

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

ANSWER COALITION  
1247 E Street SE  
Washington, D.C. 20037

Plaintiff,

v.

UNITED STATES DEPARTMENT OF THE  
INTERIOR

1849 C Street, N.W.  
Washington DC 20240

Defendant

Civil Action No.:

Case: 1:08-cv-00870  
Assigned To : Friedman, Paul L.  
Assign. Date : 5/20/2008  
Description: FOIA/Privacy Act

**COMPLAINT FOR INJUNCTIVE RELIEF**

1. This action is brought under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, et. seq., as amended. Plaintiff seeks injunctive and other appropriate relief for the expedited processing and release of agency records requested by plaintiff from the Department of the Interior ("DOI") and its component agency, the National Park Service ("NPS"). The DOI and NPS have refused expedited processing and the fee waiver requested by plaintiffs and have failed and refused to respond to subsequent inquiry by plaintiff regarding the FOIA request, including failing and refusing to respond to plaintiff's timely appeal.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action pursuant to the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331.
3. Venue lies in this district pursuant to 5 U.S.C. § 552(a)(4)(B).

## PARTIES

4. Plaintiff A.N.S.W.E.R. Coalition (Act Now to Stop War & End Racism) is an organization expressly formed for the purpose of, and is primarily engaged in, informing the public concerning actual or alleged government activity, specifically that which is related to war policies, civil rights and racism, and mobilizing collective democratic action in response. Plaintiff is not a commercial enterprise for purposes of the fee waiver provisions of FOIA. See 5 U.S.C. § 552(a)(4)(A)(iii). It engages in advocacy, education, mass grassroots action, and litigation relating to the promotion of public understanding and debate concerning key public policy issues including matters related to civil rights and civil liberties including particularly First Amendment rights. See, e.g., National Council of Arab Americans and ANSWER Coalition v. City of New York, Civil Action No. 04-CV-6602 (WHP), United States District Court, Southern District of New York (securing the lifting of restrictions on First Amendment activities on the Great Lawn of Central Park); ANSWER Coalition v. Kempthorne, Civil Action No. 05-0071 (PLF), United States District Court, District of Columbia (enjoining the National Park Service's policy and practice of unconstitutionally allocating and denying access to demonstrators along the Inaugural parade route). A primary activity of ANSWER is the dissemination and publication of information about government activities through leaflets, literature, articles and other communications, using in-person distribution including, but not limited to, at mass demonstrations and public assemblies as well as at conferences and meetings; through the ANSWER web site; and through mass email communications. ANSWER is experienced and successful in communicating with groups and individuals nationwide like the organizations and people who have used the National Mall for free speech activities.

5. Defendant Department of Interior (DOI) is an agency of the United States within the meaning of 5 U.S.C. § 552(f)(1). The National Park Service (NPS) is a component within the DOI. Each is charged with the duty to provide public access to documents in its possession consistent with the requirements of the FOIA and is denying Plaintiff access to its records in contravention of public law.

### **Background**

6. The National Park Service has announced plans to assess and implement “choices for the future of the National Mall,” which include significant restrictions on and obstructions to First Amendment activities on the National Mall. In a public meeting held on January 12, 2008 in Washington, D.C. the NPS representatives present acknowledged that no effort had been made to inform those persons and entities who had sought or obtained permits for use of the Mall for First Amendment activities of these significant proposed changes and the new restrictions under consideration. In response to concerns about this lack of public outreach, the NPS representatives stated that others, outside of the NPS, should endeavor to reach out to engage such interested parties. Independently as part of its own mission, as well as consistent with the NPS’ stated urging, the ANSWER Coalition sought disclosure of the names, addresses and contact information for persons/groups who have publicly been issued permits for use of the National Mall for demonstrations and First Amendment activities, information which is solely in the possession of the NPS and DOI.
7. The National Park Service had stated that it expects its National Mall Plan to be complete by January 2009. A Draft National Mall Plan is expected to be published by the summer of 2008 at which time there will only be two months for public review and comment.

Yet, even at this late date and with the window for public involvement rapidly closing, the NPS has chosen to not initiate direct contact with persons and groups who will be apparently affected (along with millions of others) by the new restrictions - - as can be discerned based upon prior usage of the National Mall for protest or First Amendment protected activities.

8. The information requested is simple, public information easily secured from permit issuances.
9. The information requested is necessary to fully inform this notice and comment process and is required to be received on an expedited basis to be meaningful. The value will be lost if the information is not disclosed quickly allowing for notification of the process to identified organizations and groups and for active participation *by the public*. This is not a process that is to involve merely invited participants selected by the National Park Service or lawmakers. It is the most public of all public space.

