

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

CENTER FOR BIOLOGICAL DIVERSITY,

Plaintiff,

v.

U.S. DEPARTMENT OF STATE, *et al.*

Defendants.

Case No.: 1:18-cv-00563-JEB

SECOND AMENDED COMPLAINT

1. Plaintiff Center for Biological Diversity (“the Center”) challenges Defendant U.S. Department of State and Secretary Michael R. Pompeo’s (“the Department”) failure to publicly release and properly submit the seventh U.S. Climate Action Report (“Seventh Climate Action Report” or “Report”) within the mandatory deadline established under the United Nations Framework Convention on Climate Change (“the Convention”), UNFCCC, May 9, 1992, S. Treaty Doc. No. 102-38, 1771 U.N.T.S. 107. Among other things, this Report must outline United States’ actions to address climate change and report on the country’s progress towards meeting the Convention’s greenhouse gas emission reduction objectives. The Center also challenges the Department’s failure to timely complete its response to the Center’s request for records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, regarding the Department’s preparation and production of the overdue Seventh Climate Action Report.

2. The United States was required to complete, publicly release, and submit to the Convention Secretariat the Seventh Climate Action Report—which must contain both the “Biennial Report of the United States of America” (“Biennial Report”) and the separate “National Communication of the United States of America” (“National Communication

Report”)—no later than January 1, 2018. In accordance with the Global Climate Protection Act of 1987, 15 U.S.C. § 2901, the Department is designated as the lead agency for U.S. compliance with the country’s international obligations related to climate change, including those under the U.S.-ratified Convention.

3. Although it is now almost one year beyond the January 1, 2018 deadline, to date the Department has not even issued a draft of the report for public comment, let alone publicly released the final Seventh Climate Action Report and submitted it to the Convention Secretariat. Accordingly, the Center seeks declaratory, mandamus, and injunctive relief to compel the Department to comply with this obligation as soon as possible, pursuant to the Mandamus Act, 28 U.S. Code § 1361, and Administrative Procedure Act (“APA”), 5 U.S.C. § 706.

4. In addition, on February 1, 2018, the Center submitted a FOIA request for records concerning the Report’s delay and the Report’s preparation (“the FOIA Request”). While, after this suit was initially filed, the State Department has begun releasing these records, it has neither released all responsive records nor provided a firm date by when the process will be completed. The Department’s failure to search for and release all records responsive to the FOIA request is contrary to FOIA and the APA.

5. Because prompt access to these records is necessary to effectuate FOIA’s purpose, the Center seeks relief directing the Department to provide the Center with all responsive records without further delay.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this matter pursuant to 5 U.S.C. § 552(a)(4)(B), 28 U.S.C. § 1331, 5 U.S.C. § 706, the Mandamus Act, 28 U.S. Code § 1361, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.

7. Venue properly vests in this Court pursuant to 5 U.S.C. § 552(a)(4)(B), which authorizes FOIA claims be brought in this District, and 28 U.S.C. 1391(e)(1), which authorizes suits against the Department in this District, where it is located, and also authorizes suit in this District because a substantial part of the events or omissions giving rise to the Center's claim regarding the Department's failure to complete and release the Seventh Climate Action Report occurred in this District.

8. Declaratory relief is appropriate under 28 U.S.C. § 2201, and Mandamus relief is appropriate under 28 U.S. Code § 1361.

9. Injunctive relief is appropriate under 28 U.S.C. § 2202 and 5 U.S.C. § 552(a)(4)(B).

PARTIES

10. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a national, non-profit conservation organization with offices throughout the United States. The Center has more than 1.5 million members and online activists who are concerned about protecting the natural environment from the ravages of climate change and other environmental degradation.

11. The Center's Climate Law Institute engages in national and international advocacy to advance the fight against climate change by, *inter alia*, pursuing strategies to limit greenhouse gas emissions. This includes publishing written scientific and policy materials for public education, as well as engaging in national and international policymaking processes concerning the United States' commitments to greenhouse gas emission reductions through the Convention and other international commitments on climate change.

