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**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

US RIGHT TO KNOW, a California Non-Profit Corporation,

Plaintiff,

v.

UNITED STATES DEFENSE ADVANCED RESEARCH PROJECTS AGENCY,

Defendant.

Case No. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Freedom of Information Act

1 **INTRODUCTION**

2 1. This action, through which Plaintiff US Right to Know (“USRTK” or “Plaintiff”) seeks  
3 access to government records held by Defendant United States Defense Advanced Research Projects  
4 Agency (“DARPA” or “Defendant”) is premised upon, and consequent to, violations of the federal  
5 Freedom of Information Act (“FOIA”), 5 U.S.C. section 552 *et seq.*, and applicable Department of  
6 Defense (“DOD”) FOIA regulations promulgated thereunder, 32 C.F.R. Part 286 – “DOD FREEDOM  
7 OF INFORMATION ACT (FOIA) PROGRAM.” This action challenges the unlawful failure of the  
8 Defendant to abide by the statutory requirements of the FOIA and applicable Department of Defense  
9 implementing regulations.

10 2. Defendant is unlawfully withholding from public disclosure information sought by  
11 USRTK, information to which USRTK is entitled and for which no valid disclosure exemption applies  
12 or has been properly asserted. In particular, Defendant has violated, and remains in violation of, the  
13 statutory mandates imposed by the FOIA by: (Count I) failing to provide a timely final determination on  
14 USRTK’s FOIA Requests; (Count II) unlawfully withholding records from public disclosure for which  
15 no valid disclosure exemption applies or has been properly asserted, or to provide the reasonably  
16 segregable portions of those records; and (Count III) failing to provide an updated “estimated date of  
17 completion.”

18 3. The records requested by USRTK are likely to contribute significantly to the  
19 understanding of the operations or the activities of the government. USRTK is a 501(c)(3) nonprofit  
20 organization and, by its nature, has no commercial interest in the requested records.

21 4. USRTK seeks declaratory relief establishing that DARPA has violated the FOIA and that  
22 such actions entitle USRTK to relief thereunder. USRTK also seeks injunctive relief directing DARPA  
23 to conduct a reasonably adequate search for records and to promptly provide responsive material, to  
24 reasonably segregate portions of non-exempt records, and to provide proper justifications for any  
25 disclosure exemptions that are applied. Finally, USRTK requests that the Court award Plaintiff its  
26 reasonable attorneys’ fees and costs incurred in bringing this action.

27 **JURISDICTION AND VENUE**



1 **LEGAL FRAMEWORK**

2 15. The FOIA requires U.S. government agencies to “promptly” make public records  
3 available to any person if that person makes a request which (1) reasonably describes the records sought  
4 and (2) complies with any applicable agency rules for making such a request. 5 U.S.C. § 552(a)(3)(A).

5 16. The FOIA requires an agency to issue a final determination on any such information  
6 request within twenty business days from the date of its receipt. 5 U.S.C. § 552(a)(6)(A)(i). In issuing a  
7 final determination, an agency is required to inform the requester of three things: (1) the agency’s  
8 determination of whether or not it must comply with the request; (2) the reasons for its decision; and (3)  
9 notice of the right of the requester to appeal to the head of the agency. 5 U.S.C. § 552(a)(6)(A)(i).

10 17. The FOIA allows an agency to extend the twenty-day determination deadline, however,  
11 by ten working days when “unusual circumstances” exist and when the agency so notifies a requester in  
12 writing. 5 U.S.C. § 552(a)(6)(B)(i)-(iii); 32 C.F.R. § 286.8(c). A notice informing a requester of the  
13 invocation of the “unusual circumstances” provision must specify the applicable “unusual  
14 circumstances.” 32 C.F.R. § 286.8(c).

