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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

**NORTHWEST ENVIRONMENTAL
ADVOCATES**, an Oregon non-profit
corporation,

Plaintiff,

v.

**ANIMAL AND PLANT HEALTH
INSPECTION SERVICE**, an agency of the
United States of America,

Defendant.

Case No. 3:18-cv-00190

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

(5 U.S.C. § 552)

(Freedom of Information Act)

INTRODUCTION

1. This is an action against the Animal and Plant Health Inspection Service (“APHIS”) for violations of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *as amended*. Under the judicial review provisions of both the FOIA and the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701–706, Plaintiff Northwest Environmental Advocates (“NWEA”) seeks relief regarding a FOIA request it submitted to APHIS on January 16, 2017, and regarding an administrative FOIA appeal it submitted to APHIS on May 24, 2017.

2. The purpose of the FOIA is “to establish a general philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language.” S. Rep. No. 89-813, 1st Sess., at 3 (1965). The FOIA therefore requires federal agencies to disclose records in a timely manner to any person upon request unless the information falls within one of nine narrow disclosure exemptions in the Act. *See* 5 U.S.C. § 552(a)(3)(A), (b).

3. Federal agencies generally must determine within twenty business days whether requested records are exempt from withholding and, if they are not, the agency must promptly disclose the records to the requester. 5 U.S.C. § 552(a)(6)(A)(i); *id.* at § 552(a)(3)(A), (a)(6)(C)(i). If an agency makes an adverse determination on a FOIA request, the requester may appeal that determination to the agency, which must then make a determination on the administrative appeal within twenty days of receiving it. *Id.* at § 552 (a)(6)(A)(i)(III)(aa), (a)(6)(A)(ii).

4. NWEA is filing this lawsuit because APHIS has: (1) failed to make and communicate the agency’s final determination on NWEA’s administrative FOIA appeal; (2) failed to make and communicate the disclosure determinations required by the FOIA for all responsive records in its possession; (3) failed to act within applicable deadlines; (4) failed to provide NWEA with written notification of the unusual circumstances that would justify an

extension of any applicable deadlines; (5) failed to provide NWEA with an estimated date by which it would complete its responses to NWEA's administrative appeal and FOIA request; and (6) failed to search for and promptly disclose all the public documents it has that are responsive to NWEA's requests.

5. APHIS is unlawfully withholding its final appeal determinations, as well as documents and information sought by NWEA, information to which NWEA is entitled and for which no valid disclosure exemption applies. NWEA therefore seeks a declaration that APHIS has violated the FOIA and an order of the court compelling APHIS to make the required determinations and disclosures by a date certain.

JURISDICTION AND VENUE

6. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B) (FOIA) and 28 U.S.C. §§ 1331 (federal question), 1346 (United States as defendant), 2201 (declaratory judgment), and 2202 (further relief).

7. Venue is proper in the Portland Division of the United States District Court for the District of Oregon pursuant to 5 U.S.C. § 552(a)(4)(B), 28 U.S.C. § 1391(e), and Local Rule 3-2(b) because NWEA resides and maintains its primary place of business in Portland, Oregon, and because a substantial part of the events or omissions giving rise to the claims occurred in this divisional venue and judicial district.

PARTIES

8. Plaintiff NORTHWEST ENVIRONMENTAL ADVOCATES is a non-profit entity organized under Section 501(c)(3) of the Internal Revenue Code, with its principal place of business in Portland, Oregon. Founded in 1969, NWEA has actively worked for over 30 years to protect and restore water quality and fish habitat in the Pacific Northwest. NWEA employs community organizing, strategic partnerships, public records requests, information sharing,

advocacy with administrative agencies, lobbying, and litigation to ensure better implementation and enforcement of the laws that preserve the natural environment and protect water quality. NWEA also provides advice and information to many environmental organizations across the country. It has repeatedly proven itself a leader in protecting water quality and endangered aquatic species, and actively participates in many state and federal agency actions that affect water quality in the Pacific Northwest and across the nation.

