

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CENTER FOR BIOLOGICAL DIVERSITY,
378 N. Main Avenue
Tucson, AZ 85701,

Plaintiff,

v.

U.S. ARMY GARRISON, FORT
HUACHUCA,
2837 Boyd Avenue
Building 41402
Fort Huachuca, AZ 85613,

U.S. FISH AND WILDLIFE SERVICE,
1849 C Street, NW
Washington, DC 20240,

Defendants.

Case No.: _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

INTRODUCTION

1. Plaintiff Center for Biological Diversity (“the Center”) is suing Defendants the United States Army Garrison, Fort Huachuca (“USAG”), and United States Fish and Wildlife Service (“FWS”) for ongoing violations of the Freedom of Information Act, 5 U.S.C. § 552, *as amended* (“FOIA”), resulting from the agencies’ failure to timely respond to requests for records that address activities at Fort Huachuca and their impact the San Pedro River, including resident endangered species the Northern Mexican garter snake and the yellow-billed cuckoo, as well as a report prepared by GeoSystems Analysis, Inc. (“GeoSystems”).

2. The San Pedro River is the last remaining free-flowing desert river in the Southwest. The records that the Center requested will provide crucial insight into USAG and FWS’s evaluation of how military operations and activities at Fort Huachuca impact the San Pedro River and its dependent endangered species.

3. Defendants are unlawfully withholding the records that the Center requested by failing to search for and release all responsive records to the Center, in violation of FOIA.

4. Because prompt access to these records is necessary to effectuate FOIA's purpose of government transparency, the Center seeks declaratory relief establishing that Defendants have violated FOIA and injunctive relief directing Defendants to provide all responsive records without any further delay.

JURISDICTION AND VENUE

5. This Court has jurisdiction under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331 because this action arises under FOIA and the Declaratory Judgment Act, *id* §§ 2201-2202.

6. Venue vests in this Court under 5 U.S.C. § 552(a)(4)(B), which provides venue for FOIA cases in this district.

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).

PARTIES

9. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a national, non-profit conservation organization with offices throughout the United States. The Center has more than 81,000 members. Defendants' failure to comply with FOIA impairs the Center's ability to provide full, accurate, and current information to the public on a matter of public interest. Absent this information, the Center is hampered in its ability to advance its mission to protect native species and their habitat. The Center and its members are harmed by Defendants' ongoing violations of FOIA, which are preventing the Center from gaining a full understanding of Defendants' activities, priorities, and operations regarding USAG and FWS's evaluation of how

military operations and activities at Fort Huachuca impact the San Pedro River and its dependent endangered species. Center leaders and members have been working tirelessly to protect the San Pedro for more than three decades.

10. Defendant UNITED STATES ARMY GARRISON, FORT HUACHUCA is a United States Army installation located in southeast Arizona. USAG is a federal agency organized within the United States Army in the Department of Defense. USAG is in possession and control of the records that the Center seeks, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

11. Defendant UNITED STATES FISH AND WILDLIFE SERVICE is a federal bureau with the U.S. Department of the Interior. FWS's responsibility is to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people. FWS is in possession and control of the records that the Center seeks, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

STATUTORY BACKGROUND

12. FOIA's basic purpose is government transparency. It establishes the public's right to access federal agency records, with certain narrow exceptions. 5 U.S.C. § 552(b)(1)-(9).

13. Within 20 working days of receiving a FOIA request, an agency must determine if it will release requested records and notify the requester of its determination and the reasons therefore, the right to seek assistance from the FOIA Public Liaison, and the right to appeal an adverse agency determination. *Id.* § 552(a)(6)(A)(i).

14. Only in "unusual circumstances" may an agency extend the time to make a final determination by no more than 10 working days, but it must provide written notice to the requester setting forth the unusual circumstances for the extension and "the date on which a

determination is expected to be dispatched.” *Id.* § 552(a)(6)(B)(i). If it provides written notice that it cannot process the request within the specified time limit, the agency shall provide “an opportunity to limit the scope of the request so that it may be processed within” the statutory time limit or “an opportunity to arrange with the agency an alternative timeframe for processing the request or a modified request” and shall make available its FOIA Public Liaison to “assist in the resolution of any disputes between the requester and the agency.” *Id.* § 552(a)(6)(B)(ii).

