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

CITIZENS FOR RESPONSIBILITY AND  
ETHICS IN WASHINGTON  
1400 Eye Street, N.W., Suite 450  
Washington, D.C. 20005

Plaintiff,

v.

Civil Action No. \_\_\_\_\_

COUNCIL ON ENVIRONMENTAL  
QUALITY  
722 Jackson Place, N.W.  
Washington, D.C. 20503

Defendant.

**COMPLAINT FOR DECLARATORY JUDGMENT  
AND INJUNCTIVE RELIEF**

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, as amended, as well as agency FOIA regulations, challenging the failure of the Council on

Environmental Quality (“CEQ”), a component of the Executive Office of the President (“EOP”), to fulfill the request of Citizens for Responsibility and Ethics in Washington (“CREW”) for documents relating to global warming or climate change.

2. This case seeks declaratory relief that CEQ is in violation of the FOIA and agency regulations for failing to fulfill CREW’s request for records by not producing or otherwise accounting for responsive documents and injunctive relief that CEQ immediately and fully comply with CREW’s request for records under the FOIA.

### **JURISDICTION AND VENUE**

3. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

4. Plaintiff CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the right of citizens to be informed about the activities of government officials and to ensuring the integrity of government officials. CREW is dedicated to empowering citizens to have an influential voice in government decisions and in the government decision-making process. To advance its mission, CREW uses a combination of research, litigation, advocacy, and public education. As part of its research, CREW uses government records made available to it under the FOIA.

5. CREW has invested considerable organizational resources in pushing the U.S. government to take ethical issues seriously. CREW monitors closely the laws and rules applicable to government agencies.

6. CREW is harmed by CEQ's failure to comply with the FOIA because that failure harms CREW's ability to provide full, accurate, and current information to the public on a matter of great public interest and urgency. 5 U.S.C. § 552(a)(6)(c). Absent this critical information, CREW cannot advance its mission of educating the public to ensure that the public continues to have a vital voice in government decisions.

7. CREW will analyze the information it receives that is responsive to its request, and will share it with the public through memoranda, reports or press releases. In addition, CREW will disseminate any documents it acquires from its request to the public through the CREW Document Review System, an interactive website where members of the public can analyze and comment on public documents. See <http://foia.citizensforethics.org/home>. Currently, CREW's website contains links to thousands of pages of documents acquired from multiple FOIA requests. See, e.g., <http://www.citizensforethics.org/activities/campaign.php?view=130>. Visitors to CREW's website can peruse the FOIA request letters, responses from government agencies and a growing number of documents responsive to FOIA requests. The CREW website also includes documents relating to CREW's FOIA litigation, Internal Revenue Service complaints and Federal Election Commission complaints.

8. Defendant CEQ is an agency within the meaning of 5 U.S.C. § 552(f). Defendant is the federal agency with possession and control of the requested records and is responsible for fulfilling CREW's FOIA request.

## **STATUTORY FRAMEWORK**

### **The Freedom of Information Act**

9. The FOIA, 5 U.S.C. § 552, requires agencies of the federal government to release requested records to the public unless one or more specific statutory exemptions apply.

10. An agency must respond to a party making a FOIA request within 20 working days, notifying that party of at least the agency's determination whether or not to fulfill the request, and of the requester's right to appeal the agency's determination to the agency head. 5 U.S.C. § 552(a)(6)(A)(I). CEQ regulations set a shorter response time, requiring CEQ to respond to FOIA requests within 10 working days of receipt. 40 C.F.R. § 1515.5(b)(4).

11. An agency must respond to a FOIA appeal within 20 working days, notifying the appealing party of the agency's determination to either release the withheld records or uphold the denial. 5 U.S.C. § 552(a)(6)(A)(ii).

12. In "unusual circumstances," an agency may delay its response to a FOIA request or appeal, but must provide notice and must also provide "the date on which a determination is expected to be dispatched." 5 U.S.C. § 552(a)(6)(B).

