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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CITIZENS OF THE EBEBY’S RESERVE  
FOR A HEALTHY, SAFE AND  
PEACEFUL ENVIRONMENT,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF  
THE NAVY, a military department of the  
United States, an agency of the United  
States,

Defendant.

NO.

COMPLAINT

**INTRODUCTION**

1. This is an action against the U.S. Department of the Navy (“Navy”) for violations of the Freedom of Information Act (“FOIA” or “Act”), 5 U.S.C. § 552, *as amended*. Under the judicial review provisions of both the FOIA and the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701–706, plaintiff Citizens of the Ebey’s Reserve for a Healthy, Safe, and Peaceful Environment (“Citizens of Ebey’s Reserve” or “COER”) seeks relief regarding a FOIA request it submitted to the Navy on August 31, 2021 (the “FOIA Request”).

1           2.       The purpose of FOIA is “to establish a general philosophy of full agency disclosure  
2 unless information is exempted under clearly delineated statutory language.” S. Rep. No. 89-813,  
3 1st Sess., at 3 (1965). FOIA requires federal agencies to disclose records in a timely manner to any  
4 person upon request unless the information falls within one of nine narrow disclosure exemptions  
5 in the Act. *See* 5 U.S.C. § 552(a)(3)(A), (b).

7           3.       Federal agencies generally must determine within twenty business days whether  
8 requested records are exempt from withholding and, if they are not, the agency must promptly  
9 disclose the records to the requester. 5 U.S.C. § 552(a)(6)(A)(i); *id.* at § 552(a)(3)(A), (a)(6)(C)(i).  
10 If an agency makes an adverse determination on a FOIA request, the requester may appeal that  
11 determination to the agency, which must then make a determination on the administrative appeal  
12 within twenty days of receiving it. *Id.* at § 552 (a)(6)(A)(i)(III)(aa), (a)(6)(A)(ii). “If the agency  
13 does not make a “determination” within the relevant statutory time period, the requester may file  
14 suit without exhausting administrative appeal remedies.” *Citizens for Responsibility & Ethics in*  
15 *Washington v. Fed. Election Comm'n*, 711 F.3d 180, 185 (D.C. Cir. 2013).

17           4.       Citizens of Ebey’s Reserve is filing this lawsuit because the Navy has failed to make  
18 and communicate its determination on COER’s FOIA Request; failed to make and communicate the  
19 disclosure determinations required by FOIA for the responsive records in its possession; and failed  
20 to act within applicable deadlines.

22           5.       The Navy is unlawfully withholding its final appeal determination, as well as the  
23 documents sought by COER, documents to which COER is entitled and for which no valid dis-  
24 closure exemptions apply. COER seeks a declaration that the Navy has violated FOIA and an order  
25 compelling the Navy to make the required determinations and disclosures by a date certain.  
26

1 **JURISDICTION AND VENUE**

2 6. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B) (FOIA) and 28  
3 U.S.C. §§ 1331 (federal question), 1346 (United States as defendant), 2201 (declaratory judgment),  
4 and 2202 (further relief).

5  
6 7. This Court is the proper venue for this case because, pursuant to 5 U.S.C.  
7 § 552(a)(4)(B), the records responsive to COER’s FOIA Request are located in this district and  
8 because, under 28 U.S.C. § 1391(e), a substantial part of the events or omissions giving rise to  
9 plaintiff’s claims occurred in this district.

