

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

COMPETITIVE ENTERPRISE INSTITUTE )  
1899 L Street, N.W., 12<sup>th</sup> Floor )  
Washington, D.C. 20036 )

Plaintiff, )

v. )

Civil Action No. 14-852

UNITED STATES ENVIRONMENTAL )  
PROTECTION AGENCY )  
1200 Pennsylvania Avenue, N.W. )  
Washington, D.C. 20460 )

Defendant. )

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiff Competitive Enterprise Institute (“CEI”) for its complaint against Defendant United States ENVIRONMENTAL PROTECTION AGENCY (“EPA” or “the Agency”), alleges as follows:

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to compel production of agency text messages. Text messaging is an alternative to email that EPA provides to certain senior employees.
2. EPA acknowledged to plaintiff in another matter that it has destroyed all copies of the current Administrator Gina McCarthy’s text message correspondence associated with her EPA-assigned account when Ms. McCarthy was Assistant Administrator for Air and Radiation.
3. The requested correspondence are the copies associated with EPA text messaging accounts assigned to eleven employees. EPA telephony metadata records show these employees

corresponded on their EPA-assigned texting accounts and personal data assistants (PDAs) with Ms. McCarthy's EPA-assigned account.

4. By a FOIA request sent on December 17, 2013, CEI sought text message transcripts (the copy of a text message, similar to an email) sent to or from these identified individuals' EPA-assigned, official text messaging accounts.
5. Plaintiff sought a fee waiver which defendant denied, and denied a second time following an administrative appeal.
6. Plaintiff submitted its appeal of the denial of the fee waiver on January 13, 2014, to which defendant did not respond until March 7, 2014, despite the fact that 5 U.S.C. § 552 (a)(6)(A)(ii) requires the defendant to "make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal," with a short extension of time allowed under certain circumstances.
7. By unjustifiably refusing to waive fees, and thus demanding fees as a condition of complying with plaintiff's request, defendant has improperly withheld the requested documents.
8. Defendant has failed to produce any records in response to this request.
9. Defendant has a legal obligation to produce records responsive to plaintiff's request.

#### **PARTIES**

10. Plaintiff CEI is a public policy research and educational institute in Washington, D.C., dedicated to advancing responsible regulation and in particular economically sustainable environmental policy. CEI's programs include research, investigative journalism and publication, as well as a transparency initiative seeking public records relating to environmental policy and how policymakers use public resources.

11. Defendant EPA is a federal agency headquartered in Washington, D.C. whose stated mission is to “protect human health and the environment.”

### **JURISDICTION AND VENUE**

12. 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.
13. Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e) because Plaintiff resides in the District of Columbia, and defendant EPA is a federal agency.

### **FACTUAL BACKGROUND**

14. Transparency in government is the subject of high-profile promises from the president and attorney general of the United States arguing forcefully against agencies failing to live up to their legal recordkeeping and disclosure obligations. As Attorney General Holder observed, “On his first full day in office, January 21, 2009, President Obama issued a memorandum to the heads of all departments and agencies. The President directed that FOIA January 21, 2009, President Obama ispresumption: In the face of doubt, openness prevails.”<sup>1</sup>
15. Yet plaintiff’s prior dealings with EPA demonstrate that senior EPA officials have a practice of using official equipment and accounts for corresponding via text messaging as an alternative to email, while destroying the employee’s copy of the correspondence.<sup>2</sup>

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<sup>1</sup> OIP Guidance, *President Obama’s FOIA Memorandum and Attorney General Holder’s FOIA Guidelines, Creating a “New Era of Open Government,”* [www.justice.gov/oip/foiapost/2009foiapost8.htm](http://www.justice.gov/oip/foiapost/2009foiapost8.htm).

<sup>2</sup> See, e.g., *Answer in Competitive Enterprise Institute v. Environmental Protection Agency*, D.D.C. No. 13-779 (filed 7/19/2013) at ¶ 8 (conceding that such texts were sent/received by EPA Assistant Administrator Gina McCarthy), ¶21 (conceding that EPA provides such officials

That violates and evades federal record-keeping laws and regulations (*e.g.*, Federal Records Act of 1950, 44 U.S.C. 3101 *et seq.*, and the E-Government Act of 2002; 36 C.F.R. Subchapter B, Records Management, and all applicable National Archives and Records Administration (NARA) mandated guidance). That practice is also a reason why, on information and belief, no such correspondence has been produced in response to FOIA requests, congressional oversight or litigation discovery requests for “all records,” “all correspondence” or “all electronic records.” It also ensures either incomplete or “no records” responses to FOIA requests.

