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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

BUFFALO FIELD CAMPAIGN,

Plaintiff,

vs.

**UNITED STATES DEPARTMENT OF
THE INTERIOR,**

Defendant.

Case No. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Freedom of Information Act

Plaintiff, Buffalo Field Campaign (“BFC” or “Plaintiff”), alleges as follows:

INTRODUCTION

1. This action is premised upon, and consequent to, violations of the Freedom of Information Act (“FOIA”), 5 U.S.C. §§ 552 *et. seq.* It challenges the unlawful failure of the Defendant, the United States Department of the Interior (“DOI,” “Defendant,” or “Agency”), to abide by the statutory requirements of the FOIA.
2. Defendant is unlawfully withholding public disclosure of information sought by Plaintiff, information to which Plaintiff is entitled and for which no valid disclosure exemption applies or has been asserted. In particular, Defendant has violated, and remains in violation of, the statutory mandates imposed by FOIA by: (1) failing to provide a final determination resolving Plaintiff’s FOIA Request within the time required by law; and (2) failing to provide Plaintiff non-exempt responsive records in response to Plaintiff’s FOIA request, including reasonably segregable, non-exempt portions of responsive records.
3. Plaintiff seeks declaratory relief establishing that Defendant has violated the FOIA. Plaintiff also seeks injunctive relief directing Defendant to promptly provide Plaintiff with the requested material. Finally, Plaintiff seeks an Order from the Court directing Defendant to pay Plaintiff’s reasonable attorneys’ fees and costs incurred in bringing this action.

JURISDICTION, VENUE, AND BASIS FOR RELIEF

4. This Court has jurisdiction over this matter pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331 because this action arises under the FOIA and the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*
5. Venue properly vests in this Court pursuant to 5 U.S.C. § 552(a)(4)(B), which provides venue for FOIA cases in this District. Plaintiff resides and has its principal place of business in the District of Montana.
6. This case is properly brought in the District of Montana, Missoula Division. BFC's habitat coordinator, Darrell Geist, resides and has his office in Missoula, Montana. Mr. Geist submitted the FOIA Request at the heart of this dispute on behalf of BFC, and will continue to play a major role obtaining, reviewing, and releasing information obtained from responsive records to shed light on ongoing government action. BFC conducts regular business activity in Missoula, and all year-end financial information is processed in Missoula, as reflected on BFC's annual reports to the State.
7. Declaratory relief is appropriate under 28 U.S.C. § 2201.
8. Injunctive relief is appropriate under 28 U.S.C. § 2202 and 5 U.S.C. § 552(a)(4)(B).
9. Attorneys' fees and costs may be awarded by the Court to a substantially prevailing plaintiff pursuant to 5 U.S.C. § 552(a)(4)(E).

PARTIES

10. Plaintiff Buffalo Field Campaign (“BFC”) is a non-profit public interest organization founded in 1997 to stop the slaughter of Yellowstone’s wild bison, protect the natural habitat of wild free-roaming bison and other native wildlife, and to work with people of all Nations to honor the sacredness of the wild bison. BFC is supported by volunteers and participants around the world who value America’s native wildlife and the ecosystems upon which they depend, and enjoy the natural wonders of our National Parks and Forests. BFC has field offices in West Yellowstone, and Gardiner, Montana, where volunteers congregate and conduct daily field patrols to document government activities directed against wild buffalo. As BFC’s habitat coordinator, Mr. Geist regularly conducts business with and for BFC through his Missoula residence and office.

11. BFC, as an organization and on behalf of its members, is concerned with and actively involved with protecting the last remaining descendants of the native plains bison on this continent, and advocating that such bison be allowed to occupy their original range. BFC actively seeks to document and publicize the plight of the bison, to end their slaughter by government agencies, and to secure long-term protection for viable populations of wild bison and year-round habitat. BFC actively engages the American public to honor cultural heritage by allowing wild bison to exist as an indigenous wildlife species and fulfill their inherent ecological

role within their native range, and serve as the genetic wellspring for future wild bison populations.

12. Defendant DOI is an agency of the executive branch of the United States government. The DOI headquarters are located at 1849 C Street, N.W., Washington, D.C. 20240.