9. NWEA and its members derive benefits from agencies' compliance with the FOIA and from its receipt of public records. In aid of its efforts to protect and restore the environment, NWEA regularly uses the FOIA to obtain records from federal agencies. NWEA requested the records sought in this action in support of these efforts and APHIS's failure to comply with the FOIA hinders NWEA's work.

10. The above-described interests of NWEA and its members have been, are being, and, unless the relief prayed for herein is granted, will continue to be adversely affected by APHIS's disregard of its statutory duties under the FOIA and by the unlawful harm that results. APHIS's failure to fully implement the FOIA injures the interests of NWEA and its members and the relief requested in this lawsuit can redress these injuries. These harms are traceable to APHIS's conduct and would be remedied by the relief sought in this action.

11. Defendant ANIMAL AND PLANT HEALTH INSPECTION SERVICE is an administrative component of the United States Department of Agriculture. It is an agency of the executive branch of the United States government subject to the FOIA, pursuant to 5 U.S.C. § 552(f), and subject to the judicial review provisions of the APA, 5 U.S. C. §§ 701–702. APHIS is in possession or control of public records requested and sought by NWEA.

STATUTORY BACKGROUND

12. The purpose of the FOIA is “to open agency action to the light of public

scrutiny.” *U.S. DOJ v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 772 (1989) (quoting *Dep’t of the Air Force v. Rose*, 425 U.S. 352, 372 (1976)). “Congress believed that this philosophy, put into practice, would help ‘ensure an informed citizenry, vital to the functioning of a democratic society.’” *U.S. DOJ v. Tax Analysts*, 492 U.S. 136, 142 (1989) (quoting *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978)).

13. To achieve these important goals, the FOIA requires federal agencies to make records in their possession or control available to the public upon request, unless one of the FOIA’s nine specific exemptions applies. 5 U.S.C. § 552(a), (b)(1)–(9). Additionally, to ensure a requester receives all requested documents, the FOIA requires agencies to conduct a search that is reasonably calculated to uncover all records responsive to the request. *Id.* § 552(a)(3)(C)–(D).

14. The FOIA imposes strict and rigorous deadlines on federal agencies. The FOIA requires a federal agency that receives a FOIA request to determine whether the requested records are exempt from disclosure under 5 U.S.C. § 552(b) and to communicate that determination to the requester within twenty business days. *Id.* § 552(a)(6)(A)(i). If the agency determines the requested records are exempt from public disclosure, the agency must also communicate to the requester that they have a right to appeal that determination. *Id.* If the agency determines the records are not exempt from public disclosure, the agency is required to make the requested records “promptly available” to the requester. *Id.* § 552(a)(3)(A), (a)(6)(C)(i).

15. Congress set forth the circumstances in which federal agencies may obtain more time to make the determination required by 5 U.S.C. § 552(a)(6)(A)(i). In two very limited circumstances an agency may toll the twenty-day deadline for making that determination. *Id.* § 552(a)(6)(A)(ii). Additionally, an agency may extend the twenty-day deadline for making that determination by providing a written notice to the requester that sets forth the “unusual

circumstances” that justify the deadline extension and the date on which the agency expects to make the determination. *Id.* § 552(a)(6)(B)(i).

16. The statute includes a specific definition of the term “unusual circumstances.” *Id.* § 552(a)(6)(B)(iii). When the agency notifies a requester of unusual circumstances and the need for additional time, the agency’s written notification “shall provide the person an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request.” *Id.* § 552(a)(6)(B)(ii).

17. Unless an agency subject to the FOIA establishes a different timeline for disclosing responsive records by providing sufficient written notice of unusual circumstances, the FOIA’s mandate to make public records promptly available to a requester requires federal agencies to provide responsive records to a requester within or shortly after the twenty-day timeframe set forth in 5 U.S.C. § 552(a)(6)(A)(i).

18. If the agency fails to meet the disclosure deadlines established by the FOIA, including the deadline to determine within twenty days whether to respond to the request, the agency may not charge the requester for the costs incurred in searching for or duplicating the requested documents unless unusual or exceptional circumstances apply. *Id.* § 552(a)(4)(A)(viii).

