

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

US RIGHT TO KNOW )  
4096 Piedmont Avenue, # 963 )  
Oakland, CA 94611-5221 )  
 )  
Plaintiff, )  
v. )  
 )  
UNITED STATES DEPARTMENT OF STATE )  
2201 C Street NW )  
Washington, DC 20520 )  
 )  
Defendant. )

Civil Case No. 23-3412

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiff US RIGHT TO KNOW (“USRTK”) for its complaint against Defendant UNITED STATES DEPARTMENT OF STATE (“STATE”), alleges as follows:

- 1) This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to compel production under a March 15, 2023 FOIA request for certain described agency records, to which request defendant has not provided any of the statutorily required responses and therefore has denied.
- 2) These records are central to a matter of timely, current political and legal deliberations, of public interest and policy and legal significance. Specifically, the records relate to the federal government’s investigation into the origins of COVID-19.
- 3) A true and correct copy of the FOIA request that is at issue is attached hereto as Exhibit A.<sup>1</sup> The agency has failed to substantively respond to the request or to make a “determination” relating to the request.

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<sup>1</sup> It is alleged that all exhibits hereto are true and correct copies of correspondence between the parties. The contents of such exhibits are incorporated by reference herein and made a part of this Complaint.

- 4) Plaintiff requested fee waiver on multiple bases, which Defendant granted.
- 5) Defendant acknowledged the request and assigned it tracking number F-2023-06293. See Exhibit B. Defendant also wrote that “unusual circumstances” would prohibit it from responding to the request within 20 calendar days. However, the listed circumstances (the need to gather records from one or more offices) are hardly unusual.
- 6) Having received no lawful determination from Defendant regarding the FOIA request at issue, Plaintiff wrote to the Defendant on two occasions to request that it issue a legally-required “determination” relating to the request. See Exhibit C.
- 7) As of the date of this filing, Defendant has yet to provide a determination.
- 8) Defendant State Department’s failure to provide Plaintiff with the requisite records or a determination affirming the Department’s processing of Plaintiff’s requests at issue in this matter by, e.g., providing an initial determination of the number of responsive records it intends to release or withhold within the 20-day time limit established under 5 U.S.C.S. § 552(a)(6)(A)(i), violates FOIA as also articulated by this Court in *Citizens for Responsibility and Ethics in Washington (CREW) v. Federal Election Commission*, 711 F.3d 180 (D.C. Cir. 2013). Under *CREW*, agencies must “inform the requester of the scope of the documents that the agency will produce, as well as the scope of the documents that the agency plans to withhold under any FOIA exemptions” within the statutory deadline of 20 working days.
- 9) Defendant State’s failure to respond in any meaningful or lawful way, despite the passage of approximately eight months and specific requests by Plaintiff, has constructively exhausted all of Plaintiff’s administrative remedies, leaving Plaintiff no

choice but to file this lawsuit to compel State to comply with the law regarding release of agency records.

10) In this context, Plaintiff asks this Court to compel State to release records responsive to its FOIA request, and to provide an index of any claimed exempt material.

### **PARTIES**

11) Plaintiff USRTK is a nonprofit investigative research group focusing on promoting transparency for public health. It works globally to expose corporate wrongdoing and government failures that threaten public health, the environment, or the food system. Since 2015, it has obtained, posted online, and shared with the media, tens of thousands of industry and government documents, including many obtained through judicial enforcement of open records laws. Tens of thousands of pages of documents obtained by USRTK are now available for free public access.

12) Defendant State Department is a federal agency headquartered in Washington, DC.

### **JURISDICTION AND VENUE**

13) This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B), because this action is brought in the District of Columbia, and 28 U.S.C. § 1331, because the resolution of disputes under FOIA presents a federal question.

14) Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e) because the records are likely located in Washington, D.C., and because defendant State is a federal agency.

### **STATUTORY BACKGROUND**

15) FOIA provides that a requesting party is entitled to a substantive agency response within twenty working days, including a determination of whether the agency intends to comply

with the request. 5 U.S.C. § 552(a)(6)(A)(i). Within that deadline, the agency must also “determine and communicate the scope of the documents it intends to produce and withhold, and the reasons for withholding any documents,” and “inform the requester that it can appeal whatever portion of” the agency’s “determination” is adverse to the requestor. *CREW v. FEC*, 711 F.3d 180, 188 (D.C. Cir. 2013); accord *Shermco Industries v. Secretary of U.S. Air Force*, 452 F. Supp. 306, 317 (N.D. Tex. 1978).

