

The documents / communications below are in chronological order, starting with our Legal Alliance to Stop Geoengineering (LASG) initial Freedom Of Information Act (FOIA) request to the National Oceanic and Atmospheric Administration (NOAA)

LAW OFFICES OF BRIAN GAFFNEY, A Professional Corporation
446 Old County Road, Suite 100-310

Pacifica, California 94044

March 10, 2017

Via U.S. Mail and Email

National Oceanic and Atmospheric Administration U.S. Department of Commerce
1315 East-West Highway (SSMC3), Room 9719 Silver Spring, Maryland 20910

foia@noaa.gov

Re: Freedom of Information Act Request Fee Waiver Requested

Dear Sir/Madam,

Records Requested

Pursuant to the Freedom of Information Act, through this office Stop Geoengineering

Minnesota (“SGM”), requests all records¹ from January 1, 2015 to the present discussing, documenting, memorializing, or otherwise concerning:

- (1) weather modification within the Weather Service Organization Workforce Analysis;
- (2) the reason for adoption of the confidentiality provision of the “Operations and Workforce Analysis (OWA) Project: Charter for All Workstream Core Teams” a copy of which is attached hereto;

Fee Waiver Requested

Stop Geoengineering Minnesota (“SGM”) requests that the National Oceanic and

Atmospheric Administration (“NOAA”) waive any applicable fees because disclosure meets the statutory standard for waiver of fees in that it is “in the public interest because furnishing the information can be considered as primarily benefitting the general public,” 5 U.S.C. § 552(a)(4)(A). SGM is a project of the non-profit Minnesota Natural Health Coalition. SGM is

¹ “Records,” includes all documents, correspondence, including email; agency guidelines and policies; memoranda; agency Memoranda of Understanding; notices, comments, and responses to comments; biological, scientific, and other studies; reports; environmental analyses; surveys; timelines; charts; graphs; maps; analyses; data; meeting minutes and agendas; distribution lists;

notes and transcripts of meetings and conversations; and any other relevant information, **whether in hard copy or electronic/computer format.**

Page 1 of 3



itself a non-profit entity whose purpose is to educate the public about how geoengineering and weather modification can impact public health. SGM has no intention to use the information sought in furtherance of any commercial interest.

(1) The Subject of the Request. The requested records concern the activities of the NOAA and other government agencies regarding weather modification. The subject matter of this request therefore involves information that will significantly contribute to the public's understanding of the government's operations and activities in regards to weather modification.

(2) The Informative Value of the Information to Be Disclosed. The requested records are likely to contribute to an understanding of government operations or activities. NOAA is involved in weather modification activities and research. The requested records will provide insight into NOAA's process for implementing and regulating weather modification. Many of the requested records may contain information that is not currently available to the general public; therefore, release of the requested records would represent a significant new contribution to the public domain. For these reasons, the requested records will be highly informative in relation to the subject matter of the request, and will further public understanding.

(3) Contribution to General Public Understanding. SGM's mission is to educate the public about how geoengineering and weather modification can impact public health. SGM makes this request for the purposes of providing information about governmental activities and standards, including those of NOAA, to concerned members of the public. SGM is interested in the requested records because they will likely help SGM and the public better understand the methods and procedures which NOAA has for implementing and regulating weather modification.

(4) The Significance of the Contribution to Public Understanding. The requested records are likely to contribute significantly to public understanding of government operations or activities. SGM will disseminate the disclosed records to a reasonably broad audience of persons interested in the subject. SGM regularly informs, educates and counsels the public regarding weather modification and government involvement in implementing and regulating weather modification. The subject of this FOIA request will be used to contribute to one or more of the following: public presentations, news stories contributed to or written by SGM volunteers and/or members, and/or websites