16. This is related to the similar problem of senior Agency employees turning to non-official email accounts for select correspondence, which in practice means those accounts are not searched in response to FOIA requests (*see Landmark Legal Foundation v. E.P.A.*, 2013 WL 4083285, \*6 (D.D.C. Aug. 14, 2013)), and the employee’s copy of the correspondence is destroyed.<sup>3</sup>
17. FOIA has the broadest definition of “record” among the relevant federal statutes. It covers emails sent or received on an employee’s personal email account if their subject relates to official business. *See, e.g.*, Senate Committee on Environment and Public

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“with personal digital assistants that have text messaging capability”), ¶¶14, 33 (EPA currently unable to locate such records); email from Michelle Lo, counsel for EPA, to Chris Horner and Hans Bader, counsel for CEI, at 9/9/2013 3:46 PM (admitting “Ms. McCarthy uses text messaging,” but arguing that “they were not [sic] required to be preserved by the Agency.”); Email from Lo to Horner & Bader, at 8/1/2013 7:25 PM (conceding “Ms. McCarthy used the texting function on her EPA phone” and “none of her texts over the period encompassing the 18 specific dates at issue in CEI’s FOIA request (July 9, 2009, to June 29, 2012) were preserved”).

<sup>3</sup> *See, e.g.*, EPA’s response to FOIA request no. EPA-R9-2013-007631, in which the sole copies of much of the produced correspondence responsive to plaintiff’s request for work-related emails on EPA Region 9 administrator’s Comcast email account was only produced by a subsequent search of his colleagues’ EPA accounts, indicating that the employee had deleted his copies of much of this work-related correspondence.

Works, Minority Report, *A Call for Sunshine: EPA's FOIA and Federal Records Failures Uncovered* (Sept. 9, 2013) at 8

[http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore\\_id=513a8b4f-abd7-40ef-a43b-dec0081b5a62](http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=513a8b4f-abd7-40ef-a43b-dec0081b5a62).

18. All such text-message correspondence on accounts assigned solely for EPA-related use are potentially “agency records” under the Federal Records Act (44 U.S.C. § 3301), and even more likely are covered by FOIA.
19. EPA has acknowledged this, yet it asserted that, of the several thousand text messages that plaintiff identified as sent by or to senior EPA official Gina McCarthy, absolutely none were work-related, including those sent to EPA-assigned PDA accounts.  
  
(McCarthy, EPA’s Administrator, was the Assistant Administrator for Air and Radiation at the time). EPA made this claim in explaining why it allowed Ms. McCarthy to destroy each message. (*See* footnote 2, *supra*).
20. In light of this background, plaintiff sought the text message records at issue here in order to learn, and disseminate to the public information about, how EPA is using the text message capabilities paid for by the public, and to provide the public critical information on whether EPA is violating the Federal Records Act.
21. EPA has refused to provide plaintiff the requested information or approve the fee waiver request, claiming the information is of insufficient public interest, and does not concern activities or operations of the federal government, and that the requester has failed to indicate an intention to broadly disseminate the information.
22. EPA did so despite the fact that plaintiff’s fee waiver request fully explained how the information is of public interest and concerns government activities, and explained how

plaintiff regularly and broadly disseminates public information, including information obtained through FOIA requests.

**Plaintiff's Request**

23. Plaintiff submitted a FOIA request to defendant on December 17, 2013. Defendant assigned this request number EPA-HQ-2014-002006.

