

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

WILDEARTH GUARDIANS,)
)
 Plaintiff,)
) Civil No.
 vs.)
)
 ANIMAL AND PLANT HEALTH)
 INSPECTION SERVICE, an agency of the)
 United States Department of Agriculture,)
)
 Defendant.)
 _____)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. Preliminary Statement

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. §552 et seq., to compel the Animal and Plant Health Inspection Service (“APHIS”), an agency of the United States Department of Agriculture, to produce documents and records concerning its program of Aquatic Rodent Damage Management in New Mexico.

2. Plaintiff WildEarth Guardians is a New Mexico not-for-profit corporation devoted to research, public education, and advocacy on environmental issues of public importance, including but not limited to the management of public lands and resources, the protection of the natural beneficial values of watersheds, and the conservation of wildlife.

3. WildEarth Guardians requested the documents and records that are the subject of this lawsuit in furtherance of its objective of assuring that the public is informed regarding the various ways in which government activities and operations affect wildlife resources, including particularly government support of activities which have as their goal the killing of wildlife to promote private commercial enterprises.

4. WildEarth Guardians requested the subject documents and records in a FOIA request of March 7, 2012. To comply with FOIA's requirement that responsive documents be produced in response to a request within 20 working days (except in certain circumstances not applicable here), APHIS should have produced the information that WildEarth Guardians requested by no later than April 4, 2012.

5. As of the date of this filing of this Complaint, WildEarth Guardians has not received a single responsive document.

6. In this civil action, WildEarth Guardians seeks a court order (1) declaring that APHIS's failure to respond to WildEarth Guardians' request for documents and records violates the FOIA and (2) enjoining APHIS to produce the requested documents and records. 5 U.S.C. §552(a)(4)(B).

7. WildEarth Guardians also seeks other relief specified below – including a Court order requiring a Special Counsel to investigate APHIS's pattern and practice of FOIA violations – as the Court may deem just and proper.

II. Jurisdiction and Venue

8. This Court has jurisdiction over this action under 5 U.S.C. §522(a)(4)(B) (FOIA), 28 U.S.C. §1331 (federal question), and 28 U.S.C. §1361 (mandamus).

9. Venue in this Court is proper under 5 U.S.C. §522(a)(4)(B) (FOIA), because WildEarth Guardians is a New Mexico not-for-profit corporation with its principal place of business in New Mexico.

III. Parties

10. Plaintiff WildEarth Guardians is a non-profit conservation organization with its primary place of business in Santa Fe, New Mexico. WildEarth Guardians has approximately 5,100 members nation-wide, approximately 2,300 of whom reside in New Mexico. WildEarth Guardians is dedicated to protecting and restoring wildlife, wild rivers, and wild places in the United States. In part, WildEarth Guardians works in furtherance of its goals by acquiring information regarding federal programs and activities through the federal Freedom of Information Act. WildEarth Guardians then compiles and analyzes that information and, subsequently, disseminates that information to its membership, the general public, and public officials through publications, reports, its website and newsletter, general news media coverage, and public presentations. WildEarth Guardians' successful efforts at educating the public on issues concerning federal government program and activities that affect the environment contribute significantly to the public's understanding of governmental operations and activities. WildEarth Guardians also uses the information that it acquires through FOIA to participate in federal decision making processes, to file administrative appeals and civil actions, and generally to ensure that federal agencies comply with federal environmental laws. WildEarth Guardians and its

members are directly injured by APHIS's failure to comply with the statutory requirements of FOIA and a favorable outcome of this litigation will redress that injury. WildEarth Guardians bring this action on behalf of itself, its staff, and its members.

11. Defendant APHIS is independent agency of the United State Department of Agriculture. As a federal agency, APHIS is obligated to comply with the mandatory requirements of FOIA and is sued in this action in connection with its failure to comply with its statutory duties under the FOIA.

IV. Facts

12. The United States Supreme Court has held that the FOIA establishes a "strong presumption in favor of disclosure" and that "disclosure, not secrecy, is the dominant objective of the Act."

13. Pursuant to the FOIA, federal agencies have a period 20 working days to respond to FOIA requests. 5 U.S.C. §552(a)(6)(A)(i).

14. The only exception to the FOIA's 20 day period for response is a limited exception for "unusual circumstances" that are specifically and narrowly defined in the FOIA. 5 U.S.C. §552(a)(6)(B).