19. If an agency makes an adverse determination on a FOIA request, the requester may appeal that determination to the agency, which must then make a determination on the administrative appeal within twenty days of receiving it. *Id.* § 552(a)(6)(A)(i)(III)(aa), (a)(6)(A)(ii).

20. In addition to imposing response deadlines, the FOIA also requires federal agencies to communicate with requesters about the status of the agencies’ efforts to respond to a

FOIA request. Specifically, the FOIA requires agencies to assign tracking numbers to each request that will take longer than ten days to process; to provide that tracking number to each person making such a request; and to establish a telephone line or internet service that provides information about the status of a request to the requester, including an estimated date by which the agency will complete its work. *Id.* § 552(a)(7). Courts have construed these provisions to include a requirement that agencies, upon request, provide estimated completion dates to requesters. *See, e.g., Sierra Club v. U.S. EPA*, 75 F. Supp. 3d 1125, 1146 (N.D. Cal. 2014) (“[T]he Court finds that the EPA acted unreasonably when it failed to inform Plaintiffs of an estimated completion date . . .”).

21. A U.S. District Court has jurisdiction “to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” 5 U.S.C. § 552(a)(4)(B). If the government can show that “exceptional circumstances” exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. *Id.* § 552(a)(6)(C)(i). Notably, the term “exceptional circumstances” does *not* include a delay that results from a predictable agency workload of FOIA requests, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests. *Id.* § 552(a)(6)(C)(ii). Refusal by a person to reasonably modify the scope of a request, or to arrange an alternative time frame for processing a request after being given an opportunity to do so by the agency, shall be considered as a factor in determining whether exceptional circumstances exist. *Id.* § 552(a)(6)(C)(iii).

22. Agency action under the FOIA is also subject to judicial review under the APA. *Or. Natural Desert Ass’n v. Gutierrez*, 409 F. Supp. 2d 1237, 1248 (D. Or. 2006) (violation of

the FOIA's decision deadline constitutes agency action that is not in accordance with the law). Under the judicial review provisions of the APA, district courts are authorized to compel agency action unlawfully withheld or unreasonably delayed. 5 U.S.C. § 706(1). District courts must also set aside any agency action found to be arbitrary, capricious, an abuse of discretion, not in accordance with law, or made without observation of required procedures. *Id.* § 706(2).

STATEMENT OF FACTS

23. On January 16, 2017, NWEA submitted a FOIA request for public records to the FOIA officer at APHIS in Riverdale, Maryland (hereinafter "FOIA request") via electronic mail. The FOIA request sought records concerning APHIS's beaver damage management program in Oregon, including documents and information regarding whether and how APHIS complied with Section 7 of Endangered Species Act, 16 U.S.C. § 1536, before implementing that program. NWEA requested that APHIS consider the term "documents" to include, but not be limited to, letters, reports, memoranda, internal and external correspondence, including electronic mail or other communications, policy and scientific reports, meeting notes, summaries of conversations and interviews, computer records, and other forms of written communication. NWEA's FOIA request also included a request for a fee waiver.

24. NWEA did not hear anything from APHIS regarding its FOIA request for several weeks and, fearing that something had gone awry with its electronic submission, NWEA re-submitted its FOIA request to APHIS on March 27, 2017. APHIS assigned NWEA's March 27, 2017 FOIA request reference number 2017-APHIS-03034-F and stated the target response date for the March 27 request was April 24, 2017.

25. By letter dated May 5, 2017 and sent through electronic mail, APHIS acknowledged receipt of NWEA's January 16, 2017 FOIA request; assigned that FOIA request reference number 2017-APHIS-01528-F; disclosed to NWEA three responsive records, totaling

twenty-four pages; explained the agency was withholding one hundred sixty-nine pages of responsive records under FOIA exemption (b)(5); indicated the withheld documents were draft biological assessments; and informed NWEA it could file an administrative appeal if it wished to do so.