**Plaintiff's FOIA Request, Request for Expedited  
Processing and Request for a Fee Waiver**

10. On January 30, 2008, plaintiff sent two letters to the designated FOIA officers of the National Park Service and the Department of the Interior requesting under the FOIA, agency records identifying publicly available contact information for persons or entities "who have obtained permits for the use of the National Mall for demonstrations and First Amendment activities, and the purpose of the proposed activity, for the past 5 years, from January 1, 2003 to date" in the possession of the agency.
11. The ANSWER Coalition further explained that it was seeking information "that is made publicly available through the filing of a public permit application." The FOIA request

also suggested that should the information be recorded or accessible electronically, the simplest and most cost effective manner of disclosure would simply be the production of the requested data in electronic format. The plaintiff wrote, "If this information is maintained in computer files then we are requesting that it be produced in a standard excel spreadsheet format. We are also amenable to communicating with the agency's technicians should another format be preferable. If the information is maintained solely on permit applications then the requestor is seeking copies of those applications."

12. By letter dated January 31, 2008, the FOIA Officer for the NPS advised that the request was being forwarded to the National Capitol Regional.
13. By letter dated February 1, 2008, the DOI Office of the Secretary FOIA Officer advised that the "National Park Service will be responding to your request on behalf of the Department of the Interior, and will be making any and all determinations regarding your requests for a fee waiver and expedited processing."
14. By letter dated February 13, 2008, the NPS National Capitol Region Deputy Regional Director wrote that plaintiff's request for a fee waiver was denied, and further that "[i]n making this decision, Jason Waanders, Attorney-Advisor, Office of the Solicitor, was consulted."
15. The February 13, 2008 letter represented that it would impose significant financial costs for access to the requested information. "[W]e estimate the processing fees for this FOIA request to be \$1,829.94. This figure was arrived at by calculating 31 total hours of search time, performed by two employees, with each employee at a different pay grade and thus a different rate charged for the search....This figure also includes photocopying charges of \$532.74..." No explanation was provided as to how the number of search hours or the

number of photocopies was calculated. No response was provided to plaintiff's request as to whether such information was stored electronically and if so the request to receive such information in electronic or spreadsheet format. The NPS stated that it would not begin processing the request "until the fee issue has been resolved."

16. The February 13, 2008 letter cryptically warned that the information requested may involve exempt information based on privacy assertions and such would encompass information that would "likely be withheld," and that "We do not refund fees when exempt information is withheld." No further explanation or identification of what type of information was to be withheld was given, even though the nature of the information requested was plain and apparent.
17. The letter then stated, "We ask that you respond within 20 workdays of the date of this letter. If we do not hear from you within 20 workdays, then we will assume that you are no longer interested in this matter and will close the file on your request."
18. The February 13, 2008 letter from the NPS also stated that plaintiff's request for expedited processing was denied. The letter further stated that plaintiff could appeal the denial of expedited processing within 30 workdays. The letter did not mention appeal of the fee waiver denial.
19. On March 12, 2008, plaintiff's counsel timely wrote to the Deputy Regional Director for the NPS National Capital Region in response to the February 13 letter expressly requesting that the NPS not close the file of its own initiative, as it had previously stated it would.
20. The March 12 letter requested clarification "in order to achieve the least burden possible upon you and to avoid costs to our client." The letter requested that NPS advise in what

format or system the information requested is maintained, as it appears from public records maintenance disclosures that the information is stored by electronic record or database. In such case, the ANSWER Coalition submitted the information "could be recovered in far less time than you have projected." The letter reiterated plaintiff's original offer to consult with technical personnel to determine the best format for production of the data, to which NPS had not previously responded.

21. The March 12 letter asked for further clarification as to what searching would be necessary to satisfy the FOIA request, as the search charge appeared excessive and the explanation unclear. The letter also stated that "If the very high search fee is, in part, due to the fact that the requested data is within a larger data set...there may be ways to reduce the searching process..." including receiving the larger data set and having plaintiff undertake any narrowing review.
22. The March 12 letter asked for clarification as to what information NPS intends to redact, as it declined to identify what categories of information would be withheld while simultaneously demanding fees and stating that fees would not be refunded when information was withheld.
23. Plaintiff noted that the information requested is that which the NPS routinely makes publicly available.
24. The March 12 letter also stated that it intended to appeal the NPS determinations, but that "now and during the pendency of such appeals we are available by telephone, for an in-person meeting, or of course by correspondence in order to facilitate your agency's provision of the requested data with the least amount of burden."