15. In pursuit of its organizational objectives, WildEarth Guardians submitted a FOIA request to APHIS on March 7, 2012 requesting information concerning the agency's program of Aquatic Rodent Damage Management in New Mexico.

16. The documents requested in the subject FOIA request are very narrow in scope and easily identifiable. They are the (1) the project record supporting APHIS's December 2011 decision to implement its Aquatic Rodent Damage Management program, (2) a June 18, 2003

letter from the United States Fish and Wildlife Service to APHIS relative to this program, and (3) a 2003 Biological Assessment prepared by APHIS in connection with this program.

17. The 20 day time period for APHIS's response to the subject FOIA closed on April 4, 2012.

18. On April 3, 2012, an APHIS employee telephoned Mr. Bryan Bird – the WildEarth Guardians employee who had initiated the subject FOIA request – and requested a “voluntary” extension of time for response to the request. Specifically, the APHIS employee requested that Mr. Bird agree to extend APHIS's response deadline from April 4, 2012 until and through May 5, 2012. Mr. Bird agreed to this request for a one month extension.

19. In a subsequent confirming e-mail for April 3, 2012 to Mr. Bird, the APHIS employee wrote that the extension was “necessary because of the need [sic] appropriately examine distinct records that were collected in response to your request.”

20. APHIS has not claimed that there are any “unusual circumstances,” as those circumstances are specifically and narrowly defined in the FOIA, which would justify *any* extension of the time limits prescribed by FOIA.

21. There are no “unusual circumstances” present in this case, as those circumstances are specifically and narrowly defined in the FOIA.

22. Nonetheless, Mr. Bird agreed to the limited one month extension in order to accommodate APHIS's FOIA staff.

23. The one month extension of time agreed to by Mr. Bird closed on May 5, 2012.

24. As of the date of the filing of this Complaint, APHIS has not produced a single responsive document.

25. APHIS has a pattern and practice of FOIA violations.
26. Indeed, in June of 2009 the Department of Justice noted that APHIS was not making progress in reducing a substantial FOIA “backlog,” and directed the agency to prepare a Backlog Reduction Plan.
27. The United States Department of Agriculture’s 2011 Annual FOIA Report also highlights APHIS’s FOIA compliance problems.
28. For example, of the 20 organizational units within the Department that maintain FOIA statistics, APHIS took by far the highest average number of days to process a request. APHIS took an average of 49.16 days to process a request – twice as many days as the second slowest organizational unit within the Department.
29. Likewise, APHIS is the slowest organizational unit within the Department to adjudicate fee waiver requests under FOIA.
30. APHIS’s failure to provide a full and adequate response to WildEarth Guardians’ March 7, 2012 FOIA request constitutes a violation of the FOIA and frustrates WildEarth Guardians’ pursuit of its objective to educate its members, the public, and decision makers as to the environmental effects of federal government programs and activities.

V. Cause of Action

First Cause of Action

(Violations of the mandatory requirements of FOIA)

31. WildEarth Guardians incorporates the preceding paragraphs by reference as if fully set out herein.

32. APHIS has violated FOIA by failing to provide WildEarth Guardians with a full and adequate response to its March 7, 2012 FOIA request.

Second Cause of Action

(Pattern and practice of violating the FOIA's time requirements)

33. WildEarth Guardians incorporates all preceding paragraphs by reference, as if fully set out herein.

34. Wild Earth Guardians is injured by APHIS's pattern and practice of disregarding the statutory timeframe set out in the FOIA for the production of documents. This pattern and practice is deliberate, arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with the FOIA.

VI. Request for Relief

WHEREFORE, WildEarth Guardians request that this Court:

35. Declare unlawful APHIS's failure to provide a full and adequate response to WildEarth Guardians' requests for documents and records.

36. Order APHIS to produce immediately the documents and records requested by WildEarth Guardians.

37. Declare that APHIS has a mandatory obligation under the FOIA to respond to requests for documents and records within the time prescribed by the FOIA.

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

39. Award WildEarth Guardians its reasonable attorney fees and costs incurred in prosecuting this civil action. 5 U.S.C. §552(a)(4)(E).

40. Grant such other and further relief as the Court deems just and proper.

Dated: May 30, 2012

Respectfully submitted,

/s/ Steven Sugarman
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