24. Plaintiff's FOIA request sought (emphases in original, citations omitted):

**“copies of all text messages** sent to or from a mobile telephone/personal data assistant provided by EPA for the use of any of the a) following EPA employees,<sup>2</sup> b) during the period covering **June 1, 2009 to the date you process this request**, inclusive:

- 1) **Joe Goffman, Senior Counsel OAR**
- 2) **Janet McCabe**
- 3) **Margo Oge, director of the Environmental Protection Agency's office of transportation and air quality (retired late 2012)**
- 4) **3) Cindy Huang, Staff Assistant To the Assistant Administrator**
- 4) **Scott Fulton, former EPA General Counsel**
- 5) **Steve Page, Director, OAQPS, Research Triangle Park (RTP)**
- 6) **Peter Tsirigotis, Director, Sector Policies and Programs Division, OAR: OAQPS, RTP**
- 7) **Mike Flynn, Director, Office of Radiation and Indoor Air, EPA HQ**
- 8) **Bob Perciasepe**
- 9) **Curt Spalding, Regional Administrator EPA Region 1**
- 10) **Nancy Grantham, Director, EPA R1, Office of Public Affairs**
- 11) **Ira W. Leighton, former deputy RA, Region 1.**

*See* Request, pg. 2.

25. As the request noted on pg. 3, “Text message metadata provided to us by EPA identify the above-named employees as text-message correspondents of now-Administrator Gina McCarthy on her phone/PDA provided for EPA-related correspondence.” Moreover, it explained, the requested records were on PDAs “provided to federal employees solely for work-related communications,” and would help answer a “serious outstanding question

regarding Agency record preservation practices and claims made by the current EPA administrator.”

26. Plaintiff requested a fee waiver on the basis that the disclosure of the information was of significant public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester, and because requester qualifies as a representative of the news media. 40 C.F.R. §2.107(d)(1) (“No search or review fees will be charged for requests by educational institutions...or representatives of the news media.”)
27. Plaintiff’s request explained the public interest in information regarding whether the Agency is violating the Federal Records Act by destroying all Agency copies of an entire class of public records (text messages), *i.e.*, how “the information disclosed is new; supports public oversight of agency operations, including the quality of agency activities and the effects of agency policy or regulations on public health or safety; or, otherwise confirms or clarifies data on past or present operations of the government.” Request at 3-7, 17 (*citing, e.g., McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284-1286 (9<sup>th</sup> Cir. 1987)).<sup>4</sup>
28. Elsewhere in the request, plaintiff asserted and explained its intention and means to broadly disseminate the requested information, and described its pattern, practice, methods and success in so doing with public records obtained under FOIA. Request, pp. 13-25.

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<sup>4</sup> See also 132 Cong. Rec. H9464 (daily ed. Oct. 8, 1986) (Reps. English and Kindness) (stating that fee waivers are available under the circumstances described in the quoted language above).

29. Plaintiff alternately requested fee waiver as a media outlet. Request, pp. 25-27. Because of its publication activities plaintiff is recognized as a media outlet for FOIA purposes. *See e.g.*, Department of Treasury FOIA request Nos. 2012-08-053, 2012-08-054.

**Defendant's Response**

30. By email on December 23, 2013, EPA denied CEI's fee-waiver provided for by statute, stating that CEI did not in fact make assertions of its intention to broadly disseminate responsive records. Specifically, EPA stated, "You have not expressed a specific intent to disseminate the information to the general public."
31. No one from EPA contacted plaintiff seeking further information about the request or about the intention to broadly disseminate responsive information, nor to ask what plaintiff's express and serial assertions of this intention might possibly otherwise mean. No one from defendant contacted plaintiff otherwise indicating any uncertainty about the intention set forth in these numerous direct assertions of plaintiff's intentions.
32. On January 13, 2014, plaintiff administratively appealed this denial, reiterating its numerous assertions of an intention to broadly disseminate responsive information.
33. Defendant owed plaintiff a response to this appeal within 20 days of receipt of the administrative appeal. 5 U.S. Code § 552 (a)(6)(A)(ii) requires the defendant to "make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal."
34. On March 7, 2014, defendant denied plaintiff's administrative appeal. Defendant claimed that text messages sent to and from the named EPA employees on EPA-provided phones to the EPA Administrator did not concern "identifiable operations or activities of the Federal Government." EPA OGC Appeal Denial, 2. Defendant further claimed that



plaintiff failed to explain how it intended to increase public understanding of the activities of the Federal Government despite plaintiff's clear explanation of this. *Id.* at 3.