12. Among the vital instruments for these efforts is the United States' Climate Action Report, which, among other things: discloses the nation's greenhouse gas emission inventories

and sets out projected future emissions under existing and planned climate polices and measures; collates current federal, state, and local government policies and measures that address climate change; and, critically, states the government's detailed mitigation, adaptation, and international finance and technology plans to meet the Convention's objectives. In sum, the Climate Action Report communicates the status of the nation's progress with respect to the Convention's objectives, and sets out the government's action plan to meet emissions reductions targets and the Convention's other goals.

13. The Center relies on the information in the Climate Action Report to educate its members and the public about United States' activities—and deficiencies—in meeting its commitments to reduce greenhouse gas emissions. In addition, the Center also depends on the Report's information to productively engage in domestic and international advocacy that both seeks to hold the government accountable to the Convention's objectives and advance progressive measures and policies in the government's climate action plans, with the ultimate goal of progressing the country's greenhouse gas emission reductions and other facets of climate change mitigation and adaptation in ways that are consistent with the Convention.

14. By failing to timely complete, publicly release, and submit the Seventh Climate Action Report, the Department is harming the Center and its members by withholding information to which the Center is legally entitled, and which is necessary to allow the Center to carry out its mission and advocacy efforts. For example, in the absence of the Report, information regarding the government's climate action plans, measures, and policies to reduce greenhouse gas emissions in fulfillment of the Convention's emissions targets and objectives is not generally available. As a result, the absence of the Seventh Climate Action Report hinders the Center's ability to educate and advocate for government accountability and transparency with

respect to meeting the Convention obligations. The public release of the Seventh Climate Action Report will redress these injuries.

15. The Center and its members are also harmed by the Department's failure to comply with the FOIA, which prevents the Center from gaining a full understanding of the Department's activities, priorities, and decision-making with respect to the Seventh Climate Action Report, and climate change and greenhouse gas emissions more generally.

16. Defendant DEPARTMENT OF STATE is an agency within the executive branch of the federal government. The Department is designated as the lead agency responsible for complying with the country's international obligations related to climate change, including those under the U.S.-ratified Convention, and is responsible for completing, publicly releasing, and submitting the overdue Seventh Climate Action Report to the Convention Secretariat. The Department is also in custody and control of records subject to the Center's FOIA Request.

17. Defendant MICHAEL R. POMPEO is the Secretary of State and is responsible for all of the acts and omissions of the Department, including the agency's compliance with all of the agency's legal obligations.

BACKGROUND

A. The Department's Failure To Fulfill Its Legal Obligations To Publicly Release Information Under the Global Climate Protection Act And The Convention.

i. The Department's Legal Obligations

18. On October 13, 1992, the late President George H.W. Bush, after receiving consent from Congress, ratified the United Nations Framework Convention on Climate Change, the framework treaty of the international climate change regime which aims to "stabiliz[e]

greenhouse gas concentrations at a level that would prevent dangerous anthropogenic interference with the climate system.” The Convention entered into force on March 1, 1994.

19. One of the Convention’s bedrock principles is that transparency among nations is a critical component of progress on addressing greenhouse gas emissions. Accordingly, the Convention contains several vital provisions through which the parties made binding commitments to publicly disclose their emissions, their efforts to address greenhouse gas mitigation and adaptation, and other matters.

20. For example, the Convention obligates parties to fulfill specific *public* reporting requirements, providing, under Article 4, that they must:

- (a) Develop, periodically update, *publish* and make available to the Conference of the Parties, in accordance with Article 12, national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, using comparable methodologies to be agreed upon by the Conference of the Parties; [and]
- (b) Formulate, implement, *publish* and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change.

Similarly, under Article 12, the parties are required to submit this and related information concerning their “policies and measures” for “limiting its anthropogenic emissions of greenhouse gases” to the Conference of the Parties, which also makes this information publicly available. These publicly released reports form a bedrock part of the international transparency system of monitoring, verification, and implementation that is critical to global efforts collectively addressing climate change.

