

Public Land & Resources Law Review


Volume 0 Case Summaries 2018-2019

Public Employees for Environmental Responsibility v. United States EPA

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Recommended Citation

Rains, F. Aaron (2018) "Public Employees for Environmental Responsibility v. United States EPA," *Public Land & Resources Law Review*: Vol. 0, Article 7.

Available at: <https://scholarship.law.umt.edu/plrlr/vol0/iss9/7>

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*Public Employees for Environmental Responsibility v. United States
EPA, 314 F.Supp.3d 68 (D.D.C. 2018)*

F. Aaron Rains

Prior to 2016, the EPA acknowledged that human activities significantly contribute to climate change. However, on March 9, 2017, EPA Administrator Scott Pruitt announced that significant debate regarding the issue remained in the scientific community. In response to these statements, a nonprofit organization filed a FOIA request with the EPA seeking any documents or records Pruitt may have used when formulating his statements or substantiating his position. The EPA refused to comply with the request, citing undue burden and improper interrogation and this action followed. Upon review, the District Court for the District of Columbia found the plaintiff's FOIA request proper and ordered the EPA to comply.

I. INTRODUCTION

The non-profit organization, Public Employees for Environmental Responsibility ("PEER"), noted an apparent contradiction between the Environmental Protection Agency ("EPA") Administrator's public comments and the scientific data collected within the agency, after EPA Administrator Scott Pruitt publicly disputed settled climate change science relied upon by the EPA in the past.¹ The day after Pruitt's comments were made, PEER submitted a Freedom of Information Act ("FOIA") request to the EPA seeking agency documents and records that supported Pruitt's statements and impliedly changed the agency's current stance on climate change.² The EPA did not conduct a search or produce any of the requested documents in response to the FOIA request.³ PEER then filed a complaint in United States District Court for the District of Columbia to compel the EPA to conduct the search and produce the documents.⁴ The EPA moved for summary judgment on this issue citing an improper request and undue burden and PEER made a cross-motion for summary judgment refuting these claims.⁵ The court denied the EPA's motion for summary judgment and granted PEER's cross-motion, ordering the EPA to comply with PEER's FOIA request.⁶

II. FACTUAL AND PROCEDURAL BACKGROUND

1 Public Employees for Environmental Responsibility v. United States EPA, 314 F.Supp.3d 68, 71-72 (D.D.C. 2018).

2. *Id.* at 72.

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

On March 10, 2017, the day after Pruitt made nationally televised remarks regarding his stance on human contribution to climate change, PEER submitted a FOIA request seeking documents that would substantiate Pruitt's comments.⁷ PEER noted Pruitt's comments directly conflicted with the scientific conclusions regarding human activity and climate change provided on the EPA's webpage.⁸

The EPA informed the court it was prepared to search for any briefing materials prepared by Administrator Pruitt or members of his staff in the days leading up to the interview, but only if the parties negotiated acceptable "search parameters."⁹ PEER argued that it had already clarified its request and declined to make any further modifications to the search parameters; the EPA then sought to defer setting a summary judgment schedule until it had time to respond to the first part of PEER's request.¹⁰

Simultaneously, the EPA refuted the second part of PEER's request which sought the records Pruitt relied on when making his public conclusion regarding human influence on climate change.¹¹ The EPA claimed the second portion of the request was improper under FOIA, but PEER disputed this characterization.¹² At the time of the opinion, more than one year had elapsed and it remained undisputed that the EPA had not conducted a record search, nor produced any records requested by PEER.¹³

Ultimately, the court granted PEER's cross-motion for summary judgment, holding that PEER's request was a proper use of FOIA and that the EPA could not show why the request was improper or unduly burdensome.¹⁴ Thus, the EPA was directed to search for and produce the documents and records requested by both parts of PEER's amended FOIA request.¹⁵

III. ANALYSIS

The court emphasized that FOIA commands federal agencies to make "promptly available to any person" records that are not otherwise exempt in response to "any request for records which (i) *reasonably describes such records* and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed[.]"¹⁶

The court noted that it has long cautioned against federal agencies using the "reasonably describes" requirement as a loophole to deny the

7. *Id.*

8. *Id.* at 72.

