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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 TRI-VALLEY CARES,) Case No.
12)
13 Plaintiff,)
14)
15 v.) **COMPLAINT FOR DECLARATORY**
16) **AND INJUNCTIVE RELIEF**
17)
18 UNITED STATES DEPARTMENT OF)
19 ENERGY and NATIONAL NUCLEAR)
20 SECURITY ADMINISTRATION, an)
21 agency of the U.S. Department of Energy,)
22)
23 Defendants.)
24)
25)
26)
27)
28)

I. INTRODUCTION

1. Plaintiff Tri-Valley CAREs (Communities Against a Radioactive Environment) (hereinafter "TVC") brings this action to redress violations of the Freedom of Information Act (hereinafter "FOIA"), 5 U.S.C. § 552 (1966). Congress enacted FOIA to provide members of the public the right of access to federal agency records, except for those records (or portions thereof) that are protected from disclosure by exemptions and exclusions. Plaintiff challenges the failure of defendants United States Department of Energy (hereinafter "DOE") and National Nuclear Security Administration (hereinafter "NNSA"), to provide all responsive, non-exempt, and non-excluded records (or portions thereof) requested by plaintiff in four separate FOIA

1 requests made to defendants, seeking agency records pertaining to DOE and NNSA operations
2 and activities. Defendants have failed to respond to FOIA requests in a timely manner, as
3 provided by the statute, and this conduct amounts to a constructive denial of these requests.
4 Thus, defendants have improperly withheld agency records from the plaintiff. Additionally, by
5 repeatedly violating FOIA's statutory requirements, defendants exhibit a pattern and practice of
6 violating FOIA.

7 **II. JURISDICTION, VENUE, AND BASIS FOR RELIEF**

8 2. This Court has jurisdiction over this matter pursuant to 5 U.S.C. § 552(a)(4)(B)
9 (FOIA citizen suit provision) and 28 U.S.C. § 1331 (federal question) because this action arises
10 under FOIA and the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*

11 3. Venue in this Court is proper because plaintiff's principal place of business is in this
12 district. *See* 5 U.S.C. § 552(a)(4)(B); 28 U.S.C. § 1391(e).

13 4. Declaratory relief is appropriate under 28 U.S.C. § 2201 and 5 U.S.C. § 552(a)(4)(F).

14 5. Injunctive relief is appropriate pursuant to 28 U.S.C. § 2202.

15 **III. PARTIES**

16 6. Plaintiff Tri-Valley CAREs is a non-profit public benefit corporation organized under
17 the laws of the State of California. TVC's offices are located at 2582 Old First Street in
18 Livermore, California. TVC is a community-based environmental organization that was
19 founded in 1983 by concerned neighbors living around Lawrence Livermore National
20 Laboratory (hereinafter "LLNL"), a DOE NNSA site where research, design, and development
21 of nuclear weapons is conducted. TVC monitors nuclear weapons and environmental cleanup
22 activities throughout the national nuclear weapons complex, with a special focus on LLNL and
23 the surrounding communities. TVC's overarching mission is to promote peace, justice, and a
24 healthy environment. TVC holds a technical assistance grant from the U.S. Environmental
25 Protection Agency (hereinafter "EPA") to monitor environmental cleanup at LLNL's main site
26 and its Site 300 Experimental Test Site, both of which are on the federal "Superfund" list of the
27 most contaminated sites in the nation. TVC facilitates a support group for workers made ill by
28 on-the-job exposures at Livermore Lab. TVC publishes and distributes a free newsletter, as well

1 as fliers, fact sheets, web content and technical reports; information derived from FOIA requests
2 is regularly used in the preparation of these materials. TVC maintains a community “reading
3 room” at its office in Livermore and a website at www.trivalleycares.org as part of its
4 commitment to public outreach and education. A major, founding goal of TVC is to investigate
5 and achieve remedies for the public health and environmental threats posed by LLNL. Tri-
6 Valley CAREs currently has approximately 5,600 members, the majority of whom reside or
7 work in the vicinity of LLNL. TVC brings this action on its own behalf and on behalf of its
8 adversely affected members.