21. Pursuant to the December 11, 2011 Conference of the Parties, after the public release of one set of these reports mandated for January 1, 2014, subsequent “full national

communications” of this information “shall” be completed, released and submitted “every four years.” Decision 2/CP.17 of the Conference of the Parties, United Nations Framework Convention on Climate Change, Conference of the Parties 17, FCC/CP/20119/Add.1 (Dec. 11, 2011).

22. In accordance with the Global Climate Protection Act of 1987, 15 U.S.C. § 2901, the Department is designated as the lead agency for U.S. compliance with the country’s international obligations related to climate change, including those under the U.S.-ratified Conventions. Accordingly, the Department is responsible for compiling, releasing, and submitting to the Convention Secretariat the Climate Action Report – a responsibility the agency has faithfully completed until this year.

ii. The Overdue Seventh Climate Action Report

23. To fulfill the Convention’s requirements, the Department in prior years has completed, publicly released, and submitted the Climate Action Report, containing both the Biennial Report and National Communication Report. For example, the Department completed, publicly released, and submitted the most recent sixth Climate Action Report in 2014.¹

24. Before finalizing the 2014 Reports, the Department prepared drafts of both reports and publicly issued those drafts for public comment in the Federal Register. *See* 78 Fed. Reg. 59,412 (2013). The Department subsequently completed, released and submitted the final Reports, as required by the Convention.

25. Although the Seventh Climate Action Report was due on January 1, 2018, that date passed without the Department having issued even a draft of the Report for public comment.

¹ *See, e.g.*, <https://www.globalchange.gov/browse/reports/us-climate-action-report-2014> (2014 Report); *see also* <https://2009-2017.state.gov/e/oes/climate/climateactionreport/index.htm> (2016 Biennial Report).

Accordingly, on February 5, 2018, the Center sent the Department a letter detailing the agency's legal obligations, and stating that the Center intended to file suit unless the Department would agree to an expeditious schedule to complete, issue, and submit the Report.

26. To date, the Department has neither made a public announcement regarding the timetable for the completion, public release, and submission of the Report to the Convention Secretariat, nor issued a draft of the Report for public comment.

B. The Department's Failure To Fulfill Its Legal Obligations Under The FOIA.

i. FOIA's Requirements

27. FOIA's basic purpose is government transparency. It establishes the public's right to access all federal agency records unless such records may be withheld pursuant to one of nine, narrowly construed FOIA exemptions. 5 U.S.C. § 552(b)(1)-(9).

28. FOIA imposes strict deadlines on federal agencies when they receive requests for records pursuant to FOIA. Specifically, an agency must determine whether to disclose responsive records and notify the requester of its determination within 20 working days of receiving a FOIA request, and it must make releasable records "promptly" available. *Id.* §§ 552(a)(3)(A), (a)(6). Although the statute also provides limited circumstances under which this deadline may be extended, it does not provide for any extension where the agency has not responded to the requestor at all. *Id.* § 552(a)(6).

29. FOIA places the burden on the agency to prove that it may withhold responsive records from a requester. *Id.* § 552(a)(4)(B).

30. FOIA requires each agency to make reasonable efforts to search for records in a manner reasonably calculated to locate all records responsive to the FOIA request. *Id.* §

552(a)(3)(C)-(D). The cut-off date for the agency's search is the date that the agency conducts the search and not any earlier date.

31. FOIA requires federal agencies to expeditiously disclose requested records, *see id.* § 552, and mandates a policy of broad disclosure of government records. Any inquiry under FOIA brings with it a strong presumption in favor of disclosure.

32. Congress provided that in certain, limited instances, records may be withheld as exempt from FOIA's broad disclosure mandate, based on nine categories of exemptions. *Id.* § 552(b). These exemptions, however, are narrowly construed in light of FOIA's dominant objective of disclosure, not secrecy.