10 **PARTIES**

11 8. Citizens of the Ebey’s Reserve for a Healthy, Safe, and Peaceful Environment is a  
12 non-profit public interest organization incorporated in 2012 and dedicated to protecting the health  
13 and welfare of the inhabitants of Whidbey Island and surrounding areas, including marine,  
14 migratory, and endangered species, and preserving the historic northwest communities being  
15 threatened by military jet training flights. Its registered office is in Coupeville, Washington. COER  
16 brings this action on its own behalf and on behalf of its adversely affected members.  
17

18 9. The information COER seeks through its FOIA requests will assist COER in its  
19 mission as a non-profit environmental advocacy organization and in its efforts to catalog and assess  
20 the human health and environmental impacts from the Navy’s expanded operations at Naval Air  
21 Station Whidbey Island. COER disseminates the information that it gathers to the public through  
22 press releases and online resources including a regularly updated website, blog, and social  
23 networking sites.  
24

25 10. The above-described interests of Citizens of Ebey’s Reserve and its members have  
26 been, are being, and, unless the relief prayed for herein is granted, will continue to be adversely

1 affected by the Navy’s disregard of its statutory duties under FOIA and by the unlawful harm that  
2 results. The Navy’s failure to fully implement FOIA injures the interests of COER and its members  
3 and the relief requested in this lawsuit can redress these injuries. These harms are traceable to the  
4 Navy’s conduct and would be remedied by the relief sought in this action.  
5

6 11. Defendant United States Department of the Navy (“Navy”) is a military department  
7 within the United States Department of Defense subject to the authority, direction, and control of  
8 the Secretary of Defense. It is an agency of the executive branch of the United States government  
9 subject to the FOIA, pursuant to 5 U.S.C. § 552(f), and subject to the judicial review provisions of  
10 the APA, 5 U.S.C. §§ 701–702. The Navy is in possession or control of public records requested  
11 and sought by plaintiffs.  
12

### 13 STATUTORY BACKGROUND

14 12. The purpose of FOIA is “to open agency action to the light of public scrutiny.” U.S.  
15 *DOJ v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 772 (1989) (quoting *Dep’t of*  
16 *the Air Force v. Rose*, 425 U.S. 352, 372 (1976)). “Congress believed that this philosophy, put into  
17 practice, would help ‘ensure an informed citizenry, vital to the functioning of a democratic  
18 society.’” U.S. *DOJ v. Tax Analysts*, 492 U.S. 136, 142 (1989) (quoting *NLRB v. Robbins Tire &*  
19 *Rubber Co.*, 437 U.S. 214, 242 (1978)).  
20

21 13. FOIA requires federal agencies to make records in their possession or control  
22 available to the public upon request unless one of FOIA’s nine specific exemptions applies. 5  
23 U.S.C. § 552(a), (b)(1)–(9). Federal agencies bear the burden of demonstrating to a court that any  
24 withholding of responsive records is consistent with FOIA. 5 U.S.C. § 552(a)(4)(B). Even if an  
25 agency meets its burden to prove that a responsive record contains information that is exempt from  
26

1 disclosure, the agency must nevertheless disclose any non-exempt information if it can be  
2 segregated from the exempt materials. 5 U.S.C. § 552(b).

3 14. To ensure a requester receives all requested documents, FOIA requires agencies to  
4 conduct a search that is reasonably calculated to uncover all records responsive to the request. 5  
5 U.S.C. § 552(a)(3)(C)–(D).  
6

7 15. FOIA imposes strict and rigorous deadlines on federal agencies. FOIA requires a  
8 federal agency that receives a FOIA request to determine whether the requested records are exempt  
9 from disclosure under 5 U.S.C. § 552(b) and to communicate that determination to the requester  
10 within twenty business days. *Id.* § 552(a)(6)(A)(i). If the agency determines the requested records  
11 are exempt from public disclosure, the agency must also communicate to the requester that they  
12 have a right to appeal that determination. *Id.* If the agency determines the records are not exempt  
13 from public disclosure, the agency is required to make the requested records “promptly available”  
14 to the requester. *Id.* § 552(a)(3)(A), (a)(6)(C)(i).  
15