13. DOI is an “agency” as defined by 5 U.S.C. § 552(f)(1) and is therefore subject to the provisions of FOIA.

STATEMENT OF OPERATIVE FACTS

14. The FOIA requires U.S. government agencies to promptly make public records available to any person if that person makes a request which (1) reasonably describes the records sought and (2) complies with any applicable agency rules for making such a request. 5 U.S.C. § 552(a)(3)(A).

15. The FOIA requires an agency to issue a final determination on any such information request within 20 business days from the date of its receipt. 5 U.S.C. § 552(a)(6)(A)(i).

16. On June 20, 2018, Mr. Geist, in his capacity as BFC’s habitat coordinator, electronically submitted a FOIA Request (the “FOIA Request”) to Clarice Julka, the FOIA Officer for the Department of the Interior, Office of the Secretary, via its publicly acknowledged FOIA e-mail address, “osfoia@ios.dio.gov.” A true and correct copy of the FOIA request is attached as Attachment 1.

17. The FOIA Request sought the disclosure of records from DOI, Office of the Secretary concerning bison management in Yellowstone National Park and the State of Montana's "Interagency Bison Management Plan," as well as records concerning the reintroduction of bison from Yellowstone National Park to American Indian reservations or elsewhere. Records were sought from March 1, 2017 to June 20, 2018.

18. On July 19, 2018, DOI employee Cindy Sweeney provided a FOIA acknowledgment letter to Mr. Geist. That letter was signed by Clarice Julka. Relevant here, the letter indicated that the FOIA Request was received by DOI on June 20, 2018. The letter assigned a tracking number to the FOIA Request, "OS-2018-01317." Finally, the letter invoked a 10-day business extension under 43 C.F.R. § 2.19, and placed BFC's FOIA Request onto the Agency's "complex" processing track.

19. On August 10, 2018, Mr. Geist wrote back via e-mail to Cindy Sweeney, noting in pertinent part that while the Agency had requested a 10 business day extension, 16 business days had already elapsed without any further communication from DOI. Mr. Geist concluded his e-mail by requesting that DOI "Please inform me when your office intends to comply with our FOIA request."

20. Cindy Sweeney responded to Mr. Geist by e-mail on August 21, 2018. Ms. Sweeney wrote that "At this time, we are still waiting on the program offices to

send us all potentially responsive records for the request that you inquired about as we do not retain records in the OS FOIA office. Once we have those records, we can begin processing them. While we cannot provide you with a timeline at this point, please be assured we are working to complete your request as promptly as we can.”

21. Additional e-mail communications were exchanged between Mr. Geist and Ms. Sweeney on August 21-22, 2018, concerning BFC’s request for a fee waiver and an estimated completion date. The Agency ultimately granted BFC a fee waiver and provided a hyperlink containing an estimated completion date for the FOIA Request. As such, these two specific issues are not in dispute in this Complaint.

22. The DOI set September 14, 2018 as the estimated completion date for the FOIA Request.

23. Having received no final determination or responsive records on September 14, Mr. Geist again wrote to Ms. Sweeney on September 18, 2018. In that e-mail, Mr. Geist noted that BFC had received no final determination advising when or whether DOI would comply with the FOIA Request or apprising BFC of any administrative appeal rights. Mr. Geist concluded: “Your agency is in violation of the Freedom of Information Act. Please be advised Buffalo Field Campaign will initiate suit against you in federal district court unless we receive responsive

records in two weeks, or by October 2, 2018.”

24. Cindy Sweeney responded to Mr. Geist’s September 18, 2018 e-mail on September 28, 2018. Ms. Sweeney’s response was a duplication of the message she had sent Mr. Geist over a month earlier: “At this time, we are still waiting on the program offices to send us all potentially responsive records for the request that you inquired about as we do not retain records in the OS FOIA office. Once we have those records, we can begin processing them. While we cannot provide you a timeline at this point, please be assured we are working to complete your request as promptly as we can.”

25. On October 4, 2018, Mr. Geist again wrote to Ms. Sweeney by e-mail. Mr. Geist explained that “Buffalo Field Campaign is evaluating filing a complaint against your agency for violating the Freedom of Information Act...We wish to avoid litigation. It is not our preference.” Mr. Geist noted the Agency was not in compliance with the FOIA’s time limits and requested an updated estimated completion date. Mr. Geist concluded by noting that if BFC did not receive a response, “we will interpret your non-response as an adverse determination.”

