is attached and made part of this Complaint.

38. On September 15, 2023, Plaintiff sent Defendant another ECD demand via email. Exhibit 118 is Plaintiff’s ECD Demand from September 15, 2023, and it is attached and made part of this Complaint.

39. On September 18, 2023, Defendant emailed Plaintiff seeking clarification. Defendant provided that it “would take anywhere between 6 to 12 months to conduct a search and review for this request,” and further stated that the request would be “on hold” as the agency awaited a “reasonable record search date.” Exhibit 119 is the Defendant’s Clarification Email from September 18, 2023, Plaintiff’s Clarification and ECD Demand from September 20, 2023, and Defendant’s Response from September 21, 2023, and it is attached and made part of this Complaint.

40. On September 20, 2023, Plaintiff responded to Defendant via email. Plaintiff noted that an estimate of 6 to 12 months “does violate the letter of the Freedom of Information Act,” that Plaintiff understood the estimate, and asked to be notified if the timeline changed. Plaintiff then clarified the record dates for the Forest Service to

conduct a reasonable search, and based on the clarification, Plaintiff made another ECD demand. Exhibit 119 at 2-5.

41. On September 21, 2023, Defendant responded via email and provided an ECD of “September 21, 2024,” (twelve months from the date of the email). Exhibit 119 at 1.
42. More than 20 working days have elapsed since Plaintiff’s second request was received by Defendant.
43. Concerning Plaintiff’s second request, Plaintiff has constructively exhausted all administrative remedies and this matter is ripe for judicial review.

**COUNT I – DEFENDANT’S FAILURE TO ISSUE A DETERMINATION WITHIN THE STATUTORY PERIOD**

44. Plaintiff realleges paragraphs 1 through 43 above as if fully set forth herein.
45. The two requests in this matter seek the disclosure of agency records and both requests were properly made.
46. Forest Service is a federal agency subject to FOIA.
47. Included within the scope of the requests are one or more records or portions thereof that are not exempt under FOIA.
48. Forest Service failed to issue determinations within the statutory deadline.

**COUNT II – DEFENDANT’S FAILURE TO CONDUCT A REASONABLE SEARCH**

49. Plaintiff realleges paragraphs 1 through 48 above as if fully set forth herein.
50. Forest Service has failed to conduct a reasonable search for records responsive to the requests.

**COUNT III – DEFENDANT’S FAILURE TO RELEASE RECORDS**

51. Plaintiff realleges paragraphs 1 through 50 above as if fully set forth herein.



52. Forest Service has failed to promptly release records, or portions of records, responsive to the Plaintiff's two requests.

**REQUEST FOR RELIEF**

**WHEREFORE**, Plaintiff asks the Court to:

- i. Declare that Defendant violated FOIA;
- ii. Order Defendant to conduct a reasonable search for records;
- iii. Order Defendant to issue a determination;
- iv. Order Defendant to make all non-exempt records or portions of records promptly available to Plaintiff;
- v. Enjoin Defendant from withholding non-exempt public records under FOIA;
- vi. Award Plaintiff's attorney fees and costs; and,
- vii. Award such other relief the Court considers appropriate.

Dated: October 16, 2023

RESPECTFULLY SUBMITTED,

/s/ C. Peter Sorenson

C. Peter Sorenson, DC Bar #438089

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