33. The U.S. district courts have jurisdiction "to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." *Id.* § 552(a)(4)(B).

34. Alternatively, an agency's response to a FOIA request is subject to judicial review under the APA, which confers a right of judicial review on any person who is adversely affected by agency action, 5 U.S.C. § 702, and authorizes district courts to compel agency action that is unlawfully withheld or unreasonably delayed. *Id.* § 706(1). District courts must set aside any agency action that is found to be "arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law." *Id.* § 706(2)(A).

ii. The Department's Failure To Comply With The FOIA

35. Seeking to understand the reasons for the Department's failure to submit the Climate Action Report by the mandated January 1, 2018 deadline, the Center submitted a FOIA Request, to the Department on February 1, 2018, seeking, among other things:

All records mentioning, including, and/or referencing the Seventh Climate Action Report ("CAR-7"), which is bifurcated into both the Seventh U.S. National

Communication (“NC-7”) and the Third U.S. Biennial Report (“BR-3”), as mandated to be submitted under the United Nations Framework Convention on Climate Change (“UNFCCC”) Articles 4 and 12, including but not limited to:

- a. All records mentioning, including, and/or referencing the substantive content of the CAR-7, NC-7, and BR-3, including but not limited to U.S. greenhouse gas emission inventories, climate action plans, and international finance assistance;
- b. All records mentioning, including, and/or referencing the preparation, timeline of production and release, status of production and release, Federal Register notifications of production and release, public comment procedures, and interagency, intra-agency, expert, and/or other public review procedures, with respect to producing, finalizing, and releasing the CAR-7, NC-7, and BR-3;
- c. All records mentioning, including, and/or referencing whether the CAR-7, NC-7, and BR-3 will be issued in final form by the UNFCCC deadline of January 1, 2018 and/or any other further revised timeline;
- d. All records mentioning, including, and/or referencing obstacles completing the CAR-7, NC-7, and BR-3 by UNFCCC deadline of January 1, 2017 and any further revised deadline or timeline;
- e. All records mentioning, including, and/or referencing whether to comply with the UNFCCC, Paris Agreement, and other climate treaty deadlines with respect to the CAR-7, NC-7, and BR-3;
- f. All records mentioning, including, and/or referencing the effects and consequences of compliance and non-compliance with the UNFCCC, Paris Agreement, and other climate treaty deadlines with respect to the CAR-7, NC-7, and BR-3;
- g. All inter- and intra-agency correspondence records mentioning, referencing and/or including reference to compliance with the UNFCCC and any other applicable laws relevant to the production, release, and submission of the CAR-7, NC-7, and BR-3;
- h. All records of communications between the UNFCCC Secretariat or other administrator of the UNFCCC, the Intergovernmental Panel on Climate Change, and/or any other relevant international organizations and other national governments, mentioning, referencing and/or including reference to compliance with the UNFCCC and any other applicable laws relevant to the production, release, and submission of the CAR-7, NC-7, and BR-3.

36. Long after the statutory deadline for the Department to respond to the FOIA, and after this suit was filed, the Department began providing responsive records. That process is ongoing.

37. The Center has been required to expend resources to prosecute this action.

FIRST CLAIM FOR RELIEF
ADMINISTRATIVE PROCEDURE ACT

(Unlawfully withheld and unreasonably delayed agency action)

38. The Center re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

39. By failing to publicly release the Seventh Climate Action Report—including both the seventh U.S. National Communication Report and the third U.S. Biennial Report—and to submit that Report to the Secretariat, both of which are required to fulfill the Department’s legal obligations pursuant to the Global Climate Protection Act of 1987, 15 U.S.C. § 2901, and the United Nations Framework Convention on Climate Change, the Department is engaged in unlawfully withheld and unreasonably delayed agency action, in violation of the APA, 5 U.S.C. § 706.