35. Defendant further claimed that plaintiff did not qualify as a representative of the media because other media sources had reported on plaintiff's activities and because plaintiff failed to provide defendant with a copy of plaintiff's publications, despite defendant never having requested such publications (*Id.* at 5-7). It made this claim despite the fact that plaintiff's request contained citations to numerous examples of CEI's wide dissemination of information, its many publications, and its media appearances (both local and national, weekly and *ad hoc*) (Request, pp. 21-24). The request also listed many news and scholarly articles citing CEI's publications, including the articles' titles, dates, publications, and Westlaw news database cites (Request, p. 24). And it included the URLs of exemplars of CEI's own publications (Request p. 22), and CEI web sites regularly disseminating information to the public. (*e.g.*, <http://cei.org/publications>, [www.openmarket.org](http://www.openmarket.org) and [www.globalwarming.org](http://www.globalwarming.org), Request p. 23).
36. This is the latest in a series of defendant's groundless denials of plaintiff's requests on the basis that plaintiff failed to provide certain information, even though that information was clearly set forth in the FOIA request. Defendant has similarly unjustifiably disputed the public interest nature of information previously uncovered and disseminated by plaintiff, even though those productions constitute the overwhelming majority of the records that EPA has posted on its Frequently Requested Records page.<sup>5</sup>

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<sup>5</sup> That page is available at [www.epa.gov/epafoia1/frequent.html](http://www.epa.gov/epafoia1/frequent.html). *See, e.g.*, EPA FOIA request nos. HQ-FOI-01268-12, HQ-FOI-01269-12, HQ-FOI-01270-12 all of which sought information involving previously unknown email accounts that were on their face and in fact of great public interest; *see also* HQ-2013-003087, HQ-2014-001684, R6-2013-003663. Plaintiff's counsel

37. This practice of obstructing plaintiff's FOIA requests on facially unsupportable grounds began after plaintiff's counsel exposed the false-identity email account created for its former administrator, Lisa Jackson, in the name of "Richard Windsor"; that disclosure heightened public interest in EPA's operations, led to increased media and congressional scrutiny, and embarrassed top agency officials.<sup>6</sup>
38. Plaintiff regularly receives fee waivers from other federal agencies using the same or less substantial language than that which defendant rejected as insufficient.
39. Plaintiff is recognized by other federal agencies as a media outlet for FOIA purposes.
40. Plaintiff has a legal right to the information it seeks, and to the fee waiver provided for in statute for information in the public interest, and as a representative of the news media.

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Horner assists other groups with their transparency efforts including FOIA requests, whose requests defendant has recently treated in similarly adverse fashion, including HQ-2014-000344, HQ-2014-001664, R10-2013-008285, HQ-2014-002006, R3-2014-004011, HQ-2014-003658.

Agencies are to consider each such request individually and on its merits, and EPA asserts that it so treats all such requests (*See e.g.*, Jim McElhatton, *EPA arms Democrats with data, snubs Republicans*, *Washington Times*, March 18, 2014, [www.washingtontimes.com/news/2014/mar/18/epa-gives-campaign-paper-trail-to-democrats-little/](http://www.washingtontimes.com/news/2014/mar/18/epa-gives-campaign-paper-trail-to-democrats-little/)).

However, two different EPA offices (Office of the Administrator, and Office of General Counsel), have separately represented to Horner that the Agency separates his requests and those from groups employing him for specific handling, managing requests "from yourself or your affiliated organizations" [sic] together -- not individually, or even by the group making the submission as a class. *See* Feb. 19, 2014 email from Lynn Kelly, EPA Office of General Counsel to Horner. *See also* Nov. 6, 2013, email from Office of the Administrator's Jonathan Newton asserting that EPA would satisfy an outstanding request from another group he represents, but not even submitted by Horner, (EPA-HQ-2013-009342) after processing Horner's CEI request HQ-2013-001343 (which Newton asserted he would satisfy in 100 years), and then several other CEI requests.

<sup>6</sup> *See, e.g.*, Stephen Dinan, *Do Text Messages from Feds Belong on Record? EPA's Chief's Case Opens Legal Battle*, *Washington Times*, April 30, 2011, at A1 (discussing how CEI's Christopher Horner "exposed former EPA chief Lisa P. Jackson's private email account" and those of other EPA officials; and how "several congressional committees looking into the EPA also discovered other agency officials using personal emails to conduct government business - a violation of the Freedom of Information Act"; "The EPA's internal auditor also is looking into how well the agency is complying with the law.").