16 16. FOIA requires that, within the relevant time period, an agency must determine  
17 whether a requester will receive all the documents the requester seeks. “It is not enough that, within  
18 the relevant time period, the agency simply decide to later decide.” *Citizens for Responsibility &*  
19 *Ethics in Washington v. Fed. Election Comm’n*, 711 F.3d 180, 186 (D.C. Cir. 2013). Within the  
20 relevant time period, the agency must at least inform the requester of the scope of the documents  
21 that the agency will produce, as well as the scope of the documents that the agency plans to withhold  
22 under any FOIA exemptions. *Id.*, *See also id.* at 186–89 (“If the agency does not adhere to FOIA’s  
23 explicit timelines, the ‘penalty’ is that the agency cannot rely on the administrative exhaustion  
24 requirement to keep cases from getting into court.”).  
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1           17.     In addition to imposing response deadlines, FOIA also requires federal agencies to  
2 communicate with requesters about the status of the agencies' efforts to respond to a FOIA request.  
3 Specifically, FOIA requires agencies to assign tracking numbers to each request that will take  
4 longer than ten days to process; to provide that tracking number to each person making such a  
5 request; and to establish a telephone line or internet service that provides information about the  
6 status of a request to the requester, including an estimated date by which the agency will complete  
7 its work. *Id.* § 552(a)(7). Courts have construed these provisions to include a requirement that  
8 agencies, upon request, provide estimated completion dates to requesters. *See, e.g., Sierra Club v.*  
9 *U.S. EPA*, 75 F. Supp. 3d 1125, 1146 (N.D. Cal. 2014) (“[T]he Court finds that the EPA acted  
10 unreasonably when it failed to inform Plaintiffs of an estimated completion date”).  
11

12           18.     A District Court has jurisdiction “to enjoin the agency from withholding agency  
13 records and to order the production of any agency records improperly withheld from the  
14 complainant.” 5 U.S.C.A. § 552(a)(4)(B).  
15

16           19.     Agency action under the FOIA is also subject to judicial review under the APA. *Or.*  
17 *Natural Desert Ass’n v. Gutierrez*, 409 F. Supp. 2d 1237, 1248 (D. Or. 2006) (violation of the  
18 FOIA’s decision deadline constitutes agency action that is not in accordance with the law). Under  
19 the judicial review provisions of the APA, district courts are authorized to compel agency action  
20 unlawfully withheld or unreasonably delayed. 5 U.S.C. § 706(1). District courts should also set  
21 aside any agency action found to be arbitrary, capricious, an abuse of discretion, not in accordance  
22 with law, or made without observation of required procedures. *Id.* § 706(2).  
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1 **STATEMENT OF FACTS**

2 The FOIA Request

3 20. On February August 31, 2021, COER’s undersigned counsel, on behalf of COER,  
4 submitted a FOIA request to the Navy via “FOIA ONLINE” seeking records pertaining to the EA-  
5 18G Growler noise monitoring study. That study was conducted pursuant to congressional direction  
6 in the National Defense Authorization Act (“NDAA”) for Fiscal Year 2020. A true and correct  
7 copy of the FOIA Request is attached to this Complaint as Attachment A. The FOIA Request  
8 sought three categories of records:  
9

10 1. All records related to and including the EA-18G Growler noise  
11 monitoring study conducted pursuant to congressional direction in the  
12 National Defense Authorization Act (“NDAA”) for Fiscal Year 2020,  
13 including but not limited to: the noise monitoring study plan itself, type  
14 and models of equipment being used, resolution and type of raw sound  
15 data (*i.e.*, time resolution, frequency ranges, sound level weightings,  
16 audio sampling rate) being collected, how corresponding flight activity  
17 (*i.e.*, number of aircraft and their relative position) is being documented  
18 and assessed, the monitoring sites/locations, the periods of time and  
19 times of day all monitoring units are deployed during sampling weeks,  
20 methods for calculation of all noise metrics, the sampling scheme being  
21 used to represent flight types, flight activity, associated meteorological  
22 conditions under which they will be operated, and methods being used  
23 to associate the sound data with the corresponding flight type/track for  
24 the purpose of calculating the ensonified area, and dates anticipated for  
25 the report/publication to be completed and publicly available  
26 observations, number of aircraft operating, flight tracks, and flight  
schedules during the monitoring period(s).

