

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

WILDEARTH GUARDIANS,)
)
 Plaintiff,)
) Civil No. 10-00741-RHS/LFG
 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 the expenditure of federal funds in connection with the agency’s wildlife management programs.

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 the profitability of private ranching businesses and other private enterprises.

4. WildEarth Guardians requested the subject documents and records in a FOIA request of May 17, 2010. On June 14, 2010, APHIS responded to the request with basic budget information but failed to produce the information that had been specifically requested by WildEarth Guardians. The June 14 response constitutes a de facto “adverse determination” by APHIS – that is, a decision not to release the requested documents and records – but APHIS failed to apprise WildEarth Guardians as to its administrative appeal rights in connection with APHIS’s response.

5. APHIS’s constructive “adverse determination” in connection with the May 17 FOIA request constitutes a violation of the FOIA. Furthermore, APHIS’s failure to apprise WildEarth Guardians of its administrative appeal rights constitutes constructive denial of WildEarth Guardians’ administrative appeal rights in connection with the subject FOIA violation. 5 U.S.C. §552(a)(6)(C)(i).

6. In this civil action, WildEarth Guardians seeks a court order declaring that APHIS’s failure to respond to WildEarth Guardians’ request for documents and records violates the FOIA and ordering APHIS to produce the requested documents and records. 5 U.S.C. §552(a)(4)(B). WildEarth Guardians also seeks other relief specified below, as the Court may deem just and proper.

II. Jurisdiction and Venue

7. 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).

8. 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

9. 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.

10. 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

11. 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."

12. Pursuant to the FOIA, federal agencies "shall provide [requested documents and records] in any form or format requested by the person if the record is readily reproducible by the agency in that form or format." 5 U.S.C. §552(a)(3)(B).

13. Similarly, the Department of Agriculture regulations implementing FOIA require the agency to produce documents and records in response to a FOIA request in any form or format in that is "readily reproducible."

14. Furthermore, when an agency determines not to produce documents and records requested by a FOIA requester, FOIA requires that the agency apprise the requester of its right to administratively appeal the agency's decision. 5 U.S.C. §552(a)(6)(A)(i).

15. In pursuit of its organizational objectives, WildEarth Guardians submitted a FOIA request to APHIS on May 17, 2010 requesting information concerning the financial expenditures

of APHIS. The FOIA request specifically states that budgetary information of interest to WildEarth Guardians, and asks for documents and records relative to expenditures in connection with certain specifically identified activities such as the killing of wildlife by “aerial gunning, toxicants, hounding, trapping, and calling and shooting.” The FOIA request specifically described the documents and records sought by WildEarth Guardians, and specifically described the way in which the documents would be used once they were produced by APHIS.

16. On June 14, 2010, APHIS responded to the request by sending WildEarth Guardians very general budget information. APHIS refused to provide WildEarth Guardians with the specific documents and records sought in the May 17 request. To justify its decision not to release the requested information, APHIS stated in its June 14 letter that “the information you requested is not *maintained* in a separate, detailed, or line-item expenditure format.” (Emphasis added.)

17. Courts have recognized that whether or not information is *maintained* in a certain format is not determinative of an agency’s obligation to produce that information in response to a FOIA request. More particularly, courts recognize that many agencies store information in digital data bases and that these agencies must “query search” such data bases in response to a FOIA request regardless of whether the “query search” of particular interest to the FOIA requester is actually *maintained* by the agency. See for example Thompson Publishing Group, Inc. v. Health Care Financing Administration, 1994 WL 116141 (D.D.C. 1994).

18. APHIS has the ability to “query search” its financial and budgetary data bases in order to provide the specific information that was requested by WildEarth Guardians in its FOIA request of May 17.

19. The information specifically requested by WildEarth Guardians in its FOIA request of May 17 is “readily reproducible” by APHIS.

20. APHIS’s June 14 response to the subject FOIA request evidences the fact that APHIS did not conduct an adequate search for the requested information, because it did not conduct a “query search” for the requested information. Instead, APHIS refused to provide the requested information on the basis that it did not *maintain* the requested information in the specified format.

21. APHIS’s failure to provide a full and adequate response to WildEarth Guardians’ May 17 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

(Violations of the mandatory requirements of FOIA)

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

23. APHIS has violated FOIA by failing to provide WildEarth Guardians with a full and adequate response to its May 17, 2010 FOIA request.

VI. Request for Relief

WHEREFORE, WildEarth Guardians request that this Court:

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

25. Order APHIS to produce immediately the documents and records requested by WildEarth Guardians.
26. 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.
27. Award WildEarth Guardians its reasonable attorney fees and costs incurred in prosecuting this civil action. 5 U.S.C. §552(a)(4)(E).
28. Grant such other and further relief as the Court deems just and proper.

Dated: August 9, 2010

Respectfully submitted,

/s/ Steven Sugarman
Steven Sugarman
347 County Road 55A
Cerrillos, NM 87010
Telephone: (505) 672-5082