

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FRIENDS OF THE EARTH)	
1100 15th St. NW, 11th Fl.)	
Washington, DC 20005,)	
)	Civ. No.
Plaintiff,)	
)	
v.)	
)	
UNITED STATES DEPARTMENT OF STATE)	
2201 C Street, NW)	
Washington, DC 20520,)	
)	
Defendant.)	
)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. In this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, Friends of the Earth (“FoE”) seeks the release of critical records from the Department of State (“State”) concerning the involvement of well-connected lobbyists in decision-making over the Keystone XL pipeline – a highly controversial project that would carry one of the world’s dirtiest fuels, tar sands crude oil, from Alberta, Canada to refineries in the Texas gulf coast. Timely receipt of these records is vital to FoE’s ability to contribute to the public’s understanding of the State Department’s activities in the Keystone XL permitting process, which is nearly complete. However, although FoE submitted an expedited FOIA request on April 15, 2013, State denied the request for expedited processing, and more than three months later no responsive records have been provided. This suit challenges the agency’s failure to grant expedited processing, and failure to provide any responsive records. 5 U.S.C. §§ 552(a)(6)(E)(iii), 552(a)(6)(A)(i), 552(a)(3)(A); see also 22 C.F.R. § 171.12.

JURISDICTION

2. This Court has jurisdiction over this action and venue is proper in this district pursuant to 28 U.S.C. § 1331, 5 U.S.C. § 552(a)(4)(B), and 5 U.S.C. 552(a)(6)(E)(iii).

PARTIES

3. FoE is a national, non-profit environmental advocacy organization founded in 1969, incorporated and headquartered in Washington, D.C. with an office in Berkeley, California. FoE's mission is to defend the environment and champion a healthy and just world. FoE seeks to change the perception of the public, media and policy makers – and effect policy change – with hard-hitting, well-reasoned policy analysis and advocacy campaigns that describe what needs to be done, rather than what is seen as politically feasible or politically correct. FoE is also the U.S. voice of the world's largest network of environmental groups – Friends of the Earth International – a federation of grassroots groups working in 76 countries on the world's most urgent environmental and social issues.

4. FoE routinely disseminates information to educate the public on current environmental policy issues. Almost all of FoE's staff members are engaged in disseminating such information. In addition to press releases, they disseminate information through press briefings and radio and television interviews. FoE also has a regularly updated website that disseminates information about key environmental issues. FoE staff members respond to questions from the public about environmental issues and disseminate information in responding to those questions. They distribute email messages with information on environmental issues several times per week, post blog articles on FoE's website several times per week, and letter mailings multiple times per year, and they release a quarterly "Newsmagazine," and distribute information through multiple social networking sites and pages, and at public events.

5. The records at issue here will further FoE's mission as a non-profit environmental advocacy organization. Through FoE's dissemination, the information is likely to contribute significantly to the public's understanding of the State Department's activities in the Keystone XL permitting process, and will not be used for commercial purposes.

6. Defendant the United States Department of State is a federal agency in control of records responsive to FoE's FOIA request. The State Department processes requests for agency records under FOIA and, in carrying out its responsibilities, must comply with applicable FOIA requirements.

**STATUTORY FRAMEWORK AND FACTS GIVING
RISE TO CAUSE OF ACTION**

THE FREEDOM OF INFORMATION ACT

7. "The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." John Doe Agency v. John Doe Corp., 493 U.S. 146, 152 (1989) (citations omitted). FOIA was enacted to "permit access to official information long shielded unnecessarily from public view," by creating a "right to secure such information from possibly unwilling official hands." EPA v. Mink, 410 U.S. 73, 80 (1973). "[D]isclosure, not secrecy, is the dominant objective of the Act." John Doe, 493 U.S. at 152 (citation omitted).

8. Upon request, FOIA requires agencies of the federal government to conduct a reasonable search for requested records and release them to the public, unless one of nine specific statutory exemptions applies. 5 U.S.C. § 552(a)(3), (b).

9. Upon receiving a FOIA request, an agency has twenty working days to respond. Id. § 552(a)(6)(A). A requestor has exhausted administrative remedies "if the agency fails to

comply with the” twenty day deadline. Id. § 552(a)(6)(C)(i). In that event, FOIA authorizes the requester to invoke the jurisdiction of a federal court to obtain the requested records. Id. § 552(a)(4)(B).

10. In addition, a requestor may seek “expedited processing” based on a “compelling need.” Id. § 552(a)(6)(E)(i)(I). State’s regulations provide that this criteria is satisfied where the requestor demonstrates that (a) “their primary activity involves . . . disseminating information to the public”; (b) the “information has a particular value that will be lost if not disseminated quickly”; and (c) the information “concerns some actions taken, contemplated, or alleged by or about the government of the United States.” 22 C.F.R. §171.12(b)(2).

11. Upon taking office, President Obama reaffirmed the importance of providing government records to the public under FOIA, echoing the words of Congress and the Supreme Court that “[a] democracy requires accountability, and accountability requires transparency” and emphasizing that FOIA “should be administered with a clear presumption: In the face of doubt, openness prevails.” Memorandum from President Obama to the Heads of the Executive Departments and Agencies Regarding FOIA (Jan. 21, 2009).