15. FOIA requires each agency to undertake a search for requested records in a manner reasonably calculated to locate all records responsive to the FOIA request. *Id.* § 552(a)(3)(C)-(D). Using the date of a FOIA request as the cut-off date for its search is not always reasonable, while using the date that the agency commences its search has consistently been found to be reasonable.

16. FOIA requires federal agencies to promptly disclose requested records. *Id.* § 552(a)(3)(A), (a)(6)(C)(i).

17. In certain limited instances, an agency may withhold records under one or more of nine specific exemptions. *Id.* § 552(b). These exemptions must be narrowly construed considering FOIA’s dominant objective of disclosure, not secrecy.

18. FOIA places the burden on the agency to prove that it may withhold responsive records from a requester. *Id.* § 552(a)(4)(B).

19. An agency may only withhold records if the agency reasonably foresees that disclosure would harm an interest protected by a FOIA exemption or disclosure is otherwise prohibited by law. *Id.* § 552(a)(8)(A).

20. FOIA provides this Court jurisdiction “to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” *Id.*

FACTUAL BACKGROUND

Background to the Center’s FOIA Requests

21. Fort Huachuca is a United States Army Installation located in the foothills of the Huachuca Mountains west of Sierra Vista, Arizona. The Army Installation lies directly between the Huachuca Mountains and the San Pedro River.

22. The San Pedro River is the last free-flowing, undammed desert river in the American Southwest. The river originates in Mexico and flows north across the Arizona border until it connects to the Gila River north of Tucson. This river is the home to one of the Southwest’s most precious and rare wetland ecosystems.

23. The San Pedro River and its surrounding forest are a haven to millions of migrating birds and home to one of the most diverse assortments of animal and plant species in the United States. Groundwater pumping near the river, however, is intercepting water that would otherwise feed the upper San Pedro. This is lowering the water table and causing the San Pedro River and its lush ribbon of riparian vegetation to dry up.

24. Fort Huachuca is largely responsible for the groundwater pumping that threatens to destroy the upper San Pedro.

25. On June 4, 2013, Fort Huachuca transmitted to FWS a request for a consultation under section 7 of the Endangered Species Act, 16 U.S.C. §1536 (“ESA”), to determine whether ongoing and future military operations and activities at Fort Huachuca, Cochise County,

Arizona, would jeopardize the continued existence of any species listed as threatened or endangered under the ESA or adversely modify any critical habitat for ESA-listed species.

26. As part of Fort Huachuca's consultation with FWS under section 7 of the ESA, on November 25, 2013, Fort Huachuca submitted a revised Programmatic Biological Assessment ("PBA") to FWS concluding that the Fort's operations will have no effect on threatened or endangered species. On March 31, 2014, FWS issued the Final Biological and Conference Opinion on Ongoing and Future Military Operations and Activities at Fort Huachuca, Cochise County, Arizona ("Biological Opinion"). FWS, amended the Biological Opinion on May 16, 2014.

27. Upon information and belief, during the ESA consultation process, Fort Huachuca failed to supply FWS with a copy of a November 2010 report that GeoSystems produced for the Base titled, "Calculation of Pumping-induced Baseflow and Evapotranspiration Capture Attributable to Fort Huachuca, Prepared for Environmental and Natural Resources Division Directorate of Public Works, U.S. Army Garrison, Fort Huachuca."

28. The PBA and Biological Opinion included selected sections from the GeoSystems report, but failed to reveal two major findings of the report: (1) ongoing groundwater pumping attributable to Fort Huachuca was harming the San Pedro River as early as 2003, with harm estimated to peak in 2050; and (2) ongoing groundwater pumping attributable to Fort Huachuca had contributed approximately 300,000 acre-feet to the deficit prior to preparation of the Biological Opinion.

29. Deficit refers to the rate of groundwater pumping, which exceeds the rate of natural recharge, creating a groundwater deficit that lowers the water table. The groundwater deficit in the San Pedro Basin has increased dramatically in the last 50 years.

30. Since release of the 2014 Biological Opinion, two new species dependent upon the San Pedro River for survival and recovery have been added to the list of species requiring federal protection under the ESA: the Northern Mexican garter snake (*Thamnophis eques*) on July 8, 2014, and the yellow-billed cuckoo (*Coccyzus americanus*) on October 3, 2014.