2. A copy of all raw data collected during each completed  
sampling quarter for all 11 locations on Whidbey Island, as well as data  
from the monitoring (including coordinated observer data) of the three  
semi-permanent locations on the Olympic Peninsula, Port Townsend,  
and Lopez Island. Data should be categorized by date, diel time (24-  
hour clock), site/location, and type of data: sound level measurements,  
audio sound recording, on-the-ground.

3. All contract correspondence for this work, and contract award  
notice/information including budget and contractor(s) selected.

1  
2 Plaintiff’s Communications with the Navy

3 21. On August 31, 2021, the Navy assigned an internal tracking number to the FOIA  
4 Request: DON-NAVY-2021-010094.

5 22. On September 17, 2021, plaintiffs received an email from “admin@foiaonline.gov”  
6 stating that the FOIA Request had been modified. But plaintiffs had not modified the FOIA  
7 Request.

8 23. On September 21, 2021, plaintiffs undersigned counsel logged into FOIA ONLINE  
9 and found a letter from Navy Commander D.M. Schull dated August 23, 2021, stating that the  
10 FOIA Request had been referred to an internal department of the Navy. The letter from Navy  
11 Commander D.M. Schull dated August 23, 2021 stated that it was “Sent via email to: griefen@bnd-  
12 law.com.” However, that letter had not been emailed to plaintiff’s undersigned counsel. Moreover,  
13 the letter was dated August 23, 2021—eight days prior to plaintiff submitting the FOIA Request—  
14 which is impossible. Plaintiff’s undersigned counsel emailed Commander Schull and other Navy  
15 staff on September 21, 2021, pointed out the error in Commander Schull’s letter, and requested an  
16 estimated completion date and the Navy’s determination on the FOIA Request.  
17

18 24. On September 22, 2021, plaintiff’s undersigned counsel and Commander Schull  
19 exchanged emails and agreed that the 20-day period for the Navy’s determination and estimated  
20 completion date would expire on September 29, 2021.  
21

22 25. On September 30, 2021, plaintiff’s undersigned counsel received a notification from  
23 FOIA Online stating: “On behalf of R. Patterson, Head, DON FOIA/PA Program Office (DNS-  
24 H(36)), please find attached, an official response to the subject FOIA request.” The attached official  
25 response stated that the Navy “will not be able to respond within the FOIA’s 20-day statutory time  
26 period;” that the Navy was “availing ourselves of the 10 working days’ extension of response time



1 provided in the Department of the Navy FOIA/PA regulations (32 CFR §701.8(g)(2));” and that  
2 the new estimated completion date was October 29, 2021.

3 26. On October, 5, 2021, the Navy provided an interim response to the FOIA request,  
4 including several records.

5 27. On October 29, 2021, plaintiff’s undersigned counsel received an email from  
6 Gregory Carson in the Navy’s “DON FOIA/PA Program Office” stating: “On behalf of R.  
7 Patterson, Head, DON FOIA/PA Program Office (DNS-H(36)), please find attached, an official  
8 response to the subject FOIA request.” There was no attachment to that email.

9 28. On November 3, 2021, plaintiff’s undersigned counsel received an email from  
10 Gregory Carson in the Navy’s “DON FOIA/PA Program Office” stating in part: “Please find the  
11 attached interim response from NAVFAC Atlantic to your FOIA request.” The Navy did not release  
12 the Noise Monitoring Study Plan or the other documents we had requested as described in  
13 Paragraph 20(1–3), above.

14 29. On January 7 and January 11, 2022, plaintiff’s undersigned counsel called the DoD  
15 Navy Component FOIA Public Liaison, Mr. Chris Julka, to seek dispute resolution services  
16 regarding the Navy’s failure to release the Noise Monitoring Study Plan and the other documents  
17 we had requested and failure to provide an estimated completion date for release of the Noise  
18 Monitoring Study Plan and the other documents we had requested as described in Paragraph 20(1–  
19 3), above. Mr. Julka did not answer the phone or return the undersigned counsel’s voice mails.