41. Plaintiff has exhausted the administrative process.
42. For these reasons, as explained in detail below, defendant should be required to provide the records responsive to plaintiff's request and to grant plaintiff's request for a fee waiver.

### **LEGAL ARGUMENTS**

#### **Defendant EPA has Arbitrarily and Capriciously Denied Plaintiff's Fee Waiver**

43. Plaintiff requested waiver or reduction of all costs pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) ("Documents shall be furnished without any charge...if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester"). *See also* 40 C.F.R. §2.107(l), and (c).
44. Plaintiff does not seek these records for a commercial purpose. Plaintiff is organized and recognized by the Internal Revenue Service as a 501(c)3 educational organization. As such, plaintiff also has no commercial interest possible in these records. When no commercial interest exists, an assessment of that non-existent interest is not required in any balancing test with the public's interest.
45. As a non-commercial requester, plaintiff is entitled to a liberal construction of the fee waiver standards. *See* 5 U.S.C. § 552(a)(4)(A)(iii); *McClellan*, 835 F.2d at 1284; *Perkins v. U.S. Department of Veterans Affairs*, 754 F.Supp.2d 1 (D.D.C. 2010).
46. A fee waiver request is likely to pass muster "if the information disclosed is new; supports public oversight of agency operations, including the quality of agency activities and the effects of agency policy or regulations on public health or safety; or, otherwise confirms or clarifies data on past or present operations of the government." 132 Cong. Rec. H9464 (daily ed. Oct. 8, 1986) (Reps. English and Kindness); *accord* *McClellan*, 835 F.2d at 1284-1286; *CREW v. U.S. Dept of Educ.*, 593 F.Supp.2d 261, 268 (D.D.C. 2009). The requested

information meets that description as specified in plaintiff's original request and administrative appeal.

47. Under the Freedom of Information Act, after an individual submits a request, an agency must determine within 20 working days after the receipt of any such request whether to comply with such request. 5 U.S.C. § 552(a)(6)(A)(i). Under *CREW v. FEC*, 711 F.3d 180, 186 (D.C. Cir. 2013), that response must inform the requester of the scope of the records it plans to produce and the scope of documents that it plans to withhold under any FOIA exemptions. This 20-working-day time limit also applies to any appeal. § 552(a)(6)(A)(ii). 5 U.S.C. § 552(a)(6)(A) proclaims 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. 5 U.S.C. § 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. Here the Agency did not ask for further information or clarification.
48. Furthermore, under § 552(a)(6)(A)(ii)(VIII), if the agency has missed any deadline under that section's paragraph 6, the agency shall no longer be able to assess fees. By failing to respond to plaintiff's appeal of the fee waiver denial within the statutorily required deadline, defendant has waived the right to assess fees.
49. To underscore Congress's belief in the importance of the statutory time limit, the 2007 FOIA Amendments declare that "[a]n agency shall not assess search fees . . . if the agency fails to comply with any time limit" of FOIA. In other words, the amendments were created to

prevent precisely the kind of behavior that the EPA is engaging in by continuing to unjustly and unlawfully deny fee waivers after they have waived their ability to assess fees by not following the statutory deadline, constructively denying the request. *See Lawyers Comm. v. Dept. of Justice*, 2009 WL 2905963, \*1 (N.D. Cal. Sep. 8, 2009) (agency waived right to charge fees by failing to respond to fee waiver within 20 days); *Bensman v. National Park Service*, 806 F. Supp. 2d 31, 38 (D.D.C. 2011) (“[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.”).

50. There is no credible argument that the requested information does not concern identifiable activities or operations of the Federal Government or that requester failed to explain how the information would be used to increase public understanding of government activities. Defendant further cannot claim that requester does not qualify as a representative of the news media. Finally, defendant waived its ability to assess fees under § 552(a)(6)(A)(ii)(VIII) because it failed to respond to plaintiff’s appeal of the fee denial within the statutory period.