31. On March 13, 2020, the Center and Maricopa Audubon Society filed suit to challenge FWS's 2014 Biological Opinion for ongoing and future military operations and activities at Fort Huachuca, Arizona, alleging violations of the Endangered Species Act. The groups also alleged that the Fort's reliance on the flawed biological opinion violated its independent obligations under the ESA. The groups amended their complaint shortly thereafter to add the Sierra Club as a plaintiff. The FWS and Fort answered the amended complaint on June 8, 2020, and subsequently lodged their respective Administrative Records with the court.

The Center's FOIA Request to USAG (FP-20-005464)

32. On December 4, 2019, the Center electronically submitted a FOIA request to USAG, requesting:

- (1) a complete copy of the Administrative Record for the consultation with the U.S. Fish and Wildlife Service that resulted in the March 31, 2014, U.S. Fish & Wildlife Service *Final Biological and Conference Opinion on Ongoing and Future Military Operations and Activities at Fort Huachuca, Cochise County, Arizona*, Amended May 16, 2014;
- (2) a complete copy of each, every, and all correspondence and each and every document accompanying this correspondence in the possession of Fort Huachuca and/or Fort Huachuca personnel, both civilian and/or military, from January 1, 2008, to May 16, 2015, that is not already included in the Administrative Record, referring to the study, Calculation of Pumping induced Baseflow and Evapotranspiration Capture Attributable to Fort Huachuca, Prepared for Environmental and Natural Resources Division Directorate of Public Works, U.S. Army Garrison, Fort Huachuca, Arizona; prepared by GeoSystems Analysis, Inc. November 2010;

- (3) a complete copy of each, every and all correspondence and all accompanying documents to/and or from Fort Huachuca personnel, both civilian and/or military, and the U.S. Fish and Wildlife Service, from May 16, 2014, to today's date, December 4, 2019, regarding the effects of the Base's activities on the San Pedro River, and its representative and dependent endangered species;
- (4) a complete copy of each, every and all correspondence and all accompanying documents to/and or from Fort Huachuca personnel, both civilian and/or military, and the U.S. Fish and Wildlife Service, from July 8, 2014 to date, regarding a formal consultation on the effects of Ongoing and Future Military Operations and Activities at Fort Huachuca on Northern Mexican garter snake;
- (5) a complete copy of each, every and all correspondence and all accompanying documents to/and or from Fort Huachuca personnel, both civilian and/or military, and the U.S. Fish and Wildlife Service, from to date, October 3, 2014 regarding a formal consultation on the effects of Ongoing and Future Military Operations and Activities at Fort Huachuca on Yellow-billed Cuckoo; and,
- (6) for Fort Huachuca's report, Calculation of Pumping-induced Baseflow and Evapotranspiration Capture Attributable to Fort Huachuca, Prepared for Environmental and Natural Resources Division Directorate of Public Works, U.S. Army Garrison, Fort Huachuca, Arizona; prepared by GeoSystems Analysis, Inc. November 2010, please provide to us:
 - a. All model input and output files used to simulate all scenarios from 1902 to 2105 (i.e., 4 Scenarios described in Table 1).
 - b. All data (spreadsheets, text files, GIS files) used to support development of all model inputs from 1902 to 2105, including:
 - i. All artificial recharge (i.e., irrigation return, septic leakage, recharge basins, etc.) locations, rates, users.
 - ii. All other recharge estimates – i.e., natural at all model time periods.
 - iii. All ET locations, extinction depths, rates, dates at all model time periods.
 - iv. All Fort-Attributable on-/off-post pumping, including the data used to create Figures 3 and 13.
 - v. All non-Fort pumping in model scenarios (i.e., All wells in the Basin – FD scenario).

vi. All census data used to estimate model inputs.

33. On December 5, 2019, USAG electronically acknowledged the Center's FOIA request and assigned it tracking number, FP-20-005464.

34. On March 9, 2020, USAG sent the Center an email on the status of its FOIA request. The email stated that the USAG was "currently in the processes of reviewing records and normal redactions for [Personal Identifiable Information] would be exempt from release." The email also stated that USAG would, "provide [the Center] with an update once [USAG] push[ed] it for the next step, which would be [the USAG] legal review."