20 30. On January 11, 2022, plaintiff’s undersigned counsel emailed Mr. Julka, stating: “I  
21 have been trying to reach you on the phone. I left messages for you on January 7 and again today,  
22 but have not received a call back. I am hoping that you can help resolve a potential dispute regarding  
23 our August 31, 2021 FOIA Request (No. DON-NAVY-2021-010094). A copy of that request is  
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1 attached. It pertains to the EA-18G Growler noise monitoring study conducted pursuant to  
2 congressional direction in the National Defense Authorization Act (“NDAA”) for Fiscal Year 2020.  
3 While we have received two ‘interim’ responses from the Navy, we have not received the records  
4 we requested. For example, we have not yet received the noise monitoring study plan itself. I am  
5 hoping to avoid a repeat of the lawsuit we were forced to file (Case No. 2:19-cv-01041, W.D.  
6 Washington) in a similar matter involving the Navy. Your assistance will be appreciated.”

8 31. After sending the above email to Mr. Julka on January 11, 2021, plaintiff’s  
9 undersigned counsel called Mr. Julka again and reached him by telephone. Mr. Julka said that he  
10 could not find the email plaintiff’s undersigned counsel sent and would look for it and call  
11 plaintiff’s counsel back. Mr. Julka did not call plaintiff’s undersigned counsel back.

12 32. On January 24, 2022, plaintiff’s undersigned counsel emailed Mr. Julka, stating:  
13 “When we spoke on the phone on January 11, 2022, you told me that you were having trouble  
14 finding my email (below) and would look for it an[d] call me back. I never received a call back  
15 from you. We have not received an estimated date of completion for FOIA Request DON-NAVY-  
16 2021-010094, even though that request was submitted nearly five months ago, on August 31, 2021.  
17 Nor have we received the records sought in that request. Please let me know when will receive the  
18 records we seek by providing an estimated date of completion. Please contact me as soon as  
19 possible.”

21 33. On January 24, 2022, Mr. Julka replied to the email described in the paragraph  
22 above, stating: “I have yet to confirm this, but I believe the POC is Mr. John Diring of NAVFAC  
23 Atlantic. You may reach him at john.e.diring.civ@us.navy.mil.”

24 34. On January 24, 2022, plaintiff’s undersigned counsel emailed Mr. Diring, stating:  
25 “Mr. Julka suggested that I contact you. Please see the email thread below. Please copy Mr. Julka  
26

1 and Mr. Bricklin on your reply. We submitted FOIA Request No. DON-NAVY-2021-010094  
2 nearly five months ago and have not yet received the records we requested. Nor have we received  
3 an estimated date of completion. According to FOIA Online, the estimated date of completion is  
4 still ‘TBD.’ Kindly provide an estimated date of completion and the records requested in FOIA  
5 Request No. DON-NAVY-2021-010094.”  
6

7 35. On January 27, 2022, Mr. Diring emailed plaintiff’s undersigned counsel, stating:  
8 “I have forwarded your concern to Mr. Greg Cason. He has been in direct communication with  
9 our counsel’s office about all the redactive documents we proposed for release and we have  
10 followed his guidance.”

11 36. On January 27, 2022, Mr. Carson emailed plaintiff’s undersigned counsel, stating:  
12 “I apologize that you have not received any communication regarding this request. As you can see  
13 from the attached document there have been a few records and responses sent via FOIA online. I  
14 will attempt to send the records again to you via DOD SAFE which is a file transfer application.”  
15 This email was followed by an email providing instructions for downloading files from DOD  
16 SAFE. Plaintiff’s undersigned counsel downloaded the files from DOD SAFE and discovered that  
17 they were identical to the records that had previously been released. Those records did not include  
18 the Noise Monitoring Study Plan or the other documents we had requested and the other documents  
19 we had requested as described in Paragraph 20(1–3), above.  
20