9 7. Plaintiff and its members suffer an informational harm by being denied access to the
10 requested records, which are crucial to the ability of plaintiff and its members to carry out
11 educational and oversight activities regarding DOE, NNSA and the nuclear weapons complex.
12 Plaintiff’s injuries can be redressed by this suit and granting of the remedies requested herein.

13 8. Defendant United States Department of Energy is a federal agency whose
14 overarching mission is to advance the national, economic, and energy security of the nation; to
15 promote scientific and technological innovation in support of that mission; and to ensure the
16 environmental cleanup of the national nuclear weapons complex. DOE is in possession and
17 control of the records sought by plaintiff. As an agency of the executive branch of the United
18 States government, DOE is subject to FOIA pursuant to 5 U.S.C. § 552(f).

19 9. Defendant United States National Nuclear Security Administration, a separately
20 organized agency within the U.S. Department of Energy, is responsible for the management and
21 security of the nation’s nuclear weapons, nuclear nonproliferation, and naval reactor programs.
22 NNSA is in possession and control of the records sought by plaintiff. As an agency of the
23 executive branch of the United States government, NNSA is subject to FOIA pursuant to 5
24 U.S.C. § 552(f).

25 **IV. LEGAL FRAMEWORK OF FOIA RELEVANT TO ALL CLAIMS**

26 10. FOIA requires, *inter alia*, that all federal agencies must promptly provide copies of
27 all non-exempt and non-excluded agency records (or portions thereof) to those persons who
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1 make requests for records that reasonably describe such records and are made in conformance
2 with applicable rules and procedures. *See* 5 U.S.C. § 552(a)(3)(A).

3 11. FOIA requires a federal agency to make a final determination on all FOIA requests
4 that it receives within twenty days (excepting Saturdays, Sundays, and legal public holidays)
5 after the receipt of such request, unless the agency provides notice to the requester of “unusual
6 circumstances” meriting additional time for responding to a FOIA request. 5 U.S.C. §
7 552(a)(6)(A)-(B).

8 12. FOIA expressly provides that in instances of “unusual circumstances,” an agency
9 may delay its response to a FOIA request or appeal for up to 10 working days, but must provide
10 written notice and must also provide “the date on which a determination is expected to be
11 dispatched.” 5 U.S.C. § 552(a)(6)(B)(i).

12 13. Agencies are required to establish a telephone line or Internet service for requesters
13 to inquire about the status of FOIA requests in which the agency claims “unusual
14 circumstances.” This service must provide requesters with an estimated date that the agency will
15 complete their action. 5 U.S.C. §552(a)(7)(B)(ii).

16 14. FOIA expressly provides that persons shall be deemed to have exhausted their
17 administrative remedies if the agency fails to comply with the applicable time limitations
18 provided by 5 U.S.C. § 552(a)(6)(A)(i)-(ii). 5 U.S.C. § 552(a)(6)(C).

19 15. FOIA provides that any person who has not been provided records requested
20 pursuant to FOIA, after exhausting their administrative remedies, may seek legal redress from
21 an appropriate federal district court to “enjoin the agency from withholding agency records and
22 to order the production of any agency records improperly withheld from the complainant.” 5
23 U.S.C. § 552(a)(4)(B).

24 16. Under FOIA, a federal agency has the burden to sustain its actions. 5 U.S.C. §
25 552(a)(4)(B).

26 17. Pursuant to FOIA, this Court may assess attorney fees and litigation costs against
27 the United States if plaintiff substantially prevails in this action. 5 U.S.C. § 552(a)(4)(E).
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1 18. Pursuant to the Equal Access to Justice Act, this Court may assess the costs of
2 disbursements and costs of litigation, including reasonable attorney and expert witness fees
3 against the United States if plaintiff substantially prevails in this action. 28 U.S.C. § 2412.