13. The FOIA also requires each agency to promulgate regulations specifying a fee schedule for the processing of FOIA requests and establishing procedures and guidelines for the waiver or reduction of fees. 5 U.S.C. § 552(a)(4)(A). Defendant CEQ's fee waiver regulations are found at 4 C.F.R. § 1515.15, and do not establish any procedures for waiving or reducing fees. Under the FOIA, agencies should produce documents at no charge to the requester or at a reduced 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 the government and is not primarily in the commercial interest of the requester,” 5 U.S.C. §552(a)(4)(A)(iii).

14. This Court has jurisdiction, upon receipt of a complaint, “to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” 5 U.S.C. § 552(a)(4)(B).

15. The FOIA provides a mechanism for disciplinary action against agency officials who have acted inappropriately in withholding records. Specifically, when requiring the release of improperly withheld records, if the Court makes a written finding that “the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously,” a disciplinary investigation is triggered. 5 U.S.C. § 552(a)(4)(F).

#### **FACTS GIVING RISE TO PLAINTIFF’S CLAIMS FOR RELIEF**

16. The U.S. Congress created the Council for Environmental Quality through the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321, *et. seq.* As part of its mission, CEQ must “insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken.” 40 C.F.R. § 1500.1(b). CEQ regulations also require that “[t]he information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.” *Id.*

17. Currently, there is a scientific consensus that the earth is warming at a potentially dangerous rate, with human activity contributing to that process of global warming. *See, e.g., Climate Change 2007: The Physical Science Basis, Summary for Policy Makers*, United Nations Intergovernmental Panel on Climate Change (Feb. 2007) (attached as Exhibit 1); Elizabeth Rosenthal & Andrew C. Revkin, *Science Panel Calls Global Warming “Unequivocal”*, N.Y.

Times, Feb. 3, 2007 (attached as Exhibit 2); Juliet Eilperin, Debate on Climate Shifts to Issue of Irreparable Change; Some Experts on Global Warming Foresee 'Tipping Point' When It Is Too Late to Act, Wash. Post, Jan. 29, 2006 (attached as Exhibit 3). Although recent pronouncements by the scientific community convey a higher degree of certainty about the causes of this warming than ever before, scientists worldwide have expressed grave concerns about the dangers of warming and its human causes since at least 2001, the year President Bush took office. See Climate Change 2001: Synthesis Report, Intergovernmental Panel on Climate Change (2001), available at [http://www.grida.no/climate/ipcc\\_tar/vol4/english/index.htm](http://www.grida.no/climate/ipcc_tar/vol4/english/index.htm) (last visited Feb. 13, 2007). See also Naomi Oreskes, Beyond the Ivory Tower: The Scientific Consensus on Climate Change, Science, Dec. 3, 2004 (attached as Exhibit 4) (analyzing 928 scientific reports on climate change published between 1993 and 2003).

18. U.S. government scientists at CEQ and other agencies have been studying the issue of global warming for many years, and have produced a variety of reports to inform the public and Congress on the issue. See, e.g., Our Changing Planet: The U.S. Climate Change Science Program for Fiscal Years 2004 and 2005, available at <http://www.usgcrp.gov/usgcrp/Library/ocp2004-5/default.htm> (last visited Feb. 13, 2007). Notwithstanding CEQ's mandate to present the best scientific information to the public, in recent years political appointees at CEQ have edited many of these reports in ways that distorted scientific conclusions and deprived Congress and the American public of the government's scientific conclusions, warnings, and predictions on climate change. See Andrew C. Revkin, Bush Aide Edited Climate Reports, N.Y. Times, June 8, 2005 (attached as Exhibit 5); Rewriting The Science, *60 Minutes* (CBS television broadcast, first aired March 19, 2006) (print version

July 30, 2006) (“Rewriting the Science”) (attached as Exhibit 6); Memorandum from Chairman Henry A. Waxman to Members of the Committee on Oversight and Government Reform, re: CEQ Documents (Jan. 30, 2007) at 5 [hereinafter “Cmte. Mem.”] (attached as Exhibit 7).