21 37. On January 27, 2022, plaintiff’s undersigned counsel emailed Mr. Carson, stating:  
22 “I did not say that we had received no communication regarding our request. I said that we have  
23 not received the records that we requested. For example, we have not received the noise monitoring  
24 study plan itself. Nor have we received the other records requested in the attached request that we  
25 filed last August, nearly five months ago. The Navy has failed to provide an estimated date of  
26

1 completion for this nearly five month old request. We are prepared to litigate to obtain the records  
2 we seek (as we were forced to do in in 2019, Case 2:19-cv-01041-MJP), but we hope that will not  
3 be necessary. Please provide an estimated date of completion immediately, release the noise  
4 monitoring study plan immediately, and provide a schedule for the prompt release of the remainder  
5 of the records that we seek.”

6  
7 38. On January 27, 2022, Mr. Carson emailed plaintiff’s undersigned counsel, stating:  
8 “I apologize for the misunderstanding and will continue to work to get the documents you seek.”  
9 Mr. Carson did not provide an estimated completion date; did not make a determination regarding  
10 the Noise Monitoring Study Plan; and did not release the Noise Monitoring Study Plan or the other  
11 documents we had requested.

12  
13 39. On January 27, 2022, plaintiff’s undersigned counsel emailed Mr. Carson, stating:  
14 “Thank you for your email. Again, please provide an estimated date of completion immediately,  
15 release the noise monitoring study plan immediately, and provide a schedule for the prompt release  
16 of the remainder of the records that we seek. The noise monitoring plan should not be difficult for  
17 the Navy to locate.”

18  
19 40. On February 9, 2022, plaintiff’s undersigned counsel received an email notification  
20 from FOIA Online stating: “On behalf of R. Patterson, Head, DON FOIA/PA Program Office  
21 (DNS-H(36)), please find attached, an official response to the subject FOIA request.” The emailed  
22 notification included an “interim response” letter dated February 9, 2022 containing a weblink to  
23 certain documents, none of which were the Noise Monitoring Study Plan.

24  
25 41. The February 9, 2022 emailed notification included a document titled “Noise  
26 Monitoring Plan RTC SIGNED FINAL,” but this document appears to include only a summary of  
the Noise Monitoring Plan, not the Noise Monitoring Plan itself.

1           42.     The February 9, 2022 interim response letter stated: “Regarding part three of your  
2 request, NAVFAC LANT is still reviewing potentially responsive documents and has provided an  
3 estimated completion date of February 28, 2022 or sooner to provide the results of this review.”  
4 “Part three” of plaintiff’s FOIA Request is described above at paragraph 20(3).  
5

6           43.     The Navy did not release any additional records or provide the results of the review  
7 described in the prior paragraph between February 9, 2022 and February 28, 2002.

8           44.     As of March 3, 2022, the Navy has not released any additional documents or  
9 provided the results of its review of “part three” of the FOIA Request.

10           Current Status of FOIA Request

11           45.     It has been nearly six months since plaintiff submitted the FOIA Request, but the  
12 Navy has neither released the Noise Monitoring Study Plan nor provided an estimated completion  
13 date by which it will release the Noise Monitoring Study Plan. The Navy has provided some, but  
14 not all, of the other records sought by the FOIA Request, as described above in Paragraph 20(1–3).  
15

16           46.     As of the date of this Complaint, the FOIA ONLINE page for the FOIA Request  
17 (Tracking No. DON-NAVY-2021-010094) shows the “Estimated Date of Completion” as “TBD.”

18           47.     As of the date of this Complaint, the FOIA ONLINE page for the FOIA Request  
19 (Tracking No. DON-NAVY-2021-010094) shows the “Request Phase” as “Assignment.”  
20

21           48.     As of the date of this Complaint, the FOIA ONLINE page for the FOIA Request  
22 (Tracking No. DON-NAVY-2021-010094) shows the “Final Disposition” as “Undetermined.”  
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1 **CAUSES OF ACTION**

2 **CLAIM 1**

3 **VIOLATIONS OF THE FREEDOM OF INFORMATION ACT IN**  
4 **RESPONDING TO COER’S FOIA REQUESTS: VIOLATION OF**  
5 **THE DECISION DEADLINES IN THE FOIA**

6 49. Plaintiff hereby incorporates by reference the allegations in the preceding  
7 paragraphs.