4 **V. FACTUAL ALLEGATIONS FOR PLAINTIFF'S FOIA REQUESTS**

5 **Plaintiff's July 17, 2012 FOIA Request to NNSA: FOIA 12-00257-H**

6 19. On or about July 17, 2012, plaintiff sent a FOIA request to NNSA seeking records
7 pertaining to the Chemistry and Metallurgy Research Replacement Nuclear Facility (CMRR-
8 NF). Specifically, any information pertaining to findings that the NNSA may meet its plutonium
9 pit mission needs without CMRR-NF, and any determinations by the agency that the CMRR-NF
10 may not be necessary to the nation's security. This request included the following documents:

- 11
- 12 • All information concerning the 60-day study produced by Los Alamos National
13 Laboratory that determined that the Agency can maintain its plutonium pit
14 manufacturing and sustainment needs without CMRR-NF (see attachment for
15 reference to the requested study),
 - 16 • All notes pertaining to determinations that the CMRR-NF may not be necessary,
 - 17 • All notes pertaining to findings that the NNSA may meet its plutonium pit mission
18 needs without CMRR-NF,
 - 19 • All decisional documents pertaining to the 60-day study by Los Alamos National
20 Laboratory that determined that the Agency can maintain its plutonium pit
21 manufacturing and sustainment needs without CMRR-NF,
 - 22 • Electronic Communications concerning the 60-day study by Los Alamos National
23 Laboratory that determined that the Agency can maintain its plutonium pit
24 manufacturing and sustainment needs without CMRR-NF,
 - 25 • All Laboratory correspondence, reports, meeting minutes, and memorandums
26 regarding the 60-day study by Los Alamos National Laboratory that determined
27 that the Agency can maintain its plutonium pit manufacturing and sustainment
28 needs without CMRR-NF,
 - Any other significant information regarding the 60-day study by Los Alamos
National Laboratory that determined that the Agency can maintain its plutonium pit
manufacturing and sustainment needs without CMRR-NF.

24 20. On or about July 25, 2012, Christina Hamblen with NNSA sent Scott Yundt an email
25 acknowledging receipt of our FOIA request and providing the control number: 12-00257-H.

26 21. On or about April 3, 2013, Christina Hamblen sent a partial response with two
27 enclosed documents that were responsive to "the 60-day study produced by LANL that
28

1 determined that the Agency can maintain its plutonium pit manufacturing and sustainment
2 needs without CMRR-NF.” The letter also states that NNSA continues to work on the request.

3 22. On or about June 12, 2013- NNSA E-mailed a response sent to Scott Yundt,
4 indicating that Los Alamos had located potentially responsive documents that is was reviewing.
5 “NNSA’s Office of Defense programs is still searching for responsive records, responsive
6 documents from LLNL were being redacted.” No estimated date of completion was provided.

7 23. On or about July 16, 2014 TVC sent a *Notice of Statutory Violation/Offer to Assist*
8 *Letter* to NNSA stating that defendants were in violation of FOIA, requesting that defendants
9 respond with an estimated date of dispatch and offering to assist in the release of the requested
10 documents.

11 24. On or about June 19, 2015 TVC sent a second *Notice of Statutory Violation/Offer to*
12 *Assist Letter* to NNSA stating that defendants were in violation of FOIA, requesting that
13 defendants respond with an estimated date of dispatch and offering to assist in the release of the
14 requested documents.

15 25. On or about July 7, 2015 Sandra Lewandowski with NNSA responded to TVC’s
16 status update request stating that declassification was ongoing, but without providing estimated
17 dates of completion.

18 26. To date, plaintiff has not received all of the responsive documents in NNSA’s
19 possession.

20 **Plaintiff’s January 28, 2015 FOIA Request to NNSA: FOIA 15-00099-K**

21 27. On or about January 28, 2015, plaintiff sent a FOIA request to NNSA seeking
22 records of all documents, from November 20, 2013 to the date of search, that concern the use of
23 plutonium, other fissile and/or fissionable materials at the National Ignition Facility (NIF)
24 located at the Lawrence Livermore National Laboratory. The request included the following
25 documents:

- 26
- 27 • Any records/documents on the use of fissionable and fissile materials at the NIF
 - 28 • Status
 - Schedule for use of these materials in experiments
 - Scope and purpose of experiments using these materials

