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8
9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 U.S. RIGHT TO KNOW, a California Non-Profit
12 Corporation,

13 Plaintiff,

14 vs.

15 UNITED STATES DEPARTMENT OF
ENERGY,

16 Defendant.

Case No.:

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Freedom of Information Act,
5 U.S.C. § 552 *et seq*

INTRODUCTION

1
2 1. Through this action, Plaintiff U.S. Right to Know (hereinafter “Plaintiff” and/or
3 “USRTK”) seeks access to government records held by Defendant United States Department of
4 Energy (hereinafter “Defendant” and/or “DOE”), pursuant to the Freedom of Information Act
5 (hereinafter “FOIA”), 5 U.S.C. § 552 *et seq.*, and the DOE Implementing Regulations, 10 C.F.R. §§
6 1004, *et seq.* This action challenges Defendant’s unlawful failure to abide by the statutory
7 requirements of FOIA and applicable implementing regulations.

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

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

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

JURISDICTION AND VENUE

26
27 5. This Court has jurisdiction pursuant to 5 U.S.C. section 552(a)(4)(B). That provision
28 of the FOIA grants jurisdiction to “the district court of the United States in the district in which the

1 complainant resides or has his principal place of business[.]” 5 U.S.C. § 552(a)(4)(B). USRTK is a
2 nonprofit public benefit corporation organized under the Nonprofit Public Benefit Corporation Law
3 for charitable purposes. USRTK was incorporated in the State of California in May 2014. USRTK
4 maintains its principal place of business in the Northern District of California.

5 6. This Court also has federal question jurisdiction pursuant to 28 U.S.C. section 1331
6 because this action arises under the FOIA and the Declaratory Judgment Act, 28 U.S.C. section
7 2201 *et seq.*

8 **INTRADISTRICT ASSIGNMENT**

9 7. Pursuant to Civil Local Rule 3-2(c), this case is properly brought in the San
10 Francisco Division of the Northern District of California, because a substantial part of the events
11 and omissions which give rise to the claims alleged herein occurred in the County of San Francisco.

12 8. Under the FOIA, 5 U.S.C. § 522(a)(4)(B), jurisdiction vests in the district court
13 where “the complainant resides” or “has his principal place of business.”

14 9. Plaintiff has its principal place of business in the County of San Francisco.

15 10. As such, under the Civil Local Rule 3-2(c), (d), intradistrict assignment to the San
16 Francisco division is proper.

17 **PARTIES**

18 11. Plaintiff USRTK is a 501(c)(3) nonprofit corporation organized under the laws of the
19 State of California.

20 12. USRTK is a nonprofit newsroom and public health research group. USRTK
21 investigates and reports on corporate wrongdoing and government failures that threaten our health,
22 environment or food system.

23 13. Defendant DOE is a department of the Executive Branch of the United States
24 government branch and an “agency” under the FOIA, the records sought are “records” under the
25 FOIA, and because Defendant DOE is in possession and control of the records sought by USRTK,
26 the DOE is subject to the FOIA pursuant to 5 U.S.C. §552(f).

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LEGAL FRAMEWORK

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2 14. 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
4 sought and (2) complies with any applicable agency rules for making such a request. 5 U.S.C. §
5 552(a)(3)(A).

6 15. The FOIA requires an agency to issue a final determination on any such information
7 request within twenty business days from the date of its receipt. 5 U.S.C. § 552(a)(6)(A)(i). In
8 issuing a final determination, an agency is required to inform the requester of three things: (1) the
9 agency’s determination of whether or not it must comply with the request; (2) the reasons for its
10 decision; and (3) notice of the right of the requester to appeal to the head of the agency. 5 U.S.C. §
11 552(a)(6)(A)(i).

12 16. The Department of Energy’s regulations implementing the FOIA are found at 10
13 C.F.R. section 1004, *et seq.*

14 17. The FOIA allows an agency to extend the twenty-day determination deadline,
15 however, by ten working days when “unusual circumstances” exist and when the agency so notifies
16 a requester in writing. 5 U.S.C. § 552(a)(6)(B)(i)-(iii). A notice informing a requester of the
17 invocation of the “unusual circumstances” provision must specify the applicable “unusual
18 circumstances.” *Id.*; 10 C.F.R. § 1004.5(d)(iii).

