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*Plaintiffs' Counsel*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
MEDFORD DIVISION**

**RONALD C. SCHAAF, DEBORAH  
EVANS, BILL GOW, STACEY  
MCLAUGHLIN, WILL MCKINLEY,  
JAMES DAHLMAN, JOAN DAHLMAN,  
PAMELA ORDWAY, CLARENCE  
ADAMS, EVANS SCHAAF FAMILY LLC,**  
an Oregon corporation, **GREATER GOOD  
OREGON**, an Oregon non-profit corporation,  
**LANDOWNERS UNITED**, an Oregon non-  
profit corporation, **OREGON WOMEN'S  
LAND TRUST**, an Oregon non-profit  
corporation, and **NISKANEN CENTER,  
INC.**, a Delaware non-profit corporation,

Plaintiffs,

v.

**UNITED STATES BUREAU OF LAND  
MANAGEMENT, UNITED STATES  
DEPARTMENT OF THE INTERIOR,  
FEDERAL BUREAU OF  
INVESTIGATION, UNITED STATES**

Case No.: 1:22-cv-728

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

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

**DEPARTMENT OF JUSTICE and  
UNITED STATES CUSTOMS AND  
BORDER PROTECTION,**

Defendants.

The above captioned Plaintiffs allege as follows:

**INTRODUCTION**

**1.** This action is premised upon, and consequent to, violations of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.* It challenges the unlawful failure of the Defendants, the United States Bureau of Land Management (“BLM”), the United States Department of the Interior (“DOI”), the Federal Bureau of Investigation (“FBI”), the United States Department of Justice (“DOJ”), and the United States Customs and Border Protection (“CBP”), to adequately respond to Plaintiffs’ FOIA requests and administrative appeals within the time and manner required by FOIA. Consequently, the Defendants are unlawfully withholding information responsive to Plaintiffs’ FOIA requests that do not fall within the scope of FOIA’s exemptions to mandatory disclosure.

**2.** The purpose of the FOIA is “to establish a general philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language.” S.Rep. No. 813, 89th Cong., 1st Sess., 3 (1965). The FOIA therefore requires federal agencies to disclose records to any person upon request unless the information falls within one of nine narrow disclosure exemptions listed in the Act. *See* 5 U.S.C. §§ 552(a)(3)(A), (b). Except in unusual circumstances, federal agencies must determine within twenty business days whether requested records are exempt from withholding and, if they are not, the agency must “promptly disclose” the records to the requester. 5 U.S.C. §§ 552(a)(6)(A)(i); *id.* at (a)(3)(A), (a)(6)(C)(i). Upon receiving a federal agency’s adverse or inadequate FOIA disclosure or determination, a

requester is then entitled to file an administrative appeal to the head of the federal agency. 5 U.S.C. § 552(a)(6)(A)(i)(III). The federal agency then must make a determination with respect to that administrative appeal within twenty working days. 5 U.S.C. § 552(a)(6)(A)(ii). FOIA requires federal agencies to provide the requester with information about the status of the agency's response to the request, including an estimated date ("ECD") on which the agency will complete action on the request. 5 U.S.C. § 552(a)(7)(B)(ii). The district court has jurisdiction to enjoin an agency from withholding agency records and to order the production of agency records improperly withheld. 5 U.S.C. § 552(a)(4)(B).

**3.** The FOIA requests at issue in this case seek information relating to the BLM's, FBI's, and CBP's involvement with other federal, state, local and private entities in surveillance and alleged security activities directed at private citizens engaged in First Amendment protected lawful and peaceful opposition to the Jordan Cove Energy Project ("Project"), which is comprised of the Pacific Connector Gas Pipeline ("Pipeline") and the Jordan Cove LNG facility ("Jordan Cove") in southwestern Oregon. A primary source of millions of private dollars underwriting this surveillance by public law enforcement (and therefore a potentially corrupting influence), was the Canadian energy company Pembina Pipeline Corporation, owners of the Project. Finally, Plaintiffs seek information relating to Defendants' processing of their FOIA requests.

**4.** The BLM and DOI violated the FOIA's provisions in processing Plaintiffs' information requests. First, BLM's Oregon office failed to adequately justify withholding entire documents and portions of documents through its claimed FOIA exemptions and failed to show it performed an adequate search. Therefore, BLM failed to release information that does not properly fall within the ambit of any of FOIA's disclosure exemptions. Second, DOI failed to

timely issue a final determination on Plaintiffs' administrative appeal within the time allowed by FOIA. Third, BLM and DOI failed to issue a final determination on Plaintiffs' FOIA requests within the time allowed by FOIA. Fourth, BLM and DOI failed to provide Plaintiffs with an estimated completion date for their information requests and appeal as required by FOIA.

**5.** The FBI violated the FOIA's provisions in processing Plaintiffs' information requests. First, the FBI improperly issued a "*Glomar*" response (in which the FBI refused to confirm or deny the existence of such records) in response to part of Plaintiffs' request. Second, the FBI failed to adequately justify withholding entire documents and portions of documents through its claimed FOIA exemptions and failed to show it performed an adequate search for the requested documents. Therefore, the FBI failed to release information that does not properly fall within the ambit of any of FOIA's disclosure exemptions. Third, the FBI and DOJ failed to timely issue final determinations on Plaintiffs' FOIA requests and administrative appeals within the time allowed by FOIA. Fourth, FBI and DOJ failed to provide Plaintiffs with an estimated completion date for their information requests and appeals as required by FOIA.

**6.** The CBP violated the FOIA's provisions in processing Plaintiffs' information requests. First, the CBP failed to adequately justify withholding portions of documents through its claimed FOIA exemptions and failed to show it performed an adequate search for the requested documents. Therefore, CBP failed to release information that does not properly fall within the ambit of any of FOIA's disclosure exemptions. Second, CBP failed to timely issue final determinations on Plaintiffs' FOIA request and administrative appeal within the time allowed by FOIA. Third, CBP failed to provide Plaintiffs with an estimated completion date for their information request and appeal as required by FOIA.

**7.** Plaintiffs recognize the realities of Defendants’ workloads and have been more than willing to give the Agencies additional time to make the required determinations and to disclose requested records in this and many other matters. But in this case, Defendants have missed every applicable deadline while showing little sign that they will ever actually disclose the requested records to Plaintiffs on a timeline that will allow Plaintiffs to use the information to provide meaningful public oversight of the Agencies’ operations and activities.

**8.** Defendants are unlawfully withholding the public disclosure of information sought by Plaintiffs, information to which Plaintiffs are entitled and for which no valid disclosure exemption applies. Defendants violated the statutory mandates and deadlines imposed by FOIA through their failure to provide final determinations resolving Plaintiffs’ FOIA requests and appeals within the time and manner required by law. Accordingly, Plaintiffs seek injunctive relief directing Defendants to promptly provide Plaintiffs the requested records.