16) 5 U.S.C. § 552(a)(6)(A) prescribes that the 20-day time limit shall not be tolled by the agency except in two narrow scenarios: The agency may make one request to the requester for information and toll the 20-day period while it is awaiting such information that it has reasonably requested from the requester, § 552(a)(6)(A)(ii)(I), and agencies may also toll the statutory time limit if necessary to clarify with the requester issues regarding fee assessment. § 552(a)(6)(A)(ii)(II). In either case, the agency’s receipt of the requester’s response to the agency’s request for information or clarification ends the tolling period. Neither apply here as State did not seek additional information from plaintiff regarding the request at issue in this suit.

17) State owed USRTK *CREW*-compliant responses to the request, including a “determination” as that term is defined in *CREW v. FEC*, 711 F.3d 180, 188 (D.C. Cir. 2013), by approximately April 13, 2023 (or at the latest April 27, 2023, if State had demonstrated “unusual circumstances” truly prevented an earlier response). To date, however, State has provided no substantive response or “determination” with respect to the request at issue.

18) In *Bensman v. National Park Service*, 806 F. Supp. 2d 31 (D.D.C. 2011) this Court noted: “[The effect of] the 2007 Amendments was to impose consequences on agencies

that do not act in good faith or otherwise fail to comport with FOIA's requirements. See S. Rep. No. 110-59. To underscore Congress's belief in the importance of the statutory time limit, the 2007 Amendments declare that "[a]n agency shall not assess search fees... if the agency fails to comply with *any time limit*' of FOIA" (*emphasis added*).

- 19) State is now past its statutory period for issuing such determinations on the above-described request without providing any substantive response to Plaintiff's request. Among the consequences of State's violation(s) of the statutory time limits of FOIA, is that State cannot now seek fees.
- 20) Defendant State is improperly denying Plaintiff access to agency records in violation of FOIA.

### **FIRST CLAIM FOR RELIEF**

#### **Duty to Produce Records – Declaratory Judgment**

- 21) Plaintiff re-alleges paragraphs 1-20 as if fully set out herein.
- 22) Plaintiff has sought and been denied production of responsive records reflecting the conduct of official business.
- 23) Plaintiff has a statutory right to the information it seeks and that defendant has unlawfully withheld.
- 24) Plaintiff is not required to further pursue administrative remedies.
- 25) Plaintiff asks this Court to enter a judgment declaring that:
- a. Plaintiff is entitled to records responsive to its FOIA request described above, and any attachments thereto, but State failed to provide them; and that
  - b. State's processing of Plaintiff's FOIA request described above is not in accordance with the law, and does not satisfy State's obligations under FOIA; and that

- c. State must now produce records responsive to Plaintiff's request and must do so at no cost to the Plaintiff.

**SECOND CLAIM FOR RELIEF**  
**Duty to Produce Records – Injunctive Relief**

- 26) Plaintiff re-alleges paragraphs 1-25 as if fully set out herein.
- 27) Plaintiff is entitled to injunctive relief compelling State to produce the records responsive to the FOIA request described in this pleading.
- 28) Plaintiff asks the Court to enter an injunction ordering State to produce to Plaintiff, within 10 business days of the date of the order, the requested records sought in Plaintiff's FOIA request described above, and any attachments thereto.
- 29) Plaintiff asks the Court to order the parties to consult regarding withheld documents and to file a status report to the Court within 30 days after plaintiff receives the last of the produced documents, addressing defendant's preparation of a *Vaughn* log and a briefing schedule for resolution of remaining issues associated with Plaintiff's challenges to Defendant's withholdings, if any, and any other remaining issues.

**THIRD CLAIM FOR RELIEF**  
**Costs And Fees – Injunctive Relief**

- 30) Plaintiff re-allege paragraphs 1-29 as if fully set out herein.
- 31) Pursuant to 5 U.S.C. § 552(a)(4)(E), the Court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.
- 32) This Court should enter an injunction or other appropriate judgment or order requiring the Defendant to pay reasonable attorney fees and other litigation costs reasonably incurred in this case.

WHEREFORE, Plaintiff requests the declaratory and injunctive relief herein sought, and an award for its attorney fees and costs and such other and further relief as the Court shall deem proper.

Respectfully submitted this 14<sup>th</sup> day of November, 2023,

US RIGHT TO KNOW

By Counsel:

/s/Matthew D. Hardin

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