9. *Id.* at 73 (external citation omitted).

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.* at 82.

15. *Id.* at 74.

16. *Id.* (quoting 5 U.S.C. § 552(a)(3)(A)) (emphasis in original).

public access to records and documents.¹⁷ FOIA was enacted to eliminate loopholes and allow for a more streamlined and unimpeded exchange of information between the public and agencies.¹⁸ Therefore, the statutory requirement that a FOIA request reasonably describe such records, calls for a reasonable description enabling the Government employee to locate the requested records,' but is 'not to be used as a method of withholding records[.]'"¹⁹

When an agency becomes reasonably clear as to the materials desired by the requesting party, FOIA obligates the agency to honor the request and "disclose all reasonably segregable, nonexempt portions of the requested record(s)[.]"²⁰ Likewise, if an agency knows or believes that certain places may contain responsive documents, it is obligated under FOIA to search barring an "undue burden."²¹ However, "[t]he law is well settled that '[a]n agency need not honor a request that requires 'an unreasonably burdensome search.'"²² An agency claiming that a search would be unreasonably burdensome is therefore required to provide a detailed affidavit explaining why a search would be unreasonably burdensome.²³

The EPA argued that PEER's FOIA request was improper, overbroad, and unduly burdensome.²⁴ The EPA further argued that the request did not meet the statutory threshold of "reasonably describing" the requested records.²⁵ The court found the EPA's arguments unpersuasive, noting that more than one year after PEER submitted its FOIA request the EPA had still not conducted a search.²⁶

A. The FOIA Request Does Not Pose an Improper Question

The EPA refused to respond to PEER's FOIA request and contended that both parts of PEER's request "would require [the] EPA to spend countless hours researching" and evaluating "a vast trove of material on the effect of human activity on climate change[.]"²⁷ However, the court stated that the EPA's objection "stray[ed] far from the actual text

17. *Id.*

18. *Id.*

19. *Id.* (quoting *Bristol-Myers Co. v. FTC*, 424 F.2d 935, 938 (D.C. Cir. 1970)).

20. *Id.* at 74-75 (quoting *Assassination Archives & Research Ctr. v. CIA*, 334 F.3d 55, 58 (D.C. Cir. 2003)).

21. *Id.* at 75 (quoting *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 327 (D.C. Cir. 1999)).

22. *Id.* (quoting *Am. Fed'n of Gov't Emps., Local 2782 v. U.S. Dep't of Commerce*, 907 F.2d 203, 209 (D.C. Cir. 1990)).

23. *Id.* (quoting *Nation Magazine, Wash. Bureau v. U.S. Customs Serv.*, 71 F.3d 885, 890 (D.C. Cir. 1995)).

24. *Id.*

25. *Id.* (citing 5 U.S.C. § 552(a)(3)(A)).

26. *Id.*

27. *Id.* (external citation omitted).

of . . . the FOIA request.”²⁸ The court found that PEER’s request properly identified and “target[ed] for disclosure” EPA records Pruitt may have relied on when making his public statements on March 9, 2017.²⁹

The EPA further contended that Pruitt’s statements reflected “personal opinion” and there are “no administrative record[s] or file[s] regularly compiled to support individual statements of personal opinion[.]”³⁰ The court noted, however, that public statements by the head of an agency, even if “personal opinion,” may nonetheless guide the agency’s regulatory efforts and, to the extent any agency records provide the basis for such public statements, those agency records are a proper focus of a FOIA request.³¹ The court held that the “EPA can claim no confusion over the records sought in the first part of the FOIA request since the agency represented to [the D.C. District Court] that [the] EPA was ‘processing any responsive records as to part one of the request[.]’”³² Therefore, the court held that “any agency records compiled, prepared, provided, used, or reviewed by Administrator Pruitt in connection with his public statements on March 9, 2017, must be searched for and disclosed unless exempt.”³³

The court found the second part of the FOIA request that sought agency records, including “studies, reports, or guidance material . . . that support the conclusion that human activity is not the largest factor driving global climate change[.]” equally straight forward.³⁴ The EPA argued that the second part of the request required the agency to take a definitive stance on anthropogenic causes of climate change.³⁵ The court found this argument perplexing, however, as the agency had already taken a public position on the causes of climate change.³⁶ Moreover, the court noted that “based on th[e] scientific record, EPA made the linchpin finding: in its judgment, the ‘root cause’ of the recently observed climate change [was] ‘very likely’ the observed increase in anthropogenic greenhouse gas emissions.”³⁷

28. *Id.* at 75-76.