### **PARTIES**

**9.** Plaintiffs Ronald C. Schaaf, Deb Evans, Bill Gow, Evans Schaaf Family LLC, Stacey McLaughlin, Will McKinley, James Dahlman, Joan Dahlman, Pamela Ordway, Clarence Adams, Greater Good Oregon, Landowners United, and Oregon Women’s Land Trust (collectively, “Landowner Plaintiffs”) are Oregon landowners and landowner-focused organizations. The proposed Pipeline would have directly and adversely affected not only their properties in Oregon but also vast tracks of state and federally managed lands in the state.

**10.** Plaintiffs submitted the FOIA requests at issue in this case. The information Plaintiffs seek is intended to allow the public to examine the BLM, FBI, and CBP’s conduct with regard to surveillance and alleged security activities carried out by federal agencies alone and/or in collaboration with local Oregon and state agencies, as well as private and foreign entities, to

monitor and surveil organizations and individuals opposed to the Project. There exists substantial public interest in this information, and the Plaintiffs will use it to: inform the public dialogue regarding the Defendants' work and exercise of its police power in favor of foreign, private interests; shed light on the extent to which Defendants utilized each agencies' resources and power to observe, monitor, and track public, First Amendment-protected activities; illuminate Defendants' activities, positions, and policies related to the Project, as well as provide public insight into Defendants' relationships with local and federal agencies—and private actors—in intelligence-gathering efforts; and give more public oversight over how these operations and activities relate to each agencies' stated mission.

**11.** Plaintiff Niskanen Center, Inc. (“Niskanen”) is a Washington D.C.-based non-profit and advocacy organization with a strong interest in securing Americans' rights to their property. Niskanen submitted the FOIA requests at issue in this case on behalf of itself and the impacted Landowner Plaintiffs. As part of its mission, it seeks public records from Defendants that are relevant to their work and will be disseminated to the general public. Niskanen regularly communicates to wide array of audiences through the popular media, congressional testimony, and court filings, and to smaller public audiences through blogs, press releases, and other content such as white papers and opinion essays. As with the individual Landowner Plaintiffs, Niskanen seeks the information at issue in this case to: inform the public dialogue regarding the Defendants' work and exercise of its police power in favor of foreign, private interests; shed light on the extent to which Defendants utilized each agencies' resources and power to observe, monitor, and track public, First Amendment-protected activities; illuminate Defendants' activities, positions, and policies related to the Project, as well as provide public insight into Defendants' relationships with local and federal agencies—and private actors—in intelligence-

gathering efforts; and give more public oversight over how these operations and activities relate to each agencies' stated mission.

**12.** Defendant BLM is an agency of the executive branch of the federal government. It is in possession, custody, or control of the records sought by Plaintiffs and as such, it is subject to the FOIA pursuant to 5 U.S.C. § 552(f).

**13.** Defendant DOI is an agency of the executive branch of the federal government. It is in possession, custody, or control of the records sought by Plaintiffs, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

**14.** Defendant FBI is an agency of the executive branch of the federal government. It is in possession, custody, or control of the records sought by Plaintiffs and as such, it is subject to the FOIA pursuant to 5 U.S.C. § 552(f).

**15.** Defendant DOJ is an agency of the executive branch of the federal government. It is in possession, custody, or control of the records sought by Plaintiffs, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

**16.** Defendant CBP is an agency of the executive branch of the federal government. It is in possession, custody, or control of the records sought by Plaintiffs and as such, it is subject to the FOIA pursuant to 5 U.S.C. § 552(f).

### **JURISDICTION AND VENUE**

**17.** This Court has jurisdiction pursuant to 5 U.S.C. 552(a)(4)(B) and 28 U.S.C. § 1331 because this action arises under the FOIA and the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*

**18.** Venue is proper in this Court pursuant to 5 U.S.C. 552(a)(4)(B) which provides venue for FOIA cases in this District because Plaintiffs reside within this judicial district. Venue

is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because a significant portion of the events, and the people and property to which they pertain, were located in Oregon. Assignment in this judicial division is proper for the same reasons.

**19.** Declaratory relief is appropriate under 28 U.S.C. § 2201.

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

### **FACTS**

#### **Background of the Jordan Cove Energy Project**

**21.** The Project intended to construct a liquefied natural gas export and storage facility and a 229-mile natural gas pipeline to supply it in southern Oregon. The Canadian energy company Pembina Pipeline Corporation owns the Project and associated successor interests.

**22.** The stated purpose of the Project was to export 100% of the transported gas to overseas markets.

**23.** The Pipeline would have traversed four Oregon counties, affecting over 250 private landowners.

**24.** Efforts to approve and construct the Project were underway for more than 15 years. The Federal Energy Regulatory Commission (“FERC”) originally approved the Pipeline and affiliated LNG Terminal in 2009 for import purposes, but FERC vacated its approval when the then-applicants sought to instead designate the Pipeline for export purposes. *See Jordan Cove Energy Project L.P.*, 139 FERC ¶ 61,040 (April 16, 2012). The Commission denied a second application in 2016, for failure to demonstrate that there was sufficient “need” for the Pipeline, as required under the National Gas Act. *Jordan Cove Energy Project L.P.*, 154 FERC ¶ 61,190 (March 11, 2016).

**25.** On March 19, 2020, FERC approved and authorized the Project. *Order Granting Authorizations Under Sections 3 and 7 of the Natural Gas Act, Jordan Cove Energy Project, L.P., Pacific Connector Gas Pipeline, L.P.*, 170 FERC ¶ 61,202 (March 19, 2020) (Certificate Order).

**26.** FERC’s authorization of the Project (“the Certificate”) allowed the foreign owned Pipeline to immediately take Landowner Plaintiffs’ properties without consent, via the extraordinary governmental power of eminent domain, all for a Project—as outlined below—that will never be built.

**27.** For 15 years, landowners and other members of the community lawfully and peacefully opposed construction of a pipeline through southern Oregon and LNG terminal, including the most recent, third iteration of the Project.

**28.** Several parties challenged the FERC Certificate in federal court. *See Deborah Evans, et al. v. FERC*, Civil No. 20-1161 (consolidated with Nos. 20-1171, 20-1170, 20-1172, 20-1180, 20-1198) (D.C. Cir.). Plaintiffs in that action included individual landowners and landowner-related organizations (including all Landowner Plaintiffs, numerous environmental groups, and several Oregon State agencies).

**29.** The United States Court of Appeals for the District of Columbia remanded part of the record back to FERC to consider whether the imposition of a stay of the pipeline certification was appropriate. *See Evans v. FERC*, Doc No. 1920347, No. 20-1161, Order (D.C. Cir. Nov. 1, 2021).