26. As of the date of this Complaint, BFC has received no further written communications from Defendant.

27. As of the date of this Complaint, BFC has received no records responsive to its FOIA Request.

28. As of the date of this Complaint, BFC has not been informed whether DOI will comply with the FOIA Request or the reasons for not complying, whether DOI will withhold records under a FOIA exemption, or whether BFC has any administrative appeal rights concerning an adverse determination.

29. To date, no “determination” has been provided to BFC concerning its FOIA Request to DOI, as that term is used in 5 U.S.C. § 552(a)(6)(A)(ii).

30. BFC has constructively exhausted all administrative remedies required by FOIA. 5 U.S.C. § 552(a)(6)(A), (a)(6)(C).

31. BFC has been required to expend costs and to obtain the services of a law firm, consisting of attorneys and legal assistants, to prosecute this action.

CAUSES OF ACTION

COUNT I

VIOLATION OF THE FREEDOM OF INFORMATION ACT: DETERMINATION DEADLINE VIOLATION

32. The allegations made in all preceding paragraphs are realleged and incorporated by reference.

33. BFC has a statutory right to have DOI process its FOIA requests in a manner which complies with the FOIA. Plaintiff’s rights in this regard are violated by DOI’s unlawful delay in informing BFC of its final determination as to the FOIA Request beyond the 20 day statutory deadline and any extensions. 5 U.S.C. § 552(a)(6)(A)(i).

34. To date, BFC has not received a communication from DOI about whether the Agency will comply with the FOIA request, DOI's reasons for making that decision, and any right of BFC to administratively appeal that decision.

35. DOI has only invoked one 10 working day extension to the FOIA's 20 business day determination deadline.

36. Based on the nature of Plaintiff's organizational activities, Plaintiff will continue to submit FOIA requests to DOI for the foreseeable future. Plaintiff will continue to rely upon release of records sought in FOIA requests to shed light on government activities. Plaintiff's statutory rights will be adversely affected if DOI is allowed to continue violating FOIA's response deadlines.

37. Unless enjoined and made subject to a declaration of Plaintiff's legal rights by this Court, Defendant will continue to violate the rights of Plaintiff to receive public records under the FOIA.

38. DOI's failure to make a final determination on BFC's FOIA Request within the statutory timeframe has prejudiced Plaintiff's ability to timely obtain public records.

COUNT II

VIOLATION OF THE FREEDOM OF INFORMATION ACT: UNLAWFUL WITHHOLDING OF NON-EXEMPT PUBLIC RECORDS

39. The allegations made in all preceding paragraphs are realleged and incorporated by reference.

40. BFC has a statutory right to have DOI process its FOIA requests in a manner that complies with FOIA. Plaintiff's rights in this regard are violated by DOI's failure to promptly provide public, non-exempt records to BFC in response to the FOIA Request. 5 U.S.C. § 552(a)(3).

41. DOI is unlawfully withholding public disclosure of information sought by BFC, information to which BFC is entitled and for which no valid disclosure exemption applies. DOI is also unlawfully withholding reasonably segregable, non-exempt portions of responsive records.

42. Based on the nature of BFC's organizational activities, it will undoubtedly continue to submit FOIA requests to DOI for the foreseeable future.

43. BFC's organizational activities to shed light on government activities will be adversely affected if DOI is allowed to continue violating FOIA's disclosure mandates.

44. Unless enjoined and made subject to a declaration of BFC's legal rights by this Court, DOI will continue to violate the rights of BFC to receive public records under the FOIA.

REQUEST FOR RELIEF

WHEREFORE, BFC requests that this Court:

1. Declare DOI's failure to disclose the records requested by Plaintiff in the FOIA Request to be unlawful under the FOIA, 5 U.S.C. § 552(a)(3).

2. Order DOI to promptly provide BFC with the non-exempt records sought in its FOIA Request.
3. Declare DOI's failure to make a timely final determination on Plaintiff's FOIA Request to be unlawful under the FOIA, 5 U.S.C. §§ 552(a)(6)(A)(i), (ii).
4. Award BFC its reasonable attorneys' fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E) and 28 U.S.C. § 2412.
5. Grant such other and further relief as the Court may deem just and proper.

Filed this 10th Day of October, 2019.

/s/ Timothy Bechtold

Attorneys for Plaintiff