29. *Id.* at 76.

30. *Id.* at 77.

31. *Id.*

32. *Id.* at 78 (referencing the court’s holding in *Bristol Meyers Co.*, which reversed a district court decision that materials requested did not constitute “identifiable records”).

33. *Id.*

34. *Id.*

35. *Id.* at 78-79.

36. *Id.* at 79. The EPA’s “Causes of Climate Change” web page (now archived) states that “carbon dioxide is the primary greenhouse gas that is contributing to recent climate change and that the primary human activity affecting the amount and rate of climate change is greenhouse gas emissions from the burning of fossil fuels[.]” *Causes of Climate Change*, U.S. ENVTL. PROT. AGENCY, <https://archive.epa.gov/epa/climate-change-science/causes-climate-change.html> (last visited Sept. 17, 2018).

37. *Id.* at 79 (quoting *Coal. for Responsible Regulation, Inc. v. EPA*, 684 F.3d 102, 121 (D.C. Cir. 2012)).

The court observed that both parts of PEER's FOIA requests could be viewed as seeking the records and documents underpinning this apparent change in agency position regarding climate change.³⁸ The court noted that the FOIA request targeted agency records that reach "conclusions on the causes of climate change, and specifically conclus[ions] that humans are not the largest factor," with "no need for the FOIA staff to conduct scientific research or make judgment calls."³⁹ Based on these observations, the court held that "[p]roperly construed, and contrary to EPA's objection, the plaintiff's FOIA request fully satisfies the statutory requirement of 'reasonably describ[ing]' the records sought."⁴⁰

B. The EPA Has Not Demonstrated Undue Burden

The court noted that the burden of providing a sufficient explanation that a FOIA request is overbroad and/or burdensome falls on the objecting agency.⁴¹ An agency can meet this burden by submitting a reasonably detailed affidavit demonstrating why a search would be unduly burdensome.⁴² The EPA submitted an affidavit, but the court found that it "provide[d] little explanation" as to why the plaintiff's FOIA request created undue burden on the agency.⁴³ The court held the "EPA's affidavit provide[d] no details to substantiate a claim of undue burden in complying with the plaintiff's FOIA request and therefore the agency ha[d] failed to carry its burden on summary judgment."⁴⁴

Thus, the court held that the "EPA ha[d] failed to demonstrate a viable legal basis for its refusal to conduct any search whatsoever in response to [PEER's] straightforward FOIA request."⁴⁵ The court went on to state:

When the head of an agency makes a public statement that appears to contradict 'the published research and conclusions of' that agency, the FOIA provides a valuable tool for citizens to demand agency records providing any support, scientific or otherwise, for the pronouncement, and to oblige agencies to search for and produce any non-exempt responsive records. Compliance with such a request 'would help "ensure an informed citizenry, vital to the functioning of a democratic society."⁴⁶

38. *Id.*

39. *Id.* at 79 (external citation omitted).

40. *Id.* at 80 (quoting 5 U.S.C. § 552(a)(3)(A)).

41. *Id.*

42. *Id.*

43. *Id.* at 81.

44. *Id.*

45. *Id.* at 82.

46. *Id.* (quoting *U.S. Dep't of Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 16 (2001) (internal citation omitted)).

IV. CONCLUSION

The necessity of agency accountability to the public for changes in policy was upheld by the United States District Court for the District of Columbia. The court's holding supports a fundamental tenet of democracy that is embodied, in part, in FOIA: government transparency and accountability for actions, statements, and agency positions, held on controversial issues. Further, this holding acknowledges the importance of relying on objective scientific evidence when making public comment regarding, or at least implicating, an agency's position on that issue. This holding solidifies the importance of agency accountability and transparency provided to the public through the FOIA request process.