15 18. Permissible “unusual circumstances” are limited to: “(I) the need to search for and collect  
16 the requested records from field facilities or other establishments that are separate from the office  
17 processing the request; (II) the need to search for, collect, and appropriately examine a voluminous  
18 amount of separate and distinct records which are demanded in a single request; or (III) the need for  
19 consultation, which shall be conducted with all practicable speed, with another agency having a  
20 substantial interest in the determination of the request or among two or more components of the agency  
21 having substantial subject-matter interest therein.” 5 U.S.C. § 552(a)(6)(B)(iii).

22 19. An agency is entitled to one ten-business day extension. 5 U.S.C. § 552(a)(6)(B)(i). The  
23 written notice provided to the requester must specify the specific unusual circumstances justifying the  
24 extension and the date on which a final determination is expected to be dispatched. *Id.*; 32 C.F.R. §  
25 286.8(c).

26 20. In some circumstances, the FOIA allows an agency to invoke an extension beyond ten  
27 days. To invoke a longer extension, the FOIA requires an agency to provide written notification to the  
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1 requester that (1) offers the requester an opportunity to limit the scope of the request so that it may be  
2 processed within that time limit, or (2) offers the requester an opportunity to arrange with the agency an  
3 “alternative time frame” for processing the request. 5 U.S.C. § 552(a)(6)(B)(ii); 32 C.F.R. § 286.8(c).

4 21. As part of invoking an “alternative time frame” extension, the agency must also make  
5 available to the requester its FOIA Public Liaison, who is tasked to resolve any dispute between the  
6 requester and the agency. 5 U.S.C. § 552(a)(6)(B)(ii); 32 C.F.R. § 286.8(c).

7 22. FOIA Public Liaisons “shall serve as supervisory officials” and “shall be responsible for  
8 assisting in reducing delays, increasing transparency and understanding of the status of requests, and  
9 assisting in the resolution of disputes.” 5 U.S.C. § 552(l).

10 23. Even when an “unusual circumstances” extension is made, the agency must still notify  
11 the requester of its expected date on which a final determination will be dispatched. 5 U.S.C. §  
12 552(a)(6)(B)(i); 32 C.F.R. § 286.8(c) (“Whenever the statutory time limit for processing a request  
13 cannot be met because of ‘unusual circumstances,’ as defined in the FOIA, and the DoD Component  
14 extends the time limit on that basis, the DoD Component must, before expiration of the 20-day period to  
15 respond, notify the requester in writing of the unusual circumstances involved and of the date by which  
16 processing of the request can be expected to be completed.”).

17 24. “Exceptional circumstances” for failure to comply with applicable time limits “does not  
18 include a delay that results from a predictable agency workload of requests under this section, unless the  
19 agency demonstrates reasonable progress in reducing its backlog of pending requests.” 5 U.S.C. §  
20 552(a)(6)(C)(ii).

21 25. If an agency fails to provide a final determination on a FOIA request within the statutory  
22 timeframe, the requester is deemed to have exhausted its administrative remedies and may immediately  
23 file suit against the agency. 5 U.S.C. § 552(a)(6)(C)(i).

24 26. The FOIA also requires agencies to provide “an estimated date on which the agency will  
25 complete action on the request.” 5 U.S.C. § 552(a)(7)(B)(ii); *see also* 5 U.S.C. § 552(a)(6)(B)(i).

26 27. Agencies shall make reasonable efforts to maintain their records so they are reproducible  
27 for FOIA purposes, and “shall make reasonable efforts to search” for responsive records. 5 U.S.C. §  
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1 552(a)(3)(B), (C). The term “search” “means to review, manually or by automated means, agency  
2 records for the purpose of locating those records which are responsive to a request.” 5 U.S.C. §  
3 552(a)(3)(D).

4 28. In furnishing records responsive to a request under the FOIA, an agency may, for a  
5 limited set of categories of information, exclude or withhold such information from disclosure. 5 U.S.C.  
6 § 552(b). However, even where proper justification exists for withholding such information, the agency  
7 must provide the remaining portions of records that are reasonably segregable from the properly  
8 withheld portions thereof. *Id.*

9 29. Except in certain circumstances, when an agency produces a record in response to a  
10 FOIA request but withholds a portion thereof, the agency must indicate the volume of information  
11 withheld and the exemption under which such information has been withheld. *Id.*; 5 U.S.C. §  
12 552(a)(6)(F).