FACTUAL BACKGROUND

1. The Keystone XL Pipeline

12. The highly controversial Keystone XL pipeline would transport tar sands crude oil from the Western Canadian Sedimentary Basin in Alberta, Canada to refineries in the Texas Gulf Coast area. The pipeline threatens to devastate ecosystems, pollute water sources, and jeopardize public health.

13. Because the pipeline would cross the U.S.-Canada border, TransCanada – the company seeking to build the pipeline – may not proceed with the project without a Presidential

permit from the State Department. Exec. Order No. 13,337, 69 Fed. Reg. 25,299 (Apr. 30, 2004). To reach this decision, State must complete an environmental review, consult with certain other federal agencies, and determine whether issuance of a Presidential permit to the applicant “would serve the national interest.” *Id.* at 25,300.

14. In 2011, serious conflicts of interest were discovered in the relationships between lobbyists for the TransCanada and U.S. government officials and contractors. For example, TransCanada was a “major client” of the company State hired to prepare the purportedly independent Environmental Impact Statement (“EIS”) for the project, Cardno Entrix. “Pipeline Review Is Faced With Question of Conflict,” *New York Times*, Oct. 7, 2011. In addition, TransCanada’s lead D.C. lobbyist was a top official in Hillary Rodham Clinton’s 2008 presidential campaign. *Id.*

15. In January, 2012, President Obama denied TransCanada’s request for a permit, but allowed for a new request to be submitted. In May, 2012 TransCanada submitted a renewed application for the northern portion of the pipeline, from Alberta, Canada to Nebraska.

16. In March, 2013, State issued a draft Supplemental EIS on the project. A decision on the renewed application is anticipated shortly.

2. FoE’s FOIA Request and Appeal

17. On April 15, 2013, FoE submitted a FOIA request for records concerning communications between State Department officials on the one hand and the lobbyists and other individuals representing TransCanada, other governments, and other interests that are lobbying in favor of the project on the other, between October 7, 2011 and the present. Because the requested records are needed to inform the public about these issues before State makes a

decision on the project, FoE requested expedited processing, and offered to receive responsive records on a rolling basis. FoE also requested a fee waiver.

18. On April 19, 2013, State granted FoE's fee waiver request, but denied the request for expedited processing. State did not provide any information regarding when responsive records might be provided.

19. On April 26, 2013, FoE appealed the denial of the expedited processing request. FoE explained that the requested information was critical because a number of the lobbyists presently advocating for the project formerly worked for Secretary of State John Kerry, or for former Secretary Hillary Rodham Clinton. In light of these relationships, the requested records would allow FoE to inform the public about the nature of the State Department's decision-making, and the role any of these lobbyists may be playing in that process.

20. The appeal further explained that FoE meets all parts of State's test for expedited processing. 22 C.F.R. §171.12(b)(2). First, FoE is primarily involved in information dissemination, public education and advocacy on environmental issues like the Keystone XL pipeline controversy. Second, the value of the records will be lost if not received quickly because the environmental review process is moving forward, and a final Supplemental EIS may be issued at any time, to be followed by a National Interest Determination process. Third, the public plainly needs the responsive records to understand State's decision-making in these processes before they are completed, and the overwhelming participation in the Supplemental EIS process – including over 1 million public comments – demonstrate the public's concern and interest.

21. On May 30, 2013, State denied FoE's appeal, and upheld its denial of FoE's request for expedited processing.

22. To date, more than three months after submitting its FOIA request, FoE had not received a single responsive record from the State Department. Although a representative from State has told FoE that the request is being processed, State has still not provided FoE with a date certain by when responsive records will be provided.

PLAINTIFF'S CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(failure to provide responsive records)

23. FoE hereby incorporates by reference the allegations of all the foregoing paragraphs as if fully set forth herein.

24. By failing to provide the records responsive to FoE's April 15, 2013 FOIA request, the State Department is violating the FOIA and its own implementing regulations. 5 U.S.C. § 552(a)(3)(A); 22 C.F.R. § 171.12(d).

25. Plaintiff has a right to obtain the requested records.

SECOND CLAIM FOR RELIEF

(failure to grant Expedited Processing)

26. FoE hereby incorporates by reference the allegations of all the foregoing paragraphs as if fully set forth herein.

27. By denying FoE's request for expedited processing, and denying FoE's appeal of that determination, the State Department is violating the FOIA and its own implementing regulations. 5 U.S.C. § 552(a)(6)(E); 22 C.F.R. § 171.12(b).

28. Plaintiff meets the criteria for expedited processing.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff FoE respectfully requests that this Court:

1. declare State in violation of FOIA;
2. order State to release to FoE all non-exempt records, and parts of records, responsive to FoE's FOIA requests, and a Vaughn Index for all withheld records, within 20 days;
3. award FoE its costs and attorneys' fees; and
4. award FoE such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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