26. In its May 5, 2017 disclosures, APHIS did not provide to NWEA any letters, meeting notes, email correspondence or other communications, or memoranda. On information and belief, APHIS did not search for documents and information in a manner that was reasonably calculated to uncover all records responsive to the FOIA request.

27. By letter dated May 24, 2017 and sent by certified mail, NWEA filed an administrative appeal of APHIS's final response to its January 16, 2017 FOIA request. Among other things, NWEA challenged APHIS's explanation for applying FOIA exemption (b)(5) to the documents it acknowledged it had but was withholding; challenged APHIS's failure to disclose numerous types of documents that it reasonably believed existed but that APHIS neither disclosed nor discussed in its response to the FOIA request, including emails, letters, meeting agendas and notes, memoranda, and technical or regulatory documents pertaining to the role of beavers in creating and maintaining habitat suitable for threatened and endangered salmonids; challenged APHIS's apparent failure to conduct a thorough search for all records responsive to the FOIA request; and challenged APHIS's apparent failure to segregate and disclose non-exempt information contained within the documents it was withholding from disclosure.

28. By letter dated June 5, 2017, APHIS acknowledged receipt of NWEA's administrative appeal; assigned that appeal tracking number 2017-APHIS-00198-A; and stated the target date for resolving the appeal was June 28, 2017.

29. APHIS did not issue a determination on NWEA's May 24, 2017 administrative

appeal by June 28, 2017.

30. NWEA waited for APHIS's response through the summer and early fall of 2017. NWEA also checked the status of APHIS's response using the U.S. Department of Agriculture's Public Access Link, which stated the appeal had been "Assigned for Processing." When queried with the tracking number for the administrative appeal, the U.S. Department of Agriculture's Public Access Link did not provide NWEA with an estimated completion date.

31. Hearing nothing further from APHIS regarding its administrative appeal or the FOIA request, by letter dated October 14, 2017 NWEA informed APHIS that it was in violation of the FOIA and offered to assist the agency in any way possible to facilitate its response to the appeal and the disclosure of additional responsive documents. NWEA's October 14, 2017 letter reminded APHIS of its obligations under the FOIA and also explained that APHIS's delay was hindering its ability to monitor APHIS's beaver management program and to determine whether and how that program was impacting threatened and endangered fish. Specifically, NWEA's October 14, 2017 letter stated:

As you are aware, the FOIA request being appealed sought release of records pertaining to beaver management in Oregon including but not limited to consultation under the Endangered Species Act (ESA) for the management or funding of management of beavers in Oregon. The unlawful withholding of the records requested and the delays in responding to our appeal of those denials are preventing NWEA's oversight of a program that has serious ramifications for threatened and endangered species in Oregon.

NWEA's October 14, 2017 letter explained that NWEA was contemplating filing a lawsuit to compel compliance with the FOIA; that NWEA preferred a cooperative approach to resolving concerns; and that cooperation was impossible so long as APHIS remained silent regarding the status of the appeal. It also requested that APHIS provide NWEA with an estimated date by which it would complete its response to NWEA's administrative appeal.

32. APHIS did not contact NWEA in response to the October 14, 2017 letter. APHIS did not provide NWEA with an estimated completion date after receiving NWEA's October 14, 2017 letter.

33. By letter dated November 22, 2017, NWEA again informed APHIS that it was in violation of the FOIA and again offered to assist the agency in any way possible to facilitate its response to the administrative appeal and the disclosure of additional responsive documents. NWEA's November 22, 2017 letter again notified APHIS that its delay was hindering NWEA's work to protect threatened and endangered species; that it was contemplating filing a lawsuit to force compliance with the FOIA; that it was available to help resolve any issues of concern if APHIS wished to discuss the matter; and that NWEA wanted APHIS to provide an estimated completion date.

34. On December 6, 2017, a representative of APHIS contacted NWEA by telephone and explained that APHIS had received NWEA's November 22, 2017 letter; that the person calling had just been assigned to the matter last week; that they were working on a response; that they would conduct a new search for responsive records; and that they would call NWEA the following week with an update and proposed disclosure schedule. APHIS did not provide NWEA with an estimated completion date during the December 6, 2017 telephone call between NWEA and APHIS.