**30.** On November 18, 2021, FERC ordered the Jordan Cove Energy Project and Pacific Connector Gas Pipeline to clarify by December 1, 2021 whether they planned to move

forward with the Project. *Order Establishing Briefing, Pacific Connector Gas Pipeline, LP and Jordan Cove Energy Project L.P.*, 177 FERC ¶ 61,117 at p. 4 (Nov. 18, 2021).

**31.** On December 1, 2021, the Pacific Connector Gas Pipeline and Jordan Cove Energy Project submitted a brief to FERC stating they “have decided not to move forward with the Project” and requested FERC vacate the authorizations. *Initial Brief of Pacific Connector Gas Pipeline, LP and Jordan Cove Energy Project L.P.*, FERC Accession # 20211201-5196, p. 2 (Dec. 1, 2021).

**32.** On December 16, 2021, FERC issued an order—“subject to leave of the DC Circuit”—vacating the certificates for the Jordan Cove LNG Terminal under Docket No. CP17-495-000 and the Pacific Connector Pipeline under Docket No. CP17-494-000. *Order Vacating Authorizations*, 177 FERC ¶ 61,198 at p. 3 (Dec. 16, 2021).

**33.** On January 25, 2022, the United States Court of Appeals for the District of Columbia dismissed and remanded the case to FERC “to vacate the authorizations issued to Jordan Cove LNG Terminal and Pacific Connector Pipeline, consistent with the Commission's December 16, 2021 order, 177 FERC ¶ 61,198.” *Evans v. FERC*, Doc No. 1932210, No. 20-1161, Order (D.C. Cir. Jan. 25, 2022).

BLM, FBI, and CBP Surveillance Activities of Organizations and Individuals

**34.** Plaintiffs’ FOIA requests seek information related to Defendants’ activities conducted alone and/or in collaboration with other federal agencies, Oregon local and state agencies, and with private and foreign entities, in the monitoring and surveillance of organizations and individuals who lawfully and peacefully opposed the approval and construction of the Project.

**35.** There is publicly available evidence that such surveillance and collaboration took place. As reported in *The Guardian* and *The Intercept*, law enforcement groups—including the BLM, Department of Homeland Security (DHS), and the FBI, Oregon state agencies, and private companies—monitored and tracked opponents to the Project. *See* Jason Wilson & Will Parrish, *Revealed: FBI and police monitoring Oregon anti-pipeline activists*, *The Guardian* (Aug. 8, 2019), available at <https://www.theguardian.com/us-news/2019/aug/08/fbi-oregon-anti-pipeline-jordan-cove-activists>; Will Parrish & Jason Wilson, *Revealed: anti-terror center helped police track environmental activists*, *The Guardian* (Oct. 2, 2019), available at <https://www.theguardian.com/us-news/2019/oct/02/oregon-pipelines-protests-monitoring-police-anti-terror-unit>; and Will Parrish & Alleen Brown, *Paid by the Pipeline: A Canadian Energy Company Bought an Oregon Sheriff's Unit*, *The Intercept* (Feb. 12, 2020), available at <https://theintercept.com/2020/02/12/jordan-cove-oregon-pembina-pipeline/>.

**36.** Over a period of at least four years the Coos County Sheriff's Office ("Sheriff's Office") maintained a unit ("Unit") that was solely funded with millions of dollars provided by the Project's parent company, Pembina. The Unit was tasked with protection of the Project, notwithstanding the fact that there was no existing Project infrastructure to protect. *Id.*

**37.** The Pembina-funded Unit spent a majority of its time conducting surveillance and gathering intelligence on opponents to the Project. *Id.* One observer noted that "[t]his is a public police force that has essentially opened up a private, corporately funded wing and, in doing so, is entrenching itself on one side of a very complicated political debate." *Id.*

**38.** Defendants coordinated with the Unit, federal, state, and local agencies in Oregon, as well as with private security firms employed by Pembina, to monitor and investigate

individuals and organizations, including Landowner Plaintiffs, who exercised their First Amendment right to lawfully and peacefully oppose the Project. *Id.*

**39.** Defendants’ personnel were included on distribution lists related to the monitoring and surveillance efforts of Project opponents, and were members of an intelligence-sharing group called the South Western Oregon Joint Task Force (“SWOJTF”), which surveilled peaceful opposition to JCEP.

**40.** Defendants’ entanglement and work surveilling lawful opposition to a proposed massive infrastructure project in coordination with the privately-funded Sheriff Office’s Unit and security firms poses a threat to First Amendment protections, separations between law enforcement and commercial interests, and U.S. law enforcement succumbing to foreign influence.

#### Plaintiffs’ FOIA Requests

**41.** On October 21, 2020, Plaintiffs submitted three similar FOIA requests to the BLM, FBI, and CBP (collectively, “the Requests”) seeking “information related to surveillance and security activities that have been carried out by federal agencies alone and/or in collaboration with local and state agencies in Oregon, as well as private entities, in the monitoring and surveillance of organizations and individuals engaging in JCEP [Jordan Cove Energy Project]-related activities.”

**42.** The Requests included a fee waiver request as the Niskanen Center is a 501c(3) nonprofit think tank that operates in the public interest.

**43.** On October 21, 2020, Plaintiffs filed their FOIA request to BLM via the online [FOIAonline.gov](https://www.foiaonline.gov) portal and via email to Keiosha Alexander, Acting FOIA Officer, and Diana Fisher, Oregon State FOIA Coordinator. This request asked that Defendant BLM provide the

estimated date for completion an agency is required to provide by FOIA. 5 U.S.C. § 552(a)-(7)(B)(ii).

**44.** On October 21, 2020, Plaintiffs filed their FOIA request to the FBI via the FBI's eFOIPA request portal and an email to Bobak Talebian, FOIA Director, at [DOJ.OIP-FOIA@usdoj.gov](mailto:DOJ.OIP-FOIA@usdoj.gov).

**45.** On October 21<sup>1</sup>, 2020, Plaintiffs filed their FOIA request to CBP via the online [FOIAonline.gov](https://www.foiaonline.gov) portal.

**46.** The Requests asserted that full disclosure is in the public interest because release of the information will enhance the public's oversight and understanding of the operations and activities of federal agencies and their collaboration with private entities in the law enforcement sphere. In so doing, the requests will support First Amendment rights and will hold to account undue corporate and foreign influence on U.S. law enforcement.

**47.** The public interest is best served by the full release of the requested information, which will: inform the public dialogue regarding the Defendants' work and exercise of its police power in favor of foreign, private interests; shed light on the extent to which Defendants utilized each agencies' resources and power to observe, monitor, and track public, First Amendment-protected activities; illuminate Defendants' activities, positions, and policies related to the Project, as well as provide public insight into Defendants' relationships with local and federal agencies—and private actors—in intelligence-gathering efforts; and give more public oversight over how these operations and activities relate to each agencies' stated mission.