(<http://www.minnesotanaturalhealth.org/stopgeoengineeringmn.html> and <http://stopgeoengineeringmn.squarespace.com>). Exactly which of these uses of the information addressed in this FOIA request will be determined after complete review of the requested material. SGM's members, volunteers, and counsel bring a broad range of expertise, skills, and familiarity with weather modification that will enable SGM to review and understand the responsive records and to supply this information in a coherent and understandable way to the general public and the media. SGM can draw on scientists, attorneys, and others to review and summarize this information. SGM certainly has the necessary qualifications relevant to any use of the records that may come about upon reviewing them. SGM's contribution to the public understanding, as compared to the level of understanding prior to disclosure, as well as SGM's intent to inform the public, are well established. Moreover, many of the records requested may

not have been publicly released to date. A requester is likely to contribute significantly to the public understanding if the information disclosed is new; supports public oversight of agency operations; or otherwise confirms or clarifies data on past or present operations of the government. 132 Cong. Rec. H9464 (Reps. English and Kindness).

(5) The Existence and Magnitude of a Commercial Interest. SGM has no commercial interest that would be furthered by the requested disclosure. SGM is a non-profit entity and requests the information to further its scientific, legal, and educational efforts. The FOIA fee waiver amendments of 1986 were designed specifically to allow nonprofit, public interest groups, such as SGM, access to government records without the payment of fees. FOIA's fee waiver provision is to be liberally construed in favor of waivers for noncommercial requesters.

NOAA Response

Please submit responsive records, along with an index for any records withheld that

clearly identifies the basis for withholding, to the letterhead address above. Please segregate any records you determine are exempt and provide the remainder and the reasons for not providing all of the responsive records.

The basic time limit for responding to FOIA requests is twenty work days. See 5 U.S.C. § 552(a)(6)(A). This time limit can be extended under certain limited circumstances for at most an additional ten working days. *See id.* at § 552(a)(6)(B).

Please provide all responsive documents that are in the files maintained by NOAA personnel or offices on the date that NOAA staff conducts their searches for the documents responsive to this request.¹ **SGM requests that to the extent that NOAA can do so, it furnish electronic copies of the above documents in lieu of paper copies (to minimize the expense and burden of copying).** 5 U.S.C. § 552(a)(3)(B) (note, as amended in 1996 FOIA mandates that “an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.”)

Please contact this office if you have any questions regarding the scope of this request, the nature of the records sought, or any other aspect of this request. I look forward to hearing from you.

By signing below, I certify that the reasons provided for a fee waiver are true and correct.
Sincerely,

Brian Gaffney

Due to NOAA's lack of response to the FOIA request, the message below was sent to the Department of Commerce, the umbrella agency for NOAA.

LAW OFFICES OF BRIAN GAFFNEY, A Professional Corporation

446 Old County Road, Suite 100-310 Pacifica, California 94044

June 27, 2017

Assistant General Counsel
Room 5898-C U.S. / Room 5875 Department of Commerce
14th and Constitution Avenue NW Washington, D.C. 20230 FOIAAppeals@doc.gov

Re: Freedom of Information Act Appeal

FOIA Request: DOCNOAA2017000790 Dear FOIA Appeals Officer,

This office sent FOIA requests to the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Department of Commerce on March 10, 2017 on behalf of our client Stop Geoengineering Minnesota (SGM). I write on behalf of Stop Geoengineering Minnesota to appeal the failure of NOAA and Commerce to timely respond to this FOIA request.

After receiving SGM's FOIA request, on March 23 NOAA requested additional information to determine the fee waiver. On May 26, 2017, this office provided the requested fee waiver information. On June 19, 2017, this office emailed NOAA to confirm that a FOIA determination would be provided by June 26, 2017. No response has been received Twenty business days from May 26th elapsed on June 26, 2017.

The grounds for this appeal are that neither NOAA or Commerce has within 20 business days determined whether the agency will comply with SGM's FOIA request, nor notified this office of the FOIA determination. 5 U.S.C. § 552(a)(6)(A)(i).