35. As of the date this action was filed, APHIS had not contacted NWEA since December 6, 2017.

36. The deadline for APHIS to issue the final determinations required by 5 U.S.C. § 552(a)(6)(A)(ii) for NWEA's administrative appeal has passed. As of the date this action was filed, APHIS had not provided NWEA with the determinations required by 5 U.S.C.

§ 552(a)(6)(A)(ii) for NWEA’s administrative appeal. As of the date this action was filed, APHIS had not provided NWEA with an estimated date by which APHIS would make the final determinations required by 5 U.S.C. § 552(a)(6)(A)(ii) for NWEA’s administrative appeal. When queried with the tracking number for NWEA’s administrative appeal on January 29, 2018, the U.S. Department of Agriculture’s Public Access Link stated the agency’s work was “in process” but did not provide NWEA with an estimated completion date.

37. The deadline for APHIS to issue the final determinations required by 5 U.S.C. § 552(a)(6)(A)(i) for all records subject to the FOIA request has passed. As of the date this action was filed, APHIS had not provided NWEA with the determinations required by 5 U.S.C. § 552(a)(6)(A)(i) for all records subject to the FOIA request. As of the date this action was filed, APHIS had not provided NWEA with an estimated date by which APHIS would make the final determinations required by 5 U.S.C. § 552(a)(6)(A)(i) for all records subject to the FOIA request.

38. As of the date this action was filed, APHIS had failed to provide NWEA with any written notice setting forth any unusual circumstances that would justify extension of the deadlines set forth in 5 U.S.C. § 552(a)(6)(A)(i) for NWEA’s FOIA request. As of the date this action was filed, APHIS had not provided sufficient written notice to NWEA of any unusual circumstances that might warrant the actual delay that occurred in responding to the FOIA request.

39. As of the date this action was filed, APHIS had failed to conduct a reasonable and thorough search for all documents, information, and records responsive to NWEA’s FOIA request.

40. As of the date this action was filed, APHIS had failed to provide NWEA with all non-exempt documents that are responsive to NWEA’s FOIA request.

41. As of the date this action was filed, APHIS had failed to make promptly available to NWEA all non-exempt documents that are responsive to NWEA's FOIA request.

42. As of the date this action was filed, APHIS had not estimated a completion date by which APHIS would disclose to NWEA all non-exempt documents responsive to NWEA's FOIA request.

43. APHIS is currently withholding from NWEA non-exempt documents that are responsive to NWEA's FOIA request. None of FOIA's nine exemptions to mandatory disclosure apply to the documents and information APHIS is currently withholding from NWEA. APHIS has no legal basis for withholding the records that NWEA sought via the FOIA request.

44. As of the date this action was filed, APHIS had constructively denied NWEA's administrative appeal. As of the date this action was filed, APHIS had constructively denied NWEA's FOIA request.

45. Prior to filing this action NWEA fully exhausted all administrative remedies required by the FOIA. 5 U.S.C. § 552(a)(6)(A), (a)(6)(C).

46. NWEA has been required to expend costs and to obtain the services of a law firm to prosecute this action.

47. The filing of this lawsuit was necessary to compel APHIS to make the determinations required by 5 U.S.C. § 552(a)(6)(A)(ii) for NWEA's administrative appeal. The filing of this lawsuit was necessary to compel APHIS to provide a written deadline by which it would make the determinations required by 5 U.S.C. § 552(a)(6)(A)(ii) for NWEA's administrative appeal.

48. The filing of this lawsuit was necessary to compel APHIS to make the determinations required by 5 U.S.C. § 552(a)(6)(A)(i) for all documents subject to NWEA's

FOIA request. The filing of this lawsuit was necessary to compel APHIS to provide a written deadline by which it would make the determinations required by 5 U.S.C. § 552(a)(6)(A)(i) for all documents responsive to NWEA's FOIA request.