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<sup>1</sup> Although the CBP FOIA Request is dated October 22, 2020, it was actually submitted on October 21, 2020; the same date that the BLM and the FBI FOIA Requests were submitted. The date "22" on the CBP FOIA Request was a typographic error. Official automatic receipts from CBP establish the CBP Request submission date as October 21, 2020. *See infra* ¶ 100.

BLM's and DOI's Responses

**48.** On October 21, 2020, BLM sent an automatic reply to Plaintiffs' October 21, 2020 BLM FOIA Request from [admin@foiaonline.gov](mailto:admin@foiaonline.gov) confirming receipt of request and providing tracking number **DOI-BLM-2021-000331**.

**49.** On November 20, 2020, Plaintiffs sent a letter of inquiry via email on request No. **DOI-BLM-2021-000331** to the Bureau of Land Management Coos Bay District Office to the attention of Keiosha Alexander, Acting FOIA Officer, and Diana Fisher, Oregon State FOIA Coordinator, at email addresses [kaalexander@blm.gov](mailto:kaalexander@blm.gov) and [BLM\\_OR\\_SO\\_FOIA@blm.gov](mailto:BLM_OR_SO_FOIA@blm.gov), stating BLM had failed to respond with a determination by November 20, 2020 and had failed to provide an estimated completion date for disclosure, as required by law. The letter requested that BLM respond by November 25, 2020.

**50.** On December 10, 2020, Plaintiffs accessed BLM's online status check system for our FOIA request. The online status detailed that Plaintiffs' FOIA request was "Under Agency Review," left the estimated date of completion blank, and stated that the final disposition is "Undetermined." Plaintiffs accessed BLM's online status check system again on January 11, 2021, and on July 12, 2021, and the status details remained unchanged.

**51.** On January 15, 2021, Plaintiffs sent another letter of inquiry via email on request No. **DOI-BLM-2021-000331** to the Bureau of Land Management Coos Bay District Office to the attention of Keiosha Alexander, Acting FOIA Officer, and Diana Fisher, Oregon State FOIA Coordinator, at email addresses [kaalexander@blm.gov](mailto:kaalexander@blm.gov) and [BLM\\_OR\\_SO\\_FOIA@blm.gov](mailto:BLM_OR_SO_FOIA@blm.gov), again reiterating that FOIA required BLM to have provided a determination by November 20, 2020. The letter requested that BLM respond by January 21, 2021. The letter also asked that

Defendant provide the estimated date for completion as required under the law. 5 U.S.C. § 552(a)(7)(B)(ii).

**52.** On January 20, 2021, Shannon Wolery, FOIA/Privacy Act Officer at the BLM Oregon State Office responded with a letter via email to Plaintiffs to explain that their office could not respond to the FOIA request as there were certain items that the Oregon State Office could not response to “such as items #8-10,” since “the scope of the request would require a search performed at the Department of the Interior (DOI) or BLM Headquarters level,” and that the new FOIA tracking number **DOI-BLM-2021-001950** was created “for the OR/WA portions that respond to [the] request.” Ms. Wolery further provided that at “the DOI/BLM level, the National office will respond to those portions of your request under the original tracking number of DOI-BLM-2021-000331.” (emphasis added). The email noted an anticipated final response by April 15, 2021 and that BLM would “provide interim responses to you until we complete processing your request.”

**53.** In a January 20, 2021 email from Ms. Wolery the BLM granted Plaintiffs’ fee waiver request but that message did not purport to be, nor was it, a final decision on Plaintiffs’ FOIA request.

**54.** On January 25, 2021, Plaintiffs sent another letter of inquiry to the Bureau of Land Management Coos Bay District Office on the Oregon State Office request No. **DOI-BLM-2021-001950** to the attention of Keiosha Alexander, Acting FOIA Officer, and Diana Fisher, Oregon State FOIA Coordinator, and Shannon Wolery, FOIA/Privacy Act Officer, at email addresses [kaalexander@blm.gov](mailto:kaalexander@blm.gov) and [BLM\\_OR\\_SO\\_FOIA@blm.gov](mailto:BLM_OR_SO_FOIA@blm.gov). In this letter, Plaintiffs requested that BLM “provide the date by which [Plaintiffs] can expect receipt of the first portion

of responsive records and how often [Plaintiffs] can expect disclosure of the subsequent releases.”

**55.** Later on January 25, 2021, Shannon Wolery of the Oregon State Office, sent an email to Plaintiffs and explained that BLM “plan[s] to release the first batch to [Plaintiffs] no later than the end of February.” Notably, BLM did not say when other documents would be released.

**56.** The BLM’s Oregon office produced 103 pages of heavily redacted documents on three separate occasions on Request No. **DOI-BLM-2021-001950** – on March 1, 2021, April 1, 2021, and April 14, 2021 (collectively referred to as “BLM’s Produced Documents”) – and completely withheld at least 127 pages of responsive documents.

**57.** BLM’s Oregon office relied on FOIA exemptions 6, 7(C), 7(E), and 7(F) in redacting 86 out of the 103 BLM’s Produced Documents and in completely withholding 127 pages. BLM did not explain in any of its disclosures why it was entitled to redact portions of the BLM’s Produced Documents or to completely withhold entire documents based on these alleged exemptions. BLM did not even provide any sort of explanation as to what the redacted documents or segments of documents contained.

**58.** BLM’s Oregon office further failed to provide any details of the search process used.

**59.** On August 20, 2021, Plaintiffs filed with DOI an administrative appeal of BLM’s Oregon office’s final determination for FOIA Request No. **DOI-BLM-2021-001950** via email to [FOIA.Appeals@sol.doi.gov](mailto:FOIA.Appeals@sol.doi.gov), appealing the BLM Oregon office’s determination because it failed to justify withholding portions of documents and documents entirely and failed to provide sufficient information for Plaintiffs to determine the adequacy of the search.

**60.** DOI's appeal decision was due 20 business days after Plaintiffs filed the appeal, or by September 20, 2021. 5 U.S.C. § 552(a)(6)(A)(ii).

**61.** On October 13, 2021, Plaintiffs for the third time sent a letter of inquiry to the BLM National HQ Office regarding FOIA Request No. **DOI-BLM-2021-000331** to Keiosha Alexander, Acting FOIA Officer via email address [kaalexander@blm.gov](mailto:kaalexander@blm.gov), and noted again that the BLM National HQ Office failed to properly respond to the request, and did not provide an estimated completion date or disclosure of the requested documents as required under the law.

**62.** On November 19, 2021, Plaintiffs sent a letter of inquiry via email to DOI's appeals email address, [FOIA.Appeals@sol.doi.gov](mailto:FOIA.Appeals@sol.doi.gov), seeking an acknowledgement of receipt of the appeal of Request No. **DOI-BLM-2021-001950**, and estimated date of completion and requested that DOI respond by December 3, 2021. The letter also noted that "time is of the essence" for the request.

**63.** As of the date this lawsuit was filed, Plaintiffs have not received a final decision from DOI regarding their outstanding FOIA appeal of Request No. **DOI-BLM-2021-001950**.

