

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

CENTER FOR BIOLOGICAL)	
DIVERSITY , a nonprofit corporation,)	
1333 N. Oracle Rd.)	
Tucson, AZ 85705)	Case No:
)	
Plaintiff,)	
v.)	
)	
KEN SALAZAR , United States Secretary of)	
the Interior)	
1849 C Street, N.W.)	
Washington, D.C. 20240)	
)	
DEPARTMENT OF INTERIOR)	
1849 C Street, N.W.)	
Washington, D.C. 20240)	
)	
Defendants.)	
_____)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. In this civil action for declaratory and injunctive relief, Plaintiff CENTER FOR BIOLOGICAL DIVERSITY (“Center”) challenges the failure of Defendants KEN SALAZAR, United States Secretary of the Interior and the DEPARTMENT OF INTERIOR (collectively “the Secretary”) to comply with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.*, as amended, in order to compel the Secretary to disclose records withheld wrongfully after a FOIA request.

2. FOIA requires that federal agencies respond to public requests for documents to increase public understanding of the workings of government and access to government

information. The records sought by Plaintiff concern the Secretary's approvals of offshore oil and gas activities. Specifically, Plaintiff sought the Secretary's correspondence concerning the approvals of offshore oil and gas leasing and records from meetings attended by the Secretary concerning offshore oil and gas leasing.

3. The information sought is of public concern because it relates to the federal management of offshore oil and gas activities as well as the implementation of public laws governing those activities.

4. The Secretary's communications are sought, in part, to determine extent of relationship between the Secretary and regulated oil and gas industry in the run-up to the *Deepwater Horizon* disaster.

5. The April 20, 2010 blowout of the *Deepwater Horizon* drill rig, and subsequent and ongoing oil spill in the Gulf of Mexico, has lead to public concern about the Department of Interior's management of offshore oil activities. The Secretary is the highest ranking official with ultimate responsibility for the oversight and management of offshore oil and gas activities.

6. On May 18, 2010, the Center submitted its FOIA request (OS-2010-00286) to the Secretary. The agency failed to respond with its determination within 20 days as required by FOIA.

7. The Secretary's conduct is arbitrary and capricious and amounts to a denial of Plaintiff's FOIA request. The Secretary's conduct frustrates Plaintiff's efforts to educate the public regarding ongoing activities of the Department of Interior and is a violation of FOIA.

8. Plaintiff seeks a court order requiring the Secretary to immediately make a determination and produce the documents sought in the May 18, 2010 FOIA request, as well as other appropriate relief.

II. JURISDICTION AND VENUE

9. This Court has jurisdiction over this action pursuant to the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331 (federal question jurisdiction).

10. Venue is properly vested in this Court pursuant to 28 U.S.C. § 1391(e), because the Defendant resides in this district and a substantial part of the events and omissions which gave rise to this action occurred in this district. Venue is also proper under 5 U.S.C. §552(a)(4)(B).

III. PARTIES

11. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY (“the Center”) is a nonprofit corporation that works through science, law, and policy to secure a future for all species, great or small, hovering on the brink of extinction. The Center is dedicated to the preservation, protection, and restoration of biodiversity and ecosystems throughout the world.

12. The Center informs, educates, and counsels the public regarding environmental issues, policies, and laws relating to environmental issues. Specifically, the Center works to provide the public with a better understanding of the government’s management of offshore oil and gas activities and its impacts on the environment. The Center has been substantially involved in the management activities of numerous government agencies for years, and has consistently displayed its ability to disseminate information granted to it through FOIA. Informing the public is central to the Center’s mission. The Center educates and informs the public through media advocacy, our webpage and publications that are widely distributed.

13. The Secretary’s failure to comply with FOIA harms the interests of the Center and its members.

14. Defendant KEN SALAZAR, United States Secretary of the Interior, is the highest ranking official within the Department of Interior and, in that capacity, has ultimate responsibility for complying with FOIA. He is sued in his official capacity.

15. Defendant DEPARTMENT OF INTERIOR is an agency required by law to comply with FOIA.

IV. STATUTORY BACKGROUND

A. The Freedom of Information Act.

16. The Freedom of Information Act allows any person to obtain access to the records of federal agencies provided the statute's disclosure exemptions do not apply to the requested documents. 5 U.S.C. § 552.

17. On January 21, 2009 President Obama issued an Executive Memo declaring a presumption under FOIA that "openness prevails," and providing that:

The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. . . . All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA.

18. After receiving a FOIA request, an agency has twenty working days to determine "whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination." 5 U.S.C. § 552(a)(6)(A)(i).

19. "Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request." 5 U.S.C. § 552(a)(6)(C)(i).

20. In "unusual circumstances," an agency may take ten additional days to respond to a request. However, FOIA does not permit an agency to delay a response indefinitely. 5 U.S.C. § 552(a)(6)(B).

21. The Department of Interior regulations governing FOIA provide that the requester may "consider any nonresponse within these time limits as a denial of records and file a formal appeal . . . or lawsuit." 43 C.F.R. § 2.12(a).

22. FOIA states that a requester “shall be deemed to have exhausted his administrative remedies . . . if the agency fails to comply with the applicable time limit provisions.” 5 U.S.C. § 552(a)(6)(C)(i).

23. FOIA provides this Court with “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).

24. FOIA permits the Court to assess “reasonable attorney fees and other litigation costs reasonably incurred in any case . . . in which the complainant has substantially prevailed.” 5 U.S.C. § 552(a)(4)(E)(i).