19 18. Permissible “unusual circumstances” are limited to: “(I) the need to search for and
20 collect the requested records from field facilities or other establishments that are separate from the
21 office processing the request; (II) the need to search for, collect, and appropriately examine a
22 voluminous amount of separate and distinct records which are demanded in a single request; or (III)
23 the need for consultation, which shall be conducted with all practicable speed, with another agency
24 having a substantial interest in the determination of the request or among two or more components
25 of the agency having substantial subject-matter interest therein.” 5 U.S.C. § 552(a)(6)(B)(iii), 10
26 C.F.R. §1004.5(d)(2).

27 19. An agency is entitled to one, ten-business day extension. 5 U.S.C. § 552(a)(6)(B)(i).
28 The written notice provided to the requester must specify the specific unusual circumstances

1 justifying the extension and the date on which a final determination is expected to be dispatched. *Id.*

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

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

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

13 23. Even when an “unusual circumstances” extension is made, the agency must still
14 notify the requester of its expected date on which a final determination will be dispatched. 5 U.S.C.
15 § 552(a)(6)(B)(i)(“Whenever we cannot meet the statutory time limit for processing a request
16 because of ‘unusual circumstances,’ as defined in the FOIA, and we extend the time limit on that
17 basis, we will notify you, before expiration of the 20-day period to respond and in writing of the
18 unusual circumstances involved and of the date by which we estimate processing of the request will
19 be completed.”), 10 C.F.R. section 1004.5(d)(iii).

20 24. “Exceptional circumstances” for failure to comply with applicable time limits “does
21 not include a delay that results from a predictable agency workload of requests under this section,
22 unless the agency demonstrates reasonable progress in reducing its backlog of pending requests.”
23 5 U.S.C. § 552(a)(6)(C)(ii).

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

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

1 § 552(a)(6)(B)(i).

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

7 28. In furnishing records responsive to a request under the FOIA, an agency may, for a
8 limited set of categories of information, exclude or withhold such information from disclosure.
9 5 U.S.C. § 552(b). However, even where proper justification exists for withholding such
10 information, the agency must provide the remaining portions of records that are reasonably
11 segregable from the properly withheld portions thereof. *Id.*

12 29. Except in certain circumstances, when an agency produces a record in response to a
13 FOIA request but withholds a portion thereof, the agency must indicate the volume of information
14 withheld and the exemption under which such information has been withheld. *Id.*; 5 U.S.C. §
15 552(a)(6)(F).

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

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

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

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

28 34. This Court has jurisdiction to enjoin the agency from withholding agency records

1 and to order the production of any agency records improperly withheld from the complainant,
2 pursuant to 5 U.S.C. § 552(a)(4)(A)(i)(B).

3 **STATEMENT OF OPERATIVE FACTS**

4 **U.S. Right to Know’s Investigative Work**

5 35. USRTK has a demonstrated track record of obtaining and disseminating information
6 obtained under the FOIA and state public records laws concerning public health. Since 2015,
7 USRTK has obtained, posted online, and reported on thousands of industry and government
8 documents gathered via public records requests. USRTK’s work has contributed to three New York
9 Times investigations, 16 academic papers in public health journals, 14 articles in the BMJ, one of
10 the world’s leading medical journals, and global media coverage documenting how food and
11 chemical corporations impact public health and the environment. USRTK’s staff has expertise in
12 investigative journalism and advanced research, especially as it concerns impacts on human health.
13 (<https://usrtk.org/about-u-s-right-to-know/>). USRTK is a recognized news outlet and is a member of
14 the Institute for Nonprofit News, a network of more than 500 nonprofit news organizations
15 dedicated to public service journalism.

16 36. USRTK’s investigation of the origins of COVID-19 has been featured in news
17 outlets around the world, including the [Wall Street Journal](#), [New York Times](#), [Washington Post](#),
18 [USA Today](#), [New Yorker](#), [Vanity Fair](#), [Science](#), [the BMJ](#), [Journal of Medical Ethics](#) and many other
19 outlets. (<https://usrtk.org/about-u-s-right-to-know/>).

20 37. In February 2025, USRTK received a James Madison Freedom of Information
21 Award from the Society for Professional Journalists Northern California chapter. This award
22 recognizes people and organizations that have made “significant contributions to advancing
23 freedom of information and expression in the spirit of James Madison, the creative force behind the
24 First Amendment.” The award states in part that:

25 By filing more than 160 requests under the Freedom of Information
26 Act, initiating 30 lawsuits to uncover documents held by federal
27 officials, and combing through tens of thousands of documents, U.S.
28 Right to Know unearthed crucial information about the potential
origins of COVID-19 and the high-risk research being conducted at
the Wuhan Institute of Virology.