**64.** Further, as of the date this lawsuit was filed, Plaintiffs still have not received any response from BLM's National HQ Office regarding Request No. **DOI-BLM-2021-000331**, including the date of receipt as required by FOIA, 5 U.S.C. § 552(a)(7)(B)(i), or an estimated completion date for disclosure as required by 5 U.S.C. § 552(a)(7)(B)(ii).

**65.** Because DOI has failed to provide an appeal determination on Plaintiffs' appeal of Request No. **DOI-BLM-2021-001950** within the statutory time period of 20 business days, and BLM's National HQ Office has failed to provide a final determination of Request No. **DOI-BLM-2021-000331** within the statutory period of 20 business days, Plaintiffs have exhausted all

administrative remedies with both offices and now seek judicial enforcement of their FOIA request. 5 U.S.C. § 552(a)(6)(C).

**66.** The filing of this lawsuit was necessary to compel BLM and DOI to disclose all records that are responsive to Plaintiffs' FOIA requests.

**67.** Plaintiffs' claims presented herein are not insubstantial within the meaning of 5 U.S.C. § 552(a)(4)(E)(ii)(II).

**68.** No exceptional circumstances exist within the meaning of FOIA, 5 U.S.C. § 552(a)(6)(C) that would allow this Court to grant BLM more time to review and disclose the requested records.

**69.** BLM has not exercised due diligence in searching for and releasing records responsive to Plaintiffs' requests.

**70.** The delays at issue in this case result from a predictable agency workload of FOIA requests. Defendants BLM and DOI have not made reasonable progress in reducing its backlog of pending requests and appeals.

**71.** The circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the processing of the request and appeal and withholdings at issue in this case.

**72.** Based on the nature of Plaintiffs' professional activities, organizational Plaintiffs will continue to employ FOIA's provisions for information requests to BLM and DOI in the foreseeable future.

**73.** Organizational Plaintiffs have plans to submit additional FOIA requests to BLM and DOI in the future.

**74.** Plaintiffs' professional activities will be adversely affected if BLM and DOI are allowed to continue violating FOIA's disclosure provisions.

**75.** Unless enjoined and made subject to a declaration of Plaintiffs' legal rights by this Court, BLM and DOI will continue to violate the rights of Plaintiffs to receive public records under FOIA.

**76.** Plaintiffs have been required to expend costs and to obtain the services of attorneys to prosecute this action.

#### FBI's Response

**77.** On October 21, 2020, the FBI sent an automatic reply from [efoia@subscriptions.fbi.gov](mailto:efoia@subscriptions.fbi.gov) confirming receipt of the FOIA Request submitted to the FBI that same day.

**78.** On October 26, 2020, the FBI sent three letters via email from Michael G. Seidel, Section Chief of the Record/Information Dissemination Section in the Information Management Division at the FBI:

- a. The first letter with tracking number **1479222-000** had the subject "Pacific Connector Gas Pipeline" and noted it was being closed administratively because "the material responsive to your request will be processed in FOIPA request number 1479214-0 [sic], as they share the same information." It then described an addendum that includes general information that applies to all FOIPA requests.
- b. The second letter with tracking number **1479214-000** had the subject "Jordan Cove LNG Terminal" and was a generic acknowledgement letter of the FOIA Request, that it was being processed, and that the fee waiver request was under consideration.
- c. The third letter stated that Plaintiffs "requested records on one or more third party individuals" and assigned tracking number **1479286-000** to that alleged portion of the request. This letter was a "*Glomar*" response or denial in which the FBI refused to confirm or deny the existence of such records "on third party individuals."

**79.** On November 20, 2020 Niskanen sent the FBI a letter of inquiry on FBI Request No. **1479214-000** noting that the FBI was required to respond to the request by November 20, 2020. The letter requested that the FBI respond by Wednesday, November 25, 2020, and that it was vital that Plaintiffs obtained the information as soon as possible.

**80.** On December 11, 2020, the FBI sent a Final Determination via email for FOIPA request number **1479214-000** that asserted 31 pages were reviewed and 7 pages were being released. The FBI also attached a sheet purporting to list all the deleted pages, identified by page number and claimed exemption, along with 7 total pages of partially redacted documents (“FBI’s Produced Documents”).

**81.** The FBI’s decision on FOIPA request number **1479214-000** invoked FOIA’s exemptions 6, 7(C), and 7(E) in partially redacting the Produced Documents and in completely withholding the other 24 reviewed pages. The FBI did not explain in any of its disclosures why it redacted portions of the Produced Documents or why it completely withheld entire documents based off these exemptions. The FBI did not provide any explanation of the contents of redacted whole documents or segments of documents.

**82.** The FBI further failed to provide any adequate details of the search process used.

**83.** On January 24, 2021, Plaintiffs filed an administrative appeal via DOJ’s FOIA STAR portal and via email to [DOJ.OIP.FOIA@usdoj.gov](mailto:DOJ.OIP.FOIA@usdoj.gov), that challenged the FBI’s October 26, 2020 “*Glomar*” denial under FOIA request number **1479286-000** because the FBI failed to justify a “*Glomar*” response.

**84.** The DOJ responded with two acknowledgment letters to the *Glomar* administrative appeal on January 25, 2021.

**85.** The DOJ’s final decision for the “*Glomar*” appeal under FOIA request number **1479286-000** was due 20 business days after Plaintiffs filed the appeal, or by February 22, 2021. 5 U.S.C. § 552(a)(6)(A)(ii).

**86.** On February 24, 2021, Plaintiffs sent a letter of inquiry noting that the DOJ had failed to respond to Plaintiffs’ “*Glomar*” administrative appeal, that time remained of the essence, and requested a response by February 26, 2021.

**87.** On March 11, 2021, Plaintiffs filed another administrative appeal via DOJ’s FOIA STAR portal and via email to [DOJ.OIP.FOIA@usdoj.gov](mailto:DOJ.OIP.FOIA@usdoj.gov). This appeal challenged the FBI’s December 11, 2020 final determination under FOIA request number **1479214-000** because it failed to justify withholding portions of documents and documents entirely and failed to provide sufficient information for Plaintiffs to determine the adequacy of the search.

**88.** The DOJ’s decision for the appeal regarding FOIA request number **1479214-000** was due 20 business days after Plaintiffs filed the appeal, or by April 8, 2021. 5 U.S.C. § 552(a)(6)(A)(ii).

**89.** On November 19, 2021, Plaintiffs emailed a letter to the DOJ’s FOIA email address, [DOJ.OIP.FOIA@usdoj.gov](mailto:DOJ.OIP.FOIA@usdoj.gov), seeking a response to all the pending administrative appeals, noting that responses to the appeals were long overdue, and once again that time remained of the essence.