13 30. An agency that withholds public records from a requestor under the FOIA bears the  
14 burden of sustaining the legality of its action. 5 U.S.C. § 552(a)(4)(B).

15 31. Requesters under the FOIA may ask that an agency waive fees associated with any  
16 request for records “if disclosure of the information is in the public interest because it is likely to  
17 contribute significantly to the public understanding of the operations or activities of the government and  
18 is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii).

19 32. An agency may only charge certain fees depending on the category of requester. For non-  
20 commercial requesters such as USRTK, “fees shall be limited to reasonable standard charges for  
21 document search and duplication.” 5 U.S.C. § 552(a)(4)(A)(ii)(III).

22 33. Agencies are prohibited from assessing search fees if the agency fails to comply with the  
23 FOIA’s twenty-day determination deadline or any lawful extension under the statute’s “unusual  
24 circumstances” provisions. 5 U.S.C. § 552(a)(4)(A)(viii).

25 **STATEMENT OF OPERATIVE FACTS**

26 *FOIA Request One*

27 34. USRTK submitted a FOIA Request (“Request One”) to DARPA on October 2, 2020.

1 Request One sought a waiver of all fees associated with processing the Request. A copy of Request One  
2 is attached hereto as **Exhibit A**.

3 35. Request One seeks agency records related to funding contracts, grant agreements, and  
4 communications about funding pertaining to the Duke-DARPA P3 Program, DARPA agreement number  
5 HR0011-17-2-0069). Exhibit A at 1-2.

6 36. USRTK has no commercial interest or value in records responsive to Request One.

7 37. The records requested by USRTK are likely to contribute significantly to the public  
8 understanding of the operations and activities of the government, especially as they pertain to the SARS-  
9 CoV-2 virus and the COVID-19 pandemic in the United States.

10 38. USRTK has a demonstrated track record of obtaining and disseminating information  
11 obtained under the FOIA and state public records laws concerning public health. Since 2015, USRTK  
12 has obtained, posted online, and reported on thousands of industry and government documents gathered  
13 via public records requests. USRTK's work has contributed to three New York Times investigations, 15  
14 academic papers in public health journals, 13 articles in the BMJ, one of the world's leading medical  
15 journals, and global media coverage documenting how food and chemical corporations impact public  
16 health and the environment. USRTK's staff has expertise in investigative journalism and advanced  
17 research, especially as it concerns impacts on human health.

18 39. USRTK's investigation of the origins of COVID-19 has been featured in news outlets  
19 around the world, including the Wall Street Journal, Science, BMJ, USA Today, New Yorker, Vanity  
20 Fair, Fox News, The Intercept, Sky News Australia, Daily Mail, The Australian, Bulletin of the Atomic  
21 Scientists, RAI 3's Presadiretta, Le Parisien, Le Point, CNET, Taiwan News, La Jornada, The Sun,  
22 Daily Caller, New York Post and many others.

23 40. USRTK shares its findings with media outlets, public health and medical journals, and  
24 through its own library of information, available online at: <<http://www.usrtk.org>>. Many of USRTK's  
25 documents are available through the USRTK Agrichemical Collection of the University of California,  
26 San Francisco's ("UCSF") Chemical Industry Documents Archive, available online at:  
27 <<https://www.industrydocuments.ucsf.edu/chemical/collections/usrtk-agrichemical-collection/>>, and the  
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1 USRTK Food Industry Collection of the UCSF Food Industry Documents Archive, available online at:  
2 <<https://www.industrydocuments.ucsf.edu/food/collections/usrtk-food-industry-collection/>>.

3 41. Request One was received and acknowledged by DARPA via email on October 2, 2020  
4 and assigned tracking number “21-F-0004.”