B. The Administrative Procedure Act

25. The Administrative Procedure Act (“APA”) states that a reviewing court “shall compel agency action unlawfully withheld or unreasonably delayed,” 5 U.S.C. § 706(1); and “shall hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

26. Under the APA, judicial review of agency action is proper, “except to the extent that statutes preclude judicial review; or agency action is committed to agency discretion by law.” 5 U.S.C. § 701(a).

V. FACTUAL AND PROCEDURAL BACKGROUND

A. The Deepwater Horizon Oil Spill

27. On April 20, 2010, the *Deepwater Horizon*, an offshore oil rig operated by BP, exploded leaving 11 workers dead and spilling millions of gallons of oil into the Gulf of Mexico. More than two months later, the ruptured deepwater well continues to gush oil at a volume that

every five days exceeds the total amount spilled by the Exxon Valdez. The oil spill is the worst in U.S. history.

28. Oil has washed ashore on over 507 miles of coastline, threatening productive wetlands where thousands of seabirds nest and rest from their migrations. Hundreds of species in the Gulf of Mexico will be harmed by the toxic oil, including several threatened and endangered species of sea turtles and whales.

29. The oil spill has brought concern into the public forum about the federal government's management of offshore oil and gas activities. Several Congressional hearings and official investigations have been launched to review the oversight and management of offshore drilling, as well as the regulated industry's relationship with the federal government.

30. The Secretary of Interior is the ranking official charged with the oversight of offshore oil and gas activities, including the exploratory drilling conducted by BP that resulted in the *Deepwater Horizon* spill. The Secretary plans offshore oil and gas leasing activities, conducts lease sales, approves exploration and development plans, and permits applications to drill through the Bureau of Ocean Energy (formerly the Minerals Management Service), a branch of the Department of Interior. The Secretary is also responsible for compliance with environmental and other laws as they apply to offshore drilling activities.

B. The Secretary's Withholding of Information Concerning Offshore Oil Drilling

31. On May 18, 2010, the Center filed a FOIA request (OS-2010-00286) with the Office of the Secretary seeking: (1) All correspondence, emails, text messages, phone logs, faxes, and other mobile messaging, sent to/from Secretary of the Interior Ken Salazar related to the approval of any offshore oil and/or gas leasing; and (2) Meeting notes of meetings attended by Secretary of the Interior Ken Salazar regarding offshore oil and/or gas leasing.

32. On May 21, 2010, the Secretary acknowledged receiving the Center's FOIA request on May 20, and invoked a ten-working day extension, making the due date for a response July 1, 2010.

33. To date, the Secretary has not provided its determination whether to comply with

the request for records, or the requested documents in response to Plaintiff's May 18, 2010 request. In so doing, the Secretary has failed to meet the twenty (20) day limit imposed by FOIA for its determination with respect to Plaintiff's request, 5 U.S.C. § 552(a)(6)(A)(ii), and has failed to comply with the ten (10) working day limit for extensions, 5 U.S.C. § 552(a)(6)(B).

34. The Secretary has violated and continues to violate FOIA and the APA by withholding its responsive determination and requested documents. This also deprives the public of valuable information concerning the federal government's management of offshore oil and gas activities and compliance with environmental and other laws.

35. The Center exercises the right to commence this action pursuant to the Department of Interior's FOIA regulations that deem a requester may "consider any nonresponse within these time limits as a denial of records and file a formal appeal . . . or lawsuit." 43 C.F.R. § 2.12(a). Additionally, the Center "shall be deemed to have exhausted [its] administrative remedies . . . if the agency fails to comply with the applicable time limit provisions." 5 U.S.C. § 522(a)(6)(C)(i).

VI. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Violation of the Freedom of Information Act)

36. The Center realleges and incorporates by reference all the allegations set forth in this Complaint, as though fully set forth below.

37. The Secretary's failure to respond with a determination with respect to Plaintiff's FOIA request and disclose the requested documents is a violation of FOIA, 5 U.S.C. § 552, and the agency's own regulations, 43 C.F.R. Part 2, promulgated thereunder.

38. The Secretary's failure to provide the requested documents within the required timeframe violates 5 U.S.C. § 552(a)(6)(A)(i) and 5 U.S.C. § 552(a)(6)(B).

SECOND CLAIM FOR RELIEF

(Violation of the Administrative Procedure Act)

39. The Center realleges and incorporates by reference all the allegations set forth in this Complaint, as though fully set forth below.

40. The Secretary's failure to disclose documents responsive to Plaintiff's request constitutes agency action unlawfully withheld and unreasonably delayed, in violation of the APA, 5 U.S.C. §§ 701-706. The Secretary's failure in this matter is arbitrary, capricious, an abuse of discretion, not in accordance with the law and without observance of procedure required by law, all in violation of the APA.

VII. PRAYER FOR RELIEF

For the reasons stated above, Plaintiff respectfully requests that the Court grant the following relief.

1. Enter an Order declaring that the Secretary has wrongfully withheld the responsive determination;
2. Order the Secretary to immediately make its determination with respect to Plaintiff's request and disclose to Plaintiff all wrongfully withheld documents;
3. Maintain jurisdiction over this action until the Secretary is in compliance with FOIA, APA and every order of this Court;
4. Award Plaintiff its attorney fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E)(i); and
5. Grant Plaintiff such other relief as the Court deems just and proper.

DATED: July 12, 2010.

Respectfully submitted,

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