1 See Thomas Peele & Laura Wenus, *SPJ NORCAL Honors Transparency Champions in James*
2 *Madison Freedom of Information Awards*, Society of Professional Journalists, Northern California,
3 [https://spjnorcal.org/2025/02/12/spj-norcal-honors-transparency-champions-in-james-madison-](https://spjnorcal.org/2025/02/12/spj-norcal-honors-transparency-champions-in-james-madison-freedom-of-information-awards-3/)
4 [freedom-of-information-awards-3/](https://spjnorcal.org/2025/02/12/spj-norcal-honors-transparency-champions-in-james-madison-freedom-of-information-awards-3/) (last visited March 04, 2026).

5 38. USRTK shares its findings with media outlets, public health and medical journals,
6 and through its own library of information, available online at: <https://www.usrtk.org>. Many of
7 USRTK's documents are available through the USRTK Agrichemical Collection of the University
8 of California, San Francisco's (UCSF) Chemical Industry Documents Archive, available online at:
9 <https://www.industrydocuments.ucsf.edu/chemical/collections/usrtk-agrichemical-collection/>,
10 and the USRTK Food Industry Collection of the UCSF Food Industry Documents Archive,
11 available online at: [https://www.industrydocuments.ucsf.edu/food/collections/usrtk-food-industry-](https://www.industrydocuments.ucsf.edu/food/collections/usrtk-food-industry-collection/)
12 [collection/](https://www.industrydocuments.ucsf.edu/food/collections/usrtk-food-industry-collection/).

13 **FOIA Request #CH-2025-03169-F**

14 39. On June 13, 2025, USRTK submitted a FOIA Request to the DOE (referred to herein
15 as "the Request"). USRTK submitted the Request to the DOE through the online portal at [FOIA-](mailto:FOIA-Central@hq.doe.gov)
16 [Central@hq.doe.gov](mailto:FOIA-Central@hq.doe.gov), addressed to FOIA Request Service Center, U.S. Department of Energy, 1000
17 Independence Avenue, SW, Mail Stop MA-46, Washington, D.C. 20585. The Request sought a
18 waiver of all fees associated with processing the request. USRTK documented its Fee Waiver
19 Request by attaching multi-page, highly detailed, relevant justification within the Request. USRTK
20 also requested expedited proceeding for this Request in accordance with 10 C.F.R. §10004.5(d)(4),
21 which provides in pertinent part that documents will be processed out of order "...when a request is
22 submitted by a person primarily engaged in disseminating information and there is an urgency to
23 inform the public about actual or alleged Federal Government activity." A true and accurate copy of
24 the Request is attached hereto as **Exhibit A** and is incorporated by reference as though set forth in
25 full herein.

26 40. The Request sought copies of email correspondence sent to or from Dr. Amy Sims,
27 Senior Research Scientist assigned to the Department of Energy's Pacific Northwest National
28 Laboratory, via the email amy.sims@pnnl.gov to ten separate individuals or organizations, during

1 the time range of December 1, 2019, to December 31, 2021. Exh. A at 1.

2 41. USRTK stated in the Request that the documents sought would provide USRTK and
3 the public with "...crucial insight into the activities of a senior DOE research scientist in relation to
4 SARS-CoV-2 research and the COVID-19 pandemic..." Exh. A at 3.

5 42. USRTK supported its Request for Expedited Processing by demonstrating that it
6 qualified as a representative of the news media. Exh.A at 7. The Request also demonstrated that the
7 records sought are urgently needed to inform the Public of Government Activity, stating that: "The
8 topic of this request, which pertains to government communications with expert scientists about a
9 pandemic that has killed more than one million Americans, is indisputably "a matter of current
10 exigency to the American public" in which "the consequences of delaying a response would
11 compromise a significant recognized interest," two factors routinely considered to comprise an
12 urgent need. *See for example Al-Fayed v. C.I.A.*, 254 F.3d 300, 310 (D.C. Cir. 2001)." Exh. A at 8.

13 43. On June 13, 2025, Plaintiff USRTK received an Automatic Reply from FOIA.Gov,
14 Office of Information Policy, stating, "Your FOIA request has been created and is being sent to the
15 Richland Operations Office." Along with the contact information for the FOIA Requester Service
16 Center, and Dorothy Riehle, the FOIA Officer, this Request summary stated that USRTK's request
17 was submitted on June 13, 2025, and was assigned "Confirmation ID: 2211531".

18 44. On June 30, 2025, the DOE asked USRTK for additional information clarifying
19 USRTK's status as a member of the news media.

20 45. On June 30, 2025, USRTK responded to the DOE's request for additional
21 information, by email, clarifying its status as a member of the news media.