5 42. On October 6, 2020, DARPA provided an “interim response” to Request One. In that  
6 response, DARPA invoked the “unusual circumstances” exception to the FOIA’s standard twenty-day  
7 determination deadline, but did not identify “the date by which we estimate processing of the request  
8 will be completed.” 32 C.F.R. § 286.8(c). It also did not identify the specific “unusual circumstance” at  
9 issue, stating that “At least one, if not more, of these scenarios applies or would likely apply to your  
10 request.”

11 43. DARPA’s October 6, 2020 “interim response” also did not provide USRTK with an  
12 estimated date on which DARPA would complete action on Request One or provide a decision as to  
13 USRTK’s request for a fee waiver.

14 44. USRTK emailed DARPA via Ms. Toni Wilkerson, the Government Information  
15 Specialist assigned to Request One, on November 12, 2020, requesting an update to the processing of  
16 Request One and asking whether there was anything USRTK could do to expedite the processing of  
17 Request One.

18 45. Ms. Wilkerson responded to USRTK by email on November 12, 2020, stating, *inter alia*,  
19 that “the search for the requested records has not been completed” and that she had requested “an  
20 estimated completion date from DARPA[.]”

21 46. USRTK wrote Ms. Wilkerson again on December 16, 2020, asking whether DARPA had  
22 provided an estimated completion date for Request One. Ms. Wilkerson again responded by email that  
23 same day, indicating that the estimated completion date for Request One was November 1, 2021. Ms.  
24 Wilkerson also requested that USRTK consider narrowing the scope of Request One.

25 47. USRTK responded the next day, alerting Ms. Wilkerson that it would narrow the scope of  
26 Request One by limiting the time frame from July 1, 2018, to October 1, 2020. Ms. Wilkerson  
27 responded later that same day to explain she was forwarding the narrowed time frame to DARPA.  
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1 48. No further communications were received by USRTK during the entire year of 2021. The  
2 November 1, 2021, estimated completion date passed without a single responsive record being provided.

3 49. Accordingly, on February 24, 2022, USRTK wrote to Ms. Wilkerson again. In this email,  
4 USRTK requested that DARPA provide a formal determination on Request One, address USRTK's  
5 request for a fee waiver, and provide an updated estimated completion date.

6 50. Ms. Wilkerson responded on March 1, 2022, stating that she would request an updated  
7 estimated completion date from DARPA and asking if USRTK would further narrow the scope of the  
8 request. In a subsequent email on March 2, Ms. Wilkerson asked if USRTK would agree to exclude all  
9 communications responsive to Request One from the request. On March 7, USRTK informed Ms.  
10 Wilkerson it would not narrow Request One to exclude communications, but that it would consider other  
11 narrowing proposals from DARPA.

12 51. Having heard nothing further from DARPA, USRTK again wrote Ms. Wilkerson on May  
13 18, 2022. USRTK renewed its request for a formal determination under the FOIA, a decision on  
14 USRTK's request for a fee waiver, and an estimated completion date. Ms. Wilkerson responded on May  
15 20, stating she would request an updated estimated completion date from DARPA.

16 52. On July 18, 2022, USRTK again wrote to DARPA, and again asked that Defendant  
17 provide USRTK with a formal determination on Request One, an updated estimated completion date,  
18 and a decision on USRTK's request for a fee waiver. Ms. Wilkerson responded that same day, again  
19 stating that she would reach out to DARPA to request an updated estimated completion date and to see if  
20 DARPA had further input on how to narrow Request One.

21 53. To date, USRTK has received no further communication from DARPA about Request  
22 One.

23 54. To date, DARPA has not provided USRTK with an updated estimated date of  
24 completion. The last estimated date of completion provided by DARPA expired over a year ago.

25 55. To date, DARPA has not provided USRTK with a timely and lawful "determination" that  
26 informs USRTK of (1) DARPA's determination of whether or not to comply with Request One; (2) the  
27 reasons for its decision; and (3) notice of USRTK's right to appeal to the head of the agency. 5 U.S.C. §  
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1 552(a)(6)(A)(i).