19. For example, former CEQ Chief of Staff Philip A. Cooney, a former lobbyist and “climate team leader” for the leading oil industry trade group, the American Petroleum Institute, edited drafts of an annual climate change report entitled “Our Changing Planet” by inserting and enhancing ambiguities about climate change. Revkin, N.Y. Times, June 8, 2005; Rewriting The Science. Rick Piltz, who for ten years co-wrote and edited reports, including “Our Changing Planet” for the Climate Change Science Program (“CCSP”) that CEQ oversees, has described Mr. Cooney’s editing role as including instances where “a line that said earth is undergoing change becomes ‘may be undergoing change’ . . . One line that says energy production contributes to warming was just crossed out.” Rewriting The Science. Mr. Cooney is a lawyer with a background in economics, not a scientist. Revkin, N.Y. Times, June 8, 2005.

20. On July 29, 2006, the bipartisan leadership of the House Committee on Government Reform (now the House Committee on Oversight and Government Reform) (“the Committee”) sent a letter to CEQ Chairman James Connaughton requesting that CEQ produce by August 11, 2006, all documents and communications relating to: (1) Mr. Cooney’s climate-change related activities; (2) CEQ’s review and edits of climate-change materials produced by other federal agencies; (3) CEQ efforts to manage or influence the statements of governmental scientists or experts to the media; (4) communications between CEQ and other federal agencies regarding climate change; and (5) contacts between CEQ and non-governmental parties on climate change. Letter from Tom Davis, Chairman, and Henry A. Waxman, Ranking Minority Member, U.S.

House of Representatives Committee on Government Reform, to James Connaughton, Chairman, CEQ (July 20, 2006) at 1 (attached as Exhibit 8).

21. Following discussions with CEQ staff, the Committee broadened its request to include the files of other CEQ staff. See Letter from Henry A. Waxman, Chairman, and Tom Davis, Ranking Minority Member, U.S. House of Representatives Committee on Oversight and Government Reform, to James Connaughton, Chairman, CEQ (Jan. 22, 2007) (attached as Exhibit 9). The Committee also requested that CEQ produce 39 specific documents, with no redactions, by January 25, 2007, and that CEQ produce all other documents responsive to the Committee's requests by February 9, 2007. Id.

22. CEQ did not produce the requested documents by January 25 and, instead, provided the Committee with nine of the 39 requested documents on January 29, 2007. Letter from Henry A. Waxman, Chairman, and Tom Davis, Ranking Minority Member, U.S. House of Representatives Committee on Oversight and Government Reform, to James Connaughton, Chairman, CEQ (Jan. 30, 2007) (attached as Exhibit 10). Those nine documents are the only non-public documents CEQ has provided to date to the Committee. Id.

#### **Plaintiff's FOIA Request and Follow-Up**

23. By letter dated May 12, 2006, pursuant to the FOIA, CREW requested that CEQ provide all records

that mention or relate to the causes associated with the increase in the average temperature of the earth's atmosphere and oceans that has been observed in recent decades ("climate change" or "global warming"), including, but not limited to, all records relating to scientific and policy reports.



Letter from Tim Mooney, Senior Counsel, Citizens for Responsibility and Ethics in Washington, to Khary Cauthen, Chief of Staff, Council on Environmental Quality (May 12, 2006) (attached as Exhibit 11). CREW noted its particular interest in communications between CEQ and the president, vice president, federal agency officials, members of Congress, and energy and extractive industries concerning global warming. Id. CREW also sought all CEQ records from 2001 to the present relating to the drafting and review of all reports by the CCSP. Id.

24. In addition, CREW sought a waiver of all fees associated with processing its request. As CREW explained, the subject of its request “is of particular interest and importance to the public in light of the revelations that CEQ officials edited conclusions made by government climate experts based on political expediency rather than sound science.” Id. Disclosure of the requested records is likely to contribute to the public’s understanding of the manner and extent to which outside forces may have affected and overridden the scientific judgments of the CCSP. Id.

25. At CEQ’s request, CREW worked with the agency to narrow its FOIA request, even though CREW made clear that its original request as formulated was sufficiently clear and narrow to warrant a fee waiver. Toward that end, CREW clarified that it was not seeking publicly available documents, such as unannotated newspaper clips, or documents that only pertain to activities of junior CEQ staff, and clarified that it was seeking documents from January 20, 2001, to October 26, 2006. CEQ, in turn, agreed to produce a Vaughn index identifying, document-by-document, all documents it was withholding, to begin producing documents during the week of October 30, 2006, and to produce documents and the corresponding Vaughn indices thereafter on a rolling basis.