**FIRST CLAIM FOR RELIEF**

**Duty to Grant a Fee Waiver for FOIA Request Number EPA-HQ-2014-2006–  
Declaratory Judgment**

51. Plaintiff re-alleges paragraphs 1-50 as if fully set out herein.
52. Defendant failed to provide a substantive response within the deadline(s) provided by 5 U.S.C.S. § 552(a)(6)(A), and therefore is statutorily barred from assessing fees by § 552 (a)(6)(A)(ii)(VIII).
53. Plaintiff is entitled to have its fees waived for requested records.
54. Defendant has wrongly denied plaintiff’s fee waiver request for these records.
55. Plaintiff has no requirement to further pursue its administrative remedies.

56. Plaintiff asks this Court to enter a judgment declaring that:
- (a) Plaintiff is entitled to a waiver of its fees for correspondence as specifically described in plaintiff's request FOIA Number EPA-HQ-2014-002006, and any attachments thereto;
  - (b) EPA's denial of plaintiff's fee waiver request is not in accordance with the law, and does not satisfy EPA's obligations under FOIA;
  - (c) EPA must grant plaintiff's fee waiver request; and
  - (d) EPA's refusal to grant this request is unlawful.

**SECOND CLAIM FOR RELIEF**

**Duty to Grant Waiver of Fees for FOIA Request Number EPA-HQ-2014-002006 –  
Injunctive Relief**

57. Plaintiff re-alleges paragraphs 1-56 as if fully set out herein.
58. Plaintiff is entitled to injunctive relief compelling defendant to grant its request to have its fees waived.
59. This Court should enter an injunction ordering the defendant to grant plaintiff's fee waiver within 10 business days of the date of the order.

**THIRD CLAIM FOR RELIEF**

**Duty to Release Records Sought by FOIA Request Number EPA-HQ-2014-002006 –  
Declaratory Judgment**

60. Plaintiff re-alleges paragraphs 1-59 as if fully set out herein.
61. FOIA requires that covered agencies provide records responsive to legitimate requests reasonably describing desired records, subject to one of nine enumerated exemptions.
62. Defendant EPA is a covered agency.
63. Plaintiff has sought and been denied production of responsive records reflecting the conduct of official business.
64. Plaintiff has a statutory right to the information it seeks and defendant has unlawfully failed to provide responsive records.

65. Plaintiff has no requirement to further pursue administrative remedies.
66. The requested records are of great and timely public interest.
67. Plaintiff asks this Court to enter a judgment declaring that:
  - (a) EPA correspondence as specifically described in Plaintiff's FOIA request EPA-HQ-2014-002006, and any attachments thereto, are public records, and as such, are subject to release under FOIA;
  - (b) EPA must release those requested records or segregable portions thereof subject to legitimate exemptions;
  - (c) EPA's refusal to grant a fee waiver, and requiring assurance of payment prior to producing the requested documents, is unlawful; and
  - (d) EPA's refusal to produce the requested records is unlawful.

**FOURTH CLAIM FOR RELIEF**

**Duty to Release Records Sought by FOIA Request Number EPA-HQ-2014-002006  
- Injunctive Relief**

68. Plaintiff re-alleges paragraphs 1-67 as if fully set out herein.
69. Plaintiff is entitled to injunctive relief compelling defendant to produce all records in its possession responsive to plaintiff's FOIA request.
70. This Court should enter an injunction ordering EPA to produce to plaintiff, within 10 business days of the date of the order, the records sought in plaintiff's FOIA request EPA-HQ-2014-002006, and any attachments thereto, subject to legitimate withholdings.

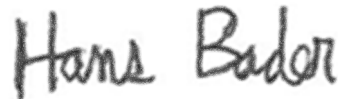
**FIFTH CLAIM FOR RELIEF**  
**Costs And Fees – Injunctive Relief**

71. Plaintiff re-alleges paragraphs 1-70 as if fully set out herein.

72. 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.
73. This Court should enter an injunction ordering defendant to pay reasonable attorney fees and other litigation costs reasonably incurred in this case.
74. Plaintiff has a statutory right to the records that it seeks, defendant has not fulfilled its statutory obligations to provide the records or a substantive response, and there is no legal basis for withholding the records.

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 9th day of April, 2014,



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