

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

FOOD & WATER WATCH)
1616 P St., N.W., Suite 300)
Washington, D.C. 20036)

Plaintiff,)

v.)

BOARD OF GOVERNORS OF THE)
THE FEDERAL RESERVE SYSTEM)
20th Street and Constitution Avenue N.W.,)
Washington, DC 20551)

Defendant.)

Civil Action No. _____

COMPLAINT

PRELIMINARY STATEMENT

1. Plaintiff Food & Water Watch (“FWW” or “Plaintiff”) brings this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, as amended, to compel the Information Disclosure Section of the Board of Governors of the Federal Reserve System (“Federal Reserve” or “Defendant”) to disclose records wrongfully withheld in failing to respond within the statutory deadline to Plaintiff’s FOIA request.
2. Plaintiff is a non-profit organization dedicated to research and public education concerning the activities and operations of federal, state, and local governments.
3. On May 4, 2020, Plaintiff submitted a FOIA request via the Federal Reserve Board of Governors’ website. This request sought “records and communications related to accessibility of lending for oil & gas industry businesses between Federal Reserve Board of Governors and representatives/officials from the following entities: the Executive Office of the White House, the Department of Energy, the Department of Treasury, the

United States Congress, any oil & gas companies or their subsidiaries, any trade organizations representing the interests the American oil & gas industry, such as the Independent Petroleum Association of America.”

4. The FOIA requires federal agencies to respond to public requests for records, including files maintained electronically, to increase public understanding of the workings of government and to provide access to government information. FOIA reflects a “profound national commitment to ensuring an open Government” and agencies must “adopt a presumption in favor of disclosure.” Presidential Mem., 74 Fed. Reg. 4683 (Jan. 21, 2009).
5. The FOIA requires agencies to determine within 20 working days after the receipt of any FOIA request whether to comply with the request. *See* 5 U.S.C. § 552(a)(6)(A)(i). Agencies may extend this time period only in “unusual circumstances” and then only for a maximum of ten additional working days. *See* 5 U.S.C. § 552(a)(6)(B)(i).
6. On June 3, 2020, the Federal Reserve acknowledged FWW’s FOIA request and indicated it would extend the response deadline to June 17, 2020. *See id.*
7. Federal Reserve System FOIA regulations state that a response to a FOIA request will be communicated within 20 days of submission. *See* 12 C.F.R. § 261.13(e). This response is to detail whether or not responsive documents were found in a search pursuant to the request and if, if applicable, whether or not information was withheld. *See* 12 C.F.R. § 261.13(f).
8. To date, Defendant has failed to meaningfully respond to Plaintiff’s FOIA request.
9. Defendant’s conduct amounts to a denial of Plaintiff’s FOIA request. Defendant is frustrating Plaintiff’s efforts to determine what activity the Federal Reserve System is

engaging in with regard to the oil and gas industry's participation in the Main Street Lending Program.

10. Plaintiff constructively exhausted its administrative remedies under 5 U.S.C. § 552(a)(6)(C)(i), and now seeks an order from this Court requiring Defendant to immediately produce the records sought in Plaintiff's FOIA request, as well as other appropriate relief, including attorneys' fees and costs.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this action under 5 U.S.C. § 552(a)(4)(B). This Court also has federal question jurisdiction over this action under 28 U.S.C. § 1331.
12. This Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*
13. This Court is a proper venue because Defendant is a government agency that resides in the District of Columbia. *See* 28 U.S.C. § 1391(e)(1)(A) (where defendant is the government or a government agency, a civil action may be brought in the district where the defendant resides). Venue is also proper under 5 U.S.C. § 552(a)(4)(B) (providing for venue in FOIA cases where the plaintiff resides, where the records are located, or in the District of Columbia).
14. This Court has the authority to award reasonable costs and attorneys' fees under 5 U.S.C. § 552(a)(4)(E).

PARTIES

15. Plaintiff, FWW, is a non-profit public interest organization incorporated and headquartered in Washington, D.C. with field offices in California, Florida, Illinois, Maryland, New Jersey, New Mexico, New York, Oregon, and Pennsylvania.

16. Among other public interest projects, FWW engages in advocacy, research, education, and litigation to promote public understanding and debate concerning key current public policy issues. FWW is a national consumer advocacy organization focused on protecting the fundamental human rights of our communities to clean water, safe food, and a livable climate. FWW educates and informs the public through news releases to the media, through its website - www.foodandwaterwatch.org, and through community organizing.
17. Defendant, Board of Governors of the Federal Reserve System, is an agency of the United States as defined by 5 U.S.C. § 552(f)(1).
18. Defendant is charged with the duty to provide public access to records in its possession consistent with the requirements of the FOIA. Here, Defendant is denying Plaintiff access to its records in contravention of federal law.

STATEMENT OF FACTS

19. Recent news reports have noted that the Federal Reserve Board has decided to expand access to the small-business lending through the Main Street Lending Program to include businesses with up to 15,000 employees or up to \$5 billion in annual revenue, doubling the revenue limit and raising the employee limit by 50%. *See* Craig Torres et al., *Fed Widens Main Street Loan Program to Reach More Businesses*, WASHINGTON POST, May 1, 2020, https://www.washingtonpost.com/business/on-small-business/fed-widens-main-street-loan-program-to-reach-more-businesses/2020/04/30/e3a8c4a8-8afd-11ea-80df-d24b35a568ae_story.html. This followed an explicit request for assistance from the Independent Petroleum Association of America, despite oil & gas companies' historically poor performance and incredible debt load prior to the COVID-19 crisis. *See*

Letter from Barry Russell, Pres./CEO, Indep. Petr. Ass'n Am., to Jerome Powell, Chairman, Bd. Govs. Fed. Res. Sys. (Apr. 15, 2020), <https://www.ipaa.org/wp-content/uploads/2020/04/Main-Street-Lending-Letter-04-15-2020.pdf>.

20. Treasury Secretary Steven Mnuchin said he had considered an additional lending facility for troubled U.S. energy companies prior to this expansion as well. The adjustments to the Main Street program announced Thursday, April 30, 2020, look to encompass many of those oil & gas companies, despite the Federal Reserve's historical reading of its emergency lending authority as not permitting it to create a lending facility to support a specific industry.
21. Companies can also now receive loans of up to \$200 million, an expansion over the previous \$150 million limit, as urged by Energy Secretary Dan Brouillette. Firms with heavier debt loads— such as American shale oil companies, most of which have never produced a positive cash flow — also now appear eligible for Federal Reserve support, as Texas Senator Ted Cruz requested in an April 24, 2020 letter to Powell and Treasury Secretary Steve Mnuchin. *See* Letter from T. Cruz, U.S. Sen., to S. Mnuchin, Sec'y, Dep't. Tres. and J. Powell, Chairman, Bd. Govs. Fed. Res. Sys. (Apr. 24, 2020), <https://www.cruz.senate.gov/files/documents/Letters/4.24.2020%20Oil%20Gas%20Fed%20Lending%20Facility%20Letter.pdf>.
22. On May 4, 2020, in response to the seeming connection between the decision by the Board of Governors of the Federal Reserve System to expand the Main Street Lending program and pressure from the oil and gas industry and its political supporters, FWW submitted a FOIA request to the Federal Reserve. The request called on Defendant to release “records and communications related to accessibility of lending for oil & gas

industry businesses between Federal Reserve Board of Governors and representatives/officials from the following entities: the Executive Office of the White House, the Department of Energy, the Department of Treasury, the United States Congress, any oil & gas companies or their subsidiaries, any trade organizations representing the interests the American oil & gas industry, such as the Independent Petroleum Association of America.”

23. Pursuant to 5 U.S.C. 552(a)(6)(A) and 12 C.F.R. § 261.13(e), Defendant had twenty working days from the date of receipt to respond to the request.
24. On June 3, 2020, the Federal Reserve acknowledged FWW’s FOIA request and indicated it would extend the response deadline to June 17, 2020 in compliance with FOIA and agency regulations. *See id.* Defendant’s communication stated that “[i]f a determination can be made before June 17, 2020, we will respond to you promptly. It is our policy to process FOIA requests as quickly as possible while ensuring that we disclose the requested information to the fullest extent of the law.” Defendant’s acknowledgement of the request, merely stating that the request had been received and providing no documents, came nearly a month after the initial request.
25. To date, despite its failure to timely respond in the first instance and its subsequent extension of response deadline, Defendant has failed to produce any responsive documents. Plaintiff has received no communication from defendant at all since the June 3, 2020 notice that the response deadline had been extended.
26. Administrative remedies are deemed exhausted when an agency fails to comply with the applicable time limits. 5 U.S.C. § 552(a)(6)(C)(i). Having fully exhausted its administrative remedies for its May 2020 FOIA request, FWW now turns to this Court

to enforce the FOIA's guarantee of public access to agency records, along with the remedies available when an agency withholds that access.

CAUSE OF ACTION

27. Plaintiff incorporates the allegations in the preceding paragraphs.
28. Defendant's failure to make a determination on Plaintiff's FOIA request or disclose the records requested within the time frames mandated by statute is a constructive denial and wrongful withholding of records in violation of FOIA, 5 U.S.C. § 552, and the Federal Reserve System regulations promulgated thereunder, 12 C.F.R. § 261.13 *et seq.*

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that this Court:

- i. Enter an order declaring that Defendant wrongfully withheld requested agency records;
- ii. Issue a permanent injunction directing Defendant to disclose to Plaintiff all wrongfully withheld records;
- iii. Maintain jurisdiction over this action until Defendant is in compliance with the FOIA and every order of this Court;
- iv. Award Plaintiff attorney fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E); and
- v. Grant such additional and further relief to which Plaintiff may be entitled.

Respectfully submitted on June 30, 2020,

 /s/Adam Carlesco
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