25. The NPS has fully refused to respond to the inquiries made by plaintiff in response to NPS's denial of a fee waiver, to plaintiff's efforts to work together to resolve outstanding issues, or to respond whatsoever to plaintiff's March 12 letter regarding these matters.
26. By letter dated March 26, 2008, plaintiff timely filed an appeal with the FOIA Appeal Officer of the DOI challenging the NPS's denial for expedited processing and denial of a fee waiver.
27. The DOI and NPS have failed and refused to respond to plaintiff's appeal letter of March 26, 2008. Such response was due April 28, 2008. The DOI has failed to meet the twenty (20) day time limit FOIA imposes for responding to an appeal. See 5 U.S.C. § 552(a)(6)(A)(ii).
28. To date, the NPS and DOI have refused to respond to plaintiff's inquiries and efforts to facilitate production of the information or to plaintiff's requests for clarification regarding the agencies' determinations.

## **CAUSE OF ACTION**

### **Claim One**

#### **(Violations of the Freedom of Information Act)**

29. Plaintiff repeats and realleges paragraphs 1 – 28.
30. The Department of the Interior and its component National Park Service have wrongfully withheld agency records requested by plaintiff, thereby violating plaintiff's rights to this information under the Freedom of Information Act.
31. Defendant has failed to timely respond to plaintiffs' March 26, 2008 administrative appeal, and so violated FOIA's response deadline.



32. Defendant improperly denied plaintiff's January 30, 2008 requests for a fee waiver, and thus violated the fee waiver provision of the FOIA.
33. Defendant improperly denied plaintiff's January 30, 2008 request for expedited processing, and thus violated the expedited processing provision of the FOIA.
34. Plaintiff has exhausted the applicable administrative remedies with respect to defendant DOI's wrongful withholding of the requested records.
35. Plaintiff is entitled to injunctive relief with respect to the release and disclosure of the requested documents and to a fee waiver.

### **Claim Two**

#### **(Administrative Procedures Act)**

36. Plaintiff incorporates by reference the preceding paragraphs as if fully set forth herein.
37. Plaintiff is entitled to judicial review, pursuant to the Administrative Procedures Act, of defendant's actions concerning its unlawful policies and practices regarding plaintiff's request for records under the FOIA.
38. Plaintiff is entitled to judicial review, pursuant to the Administrative Procedures Act, of defendant's failure to respond to plaintiff's March 26, 2007 administrative appeal during the time frame established by the FOIA.
39. Defendant has unlawfully withheld and/or unreasonably delayed agency action by failing to comply with the mandates of FOIA regarding plaintiff's FOIA request and appeal.
40. Defendant's actions regarding plaintiff's FOIA request and appeal are arbitrary and capricious, an abuse of discretion and otherwise not in accordance with law.

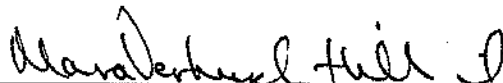
**PRAYER FOR RELIEF**

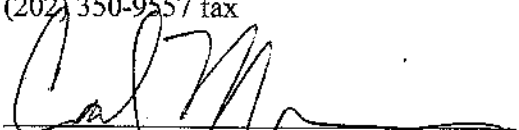
Wherefore, plaintiff prays that this Court:

- A. Order defendant DOI and its component NPS to process immediately the requested records in their entirety;
- B. Order defendant DOI and its component NPS, upon completion of such expedited processing, to disclose the requested records in their entirety and make copies available to plaintiff;
- C. Order defendant DOI and its component NPS to waive the charging of fees to plaintiff for processing and copying of the requested records;
- D. Provide for expeditious proceedings in this action;
- E. Award plaintiff its costs and reasonable attorneys fees incurred in this action; and
- F. Grant such other relief as the Court may deem just and proper.

May 20, 2008

Respectfully submitted,

  
Mara Verheyden-Hillard [450031]  
PARTNERSHIP FOR CIVIL JUSTICE  
617 Florida Avenue, NW  
Washington, D.C. 20001  
(202) 232-1180  
(202) 350-9557 fax

  
Carl Messineo [450033]  
PARTNERSHIP FOR CIVIL JUSTICE  
617 Florida Avenue, NW  
Washington, D.C. 20001  
(202) 232-1180  
(202) 350-9557 fax