2 56. At no time has DARPA lawfully invoked the FOIA’s “unusual circumstances” exception  
3 to the FOIA’s twenty-day determination deadline.

4 57. DARPA has not shown due diligence in responding to the Request One. 5 U.S.C.  
5 § 552(a)(6)(C)(i).

6 58. To date, DARPA has failed to issue a decision on USRTK’s request for a waiver of fees  
7 associated with the processing of the Request.

8 59. To date, DARPA has not produced a single record responsive to Request One.

9 60. USRTK has constructively exhausted all administrative remedies required by the FOIA. 5  
10 U.S.C. § 552(a)(6)(A), (a)(6)(C).

11 61. USRTK has been forced to retain the services of counsel and to expend funds litigating  
12 Defendant’s unlawful actions and omissions under the FOIA.

13 *FOIA Request Two*

14 62. USRTK submitted a FOIA Request (“Request Two”) to DARPA on March 1, 2021.  
15 Request Two sought a waiver of all fees associated with processing the Request. A copy of Request Two  
16 is attached hereto as **Exhibit B**.

17 63. Request Two seeks agency records concerning eight contracts funded under DARPA’s  
18 program entitled “Preventing Emerging Pathogenic Threats” or “PREEMPT.” Exhibit B at 1-2.

19 64. USRTK has no commercial interest or value in records responsive to the Request.

20 65. The records requested by USRTK are likely to contribute significantly to the public  
21 understanding of the operations and activities of the government, especially as they pertain to the origins  
22 of the SARS-CoV-2 virus and the COVID-19 pandemic in the United States.

23 66. USRTK incorporates and restates Para. 38-40, *supra*.

24 67. DARPA acknowledged receipt of Request Two on March 2, 2021. In that  
25 acknowledgment, DARPA assigned Request Two tracking number “21-F-0645.”

26 68. On March 2, 2021, DARPA also provided an “interim response” to Request Two. In that  
27 response, DARPA invoked the “unusual circumstances” exception to the FOIA’s standard twenty-day  
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1 determination deadline, but did not identify “the date by which we estimate processing of the request  
2 will be completed.” 32 C.F.R. § 286.8(c). It also did not identify the specific “unusual circumstance” at  
3 issue, stating that “At least one, if not more, of these scenarios applies or would likely apply to your  
4 request.”

5 69. DARPA’s March 2, 2021 “interim response” also did not provide USRTK with an  
6 estimated date on which DARPA would complete action on Request Two or respond to USRTK’s  
7 request for a fee waiver.

8 70. Having received no further communications or responsive records from DARPA related  
9 to Request Two, on April 15, 2021, USRTK wrote Defendant via Kayla Webster, the Government  
10 Information Specialist assigned to Request Two. In that correspondence, USRTK requested that  
11 Defendant provide a status update and an estimated date of completion for the Request consistent with  
12 the FOIA.

13 71. Ms. Webster responded on behalf of DARPA on April 16, 2021. In that correspondence,  
14 Ms. Webster noted that the search for the requested records had not started, and that the estimated date  
15 of completion for the request was September 1, 2021.

16 72. USRTK received no further communications from DARPA on Request Two, and the  
17 September 1, 2021, estimated completion date expired without a single record being produced.

18 73. On May 18, 2022, USRTK wrote to DARPA through Ms. Webster. In that  
19 correspondence, USRTK requested DARPA provide an official determination under the FOIA on  
20 Request Two, issue a decision on USRTK’s request for a fee waiver, and provide an estimated  
21 completion date that complies with the FOIA’s requirements that responsive records be made promptly  
22 available to a requester.

23 74. Ms. Webster responded on May 25, 2022. In that email, Ms. Webster provided a new  
24 estimated completion date of September 1, 2022. She also stated she would look into the status of  
25 USRTK’s request for a fee waiver.