**90.** On November 29, 2021, the DOJ belatedly issued decisions on the two administrative appeals via two emails with letter attachments to Plaintiffs. In these appeal determinations, the DOJ affirmed both of its prior determinations and refused to release any further records or information regarding its search process.

**91.** The filing of this lawsuit was necessary to compel the FBI and DOJ to disclose all

records that are responsive to Plaintiffs' FOIA requests.

**92.** Plaintiffs' claims presented herein are not insubstantial within the meaning of 5 U.S.C. § 552(a)(4)(E)(ii)(II).

**93.** The FBI did not exercise due diligence in searching for and releasing records responsive to Plaintiffs' requests.

**94.** The circumstances surrounding the FBI's and DOJ's withholding raise the question of whether agency personnel acted arbitrarily or capriciously with respect to the processing of the request and appeals and the withholdings at issue in this case.

**95.** Based on the nature of Plaintiffs' professional activities, organizational Plaintiffs will continue to employ FOIA's provisions for information requests to the FBI in the foreseeable future.

**96.** Organizational Plaintiffs have plans to submit additional FOIA requests to the FBI in the future.

**97.** Plaintiffs' professional activities will be adversely affected if the FBI is allowed to continue violating FOIA's disclosure provisions.

**98.** Unless enjoined and made subject to a declaration of Plaintiffs' legal rights by this Court, the FBI will continue to violate the rights of Plaintiffs to receive public records under FOIA.

**99.** Plaintiffs have been required to expend costs and obtain the services of attorneys to prosecute this action.

CBP's Response

**100.** On October 21, 2020, CBP sent an automatic reply from [admin@foiaonline.gov](mailto:admin@foiaonline.gov) confirming receipt of Plaintiffs' request and providing tracking number **CBP-2021-005182**.

**101.** On October 22, 2020, CBP sent another email from [no-reply@foiaonline.gov](mailto:no-reply@foiaonline.gov), acknowledging receipt of the request.

**102.** On July 28, 2021, CBP sent two emails and attachments in response to Plaintiffs' FOIA request from [no-reply@foiaonline.gov](mailto:no-reply@foiaonline.gov). Neither the emails nor the attachments stated whether CBP completely withheld any responsive documents.

- a. The first email noted that CBP partially granted and partially denied Plaintiffs' FOIA request and contained CBP's response letter.
- b. The second contained 36 pages of partially redacted documents ("CBP's Produced Documents"). CBP redacted these documents citing to FOIA exemptions 6 and 7(C). CBP did not explain in any of its disclosures why it was entitled to redact portions of CBP's Produced Documents or to completely withhold entire documents based off these exemptions.

**103.** CBP further failed to provide any details in its July 28, 2021 responses to Plaintiffs' FOIA request of the search process use.

**104.** On October 21, 2021, Plaintiffs filed an administrative appeal via US Certified mail to CBP's FOIA Appeals office at 90 K Street, NE, Washington DC 20229. According to the Post Office's tracking information, the appeal was successfully delivered on October 22, 2021.

**105.** Plaintiffs appealed CBP's determination because it failed to justify withholding portions of documents, did not clarify whether there were any documents found but not disclosed, and failed to provide sufficient information for Plaintiffs to determine the adequacy of the search.

**106.** CBP's appeal decision was due 20 business days after receipt of Plaintiffs appeal, or by November 23, 2021. 5 U.S.C. § 552(a)(6)(A)(ii).

**107.** On November 15, 2021, Plaintiffs called CBP's FOIA appeal number, 202-325-0220, and left a voicemail asking for confirmation of receipt of the appeal, an appeal tracking

number, and an estimated date of completion. On the same day, Plaintiffs also left a voicemail on the CBP's general FOIA number, 202-325-0150, asking for the same information.

**108.** On December 1, 2021, Plaintiffs again called CBP's FOIA appeal office telephone number, 202-325-0220, and left a voicemail asking for confirmation of receipt of the appeal, an appeal tracking number, and an estimated date of completion. On the same day, Plaintiffs also left a voicemail on the CBP's general FOIA number, 202-325-0150, asking again for the same information.

**109.** On December 2, 2021, Plaintiffs mailed a follow-up letter with the administrative appeal attached, via US Certified mail to CBP's FOIA Appeals office at 90 K Street, NE, Washington, DC, 20229.

**110.** On December 3, 2021, a CBP employee called Plaintiffs' counsel back, and then another CBP employee, Lynette Carter, emailed Plaintiffs' counsel asking them to send the appeal via email to the employee's email address so that she could create a tracking number.

**111.** On December 3, 2021, Plaintiffs emailed the administrative appeal to Lynette Carter. Lynette Carter responded to the email stating that she had been in the office twice in November and scanned all paper appeals but had no idea what happened to Plaintiffs' appeal.

**112.** On December 3, 2021, CBP sent an email to Plaintiffs acknowledging receipt of the appeal and assigned it tracking number **CBP-AP-2022-020557**, and stated that the "date submitted" was December 3, 2021.

**113.** On December 9, 2021, Plaintiffs' counsel received a phone call from CBP FOIA attorney Matthew Pollack who said that his office was working on the appeal.

**114.** During the December 9, 2021 phone conversation with Plaintiffs' counsel, CBP's attorney Pollack stated that at the very least an they would conduct an additional search of a specific CBP employee's files for responsive documents.

**115.** During the December 9, 2021 phone conversation with Plaintiffs' counsel, CBP's attorney Pollack asserted that he was unsure how long the appeal review process would take and thus did not provide an estimated completion date.

**116.** During the December 9, 2021 phone conversation with CBP's attorney Pollack, Plaintiffs' counsel did not excuse CBP from any of FOIA's requirements or deadlines.

**117.** On March 15, 2022, Plaintiffs sent another letter of inquiry to CBP via the FOIA online portal outlining the numerous phone calls and extensive efforts to obtain a response on the pending administrative appeal from CBP. The letter further noted how the deadline to respond elapsed long ago, and requested a decision on the appeal by April 12, 2022, noting once again that it is vital that Plaintiffs obtain this information as soon as possible because "time remains of the essence in this request."

**118.** By letter sent via email dated March 21, 2022, CBP finally issued a final decision that partially granted and partially denied Plaintiffs' appeal and still allowed withholding of non-exempt information.

**119.** In CBP's final decision on Plaintiffs' administrative appeal, CBP re-released the 36 pages of records initial released with slightly revised redactions and newly released an additional 8 partially-redacted pages, citing to exemptions 6 and 7(C).

**120.** The filing of this lawsuit was necessary to compel CBP to disclose all records that are responsive to Plaintiffs' FOIA request.

**121.** Plaintiffs' claims presented herein are not insubstantial within the meaning of 5 U.S.C. § 552(a)(4)(E)(ii)(II).

**122.** No exceptional circumstances exist within the meaning of FOIA, 5 U.S.C. § 552(a)(6)(C) that would allow this Court to grant CBP more time to review and disclose the requested records.