49. The filing of this lawsuit was necessary to compel APHIS to conduct a reasonable and thorough search for all documents, information, and records responsive to NWEA's FOIA request.

50. The filing of this lawsuit was necessary to compel APHIS to disclose all non-exempt documents and information that are responsive to NWEA's FOIA request.

51. APHIS could have conducted a reasonable and thorough search for all documents, information, and records responsive to NWEA's FOIA request before NWEA filed this lawsuit. APHIS could have made the determinations required by 5 U.S.C. § 552(a)(6)(A)(ii) for NWEA's administrative appeal before NWEA filed this lawsuit. APHIS could have made the determinations required by 5 U.S.C. § 552(a)(6)(A)(i) for all records subject to the FOIA request before NWEA filed this lawsuit. APHIS could have disclosed all records responsive to NWEA's FOIA request before NWEA filed this lawsuit. APHIS could have provided NWEA with written estimated completion dates for all of these actions before NWEA filed this lawsuit.

52. NWEA's claims for relief in this Complaint are not insubstantial.

53. No exceptional circumstances exist that would allow this Court to allow APHIS more time to review and disclose requested records. APHIS has not exercised due diligence in responding to NWEA's request. The delays at issue in this case result from a predictable agency workload of FOIA requests. APHIS has not made reasonable progress in reducing its backlog of pending requests.

54. The circumstances surrounding the withholdings raise questions regarding

whether agency personnel acted arbitrarily or capriciously with respect to the withholdings at issue in this case.

55. Based on the nature of NWEA's professional activities, NWEA will continue to employ the FOIA's provisions in information requests to APHIS in the foreseeable future. NWEA's professional activities will be adversely affected if APHIS is allowed to continue violating the FOIA's disclosure provisions. Unless enjoined and made subject to a declaration of NWEA's legal rights by this Court, APHIS will continue to violate the rights of NWEA to receive public records under the FOIA.

CAUSES OF ACTION

CLAIM 1

VIOLATIONS OF THE FREEDOM OF INFORMATION ACT IN RESPONDING TO NWEA'S MAY 24, 2017 ADMINISTRATIVE APPEAL: VIOLATION OF THE DECISION DEADLINES IN THE FOIA

56. NWEA hereby incorporates by reference the allegations in the preceding paragraphs.

57. NWEA has a statutory right to have APHIS process its administrative appeal in a manner that complies with the FOIA. APHIS violated NWEA's rights in this regard when APHIS unlawfully delayed its response to NWEA's May 24, 2017 administrative appeal beyond the deadlines imposed by the FOIA.

58. APHIS violated and is violating the FOIA by failing to respond to NWEA's May 24, 2017 administrative appeal by the deadline set forth in 5 U.S.C. § 552(a)(6)(A)(ii).

59. APHIS's violations of the FOIA with respect to its response to NWEA's May 24, 2017 administrative appeal entitle NWEA to an award of reasonable attorneys' fees and other litigation costs pursuant to 5 U.S.C. § 552(a)(4)(E).

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CLAIM 2

VIOLATIONS OF THE FREEDOM OF INFORMATION ACT
IN RESPONDING TO NWEA'S JANUARY 16, 2017 FOIA REQUEST:
VIOLATION OF THE DECISION DEADLINES IN THE FOIA

60. NWEA hereby incorporates by reference the allegations in the preceding paragraphs.

61. NWEA has a statutory right to have APHIS process its FOIA request in a manner that complies with the FOIA. APHIS violated NWEA's rights in this regard when APHIS unlawfully delayed its response to NWEA's January 16, 2017 FOIA request beyond the deadlines imposed by the FOIA.

62. APHIS violated and is violating the FOIA by failing to make a decision to disclose or withhold documents and information subject to NWEA's FOIA request by the deadline set forth in 5 U.S.C. § 552(a)(6)(A)(i).

63. APHIS violated and is violating the FOIA by failing to make the records subject to NWEA's FOIA request promptly available to NWEA.