26 75. Once again, USRTK did not receive any further communications from DARPA. Thus, on  
27 July 18, 2022, USRTK wrote again to Ms. Webster. In this message, USRTK alerted the agency that it  
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1 was in violation of the statutory mandates of the FOIA. USRTK described that it had received no official  
2 determination on Request Two within the allotted timeframe and no decision on its request for a fee  
3 waiver. USRTK informed DARPA that it would initiate a lawsuit against DARPA under the FOIA if the  
4 agency did not make a complete production of responsive records by the new estimated date of  
5 completion, September 1, 2022. USRTK noted that it would seek an award of its attorneys fees and costs  
6 if it were forced to initiate litigation. It concluded its message with the following: “Our sincere desire is  
7 to not litigate, but we are running out of options. Please do tell us if there is anything we can do to help  
8 expedite the processing of this FOIA request.”

9 76. To date, USRTK has not received any further communication from DARPA about  
10 Request Two.

11 77. To date, DARPA has not provided USRTK with an updated estimated date of  
12 completion. The September 1, 2022, estimated completion date has expired with not a single record  
13 being produced.

14 78. To date, DARPA has not provided USRTK with a timely and lawful “determination” that  
15 informs USRTK of (1) DARPA’s determination of whether or not to comply with the Request; (2) the  
16 reasons for its decision; and (3) notice of USRTK’s right to appeal to the head of the agency. 5 U.S.C. §  
17 552(a)(6)(A)(i).

18 79. At no time has DARPA lawfully invoked the FOIA’s “unusual circumstances” exception  
19 to the FOIA’s twenty-day determination deadline.

20 80. DARPA has not shown due diligence in responding to the request. 5 U.S.C.  
21 § 552(a)(6)(C)(i).

22 81. To date, DARPA has failed to issue a decision on USRTK’s request for a waiver of fees  
23 associated with the processing of the Request.

24 82. To date, DARPA has not produced a single record responsive to the Request.

25 83. USRTK has constructively exhausted all administrative remedies required by the FOIA. 5  
26 U.S.C. § 552(a)(6)(A), (a)(6)(C).

27 84. USRTK has been forced to retain the services of counsel and to expend funds litigating  
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1 Defendant's unlawful actions and omissions under the FOIA.

2 **CAUSES OF ACTION**

3 **COUNT I**

4 **VIOLATIONS OF THE FREEDOM OF INFORMATION ACT**  
5 **AND DEPARTMENT OF DEFENSE REGULATIONS:**

6 **FAILURE TO PROVIDE TIMELY FINAL DETERMINATION**

7  
8 85. The allegations made in all preceding paragraphs are realleged and incorporated by  
9 reference herein.

10 86. USRTK has a statutory right to have Defendant process its FOIA requests in a manner  
11 that complies with the FOIA. USRTK's rights in this regard were violated by DARPA's failure to  
12 provide a timely and legally adequate final determination on Requests One and Two (collectively, the  
13 "FOIA Requests").

14 87. To date, USRTK has not received any written communication from DARPA about  
15 whether the Agency will comply with the FOIA Requests, the Defendant's reasons for making that  
16 decision, and any right of USRTK to administratively appeal that decision. 5 U.S.C. § 552(a)(6)(A)(i);  
17 32 C.F.R. Part 286.

18 88. Based on the nature of USRTK's organizational activities, USRTK will continue to  
19 employ FOIA's provisions to request information from Defendant in the foreseeable future. These  
20 activities will be adversely affected if Defendant is allowed to continue violating FOIA's response  
21 deadlines.

22 89. Unless enjoined and made subject to a declaration of USRTK's legal rights by this Court,  
23 DARPA will continue to violate USRTK's rights to receive public records under the FOIA.

24 90. DARPA's failure to make a final determination on the FOIA Requests within the  
25 statutory timeframe has prejudiced USRTK's ability to timely obtain public records.