**123.** CBP has not exercised due diligence in searching for and releasing records responsive to Plaintiffs' request.

**124.** The delays at issue in this case result from a predictable agency workload of FOIA requests. Defendant CBP has not made reasonable progress in reducing its backlog of pending requests.

**125.** The circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the processing of the request and appeals and the withholdings at issue in this case.

**126.** Based on the nature of Plaintiffs' professional activities, organizational Plaintiffs will continue to employ FOIA's provisions for information requests to CBP in the foreseeable future.

**127.** Organizational Plaintiffs have plans to submit additional FOIA requests to CBP in the future.

**128.** Plaintiffs' professional activities will be adversely affected if CBP is allowed to continue violating FOIA's disclosure provisions.

**129.** Unless enjoined and made subject to a declaration of Plaintiffs' legal rights by this Court, CBP will continue to violate the rights of Plaintiffs to receive public records under FOIA.

**130.** Plaintiffs have been required to expend costs and to obtain the services of attorneys to prosecute this action.

**CLAIMS FOR RELIEF**

**COUNT I**

***Violation of the Freedom of Information Act:  
BLM and DOI's Decision Deadline Violations***

**131.** The allegations made in all preceding paragraphs are realleged and incorporated by reference herein.

**132.** FOIA requires that an agency make a final determination as to a FOIA request within 20 business days after receipt of the request. 5 U.S.C. 552(a)(6)(A)(i). BLM should have thus provided a determination for the Request by November 20, 2020.

**133.** Well more than 20 business days have passed since BLM's National HQ office received Plaintiffs' FOIA request, and BLM has not made the required final determination, in violation of 5 U.S.C. 552(a)(6)(A)(i).

**134.** As of the date this Complaint was filed BLM has not made a final decision on Plaintiffs' FOIA request.

**135.** FOIA requires that an agency make a final determination as to a FOIA appeal within 20 business days after receipt of the request. 5 U.S.C. 552(a)(6)(A)(ii). DOI should have thus provided a final determination on the appeal by September 20, 2021.

**136.** More than 20 business days have passed since DOI received Plaintiffs' FOIA appeal and it has not made the required final determination, in violation of 5 U.S.C. 552(a)(6)(A)(ii).

**137.** Plaintiffs have a statutory right to have Defendants BLM and DOI process their FOIA request and appeal in a manner which complies with FOIA. Plaintiffs' rights in this regard

were violated when the Defendants BLM and DOI unlawfully delayed their final decisions on their information request and appeal beyond the determination deadlines imposed by the FOIA. 5 U.S.C. §§ 552(a)(6)(A)(i), (ii).

**138.** Defendant BLM is unlawfully withholding public disclosure of information sought by Plaintiffs, information to which they are entitled and for which no valid disclosure exemption applies.

**139.** Based on the nature of organizational Plaintiffs' professional activities, they will continue to employ FOIA's provisions in information requests to Defendants BLM and DOI in the foreseeable future.

**140.** Organizational Plaintiffs' professional activities will be adversely affected if Defendants BLM and DOI are allowed to continue violating FOIA's decision deadlines as they have in this case.

**141.** Unless enjoined and made subject to a declaration of Plaintiffs' legal rights by this Court, Defendants BLM and DOI will continue to violate the rights of Plaintiffs to receive public records under the FOIA.

**142.** Plaintiffs are entitled to injunctive relief compelling the disclosure of the requested information.

**143.** Plaintiffs are entitled to reasonable costs of litigation, including attorneys' fees and costs in accordance with 5 U.S.C. 552(a)(4)(E).

## **COUNT II**

### ***Violation of the Freedom of Information Act: BLM's and DOI's Constructive Denial/Unlawful Withholding***

**144.** The allegations made in all preceding paragraphs are realleged and incorporated by reference herein.

**145.** Plaintiffs have a statutory right to the records they seek, and there is no legal basis for Defendants to assert that any of FOIA's nine disclosure exemptions apply. *See* 5 U.S.C. § 552(b)(1)-(9).

**146.** Defendants BLM and DOI violated Plaintiffs' rights in this regard by failing to comply with FOIA's decision deadlines and thus constructively withholding information responsive to Plaintiffs' FOIA requests.

**147.** Based on the nature of Plaintiffs' professional activities, they will continue to employ FOIA's provisions in information requests to Defendants BLM and DOI in the foreseeable future.

**148.** Plaintiffs' professional activities will be adversely affected if Defendants BLM and DOI are allowed to continue violating FOIA's disclosure provisions as it has in this case.

**149.** Unless enjoined and made subject to a declaration of Plaintiffs' legal rights by this Court, Defendants BLM and DOI will continue to violate the rights of Plaintiffs to receive public records under the FOIA.

**150.** Plaintiffs are entitled to reasonable costs of litigation, including attorneys' fees and costs pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

### **COUNT III**

#### ***Violation Of The Freedom Of Information Act: Defendants' Unlawful Application Of Disclosure Exemptions/Unlawful Withholding***

**151.** The allegations made in all preceding paragraphs are realleged and incorporated by reference herein.

**152.** Plaintiffs have a statutory right to the records they seek, and there is no legal basis for any Defendant to assert that any of FOIA's nine disclosure exemptions apply. *See* 5 U.S.C. § 552(b)(1)-(9).

**153.** Each Defendant violated Plaintiffs' rights in this regard by unlawfully withholding information responsive to Plaintiffs' FOIA requests based on the improper and overly broad application of FOIA's exemptions to mandatory information disclosure.

**154.** Defendants are wrongfully withholding non-exempt agency records requested by Plaintiffs by failing to produce records responsive to its FOIA requests.

**155.** Defendants are wrongfully withholding non-exempt agency records requested by Plaintiffs by failing to segregate exempt information in otherwise non-exempt records responsive to Plaintiffs' FOIA requests.

**156.** Based on the nature of Plaintiffs' professional activities, they will continue to employ FOIA's provisions in information requests to all Defendants in the foreseeable future.

**157.** Plaintiffs' professional activities will be adversely affected if any of the Defendants are allowed to continue violating FOIA's disclosure provisions as it has in this case.

**158.** Unless enjoined and made subject to a declaration of Plaintiffs' legal rights by this Court, all Defendants will continue to violate the rights of Plaintiffs to receive public records under the FOIA.

**159.** Plaintiffs are entitled to reasonable costs of litigation, including attorneys' fees and costs pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

#### **COUNT IV**

#### ***Violation of the Freedom of Information Act: Defendants' Failure to Provide Estimated Completion Dates***

**160.** The allegations made in all preceding paragraphs are realleged and incorporated by reference herein.

**161.** FOIA requires federal agencies to provide a requester with information about the status of the agency's response to the request, including an estimated date on which the agency

will complete action on the request. 5 U.S.C. 552(a)(7)(B)(ii).