64. Each and every allegation in this claim is a separate violation of the FOIA for which this Court can provide relief to NWEA under the FOIA.

65. APHIS's violations of the FOIA with respect to its response to NWEA's FOIA request entitle NWEA to an award of reasonable attorneys' fees and other litigation costs pursuant to 5 U.S.C. § 552(a)(4)(E).

CLAIM 3

VIOLATION OF THE FREEDOM OF INFORMATION ACT:
UNLAWFUL CONSTRUCTIVE DENIAL/UNLAWFUL WITHHOLDING

66. NWEA hereby incorporates by reference the allegations in the preceding paragraphs.

67. NWEA has a statutory right to the records it seeks. There is no legal basis for APHIS to assert that any of the FOIA's nine disclosure exemptions apply to the records APHIS has that are responsive to NWEA's FOIA request.

68. APHIS has violated and is violating NWEA's rights by unlawfully withholding non-exempt documents and information responsive to NWEA's FOIA request. APHIS's actions in response to NWEA's FOIA request and administrative appeal constitute constructive and unlawful denials of NWEA's FOIA request and administrative appeal.

69. APHIS's violations of the FOIA with respect to its response to NWEA's FOIA request and administrative appeal entitle NWEA to an award of reasonable attorneys' fees and other litigation costs pursuant to 5 U.S.C. § 552(a)(4)(E).

CLAIM 4

VIOLATIONS OF THE FREEDOM OF INFORMATION ACT: FAILURE TO PROVIDE AN ESTIMATED COMPLETION DATE

70. NWEA hereby incorporates by reference the allegations in the preceding paragraphs.

71. The FOIA requires APHIS to establish a phone line or internet service that provides information about the status of a FOIA request and to provide NWEA with an estimated date by which it will complete its response to the FOIA request and to NWEA's administrative appeal.

72. NWEA repeatedly asked APHIS for an estimated date of completion for NWEA's May 24, 2017 administrative appeal.

73. APHIS repeatedly violated the FOIA by failing to provide NWEA with an estimated date of completion for NWEA's May 24, 2017 administrative appeal.

74. APHIS's failure to provide NWEA with the requested estimated completion dates

entitle NWEA to an award of reasonable attorneys' fees and other litigation costs pursuant to 5 U.S.C. § 552(a)(4)(E).

CLAIM 5

VIOLETIONS OF THE FREEDOM OF INFORMATION ACT:
FAILURE TO CONDUCT A REASONABLE SEARCH FOR RESPONSIVE RECORDS

75. NWEA hereby incorporates by reference the allegations in the preceding paragraphs.

76. The FOIA requires APHIS to conduct a search that is reasonably calculated to uncover all records responsive to the FOIA request. 5 U.S.C. § 552(a)(3)(C)–(D).

77. On information and belief, APHIS violated the FOIA by failing to conduct a search that was reasonably calculated to uncover all documents, information and records, including letters, meeting notes, email correspondence, and memoranda responsive to the FOIA request.

78. APHIS's failure to conduct a thorough search for responsive records entitles NWEA to an award of reasonable attorneys' fees and other litigation costs pursuant to 5 U.S.C. § 552(a)(4)(E).

CLAIM 6

(In the alternative to Claims 1 through 5)

VIOLETIONS OF THE ADMINISTRATIVE PROCEDURE ACT:
FAILURE TO COMPLY WITH THE FOIA IN RESPONDING TO
NWEA'S ADMINISTRATIVE APPEAL AND FOIA REQUEST

79. NWEA hereby incorporates by reference the allegations in the preceding paragraphs.

80. APHIS violated the FOIA by, at a minimum: (a) failing to make the determinations on NWEA's administrative appeal as required by 5 U.S.C. § 552(a)(6)(A)(ii); (b)

failing to make the determinations for all documents and information subject to NWEA's FOIA request as required by 5 U.S.C. § 552(a)(6)(A)(i); (c) failing to disclose, and to disclose promptly, all non-exempt documents and information subject to NWEA's FOIA request; (d) failing to provide NWEA with estimated completion dates for APHIS's responses to NWEA's administrative appeal and FOIA request; and (e) by failing to conduct an adequate search for records responsive to NWEA's FOIA request.