35. On April 16, 2020, the Center sent an email to USAG that inquired on the status of the Center's request.

36. On April 17, 2020, USAG sent the Center an email updating the Center on the status of the request. The email stated that, "[USAG] waiting for legal right now," and that the request had not yet been sent for review because, "there was a question that [USAG] needed an answer to and [legal] are checking for [USAG]."

37. On April 24, 2020, the Center electronically sent a letter to inform USAG that the agency had violated FOIA's 20-working day determination deadline on January 6, 2020, requesting an estimated date of completion for a determination on the FOIA request, and offering to assist USAG to facilitate prompt release of requested records.

38. On April 30, 2020, the Center asked USAG if it could provide an updated estimate date of completion for a determination and release of records responsive to the request. USAG responded on May 1, 2020 by informing the Center that USAG did not have an estimated completion date and follows "first in, first out" for FOIA processing.

39. On August 31, 2020, the Center electronically sent a second letter to inform USAG that the agency had violated FOIA's 20-working day determination deadline and to request an estimated date of completion for a determination on the request.

40. On September 21, 2020, USAG replied to inform the Center that a copy of the official Administrative record was released as part of the *Center for Biological Diversity et al., v. David Bernhardt et al.*, Case No. 20-cv-00106 lawsuit on September 16, 2020, and asking whether the Center considered this request to be fulfilled and would withdraw the FOIA request.

41. The Center replied on September 22, 2020, informing the USAG that after review the requester did not find records responsive to items (2) through (6) of the FOIA request and would like USAG to continue processing the request. USAG replied that day to inform the Center that it would continue to process the FOIA request.

42. As of the date of this filing, which is 192 working days after a 20-working day determination deadline of January 6, 2020, the Center has received no responsive records from USAG.

43. Upon information and belief, USAG has failed to conduct a lawful search for records responsive to the Center's December 4, 2019 FOIA request.

44. None of FOIA's nine exemptions to the statute's disclosure mandate apply to the records responsive to the Center's FOIA request. *Id.* § 552(b).

45. The Center has been required to expend resources to prosecute this action.

The Center's FOIA Request to FWS (FWS-2020-00196)

46. On December 4, 2019, the Center electronically submitted a FOIA request to FWS's Arizona Ecological Services Field Office, requesting:

- (1) A complete copy of the Administrative Record for the consultation with the U.S. Fish and Wildlife Service that resulted in the March 31, 2014, U.S. Fish & Wildlife Service Final Biological and Conference Opinion on Ongoing and Future Military Operations and Activities at Fort Huachuca, Cochise County, Arizona, Amended May 16, 2014.;
- (2) A complete copy of each, every, and all correspondence and each and every document accompanying this correspondence in the possession of the USFWS Arizona Ecological Services Office, from May 16, 2014 to today's date, December 4, 2019, regarding the effects of the Base's activities on the San Pedro River, and/or its representative and dependent endangered species.;
- (3) A complete copy of each, every and all correspondence and all accompanying documents to/and or from the U.S. Fish and Wildlife Service Arizona Ecological Services Office and/or Fort Huachuca personnel, both civilian and/or military and/or consultants, from July 8, 2014 to date, regarding a formal consultation on the effects of Ongoing and Future Military Operations and Activities at Fort Huachuca on Northern Mexican garter snake.; and,
- (4) A complete copy of each, every and all correspondence and all accompanying documents to/and or from the U.S. Fish and Wildlife Service Arizona Ecological Services Office and/or Fort Huachuca personnel, both civilian and/or military and/or consultants, from October 3, 2014 to date regarding a formal consultation on the effects of Ongoing and Future Military Operations and Activities at Fort Huachuca on Yellow-billed Cuckoo.

47. On December 16, 2019, the Center amended its December 4, 2019 FOIA request.

In its amended FOIA request, the Center requested:

- (1) a complete copy of each and every addition added to the Administrative Record after March 31, 2014, for the Administrative Record for the consultation with the U.S. Fish and Wildlife Service that resulted in the March 31, 2014, U.S. Fish & Wildlife Service *Final Biological and Conference Opinion on Ongoing and Future Military Operations and Activities at Fort Huachuca, Cochise County, Arizona*, Amended May 16, 2014.;