**162.** Plaintiffs asked Defendants multiple times for an estimated dates of completion for their pending FOIA requests and appeals. In so doing, Plaintiffs invoked 5 U.S.C. § 552(a)(7)(B)(ii).

**163.** In violation of 5 U.S.C. 552(a)(7)(B)(ii), Defendants have repeatedly failed to provide estimated dates of completion for Plaintiffs' FOIA requests and appeals.

**164.** Based on the nature of organizational Plaintiffs' professional activities, they will continue to employ FOIA's provisions in information requests to Defendants in the foreseeable future.

**165.** Organizational Plaintiffs' professional activities will be adversely affected if Defendants are allowed to continue violating FOIA's requirement to provide estimated completion dates as it has in this case.

**166.** Unless enjoined and made subject to a declaration of Plaintiffs' legal rights by this Court, Defendants will continue to violate Plaintiffs' rights of to receive public records under the FOIA.

**167.** Plaintiffs are entitled to injunctive relief compelling the disclosure of the requested information.

**168.** Plaintiffs are entitled to reasonable costs of litigation, including attorneys' fees and costs in accordance with 5 U.S.C. 552(a)(4)(E).

**COUNT V**  
***Violation of the Freedom of Information Act:***  
***Defendants' Inadequate Search***

**169.** The allegations made in all preceding paragraphs are realleged and incorporated by reference herein.

**170.** FOIA requires that an agency make a search reasonably calculated to locate records responsive to a properly filed FOIA request. 5 USC § 552(a)(3)(C).

**171.** Plaintiffs have a statutory right to the records they seek and they properly submitted their FOIA requests and appeals in full compliance with all applicable requirements.

**172.** Defendants have not shown they have made a reasonable effort to search for all responsive records, as required by 5 USC §. 552(a)(3)(C).

**173.** Based on the nature of organizational Plaintiffs' professional activities, they will continue to employ FOIA's provisions in information requests to Defendants in the foreseeable future.

**174.** Organizational Plaintiffs' professional activities will be adversely affected if Defendants are allowed to continue violating FOIA's mandate as it has in this case.

**175.** Unless enjoined and made subject to a declaration of Plaintiffs' legal rights by this Court, Defendants will continue to violate the rights of Plaintiffs to receive public records under the FOIA.

**176.** Plaintiffs are entitled to injunctive relief compelling Defendants to undertake a search reasonably calculated to locate the information requested in this case.

**177.** Plaintiffs are entitled to reasonable costs of litigation, including attorneys' fees and costs in accordance with 5 U.S.C. 552(a)(4)(E).

**COUNT VI**

***Violation of the Freedom of Information Act:  
Engaging in a Pattern, Practice, or Policy of Unlawful Conduct  
of Failure to Provide Estimated Completion Dates***

**178.** The allegations made in all preceding paragraphs are realleged and incorporated by reference herein

**179.** Defendants have adopted and are engaged in a pattern, practice, or policy of violating FOIA's procedural requirements when processing FOIA requests by repeatedly refusing to issue accurate estimated dates on which Defendants will complete action as required by 5 U.S.C. § 552(a)(7)(B)(ii).

**180.** To the extent that Defendants have asserted any estimated completion dates in this case, they appear to have been automatically generated without any regard to the specific nature of the request at issue and the actual estimated time it would take to resolve.

**181.** On information and belief, Defendants have a pattern, practice, or policy of not providing requesters with accurate estimated dates of completion for FOIA requests and instead applying generic dates that do not reflect the specific nature or scope of a particular request.

**182.** On information and belief, Defendants have a pattern, practice, or policy of not providing requesters with accurate estimated dates of completion for FOIA requests.

**183.** In this case, Defendants have engaged in a pattern, practice, or policy of violating FOIA in responding to Plaintiffs' requests by repeatedly failing to provide accurate estimated dates by which Defendants will complete Plaintiffs' requests.

**184.** Defendants' pattern, practice, or policy of failing to provide accurate estimated completion dates for processing information requests violates the intent and purpose of FOIA.

**185.** Defendants' patterns, practices, or policies for processing FOIA requests have resulted in violations of Plaintiffs' rights to the lawful implementation of FOIA.

**186.** Defendants' patterns, practices, or policies for processing FOIA requests are likely to result in future violations of FOIA that will harm Plaintiffs because Plaintiffs are likely to continue seeking public records from Defendants.

**187.** Defendants' patterns, practices, or policies of unlawful conduct in violation of FOIA's clear requirement to issue an estimated date on which Defendants will complete action on requests is likely to recur absent intervention by this Court.

**188.** Defendants' practices or policies exist, whether formal or informal in nature.

**189.** FOIA imposes no limits on courts' equitable power to enforce its terms, and this Court should exercise its equitable powers to compel Defendants to comply with the clear requirements of FOIA and prevent Defendants from continuing to apply their unlawful FOIA pattern, practice, or policy.

**190.** Plaintiffs are entitled to a declaration that Defendants' actions violated FOIA and to an injunction barring Defendants from violating FOIA in the future when responding to their FOIA requests. Declaratory or injunctive relief will clarify and settle the legal relations at issue and afford relief from the uncertainty and controversy that gave rise to these proceedings.

**191.** Defendants' unlawful patterns, practices, or policies of violating FOIA when responding to Plaintiffs' FOIA requests entitles Plaintiffs to an award of reasonable attorney fees and other litigation costs pursuant to 5 U.S.C. § 552(a)(4)(E).

### **REQUESTS FOR RELIEF**

WHEREFORE, Plaintiffs ask that this Court:

- 1.** Enjoin Defendants to promptly provide Plaintiffs with all relief sought in this action as well as immediately disclosing all requested records;
- 2.** Declare Defendants' failures to disclose the information requested by Plaintiffs to be unlawful under the FOIA, 5 U.S.C. § 552(a)(3);
- 3.** Declare Defendants' searches to be inadequate under FOIA, 5 U.S.C. (a)(3)(C).
- 4.** Declare Defendants' failure to make a timely determination on Plaintiffs'

administrative requests and appeals to be unlawful under the FOIA, 5 U.S.C. § 552(a)(6)(A)(i) and 5 U.S.C. § 552(a)(6)(A)(ii);

**5.** Declare Defendants' failure to provide Plaintiffs with specific and accurate estimated completion dates to be unlawful under FOIA, 5 U.S.C. § 552(a)(7)(B)(i);

**6.** Declare that Defendants' pattern, practice, or policy of failing to provide accurate estimated completion dates for processing information requests violates the intent and purpose of FOIA, 5 U.S.C. § 552(a)(7)(B)(i);

**7.** Award Plaintiffs their costs and reasonable attorney fees pursuant to 5 U.S.C. § 552(a)(4)(E) or any other applicable law;

**8.** Expedite this action in every way pursuant to 28 U.S.C. § 1657(a); and

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

DATED: May 18, 2022

Respectfully submitted,

/s/ David A. Bahr

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