**COUNT II**

**VIOLATION OF THE FREEDOM OF INFORMATION ACT:  
UNLAWFUL WITHHOLDING OF NON-EXEMPT PUBLIC RECORDS**

1  
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3  
4  
5 91. The allegations made in all preceding paragraphs are realleged and incorporated by  
6 reference herein.

7 92. USRTK has a statutory right to have Defendant process its FOIA requests in a manner  
8 that complies with FOIA. USRTK's rights in this regard were violated when DARPA failed to promptly  
9 provide public, non-exempt records to USRTK in response to the FOIA Requests, 5 U.S.C. §§  
10 552(a)(3)(A) & (b), to provide a reasonable estimate of the volume of withheld records, 5 U.S.C. §  
11 552(a)(6)(F), and to reasonably segregate all non-exempt portions of otherwise exempt material, 5  
12 U.S.C. § 552(b).

13 93. DARPA is unlawfully withholding public disclosure of information sought by USRTK,  
14 information to which it is entitled and for which no valid disclosure exemption applies.

15 94. USRTK has constructively exhausted its administrative remedies with respect to this  
16 claim for both Request One and Request Two.

17 95. USRTK is entitled to injunctive relief to compel production of all non-exempt,  
18 responsive records.

19 96. Based on the nature of USRTK's organizational activities, USRTK will undoubtedly  
20 continue to employ FOIA's provisions to request information from Defendant in the foreseeable future.

21 97. USRTK's organizational activities will be adversely affected if Defendant is allowed to  
22 continue violating FOIA's response deadlines as it has in this case.

23 98. Unless enjoined and made subject to a declaration of USRTK's legal rights by this Court,  
24 DARPA will continue to violate the rights of USRTK to receive public records under the FOIA.

**COUNT III**

**VIOLATION OF THE FREEDOM OF INFORMATION ACT:**

**FAILURE TO PROVIDE ESTIMATED DATE OF COMPLETION**

99. The allegations made in all preceding paragraphs are realleged and incorporated by reference herein.

100. USRTK has a statutory right to have Defendant process its FOIA requests in a manner that complies with FOIA. USRTK's rights in this regard were violated by DARPA's unlawful failure to provide an updated estimated date of completion for both Request One and Request Two, as required by the FOIA, 5 U.S.C. section 552(a)(7)(B)(ii).

101. USRTK formally requested that DARPA provide an updated estimated dates of completion for both Request One and Request Two after the original estimated completion dates expired. No response was received from DARPA.

102. Based on the nature of USRTK's organizational activities, USRTK will continue to employ FOIA's provisions to request information from DARPA in the foreseeable future. These activities will be adversely affected if DARPA is allowed to continue violating the FOIA's requirements for providing USRTK with an estimated date of completion or updated estimated date of completion on its FOIA requests.

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

**REQUEST FOR RELIEF**

Wherefore, USRTK prays that this Court:

1. Order Defendant to promptly provide USRTK all of the information sought in this action and to immediately disclose the requested records for Requests One and Two in unredacted format unless an exemption is properly claimed and properly applies.

2. Declare Defendant's failure to provide USRTK with a final determination for Requests One and Two as unlawful under the FOIA.

3. Declare Defendant's failure to promptly provide USRTK with all non-exempt records

1 responsive to Requests One and Two as unlawful under the FOIA.

2 4. Declare Defendant’s failure to provide USRTK with an estimated date of completion, or  
3 updated estimated date of completion, as required by 5 U.S.C. section 552(a)(7)(B)(ii), unlawful under  
4 the FOIA.

5 5. Award USRTK its reasonable attorneys’ fees and costs pursuant to 5 U.S.C.  
6 section 552(a)(4)(E) or 28 U.S.C. section 2412.

7 6. Grant such other and further relief to USRTK as the Court may deem just and proper.

8  
9  
10 DATED: November 22, 2022.

11  
12 /s/ Rachel Doughty

13 RACHEL S. DOUGHTY (California State Bar  
14 No. 255904)  
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