- (2) a complete copy of each, every, and all correspondence and each and every document accompanying this correspondence in the possession of the USFWS Arizona Ecological Services Office, from March 31, 2014 to today's date, December 15, 2019, regarding the effects of the Base's activities on the San Pedro River, and/or its representative and dependent endangered species.;
- (3) a complete copy of each, every and all correspondence and all accompanying documents to/and or from the U.S. Fish and Wildlife Service Arizona Ecological Services Office and/or Fort Huachuca personnel, both civilian and/or military and/or consultants, from July 8, 2014 to date, regarding a formal consultation on the effects of Ongoing and Future Military Operations and Activities at Fort Huachuca on Northern Mexican garter snake.; and,
- (4) a complete copy of each, every and all correspondence and all accompanying documents to/and or from the U.S. Fish and Wildlife Service Arizona Ecological Services Office and/or Fort Huachuca personnel, both civilian and/or military and/or consultants, from October 3, 2014 to date regarding a formal consultation on the effects of Ongoing and Future Military Operations and Activities at Fort Huachuca on Yellow-billed Cuckoo.

48. On December 16, 2019, FWS electronically acknowledged the Center's FOIA request and assigned it tracking number FWS-2020-00196. FWS placed the request on the "exceptional/voluminous" processing track.

49. On December 17, 2019, FWS emailed the Center to confirm receipt of the amended request.

50. On April 16, 2020, the Center emailed FWS requesting a status update on its FOIA request. FWS did not respond to the Center's email.

51. On September 3, 2020, the Center electronically sent a letter to inform FWS that the agency had violated FOIA's 20-working day determination deadline and to request an estimated date of completion for a determination on the request. To date, FWS has not responded to the Center's letter.

52. As of the date of this filing, which is 184 working days after FOIA's 20-working day determination deadline of January 16, 2020, the Center has received no records responsive to its request.

53. Upon information and belief, FWS has failed to conduct a lawful search for records responsive to the Center's FOIA request.

54. None of FOIA's nine exemptions to the statute's disclosure mandate apply to the records responsive to the Center's FOIA request. *Id.* § 552(b).

55. The Center has been required to expend resources to prosecute this action.

FIRST CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT
(Failure to conduct an adequate search for responsive records)

COUNT ONE: USAG Failed to Conduct a Lawful Search for Records Responsive to the Center's FOIA Request FP-20-005464.

56. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

57. The Center has a statutory right to have USAG process its FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3).

58. USAG is violating the Center's rights in this regard by unlawfully failing to undertake a search reasonably calculated to locate all records that are responsive to the Center's FOIA request.

59. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to USAG in the foreseeable future.

60. The Center's organizational activities will be adversely affected if USAG continues to violate FOIA's requirement to undertake a search that is reasonably calculated to locate records that are responsive to the Center's FOIA request.

61. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, USAG will continue to violate the Center's right to receive public records under FOIA.

COUNT TWO: FWS failed to Conduct a Lawful Search for Records Responsive to the Center's FOIA Request FWS-2020-00196.

62. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

63. The Center has a statutory right to have FWS process its FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3).

64. FWS is violating the Center's rights in this regard by unlawfully failing to undertake a search reasonably calculated to locate all records that are responsive to the Center's FOIA request.

65. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to FWS in the foreseeable future.

66. The Center's organizational activities will be adversely affected if FWS continues to violate FOIA's requirement to undertake a search that is reasonably calculated to locate records that are responsive to the Center's FOIA request.

67. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, FWS will continue to violate the Center's right to receive public records under FOIA.

SECOND CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT
(Failure to promptly disclose records responsive to the Center's FOIA request)

COUNT ONE: USAG Failed to Promptly Disclose Records Responsive to the Center's FOIA Request FP-20-005464.

68. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

69. USAG is violating FOIA and implementing regulations by refusing to promptly disclose records responsive to the Center's FOIA request.

70. The Center has a statutory right to the records it seeks.

71. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to USAG in the foreseeable future.

72. The Center's organizational activities will be adversely affected if USAG continues to violate FOIA's disclosure provisions as it has in this case.

73. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, USAG will continue to violate the Center's right to receive public records under FOIA.

COUNT TWO: FWS Failed to Promptly Disclose Records Responsive to the Center's FOIA Request FWS-2020-00196.

74. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

75. FWS is violating FOIA and implementing regulations by refusing to promptly disclose the records responsive to the Center's FOIA request.