- Planned use of fusion fuel with fissile or fissionable materials in the same experiment
- Environmental questions and reviews
- Technical issues
- Equipment needs and issues, including but not limited to distinguishing between fission-generated and fusion-generated atoms
- Cost questions and reviews
- Treaty Compliance reviews (e.g. Partial Test Ban Treaty, CTBT, NPT)

28. On or about February 4, 2015 plaintiff received a letter from NNSA assigning the control number FOIA 15-00099-K.

29. On or about March 10, 2015 plaintiff received a partial response with 41 documents.

30. On or about July 16, 2015, plaintiff sent a *Notice of Statutory Violation/Offer to Assist letter* to Ms. Laney at NNSA stating that defendants were in violation of FOIA with respect to the remaining documents, requesting that defendants respond with an estimated date of dispatch and offering to assist in the release of the requested documents.

31. On or about August 12, 2015 Ms. Laney at NNSA sent a status update with no additional records or estimated date of completion.

32. To date, plaintiff has not received all of the responsive documents in NNSA's possession or an estimated date of completion.

Plaintiff's August 13, 2015 FOIA Request to NSNA: FOIA HQ-2015-01770-F

33. On or about August 13, 2015, plaintiff sent a FOIA request to Department of Energy's Office of Inspector General, seeking a copy of all documents containing information pertaining to facilities at Lawrence Livermore National Laboratory (and Site 300) involved in the preparation of the Inspector General's ("IG's") January 2015 Audit Report of the Department of Energy's Management of High – Risk Excess Facilities (DOE/IG – 0931). The request included the following documents:

- All materials provided to the IG by Livermore Lab or the NNSA or any other entity regarding excess facilities at LLNL or Site 300;
- Any and all evaluation of those facilities;
- Any and all analysis of risk of those facilities;

- Any and all analysis of the wastes to be produced from decontaminating and/or demolishing those facilities;
- Any and all analysis of the costs involved with decontaminating and/or demolishing those facilities.

34. On or about August 26, 2015 plaintiff received a letter from DOE acknowledging receipt of the request and assigning the control number FOIA HQ-2015-01770-F.

35. On or about September 3, 2015 plaintiff received a letter from the DOE assigning the request to the NNSA.

36. On or about September 10, 2015 plaintiff received a letter from the NNSA Office of the General Counsel stating that the request was transferred to their office and received on September 9, 2015.

37. On or about October 14, 2015 plaintiff received an Email from the IG asking to limit the request to LLNL and Site 300, plaintiff agreed to the limitation of the request.

38. To date, no responsive documents have been provided, nor has any estimated date of completion been given.

Plaintiff's January 27, 2016 FOIA Request to NSNA: FOIA 16-00071-R

39. On or about January 27, 2016, plaintiff emailed a FOIA request to the NNSA seeking a copy of all documents, from January 1, 2007 to the date of search, that concern the shipment, handling and storage of anthrax from the Dugway Proving Ground to the Lawrence Livermore National Laboratory as mentioned in a January 15, 2016 USA Today article, which was attached to the request. The request included the following documents:

- References to mislabeled Anthrax shipments both dead and alive
- Worker exposure to Anthrax and (if applicable) any use of Cipro
- Bio-safety Committee responses to Anthrax shipments
- Schedule for use of these materials in experiments
- Scope and purpose of experiments using these materials
- Environmental questions and reviews
- Technical issues
- Equipment needs and issues
- Cost Questions and Reviews

1 40. On or about February 8, 2016 plaintiff received a letter from Ms. Marquez from
2 NNSA assigning the control number 16-00071-R.

3 41. To date, no responsive documents have been provided, nor has an estimated date of
4 completion been given.

6 VI. CLAIMS FOR RELIEF

7 **Count I: Violation of the Freedom of Information Act: FOIA 12-00257-H**

8 42. The allegations made in all preceding paragraphs are realleged and incorporated by
9 reference herein.

10 43. Defendants violated FOIA by failing to provide plaintiff with all of the responsive,
11 non-exempt records, and non-excluded records (or portions thereof), requested by plaintiff in its
12 July 17, 2012 FOIA request to NNSA in a manner consistent with the 20-day statutory period,
13 or within 10 additional days if defendant claimed unusual circumstances existed.