8 50. Plaintiff has a statutory right to have the Navy process the FOIA Request in a  
9 manner that complies with the FOIA. The Navy violated plaintiff’s rights in this regard when the  
10 Navy unlawfully delayed its response to plaintiff’s FOIA Request beyond the deadlines imposed  
11 by the FOIA.

12 51. The Navy violated and is violating the FOIA by failing to respond to plaintiff’s  
13 FOIA Request with a “determination” within the deadline set forth in 5 U.S.C. § 552(a)(6)(A)(i).

14 52. The Navy’s violations of the FOIA with respect to its response to plaintiff’s FOIA  
15 Request entitle plaintiff to an award of reasonable attorneys’ fees and other litigation costs pursuant  
16 to 5 U.S.C. § 552(a)(4)(E).  
17

18 **CLAIM 2**

19 **VIOLATION OF THE FREEDOM OF INFORMATION ACT:**  
20 **UNLAWFUL CONSTRUCTIVE DENIAL/UNLAWFUL**  
21 **WITHHOLDING**

22 53. Plaintiff hereby incorporates by reference the allegations in the preceding  
23 paragraphs.

24 54. Plaintiff has a statutory right to the records, or portions of records, it seeks. There is  
25 no legal basis for the Navy to withhold the records responsive to plaintiff’s FOIA Request.  
26

1 55. The Navy has violated and is violating plaintiff's rights by unlawfully withholding  
2 non-exempt documents responsive to the FOIA Request. The Navy's actions, or lack of action, in  
3 response to plaintiff's FOIA Request constitute constructive and/or unlawful denials of the FOIA  
4 Request.

5  
6 56. The Navy's violations of the FOIA with respect to its response to plaintiff's FOIA  
7 Request entitle plaintiff to an award of reasonable attorneys' fees and other litigation costs pursuant  
8 to 5 U.S.C. § 552(a)(4)(E).

9 **PRAYER FOR RELIEF**

10 WHEREFORE, plaintiff respectfully requests that the Court:

11 A. Adjudge and declare that the Navy has violated the FOIA for the reasons set forth  
12 above;

13 B. Order the Navy to comply immediately with the FOIA by providing plaintiff with  
14 the required determinations, estimated completion dates, and non-exempt public records subject to  
15 plaintiff's FOIA Request;

16 C. Declare that plaintiff is the prevailing party and/or substantially prevailing party in  
17 this matter under FOIA, 5 U.S.C. § 552(a)(4)(E);

18 D. Declare that plaintiff is the prevailing party, that the position of the government in  
19 this action was not substantially justified, and that there are no special circumstances that make an  
20 award of costs and reasonable attorneys' fees to plaintiff unjust under the Equal Access to Justice  
21 Act, 28 U.S.C. § 2412;

22 E. Award plaintiff its reasonable attorneys' fees and litigation costs under FOIA, 5  
23 U.S.C. § 552(a)(4)(E); and/or award plaintiff its reasonable fees, expenses, costs, and  
24  
25  
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1 disbursements, including attorneys' fees associated with this litigation, under the Equal Access to  
2 Justice Act, 28 U.S.C. § 2412; and

3 F. Grant plaintiff such additional relief as the Court may deem just or proper.  
4

5 Dated this 3rd day of March, 2022.

6 Respectfully submitted,

7 CITIZENS OF THE EBEBY'S RESERVE FOR A  
8 HEALTHY, SAFE AND PEACEFUL  
9 ENVIRONMENT,

10 By and through their attorneys,

11 BRICKLIN & NEWMAN, LLP

12 By: s/David A. Bricklin

13 s/Zachary K. Griefen

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