76. The Center has a statutory right to the records it seeks.

77. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to FWS in the foreseeable future.

78. The Center's organizational activities will be adversely affected if FWS continues to violate FOIA's disclosure provisions as it has in this case.

79. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, FWS will continue to violate the Center's right to receive public records under FOIA.

THIRD CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT
(Failure to disclose all non-exempt records responsive to the Center's FOIA request)

COUNT ONE: USAG Failed to Disclose Records Responsive to the Center's FOIA Request FP-20-005464.

80. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

81. The Center has a statutory right to the records it seeks and there is no legal basis for USAG to assert that any of FOIA's nine exemptions to mandatory disclosure apply to withhold these records from the Center. *See* 5 U.S.C. § 552(b)(1)-(9).

82. To the extent USAG is claiming any of these exemptions, USAG is unlawfully withholding from disclosure records that are responsive to the Center's FOIA Request.

83. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to USAG in the foreseeable future.

84. The Center's organizational activities will be adversely affected if USAG continues to violate FOIA's disclosure provisions.

85. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, USAG will continue to violate the Center's right to receive public records under FOIA.

COUNT TWO: FWS Failed to Disclose Records Responsive to the Center's FOIA Request FWS-2020-00196.

86. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

87. The Center has a statutory right to the records it seeks, and there is no legal basis for FWS to assert that any of FOIA's nine exemptions to mandatory disclosure apply to withhold these records from the Center. *See* 5 U.S.C. § 552(b)(1)-(9).

88. To the extent FWS is claiming any of these exemptions, FWS is unlawfully withholding from disclosure records that are responsive to the Center's FOIA Request.

89. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to FWS in the foreseeable future.

90. The Center's organizational activities will be adversely affected if FWS continues to violate FOIA's disclosure provisions.

91. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, FWS will continue to violate the Center's right to receive public records under FOIA.

FOURTH CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT
(Failure to provide reasonably segregable portions of any lawfully exempt records)

COUNT ONE: USAG Failed to Provide all Reasonably Segregable Portions of Any Lawfully Exempt Records Responsive to the Center's FOIA Request FP-20-005464.

92. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

93. The Center has a statutory right to any reasonably segregable portion of a record that may contain information lawfully subject to any of FOIA's exemptions. 5 U.S.C. § 552(b).

94. USAG is violating the Center's rights in this regard to the extent it is unlawfully withholding reasonably segregable portions of any lawfully exempt records that are responsive to the Center's FOIA request.

95. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests USAG in the foreseeable future.

96. The Center's organizational activities will be adversely affected if USAG can continue violating FOIA's disclosure provisions as it has in this case.

97. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, USAG will continue to violate the Center's right to receive public records under FOIA.

COUNT TWO: FWS Failed to Provide all Reasonably Segregable Portions of Any Lawfully Exempt Records Responsive to the Center's FOIA Request FWS-2020-00196.

98. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

99. The Center has a statutory right to any reasonably segregable portion of a record that may contain information lawfully subject to any of FOIA's exemptions. 5 U.S.C. § 552(b).

100. FWS is violating the Center's rights in this regard to the extent it is unlawfully withholding reasonably segregable portions of any lawfully exempt records that are responsive to the Center's FOIA request.

101. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests FWS in the foreseeable future.

102. The Center's organizational activities will be adversely affected if FWS can continue violating FOIA's disclosure provisions as it has in this case.

103. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, FWS will continue to violate the Center's right to receive public records under FOIA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

1. Order Defendants to conduct searches reasonably calculated to locate all records responsive to Plaintiff's FOIA requests, utilizing a cut-off date for such searches that is the date the searches are conducted.
2. Order Defendants to provide Plaintiff, by a date certain, with all responsive records and reasonably segregable portions of lawfully exempt records sought in this action.
3. Declare that Defendants' failures to timely undertake a search for and disclose to Plaintiff all records responsive to Plaintiff's FOIA request, as alleged above, are unlawful under FOIA, U.S.C. § 552(a)(6)(A)(i).
4. Award Plaintiff its costs and reasonable attorney fees pursuant to 5 U.S.C. § 552(a)(4)(E).
5. Grant such other and further relief as the Court may deem just and proper.

DATED: October 7, 2020

Respectfully submitted,

/s/ Douglas W. Wolf

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