40. These violations harm the Center in the manner described in Paragraphs 10-15 above.

SECOND CLAIM FOR RELIEF
MANDAMUS ACT

(Failure to carry out a non-discretionary duty)

41. The Center re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

42. By failing to publicly release the Seventh Climate Action Report—including both the seventh U.S. National Communication Report and the third U.S. Biennial Report—and submit that Report to the Secretariat, both of which are required to fulfill the Department’s legal obligations pursuant to the Global Climate Protection Act of 1987, 15 U.S.C. § 2901, and the United Nations Framework Convention on Climate Change, the Department is failing to carry out a non-discretionary duty that may be enforced pursuant to the Mandamus Act, 28 U.S. Code § 1361.

43. These violations harm the Center in the manner described in Paragraphs 10-15 above.

THIRD CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT

(Failure to provide the records responsive to the Center’s FOIA Request)

44. The Center re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

45. The Center has a statutory right to the records it seeks. The Department is violating the FOIA and implementing regulations by refusing to disclose all the records responsive to the Center’s FOIA Request.

46. Based on the nature of the Center’s organizational activities, it will undoubtedly continue to employ FOIA’s provisions in record requests to the Department in the foreseeable future.

47. The Center’s organizational activities will be adversely affected if the Department continues to violate FOIA’s disclosure provisions as it has in this case.

48. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, The Department will continue to violate the Center's rights to receive public records under FOIA.

FIFTH CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT

(Failure to adequately search for records responsive to the Center's FOIA Request)

49. The Center re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

50. The Center has a statutory right to have the Department process the FOIA Request in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). The Department is violating the Center's rights in this regard by unlawfully failing to undertake a search reasonably calculated to locate all records that are responsive to the Center's FOIA Request.

51. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Department in the foreseeable future.

52. The Center's organizational activities will be adversely affected if the Department continues to violate FOIA's requirement to undertake a search that is reasonably calculated to locate records that are responsive to their respective FOIA Requests.

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

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SIXTH CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT

(Failure to disclose all non-exempt records responsive to the Center's FOIA Request)

54. The Center re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

55. The Center has a statutory right to the records it seeks. There is no legal basis for the Department to assert that any of FOIA's nine exemptions to mandatory disclosure apply to withhold these records from the Center. See 5 U.S.C. § 552(b)(1)-(9).

56. To the extent the Department is invoking any of these exemptions, the Department is unlawfully withholding from disclosure records that are responsive to the Center's FOIA Request.

57. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Department in the foreseeable future.

58. The Center's organizational activities will be adversely affected if the Department continues to violate FOIA's disclosure provisions.

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

SEVENTH CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT

(Failure to provide reasonably segregable portions of any lawfully exempt records)

60. The Center re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

61. The Center has a statutory right to any reasonably segregable portion of a record that may contain information lawfully subject to any of FOIA's exemptions. 5 U.S.C. § 552(b). The Department is violating the Center's rights in this regard to the extent it is unlawfully withholding reasonably segregable portions of any lawfully exempt records that are responsive to the Center's FOIA Request.

62. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Department in the foreseeable future.

63. Center's organizational activities will be adversely affected if the Department continues to violate FOIA's disclosure provisions.

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

EIGHTH CLAIM FOR RELIEF
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT
(In the Alternative to the Third Through Seventh Claim)

(Agency action unlawfully withheld or unreasonably delayed)

65. The Center re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

66. The Department is unlawfully withholding agency action by failing to comply with the mandates of FOIA as a result of its failure and refusal to search for and disclose records responsive to the Center's FOIA Request. The Department's failures constitute agency actions that are unlawfully withheld pursuant to the APA, 5 U.S.C. § 706(1).

67. Alternatively, the Department is unreasonably delaying agency action by failing to comply with the mandates of FOIA as a result of its failure and refusal to search for and disclose records responsive to the Center's FOIA Request. The Department's failures constitute agency action unreasonably delayed pursuant to the APA, 5 U.S.C. § 706(1).