81. Each and every allegation in this claim six is a separate violation of the FOIA for which this Court can provide relief to NWEA under the APA. Making the determinations required by 5 U.S.C. § 552(a)(6)(A)(ii) on NWEA's administrative appeal; making the determinations required by 5 U.S.C. § 552(a)(6)(A)(i) for all documents and information subject to the FOIA request; making responsive documents available, and promptly available, to NWEA; providing NWEA with estimated completion dates for the administrative appeal and FOIA request; and conducting an adequate search for responsive records are all final agency actions unlawfully withheld or unreasonably delayed that this Court can compel under the APA, 5 U.S.C. § 706(1).

82. Alternatively, APHIS's decisions not to make the determinations required by 5 U.S.C. § 552(a)(6)(A)(ii), not to make the determinations required by 5 U.S.C. § 552(a)(6)(A)(i), not to make responsive documents promptly available to NWEA, not to provide estimated completion dates, and not to conduct an adequate search for responsive records are final agency actions that are arbitrary, capricious, an abuse of discretion, not based on substantial evidence in the record, not in accordance with the law, or otherwise in violation of the APA, 5 U.S.C. § 706(2), because among other things those actions do not comply with the FOIA or APHIS's regulations or policies.

83. NWEA is entitled to relief under the APA and to costs of litigation and reasonable attorneys' fees under the Equal Access to Justice Act, 28 U.S.C. § 2412.

PRAYER FOR RELIEF

WHEREFORE, NWEA respectfully requests that the Court:

- A. Adjudge and declare that APHIS has violated the FOIA for the reasons set forth above;
- B. Order APHIS to comply immediately with the FOIA by conducting a search for additional records responsive to the FOIA request and by providing NWEA with the required determinations, written, estimated completion dates, and all non-exempt public records subject to NWEA's January 16, 2017 FOIA request;
- C. Declare that NWEA is the prevailing party and/or substantially prevailing party in this matter; that the position of the government in this action was not substantially justified; and that there are no special circumstances that make an award of costs and reasonable attorneys' fees to NWEA unjust;
- D. Award NWEA its reasonable attorneys' fees and litigation costs pursuant to 5 U.S.C. § 552(a)(4)(E) and/or award NWEA its reasonable fees, expenses, costs, and disbursements, including attorneys' fees associated with this litigation, under the Equal Access to Justice Act, 28 U.S.C. § 2412;
- E. Grant NWEA such additional relief as the Court may deem just and proper.

DATED this 30th day of January 2018.

Respectfully submitted,

s/ Emma Bruden
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P.O. Box 15099
Portland, Oregon 97293

Tel: (503) 719-5641
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Pro hac vice application forthcoming
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Seattle, Washington 98104-2245
Tel: (206) 223-4088 x 4
paul@kampmeierknutsen.com

Attorneys for Plaintiff

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Northwest Environmental Advocates

(b) County of Residence of First Listed Plaintiff **Multnomah**
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Emma Bruden, Kampmeier & Knutsen PLLC
P.O. Box 15099, Portland, Oregon, 97293
(503) 719-5641

DEFENDANTS

Animal and Plant Health Inspection Service

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input checked="" type="checkbox"/> 895 Freedom of Information Act
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

5 U.S.C. 552

Brief description of cause:

Challenge to agency denial of Freedom of Information Act request and appeal

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE
01/30/2018

SIGNATURE OF ATTORNEY OF RECORD

Emma Bruden

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Oregon

Northwest Environmental Advocates

Plaintiff

v.

Animal and Plant Health Inspection Service

Defendant

Civil Action No. 3:18-cv-00190

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Animal and Plant Health Inspection Service
4700 River Road
Riverdale, MD 20737-1228

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 30 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Emma Bruden
Kampmeier & Knutsen, PLLC
P.O. Box 15099
Portland, OR 97293

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 3:18-cv-00190

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: