

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

CLERKS OFFICE
US DISTRICT COURT
AT CHARLOTTESVILLE, VA
FILED
3/30/2026

LAURAA. AUSTIN, CLERK
BY: s/J. Lopez
DEPUTY CLERK

SOUTHERN ENVIRONMENTAL LAW
CENTER

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Case No. 3:26cv28

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

INTRODUCTION

1. This lawsuit seeks declaratory and injunctive relief against Defendant United States Department of Justice (“DOJ”) for its unlawful delay and failure to comply with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.

2. In July 2025, Plaintiff Southern Environmental Center (“SELC”) requested records from DOJ related to two executive order directives requiring DOJ to report, to the President, all state and federal laws burdening use of domestic energy resources or imposing disparate impact liability.

3. SELC filed two FOIA requests (“the Requests”) to gather reports, communications, and records related to these directives on July 17, 2025, and July 18, 2025.

4. DOJ has failed to meet its statutory obligation to make a determination on these Requests within twenty (20) working days of receiving them. 5 U.S.C. § 552(a)(6)(A). SELC therefore seeks declaratory and injunctive relief from this Court as provided under FOIA.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action under 5 U.S.C. § 552(a)(4)(B) (granting jurisdiction under FOIA), 28 U.S.C. § 1331 (granting jurisdiction for federal questions), and 28 U.S.C. §§ 2201, 2202 (providing authority to issue a declaratory judgment and further necessary or proper relief).

6. Pursuant to 5 U.S.C. § 552(a)(6)(C)(i), SELC is “deemed to have exhausted [its] administrative remedies” because DOJ has “fail[ed] to comply with the applicable time limit” provisions of FOIA. SELC is thus now entitled to file suit in federal district court to compel compliance with FOIA.

7. Venue is proper in the Charlottesville Division of the Western District of Virginia under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e)(1) because the requester, SELC, is a 501(c)(3) nonprofit organization with its principal place of business in Charlottesville, Virginia. W.D. Va. Civ. R. 2(a)(2), (b).

PARTIES

Plaintiff Southern Environmental Law Center

8. SELC is a 501(c)(3), nonprofit public-interest environmental law firm with a focus on six states in the Southeast. SELC is headquartered in Charlottesville, Virginia.

9. SELC is a “person” for purposes of FOIA. 5 U.S.C. § 551(2).

10. SELC collaborates with partner organizations that rely on its legal expertise to complement and strengthen their efforts, working with such partners and clients exclusively on a pro bono basis in furtherance of the public interest. In carrying out its mission to protect the communities and ecosystems of the Southeast from environmental threats, including overreach in

legislative and policy settings, SELC challenges federal agency actions that are not undertaken in accordance with applicable law, including FOIA.

11. SELC regularly requests public records under FOIA to better understand the operations of the federal government. In addition, SELC disseminates information obtained through FOIA to its conservation partners and to the general public via its website as well as through press releases, media interviews, reports, social media platforms, and public comment letters. SELC attorneys also regularly attend and present at public meetings and hearings throughout the region, during which they convey information and data acquired through FOIA requests. Through these various channels, SELC communicates such information and fosters public awareness regarding the operations of federal agencies and the relationship between governmental policies and environmental outcomes.

Defendant United States Department of Justice

12. DOJ is a federal agency under the leadership of the Attorney General of the United States. Among its other responsibilities, DOJ serves as legal counsel to executive agencies and defends challenged federal agency actions in court.

13. DOJ is an “agency” for purposes of FOIA. 5 U.S.C. § 551(1).

14. Upon information and belief, DOJ has in its possession, custody, or control the records responsive to SELC’s FOIA requests.

LEGAL BACKGROUND

Freedom of Information Act

15. Congress enacted the Freedom of Information Act “to establish a general philosophy of full agency disclosure” and “to assure the availability of Government information necessary to an informed electorate.” *Coleman v. Drug Enf’t Admin.*, 714 F.3d 816, 818 (4th Cir.

2013) (internal citations omitted). FOIA advances the statutory goal of providing “efficient, prompt, and full disclosure of information.” H.R. Rep. 93-876, at 6271 (1974). Thus, “FOIA’s disclosure regime shines a light on government operations ‘to check against corruption and to hold the governors accountable to the governed.’” *Coleman*, 714 F.3d at 818–19 (quoting *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978)).

16. Accordingly, FOIA requires federal agencies to make nonexempt records available upon request. 5 U.S.C. § 552(a)(3)(A). The term “record” encompasses “any information . . . maintained by an agency in any format, including an electronic format.” *Id.* § 552(f)(2). Agencies must “make reasonable efforts to search” for such records. *Id.* § 552(a)(3)(C).

17. FOIA requires agencies to respond to requests “promptly.” *Id.* § 552(a)(3)(A). In general, agencies must “determine” whether to comply with a FOIA request within twenty (20) working days of receiving the request, and they must “immediately notify the requester of that determination.” *Id.* § 552(a)(6)(A)(i).

18. An agency’s “determination . . . must be more than just an initial statement that the agency will comply with a FOIA request and will produce non-exempt documents and claim exemptions in the future.” *Citizens for Resp. & Ethics in Wash. v. Fed. Election Comm’n*, 711 F.3d 180, 188 (D.C. Cir. 2013). Rather, a “determination” under FOIA requires that an agency at least “determine and communicate the scope of the documents it intends to produce and withhold, and the reasons for withholding any documents.” *Id.* The agency also must “inform the requester that it can appeal whatever portion of the ‘determination’ is adverse.” *Id.*

19. In “unusual circumstances,” an agency may extend the twenty-working-day deadline by providing timely written notice to the requester. 5 U.S.C. § 552(a)(6)(B)(i). This

extension generally may not exceed ten working days. *Id.* Even under “unusual circumstances,” FOIA statute does not provide for agencies to extend the timeline for making a determination beyond ten additional working days—or, in total, thirty (30) days.

20. FOIA defines “unusual circumstances.” The statute provides that an agency can extend its determination deadline up to ten days when it must “search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request,” “search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request,” or consult with another agency or among two or more components of the agency. 5 U.S.C. § 552(a)(6)(B)(iii).

21. DOJ regulations provide that “[w]here the extension exceeds 10 working days, the [relevant officer] shall, as described by the FOIA, provide the requester with an opportunity to modify the request or arrange an alternative time period for processing.” 28 C.F.R. § 16.5(c) (2024).

22. If a federal agency fails to make and communicate its “determination” within the relevant statutory timelines, the requester “shall be deemed to have exhausted his administrative remedies.” 5 U.S.C. § 552(a)(6)(C)(i). The requester may thereafter file suit against the agency directly in federal district court. *Citizens for Resp. & Ethics in Wash.*, 711 F.3d at 182.

23. An agency’s obligations under FOIA, including the mandate to make a timely determination, persist regardless of inadequate staffing. *See Ctr. to Advance Sec. in Am. v. U.S. Agency for Int’l Dev.*, CV 24-3505 (RDM), 2025 WL 763735, at *2 (D.D.C. Mar. 11, 2025) (“[T]he Court is skeptical that an agency can avoid its obligations under FOIA—including the obligation to process a request in an efficient and prompt manner” due to staffing.).

FACTUAL BACKGROUND

24. This case concerns two individual FOIA requests for reports produced as directed by two executive orders: Section 5 of Executive Order 14281, Restoring Equality of Opportunity and Meritocracy, 90 Fed. Reg. 17,537, 17,538 (Apr. 28, 2025) and Section 2 of Executive Order 14260, Protecting American Energy from State Overreach, 90 Fed. Reg. 15,513, 15,514 (Apr. 14, 2025).

SELC's First Request

25. The President issued Executive Order 14281 on April 23, 2025. 90 Fed. Reg. at 17,537.

26. Section 5 of Executive Order 14281, in part, directs the Attorney General ("AG" or "USAG") to report to the President, within thirty (30) days of the date of the order "(i) all existing regulations, guidance, rules, or orders that impose disparate- impact liability or similar requirements, and detail agency steps for their amendment or repeal, as appropriate under applicable law; and (ii) other laws or decisions, including at the State level, that impose disparate-impact liability and any appropriate measures to address any constitutional or other legal infirmities." *Id.* at 17,538.

27. Thirty (30) days after April 23, 2025, was May 23, 2025.

28. On July 17, 2025, SELC submitted, via FOIA.gov, a request for documents related to Executive Order 14281. Letter from S. Env't L. Ctr., to U.S. Dep't of Just. (July 17, 2025), Exhibit 1 ("Request 1"). Request 1 sought two categories of records. *Id.*

29. In Request 1, SELC sought, as item no. 1, "[c]opies of reports and documents submitted to the President from the AG, in coordination with the heads of all other agencies, related to the AG's directive from the President to report 'all existing regulations, guidance,

rules, or orders that impose disparate impact liability or similar requirements, and detail agency steps for their amendment or repeal, as appropriate under applicable law; and other laws or decisions, including at the State level, that impose disparate-impact liability and any appropriate measures to address any constitutional or other legal infirmities,” as ordered under Executive Order 14281. *Id.*

30. As item no. 2, in Request 1, SELC sought “[c]ommunications and other records related to the” report mentioned in item no. 1. *Id.*

31. Twenty (20) working days—the time limit for an agency to communicate its determination—after July 17, 2025 was August 14, 2025. Thirty (30) working days—the time limit for an agency to communicate its determination for unusual circumstances—after July 17, 2025, was August 28, 2025.

32. On August 14, 2025, DOJ sent a memorandum to SELC acknowledging receipt of Request 1 and stating the request had been assigned to the “complex track.” Letter from U.S. Dep’t of Just., Off. of Info. Pol’y, to Jasmine Washington, S. Env’t L. Ctr. (Aug. 14, 2025), Exhibit 2. The acknowledgement memorandum further stated that the request “falls within ‘unusual circumstances’” and that the agency “need[ed] to extend the time limit to respond to [the] request beyond the ten additional days provided by the statute.” *Id.*

33. DOJ’s acknowledgement memorandum for Request 1 stated that SELC, as requester, could contact DOJ to modify the request. *Id.* at 2.

34. DOJ’s acknowledgement memorandum for Request 1 did not state whether the agency would produce records responsive to the request, the scope of records the agency would produce, or claim any exemptions from production.

SELC's Second Request

35. The President issued Executive Order 14260 on April 8, 2025. 90 Fed. Reg. at 15,513.

36. Section 2 of Executive Order 14260 directs the Attorney General to report to the President, within sixty (60) days, “all State and local laws, regulations, causes of action, policies, and practices (collectively, State laws) burdening the identification, development, siting, production, or use of domestic energy resources that are or may be unconstitutional, preempted by Federal law, or otherwise unenforceable,” and detailing federal agency actions taken to stop the enforcement of identified State laws and civil actions. *Id.* at 15,514.

37. Sixty (60) days after April 8, 2025, was Saturday, June 7, 2025. Monday, June 9, 2025, was the next working day after the sixty-day deadline.

38. On July 18, 2025, SELC submitted a request, via FOIA.gov, for documents related to Executive Order 14260. Letter from S. Env't L. Ctr., to Andrew Fiorillo, U.S. Dep't of Just. (July 18, 2025), Exhibit 3 (“Request 2”). Request 2 sought three categories of records. *Id.*

39. In Request 2, SELC sought, as item no. 1, “[c]opies of reports and documents submitted to the President from the USAG, in coordination with the heads of all other agencies, related to the USAG’s directive from the President to report ‘all State and local laws, regulations, causes of action, and practices . . . burdening the identification, development, siting, production, or use of domestic energy resources that are or may be unconstitutional, preempted by Federal law, or otherwise unenforceable,’” as directed by Executive Order 14260. *Id.*

40. As item no. 2 in Request 2, SELC sought “[a]ll communications and other records related to the above-mentioned report or concerning any actions taken based on this report, by

the President, the USAG, or the heads of any ‘appropriate executive departments and agencies’ pursuant to Executive Order 14260.” *Id.*

41. Lastly, as item no. 3 in Request 2, SELC sought “[c]ommunications and other records related to the above-mentioned report, including communications received, sent, or otherwise obtained by employees, contractors, or other persons associated with the Department of Justice.” *Id.*

42. Twenty (20) working days—the time limit for an agency to communicate its determination—after July 18, 2025, was August 15, 2025. Thirty (30) working days—the time limit for an agency to communicate its determination for unusual circumstances—after July 18, 2025, was August 29, 2025.

43. On August 15, 2025, DOJ sent a memorandum to SELC acknowledging receipt of Request 2. Letter from U.S. Dep’t of Just., Off. of Info. Pol’y to Jasmine Washington, S. Env’t L. Ctr. (Aug. 15, 2025), Exhibit 4. Mirroring the language of the Request 1 acknowledgement memorandum, this memorandum stated that Request 2 had been assigned to the “complex track,” that it “falls within ‘unusual circumstances,’” and that the agency “need[ed] to extend the time limit to respond to [the] request beyond the ten additional days provided by the statute.” *Id.*

44. DOJ’s acknowledgement memorandum for Request 2 stated that SELC, as requester, could contact DOJ to modify the request, including the scope and date range. *Id.* at 2.

45. DOJ’s acknowledgement memorandum for Request 2 did not state whether the agency would produce records responsive to the request, the scope of records the agency would produce, or claim any exemptions from production.

SELC's Attempts to Modify Requests

46. On December 16, 2025, SELC emailed DOJ requesting a status update on both FOIA requests and offering to discuss modifying the Requests to narrow the scope. E-mail from Jennifer Doucette, S. Env't L. Ctr., to DOJ.OIP.FOIA@usdoj.gov (Dec. 16, 2025, at 12:57 PM ET), Exhibit 5.

47. On January 30, 2026, DOJ responded to SELC's stating "the search for [SELC's] requests are still pending" and that "the best estimate that [DOJ] can provide is based on the average processing time for a complex request as reported in our FY24 Annual FOIA Report . . . which was 650 days," which "would be March 8 and 9, 2028." *Id.* at e-mail from Eric Hotchkiss, Senior Gov't Info. Specialist & Acting FOIA Public Liaison, U.S. Dep't of Just., to Jennifer Doucette, S. Env't L. Ctr. (Jan. 30, 2026, at 9:38 AM ET).

48. DOJ did not respond to the request to discuss modifying the Requests.

49. In a subsequent attempt to narrow the scope of the Requests, on March 2, 2026, SELC emailed DOJ requesting to discuss an interim production of the first categories of records from each FOIA request. E-mail from Jasmine Washington, S. Env't L. Ctr., to Eric Hotchkiss, U.S. Dep't of Just. (Mar. 2, 2026, at 9:13 AM ET), Exhibit 6.

50. DOJ responded to SELC, the same day, restating that "the search is still pending" and "[o]nly once [DOJ's] search is complete will [the agency] know enough regarding the body of responsive materials to make any decisions about whether interim responses make sense." *Id.* at e-mail Eric Hotchkiss, Senior Gov't Info. Specialist & Acting FOIA Public Liaison, U.S. Dep't of Just., to Jasmine Washington, S. Env't L. Ctr. (Mar. 2, 2026, at 10:15 AM).

51. DOJ further implied that their failure to meet their statutory timelines was due to inadequate staffing. *Id.*

52. In neither email response did DOJ's state whether the agency would produce records responsive to the request, the scope of records the agency would produce, or claim any exemptions from production.

SELC's Exhaustion of Administrative Remedies

53. SELC has exhausted its administrative remedies because DOJ has failed to make a "determination" on the Requests within the statutory timeframe. 5 U.S.C. § 552(a)(6)(C)(i).

54. DOJ has not communicated whether it will produce records in response to the Requests.

55. DOJ has not communicated the scope of records it will produce in response to the Requests.

56. DOJ has not claimed any exemptions for responsive records.

57. DOJ has rejected SELC's attempts to modify or narrow the scope of the Requests or discuss interim production of responsive records.

58. DOJ has not released any records responsive to the Requests.

59. More than twenty (20) working days have elapsed since DOJ has received Request 1 on July 17, 2025, and Request 2 on July 18, 2025. DOJ was required to respond with an initial determination by August 14, 2025, and August 15, 2025, respectively.

60. Even under "unusual circumstances," which provide ten additional days for the agency to respond, more than thirty (30) days have lapsed since DOJ has received Request 1 on July 17, 2025, and Request 2 on July 18, 2025. Under "unusual circumstances," DOJ was required to respond with an initial determination by August 28, 2025, and August 29, 2025, respectively. *Id.*

CLAIM FOR RELIEF

Violation of the Freedom of Information Act

61. SELC incorporates by reference all preceding paragraphs.

62. DOJ was required to make an initial determination regarding Request 1 by no later than August 14, 2025, and regarding Request 2 by August 15, 2025. Under “unusual circumstances,” DOJ was required to make an initial determination regarding Request 1 by no later than August 28, 2025, and regarding Request 2 by August 29, 2025.

63. As of the time of filing this complaint, the August 28, 2025, and August 29, 2025, deadlines have passed, and DOJ has yet to communicate their “determination” or produce responsive records.

64. DOJ’s responses to the Requests—an acknowledgement memorandum and two emails—do not constitute a determination pursuant to FOIA.

65. DOJ violated and continues to violate FOIA by failing to make a timely “determination” on SELC’s FOIA Request as required by 5 U.S.C. § 552(a)(6)(A)(i) and 28 C.F.R. § 16.5(c).

66. DOJ violated and continues to violate FOIA by failing to make reasonable efforts to search for records responsive to SELC’s requests as required by 5 U.S.C. § 552(a)(3)(C).

67. DOJ violated and continues to violate FOIA by failing to provide SELC with all non-exempt records responsive to SELC’s requests as required by 5 U.S.C. § 552(a)(8)(A).

68. By failing to make a timely “determination,” conduct a reasonable search, and provide SELC with all non-exempt records responsive to the Requests, DOJ has denied SELC’s right to information under FOIA. *See* 5 U.S.C. § 552.

69. Unless it is enjoined by this Court, DOJ will continue to violate SELC's legal right to be provided with the information that SELC sought in the Requests.

70. SELC is directly and adversely affected and aggrieved by DOJ's failure to provide an initial determination and responsive records to its FOIA Requests, as described above.

REQUEST FOR RELIEF

Wherefore, Plaintiff SELC respectfully requests that this Court:

A. DECLARE that DOJ has violated and is continuing to violate FOIA by failing to make a determination on SELC's Requests as required by FOIA under 5 U.S.C. § 552(a)(6)(A);

B. DECLARE that DOJ has violated and is continuing to violate FOIA by failing to make reasonable efforts to search for records in response to SELC's FOIA Requests as required by FOIA under 5 U.S.C. § 552(a)(3)(C);

C. DECLARE that DOJ has violated and is continuing to violate FOIA by failing to provide SELC with all documents responsive to SELC's Requests as required by FOIA under 5 U.S.C. § 552(a)(3)(A);

D. ORDER DOJ to search for and provide all responsive documents to SELC's FOIA Requests without further delay;

E. ORDER DOJ to produce an index identifying any documents or parts thereof that it tends to withhold and the basis for the withholdings, pursuant to 5 U.S.C. § 552(a)(8) and (b), in the event that DOJ determines certain responsive records are exempt from disclosure;

F. RETAIN jurisdiction over this matter to rule, if necessary, on the adequacy of DOJ's search for responsive records or on assertions by the agency that any responsive documents are exempt from disclosure;

G. AWARD Plaintiff its reasonable attorneys' fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E); and

H. GRANT Plaintiff any other relief the Court deems just and proper.

Respectfully submitted this 30 day of March, 2026

/s/ Kim Lanay Hayes

Kim Lanay Hayes (VA Bar No. 100367)
Southern Environmental Law Center
120 Garrett Street, Suite 400
Charlottesville, VA 22902-5613
Telephone: (434) 977-4090
khayes@selc.org

/s/ Iritha Jasmine Washington

Iritha Jasmine Washington (NC Bar No. 58302)*
Southern Environmental Law Center
136 E. Rosemary Street, Suite 500
Chapel Hill, NC 27514
Telephone: (919) 967-1450
jwashington@selc.org
* *pro hac vice application forthcoming*

Attorneys for Southern Environmental Law Center