14 44. By failing to provide plaintiff with all records responsive to its July 17, 2012 FOIA
15 request to NNSA, defendants have denied plaintiff's right to this information provided by law
16 under the Freedom of Information Act.

17 45. Unless enjoined by this Court, defendants will continue to violate plaintiff's legal
18 rights to access the records requested in plaintiff's July 17, 2012 FOIA request to NNSA.

19 46. Plaintiff is directly and adversely affected and aggrieved by defendants' failure to
20 provide all non-exempt and non-excluded records (or portions thereof) responsive to its July 17,
21 2012 FOIA request to NNSA.

22 46. Defendants violated FOIA by failing to provide plaintiff with an estimated date of
23 dispatch of the record as requested by plaintiff in its July 16, 2014 and June 19, 2015
24 correspondence. 5 U.S.C. §552(a)(6)(B)(i).

25 47. Defendants violated FOIA by failing to establish a telephone line or Internet service
26 for plaintiff to inquire about the status of this FOIA request that would specifically provide
27 plaintiff with an estimated date by which the agency would complete its action on this request. 5
28 U.S.C. §552(a)(7)(B)(ii).

1 48. Plaintiff has fully exhausted all administrative remedies required by FOIA prior to
2 seeking judicial review of defendants' failure to provide all non-exempt and non-excluded
3 records (or portions thereof) responsive to its July 17, 2012 FOIA request to NNSA.

4 49. Plaintiff has suffered a legal wrong as a result of defendants' failure to comply with
5 the mandates of FOIA. Defendants' failure to disclose all non-exempt and non-excluded
6 records (or portions thereof) responsive to plaintiff's July 17, 2012 request to NNSA has injured
7 plaintiff's interests in public oversight of governmental operations.

8 50. Plaintiff is entitled to reasonable costs of litigation, including attorney fees pursuant
9 to FOIA. 5 U.S.C. § 552(a)(4)(E).

10 51. Plaintiff is entitled to costs of disbursements and costs of litigation, including
11 reasonable attorney and expert witness fees, under the Equal Access to Justice Act, 28 U.S.C. §
12 2412.

13 **Count II: Violation of the Freedom of Information Act: FOIA 15-00099-K**

14 52. The allegations made in all preceding paragraphs are realleged and incorporated by
15 reference herein.

16 52. Defendants have violated FOIA by failing to provide plaintiff with all responsive,
17 non-exempt and non-excluded records (or portions thereof), requested by plaintiff in its January
18 28, 2015 FOIA request to NNSA in a manner consistent with the 20 day statutory time period,
19 or within 10 additional days if defendant claimed unusual circumstances existed.

20 54. By failing to provide plaintiff with all records responsive to its January 28, 2015
21 FOIA request to NNSA, defendants have denied plaintiff's right to this information provided by
22 law under the Freedom of Information Act.

23 55. Unless enjoined by this Court, defendants will continue to violate plaintiff's legal
24 rights to access the records requested in plaintiff's January 28, 2015 FOIA request to NNSA.

25 56. Plaintiff is directly and adversely affected and aggrieved by defendants' failure to
26 provide all non-exempt and non-excluded records (or portions thereof) responsive to its January
27 28, 2015 FOIA request to NNSA.

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1 57. Defendants violated FOIA by failing to provide plaintiff with an estimated date of
2 dispatch of the record as requested by plaintiff in its July 16, 2015 correspondence. 5 U.S.C.
3 §552(a)(6)(B)(i).

4 58. Defendants violated FOIA by failing to establish a telephone line or Internet service
5 for plaintiff to inquire about the status of this FOIA request that would specifically provide
6 plaintiff with an estimated date by which the agency would complete its action on this request. 5
7 U.S.C. §552(a)(7)(B)(ii).

8 59. Plaintiff has fully exhausted all administrative remedies required by FOIA prior to
9 seeking judicial review of defendants' failure to provide all non-exempt and non-excluded
10 records (or portions thereof) responsive to its January 28, 2015 FOIA request to NNSA.

11 60. Plaintiff is entitled to reasonable costs of litigation, including attorney fees pursuant
12 to FOIA. 5 U.S.C. § 552(a)(4)(E).