22 46. On July 16, 2025, Plaintiff USRTK sent a Request for Determination and Estimated
23 Date of Completion via letter to Michelle Galbert, FOIA/PA Officer, U.S. Department of Energy,
24 via email addressed to the following two email addresses: Michelle.Galbert@science.doe.gov, and
25 FOIA-Central@hq.doe.gov. This letter stated that USRTK had not received an acknowledgement
26 of the Request or information about when USRTK would receive an official "determination" on its
27 request, ID: 2510851, as required by FOIA, 5 U.S.C. § 552(a)(6)(B)(i). This letter demanded that
28 Defendant DOE provide, within 10 business days, an official determination on the Request or, at the

1 very least, a certain date by which USRTK should expect a determination. Plaintiff USRTK also
2 asked that Defendant DOE address USRTK’s request for a fee waiver in a timely manner. Finally,
3 Plaintiff USRTK asked that Defendant DOE provide an estimated completion date that complied
4 with the FOIA's requirement to "promptly" make records available upon request.

5 47. Defendant DOE did not provide USRTK with any communication following the
6 submission of USRTK’s July 16, 2025, letter.

7 48. Having heard nothing further from the DOE, on November 5, 2025, Plaintiff’s legal
8 counsel sent a letter to Michelle Galbert, FOIA/PA Officer at the DOE. The November 5, 2025,
9 letter was submitted to Ms. Galbert at the following two email addresses:

10 Michelle.Galbert@science.doe.gov, and FOIA-Central@hq.doe.gov.

11 49. The November 5, 2025, letter advised Defendant DOE of Greenfire Law PC’s
12 representation of USRTK concerning the Request. The November 5, 2025, letter asked that, within
13 10 business days from the end of the then ongoing Government Shutdown, the DOE provide the
14 statutorily required determination required by both the FOIA and the Request for Determination
15 submitted by USRTK on July 16, 2025, provide a date certain for the production of documents
16 subject to the Request, and approve USRTK’s request for a fee waiver and request for expedited
17 processing.

18 50. On November 24, 2025, Michelle Galbert responded to USRTK’s legal counsel,
19 stating that she would hopefully begin her document review later that week.

20 51. After November 24, 2025, counsel for USRTK continued to correspond with Ms.
21 Galbert to seek the production of documents responsive to the Request.

22 52. To date, Defendant DOE has not provided USRTK nor counsel with an estimated
23 date of completion, nor a timely and lawful “determination” that informs USRTK of (1) the DOE’s
24 determination of whether or not it must comply with the Request; (2) the reasons for its decision;
25 and (3) notice of the right of the requester to appeal to the head of the agency. 5 U.S.C. §
26 552(a)(6)(A)(i), .

27 53. At no time has Defendant DOE lawfully invoked the FOIA’s “unusual
28 circumstances” exception to the FOIA’s twenty-day determination deadline.

1 54. Defendant DOE has not shown due diligence in responding to the Request. 5 U.S.C.
2 § 552(a)(6)(C)(i).

3 55. To date, Defendant DOE has failed to issue a decision on USRTK's request for a
4 waiver of fees associated with the processing of the Request.

5 56. To date, Defendant DOE has not produced a single record responsive to the Request.

6 57. USRTK has constructively exhausted all administrative remedies required by the
7 FOIA. 5 U.S.C. § 552(a)(6)(A), (a)(6)(C), *accord* 10 C.F.R. §1004.5(d)(4).

8 58. USRTK has been forced to retain the services of counsel and to expend funds
9 litigating Defendant's unlawful actions and omissions under the FOIA.

10 **CAUSES OF ACTION**

11 **COUNT I**

12 **Violations of the Freedom of Information Act:
13 Failure to Provide Timely Final Determination**

14 59. The allegations made in all preceding paragraphs are realleged and incorporated by
15 reference herein.

16 60. USRTK has a statutory right to have Defendant process its FOIA requests in a
17 manner that complies with the FOIA. USRTK's rights in this regard were violated by Defendant's
18 failure to provide a timely and legally adequate final determination for the Request.

19 61. To date, USRTK has not received a formal determination from Defendant DOE
20 about whether the Agency will comply with the FOIA Requests, the Defendant's reasons for
21 making that decision, and any right of USRTK to administratively appeal that decision. 5 U.S.C.
22 § 552(a)(6)(A)(i); 10 C.F.R. §1004.5(d).

23 62. Based on the nature of USRTK's organizational activities, USRTK will continue to
24 employ the FOIA's provisions to request information from Defendant DOE in the foreseeable
25 future. These activities will be adversely affected if Defendant DOE is allowed to continue violating
26 the FOIA's response deadlines.