26. Pursuant to this agreement, CEQ produced to CREW 188 documents on November 3, 2006, consisting primarily of public climate change reports and essays, as well as correspondence from industry leaders interested in participating in various environmental initiatives. CEQ did not make any redactions to the documents. CEQ also acknowledged that because it was processing CREW's request in connection with the requests of the Committee and other FOIA requesters, "some documents provided may not be directly responsive to your request." Letter from Edward A. Boling, Deputy General Counsel, CEQ, to Dan Roth, Counsel, CREW (Nov. 3, 2006) at 1 (attached as Exhibit 12).

27. On December 26, 2006, CEQ sent CREW an additional 103 documents without redactions that included copies of non-governmental climate change reports, newspaper clippings and correspondence concerning the Bush administration's position on the Kyoto Treaty, and emails from 2001 through the first half of 2002 consisting almost exclusively of outside reports and newspaper clips that had been emailed around CEQ and other White House offices.

28. On January 30, 2007, following a Committee hearing, CEQ provided CREW with a letter dated January 29, 2007, from CEQ Chairman James Connaughton to the Committee, along with nine documents that CEQ had submitted to the Committee with its letter.

29. All of the documents that the Committee has requested of CEQ are also within the scope of CREW's FOIA request of CEQ. Since October 20, 2006, CEQ has made additional documents available to the Committee beyond the nine it produced on January 30, 2007, including hand-written notes by Mr. Cooney. See Cmte. Mem. at 5. CEQ has yet to produce these documents to CREW or claim an exemption for them under the FOIA. These documents "appear

to contain evidence of a vigorous effort by senior Administration officials to downplay the certainty and negative impacts of global warming.” Id. at 3.

30. On several occasions between January 30 and February 12, 2007, CEQ represented that it would produce to CREW all non-deliberative materials that CEQ was to produce to the Committee on February 9, and would attempt to produce a Vaughn index accounting for any withholdings or redactions. As of January 13, 2007, CREW has received neither the documents nor a Vaughn index.

31. To date, CEQ has not produced to CREW a single document containing any redaction or claimed that any document, or portion thereof, is exempt under the FOIA.

32. CREW has now constructively exhausted its administrative remedies with respect to the processing of CREW’s FOIA request. See, e.g., Judicial Watch v. Rossoti, 326 F.3d 1309, 1310 (D.C. Cir. 2003) citing 5 U.S.C. § 552(a)(6)(C).

## **PLAINTIFF’S CLAIM FOR RELIEF**

### **CLAIM ONE (Failure to Produce Records Under the FOIA)**

33. Plaintiff realleges and incorporates by reference all preceding paragraphs.

34. Plaintiff properly asked for records within CEQ’s control.

35. Plaintiff is entitled by law to access to the records requested under the FOIA, unless defendant makes an explicit and justified statutory exemption claim.

36. Therefore, CEQ violated FOIA’s mandate to release agency records to the public by failing to release the records as plaintiff specifically requested. 5 U.S.C. §§ 552(a)(3)(A), 552(a)(4)(B).

**CLAIM TWO**  
**(Failure to Respond Under the FOIA)**

37. Plaintiff realleges and incorporates by reference all preceding paragraphs.

38. To date, plaintiff has not received a full response from CEQ and CEQ has exceeded the 20-working-day statutory time limit for such a response. 5 U.S.C. § 5 52(a)(6)(A)(I).

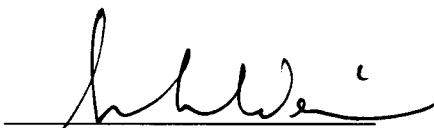
39. Therefore, CEQ has violated the FOIA's mandate to respond to plaintiff's FOIA request within the statutory time period.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff respectfully requests that this Court:

- (1) Declare that CEQ has violated the Freedom of Information Act by failing to lawfully satisfy plaintiff's FOIA request of May 12, 2006;
- (2) Order CEQ to release immediately all records responsive to plaintiff's FOIA request;
- (3) Award plaintiff its reasonable attorney fees and litigation costs in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (4) Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,



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