13 61. Plaintiff is entitled to costs of disbursements and costs of litigation, including
14 reasonable attorney and expert witness fees, under the Equal Access to Justice Act, 28 U.S.C. §
15 2412.

16 **Count III: Violation of the Freedom of Information Act: FOIA HQ-2015-01770-F**

17 62. The allegations made in all preceding paragraphs are realleged and incorporated by
18 reference herein.

19 63. Defendants have violated FOIA by failing to provide plaintiff with any responsive,
20 non-exempt and non-excluded records (or portions thereof), requested by plaintiff in its August
21 13, 2015 FOIA request to NNSA in a manner consistent with the 20 day statutory time period,
22 or within 10 additional days if defendant claimed unusual circumstances existed.

23 64. By failing to provide plaintiff with any records responsive to its August 13, 2015
24 FOIA request to NNSA, defendants have denied plaintiff's right to this information provided by
25 law under the Freedom of Information Act.

26 65. Unless enjoined by this Court, defendants will continue to violate plaintiff's legal
27 rights to access the records requested in plaintiff's August 13, 2015 FOIA request to NNSA.
28

1 66. Plaintiff is directly and adversely affected and aggrieved by defendants' failure to
2 provide any non-exempt and non-excluded records (or portions thereof) responsive to its August
3 13, 2015 FOIA request to NNSA.

4 67. Plaintiff has fully exhausted all administrative remedies required by FOIA prior to
5 seeking judicial review of defendants' failure to provide all non-exempt and non-excluded
6 records (or portions thereof) responsive to its August 13, 2015 FOIA request to NNSA.

7 68. Plaintiff is entitled to reasonable costs of litigation, including attorney fees pursuant
8 to FOIA. 5 U.S.C. § 552(a)(4)(E).

9 69. Plaintiff is entitled to costs of disbursements and costs of litigation, including
10 reasonable attorney and expert witness fees, under the Equal Access to Justice Act, 28 U.S.C. §
11 2412.

12 **Count IV: Violation of the Freedom of Information Act: FOIA 16-00071-R**

13 70. The allegations made in all preceding paragraphs are realleged and incorporated by
14 reference herein.

15 71. Defendants have violated FOIA by failing to provide plaintiff with any responsive,
16 non-exempt records and non-excluded records (or portions thereof), requested by plaintiff in its
17 January 27, 2016 FOIA request to NNSA in a manner consistent with the 20 day statutory time
18 period, or within 10 additional days if defendant claimed unusual circumstances existed.

19 72. By failing to provide plaintiff with any records responsive to its January 27, 2016
20 FOIA request to NNSA, defendants have denied plaintiff's right to this information provided by
21 law under the Freedom of Information Act.

22 73. Unless enjoined by this Court, defendants will continue to violate plaintiff's legal
23 rights to access the records requested in plaintiff's January 27, 2016 FOIA request to NNSA.

24 74. Plaintiff is directly and adversely affected and aggrieved by defendants' failure to
25 provide any non-exempt and non-excluded records (or portions thereof) responsive to its
26 January 27, 2016 FOIA request to NNSA.

27 75. Defendants violated FOIA by failing to establish a telephone line or Internet service
28 for plaintiff to inquire about the status of this FOIA request that would specifically provide

1 plaintiff with an estimated date by which the agency would complete its action on this request. 5
2 U.S.C. §552(a)(7)(B)(ii).

3 76. Plaintiff has fully exhausted all administrative remedies required by FOIA prior to
4 seeking judicial review of defendants' failure to provide all non-exempt and non-excluded
5 records (or portions thereof) responsive to its January 27, 2016 FOIA request to NNSA.

6 77. Plaintiff is entitled to reasonable costs of litigation, including attorney fees pursuant
7 to FOIA. 5 U.S.C. § 552(a)(4)(E).

8 78. Plaintiff is entitled to costs of disbursements and costs of litigation, including
9 reasonable attorney and expert witness fees, under the Equal Access to Justice Act, 28 U.S.C. §
10 2412.

11 **Count V: Pattern and Practice of Violating FOIA**

12 79. The allegations made in all preceding paragraphs are realleged and incorporated by
13 reference herein.