68. As alleged above, the Department's failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of its statutory duties under the APA.

69. The Center has suffered a legal wrong as a result of the Department's failure to comply with the mandates of FOIA. As alleged above, the Department is violating its statutory duties under the APA and injuring the Center's interests in public oversight of governmental operations.

70. The Center has no other adequate remedy at law to redress the violations noted above.

71. The Center is entitled to judicial review under the APA, 5 U.S.C. § 702.

NINTH CLAIM FOR RELIEF
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT
(In the Alternative to the Third Through Seventh Claims)

(Arbitrary and capricious agency action)

72. The Center re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

73. The Department is violating FOIA's statutory mandates by failing to search for and disclose records responsive to the Center's FOIA Request. By violating FOIA's statutory mandates, the Department's actions are arbitrary, capricious, an abuse of discretion, or not in accordance with the law pursuant to the APA, 5 U.S.C. § 706(2)(A).

74. As alleged above, the Department's failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of the agency's statutory duties under the APA.

75. The Center has suffered a legal wrong as a result of the Department's failure to comply with the mandates of FOIA. As alleged above, the Department is violating their statutory duties under the APA and injuring the Center's interests in public oversight of governmental operations.

76. The Center has no other adequate remedy at law to redress the violations noted above.

77. The Center is entitled to judicial review under the APA, 5 U.S.C. § 702.

PRAYER FOR RELIEF

WHEREFORE, the Center prays that this Court:

1. Declare the Department in violation of the APA, 5 U.S.C. § 706, by failing to publicly release and submit to the Conference of the Parties the Seventh Climate Action Report, including both the seventh U.S. National Communication Report and the third U.S. Biennial Report.

2. Grant Mandamus and Injunctive relief directing the Department to timely publish and submit to the Conference of the Parties the Seventh Climate Action Report, including both the seventh U.S. National Communication Report and the third U.S. Biennial Report by completing, publicly releasing, and submitting the final Seventh Climate Action Report to the Convention Secretariat within ninety (90) days.

3. Order the Department to conduct searches reasonably calculated to locate all records responsive to the Center's FOIA Request, utilizing a cut-off date for such searches that is

the date the searches are conducted, and providing the Center, by a date certain, with all responsive records and reasonably segregable portions of lawfully exempt records sought in this action.

4. Declare that the Department's failure to timely make a determination on the Center's FOIA Request is unlawful under FOIA, 5 U.S.C. § 552(a)(6)(A)(i) and (ii), or in the alternative, is agency action that has been unlawfully withheld or unreasonably delayed, 5 U.S.C. § 706(1), or is arbitrary, capricious, an abuse of discretion, or not in accordance with law, 5 U.S.C. § 706(2)(A).

5. Declare that the Department's failure to timely undertake a search for and disclose to the Center all records responsive to the Center's FOIA Request, as alleged above, is unlawful under FOIA, U.S.C. § 552(a)(6)(A)(i), or in the alternative, is an agency action that has been unlawfully withheld or unreasonably delayed, 5 U.S.C. § 706(1), or is arbitrary, capricious, an abuse of discretion, or not in accordance with law, 5 U.S.C. § 706(2).

6. Declare that the Department's failure to provide the Center with reasonably segregable portions of records which may be lawfully subject to a FOIA exemption, as alleged above, is unlawful under FOIA, U.S.C. § 552(a)(6)(A)(i), or in the alternative, is an agency action that has been unlawfully withheld or unreasonably delayed, 5 U.S.C. § 706(1), or is arbitrary, capricious, an abuse of discretion, or not in accordance with law, 5 U.S.C. § 706(2).

7. Award the Center its costs and reasonable attorney fees pursuant to 5 U.S.C. § 552(a)(4)(E) or 28 U.S.C. § 2412.

8. Grant such other and further relief as the Court may deem just and proper.

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DATED: December 7, 2018

Respectfully submitted

/s/ Anchun Jean Su

Anchun Jean Su

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