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

64. Defendant DOE's failure to make a final determination on the FOIA Requests within

1 the statutory timeframe has prejudiced USRTK’s ability to timely obtain public records.

2 **COUNT II**

3 **Violation of the Freedom of Information Act:**
4 **Unlawful Withholding of Non-Exempt Public Records**

5 65. The allegations made in all preceding paragraphs are realleged and incorporated by
6 reference herein.

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

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

15 68. USRTK has constructively exhausted its administrative remedies with respect to this
16 claim for Request One.

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

19 70. 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
21 future.

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

24 72. Unless enjoined and made subject to a declaration of USRTK’s legal rights by this
25 Court, Defendant DOE will continue to violate the rights of USRTK to receive public records under
26 the FOIA.

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1 **COUNT III**

2 **Violation of the Freedom of Information Act:**
3 **Failure to Timely Approve USRTK's Fee Waiver Requests**

4 73. The allegations made in all preceding paragraphs are realleged and incorporated by
5 reference herein.

6 74. USRTK has a statutory right to have Defendant process its FOIA Request in a
7 manner that complies with the FOIA. USRTK's rights in this regard were violated by the DOE's
8 unlawful delay in informing USRTK of its decision concerning USRTK's requests for a fee waiver
9 for Request One.

10 75. Based on the nature of USRTK's organizational activities, USRTK will continue to
11 employ the FOIA's provisions to request information from Defendant DOE in the foreseeable
12 future. These activities will be adversely affected if Defendant DOE is allowed to continue violating
13 the FOIA's requirements and deadlines for fee waiver requests.

14 76. USRTK's requests for a waiver of all fees associated with the Request are
15 appropriate and satisfies all elements required for approval of a fee waiver.

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

19 78. Defendant DOE's failure to make a timely determination on USRTK's fee waiver
20 requests for the Request One has prejudiced USRTK's ability to timely obtain public records.

21 **COUNT IV**

22 **Violation of the Freedom of Information Act:**
23 **Failure to Provide Estimated Date of Completion**

24 79. The allegations made in all preceding paragraphs are realleged and incorporated by
25 reference herein.

26 80. USRTK has a statutory right to have Defendant process its FOIA Requests in a
27 manner that complies with the FOIA. USRTK's rights in this regard were violated by the DOE's
28 unlawful failure to provide an estimated date of completion for the Request, as required by the

1 FOIA, 5 U.S.C. section 552(a)(7)(B)(ii).

2 81. On July 16, 2025, USRTK submitted a formal determination request to the DOE.
3 USRTK requested that the DOE provide an official determination within 10 business days of the
4 date of the formal determination request. USRTK additionally requested that the DOE provide an
5 estimated completion date complying with the FOIA’s requirement to “promptly” make records
6 available on request. **Exh. B.**

7 82. To date, the DOE has not provided an official determination concerning the Request
8 and has not provided an estimated completion date.

9 83. Based on the nature of USRTK’s organizational activities, USRTK will continue to
10 employ FOIA’s provisions to request information from Defendant DOE in the foreseeable future.
11 These activities will be adversely affected if Defendant DOE is allowed to continue violating the
12 FOIA’s requirements for providing USRTK with an estimated date of completion on its FOIA
13 Requests.

14 84. Unless enjoined and made subject to a declaration of USRTK’s legal rights by this
15 Court, Defendant DOE will continue to violate the rights of USRTK to receive public records under
16 the FOIA.

17 **REQUEST FOR RELIEF**

18 THEREFORE, USRTK prays that this Court:

19 1. Order Defendant to promptly provide USRTK all the information sought in this
20 action and to immediately disclose the requested records for the Request in unredacted format
21 unless an exemption is properly claimed and properly applies.

22 2. Declare Defendant’s failure to provide USRTK with a final determination for the
23 Request as unlawful under the FOIA.

24 3. Declare Defendant’s failure to promptly provide USRTK with all non-exempt
25 records responsive to the Request as unlawful under the FOIA.

26 4. Declare Defendant’s failure to timely approve USRTK’s request for a waiver of all
27 fees associated with the Request unlawful, and order Defendant to approve USRTK’s fee waiver
28 requests.

1 5. Declare Defendant’s failure to provide USRTK with an estimated date of completion
2 for the Request, as required by 5 U.S.C. § 552(a)(7)(B)(ii), unlawful under the FOIA.

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

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

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8 Dated: April 28, 2026

Respectfully Submitted,

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10 By: /s/ Richard A. Brody

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