14 80. Plaintiff is injured by defendants' pattern and practice of disregarding the statutory
15 timeframe set out in FOIA for the production of requested records. This pattern and practice is
16 not in accordance with the law, and without observance of procedure required by law, all in
17 violation of FOIA.

18 81. Plaintiff is injured by defendants' pattern and practice of disregarding the statutory
19 requirement to provide an estimated date on which the agency will complete action when the
20 agency has claimed "unusual circumstances." This pattern and practice is not in accordance
21 with the law, and without observance of procedure required by law, all in violation of FOIA.

22 82. Plaintiff is injured by defendants' pattern and practice of disregarding the statutory
23 requirement to establish a telephone line or Internet service for requesters to inquire about the
24 status of their FOIA request, when the agency has claimed "unusual circumstances," that would
25 specifically provide plaintiff with an estimated date by which the agency would complete its
26 action on this request. 5 U.S.C. §552(a)(7)(B)(ii).. This pattern and practice is not in accordance
27 with the law, and without observance of procedure required by law, all in violation of FOIA.

1 83. Plaintiff is entitled to reasonable costs of litigation, including attorney fees pursuant
2 to FOIA. 5 U.S.C. § 552(a)(4)(E).

3 84. Plaintiff is entitled to costs of disbursements and costs of litigation, including
4 reasonable attorney and expert witness fees, under the Equal Access to Justice Act, 28 U.S.C. §
5 2412.

6 **VII. REQUEST FOR RELIEF**

7 WHEREFORE, plaintiff respectfully requests that this Court enter Judgment for plaintiff
8 providing the following relief:

9 1. Expedite this case in accordance with 28 U.S.C. §1657(a) so as to resolve this case in
10 time for plaintiff to use the requested information in furtherance of its legitimate objectives.
11 Good cause is shown because “a right under...a Federal Statute would be maintained”. 28
12 U.S.C. §1657(a).

13 2. Declare that defendants have violated FOIA by failing to fully respond to the four
14 FOIA requests that are the subject of this complaint (FOIA-12-00257-H, FOIA-15-00099-K,
15 FOIA- HQ-2015-01770-F, and FOIA-16-00071-R).

16 3. Direct by injunction that defendants immediately provide plaintiff with all non-
17 exempt and non-excluded records (or portions thereof), responsive to the four FOIA requests
18 that are the subject of this complaint (FOIA-12-00257-H, FOIA-15-00099-K, FOIA- HQ-2015-
19 01770-F, and FOIA-16-00071-R).

20 4. Order the Special Counsel to commence an investigation to determine whether
21 disciplinary action is warranted against any federal employee for the defendants’ unlawful
22 pattern and practice of withholding information sought pursuant to FOIA. See 5 U.S.C. §
23 552(a)(4)(F).

24 5. Direct by injunction that defendants comply with the time requirements of FOIA, as
25 provided by both case law and statute, for the production of requested documents to plaintiff.

26 6. Direct by injunction that defendants comply with the requirement of FOIA to provide
27 an estimated date on which the agency will complete action on a request when the agency has
28 claimed “unusual circumstances,” as provided by both case law and statute.

1 7. Direct by injunction that defendants comply with the requirement of FOIA to
2 establish a telephone line or Internet service for requestors to inquire about the status of FOIA
3 requests, when the agency has claimed “unusual circumstances,” that would specifically provide
4 plaintiff with an estimated date by which the agency would complete its action. 5 U.S.C.
5 §552(a)(7)(B)(ii).

6 8. Direct by injunction that defendants are barred from any and all improper
7 withholdings of agency records.

8 9. Maintain jurisdiction over this action until defendants are in compliance with FOIA
9 and every order of this Court.

10 10. Grant plaintiff’s costs of litigation, including reasonable attorney fees, as provided
11 by FOIA, 5 U.S.C. § 552(a)(4)(E), and the Equal Access to Justice Act, 28 U.S.C. § 2412.

12 11. Provide such other relief as the Court deems just and proper.

13 Respectfully submitted this 10th day of June, 2016

14
15 /s/ Scott Yundt

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