Sincerely, Brian Gaffney

NOAA's eventual response

The communication below was received from NOAA on July 18th

On Tue, Jul 18, 2017 at 10:09 AM, foia@noaa.gov <foia@noaa.gov> wrote:

Good afternoon,

Thank you for your Freedom of Information Act (FOIA) request dated 03/14/2017, received by the National Oceanic and Atmospheric Administration (NOAA) on 03/20/2017.

If you still wish to receive the requested records, please notify this office within 30 days of the date of this letter. If we do not hear from you by August 10, 2017, we will administratively close this request without further action.

If you have questions regarding your request, please contact Symone Stone at symone.stone@noaa.gov.

Sincerely,
NOAA FOIA



LASG's response, sent the same day as the July 18th NOAA message was received.

Our attorney responded on the same day,

From: **Brian Gaffney**

Date: Tue, Jul 18, 2017 at 10:17 AM

Subject: Re: Still Interested Letter - FOIA Request DOC-NOAA-2017-000790

To: "foia@noaa.gov" <foia@noaa.gov>, symone.stone@noaa.gov, FOIAAppeals@doc.gov

Yes, of course, this office wishes to receive the requested records. A response was due by NOAA on June 26. see attached.

Brian Gaffney



LASG attorney Brian Gaffney issues a final appeal to NOAA for the FOIA information that we are legally entitled to.

LASG again responds to the DOC and NOAA

LAW OFFICES OF BRIAN GAFFNEY, A Professional Corporation
446 Old County Road, Suite 100-310
Pacifica, California 94044

August 14, 2017

Via Email

National Oceanic and Atmospheric Administration
foia@noaa.gov

Department of Commerce
EFoia@doc.gov

Assistant General Counsel
FOIAAppeals@doc.gov

Re: Intent to File Suit for Failure to Comply with the Freedom of Information Act

Dear Sirs/Madams,

This office sent FOIA requests to the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Department of Commerce on March 10, 2017 on behalf of our client Stop Geoengineering Minnesota (SGM). On June 27, 2017, this office filed a FOIA appeal. To date, no responsive records or any other substantive responsive have been received. On behalf of SGM, I again request that you provide this office with an estimated completion date.

I write to inform you that unless responsive records are received by this office by August 22nd, next week this office will file suit alleging FOIA violations related to (1) failure to timely respond, (2) failure to search for responsive records, (3) failure to timely respond to a FOIA appeal, (4) improper denial of a FOIA fee waiver, (5) failure to provide a completion date, (6) failure to provide the date you received the FOIA request until July 18, 2017, and (7) failure to ever provide the date you received the FOIA appeal.

Sincerely,



Brian Gaffney

cc: Stop Geoengineering Minnesota

When no further response from NOAA was received, legal action was initiated by LASG

Case 1:17-cv-01930 Document 1 Filed 09/21/17 Page 1 of 14

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Stop Geoengineering Minnesota, a project of the non-profit Minnesota Natural Health Coalition, a non-profit corporation, 1043 Grand Avenue, #317, Saint Paul, MN 55105,

Plaintiff, vs.

U.S. Department of Commerce, an agency of the United States of America, 1401 Constitution Ave., NW., Washington, DC 20230,

Case No. 1:17-cv-1930

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Freedom of Information Act Case

Defendant.

INTRODUCTION

1. Plaintiff Stop Geoengineering Minnesota (hereinafter “Plaintiff” or “SGM”) brings this action to redress violations of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et. seq.*, Plaintiff challenges the failure of the U.S. Department of Commerce (hereinafter ““Defendant” or “Commerce”) to respond lawfully to Plaintiff’s FOIA request.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

2. In March, 2017, Plaintiff requested that Commerce release records concerning (1) weather modification within the Weather Service Organization Workforce Analysis, and (2) the reason for adoption of the confidentiality provision of the “Operations and Workforce Analysis (OWA) Project: Charter for All Workstream Core Teams.” Plaintiff requested these records to inform the public, the media and government officials about weather modification, government knowledge of weather modification and government efforts to restrict public knowledge about weather modification.

3. Defendant has failed to timely make the statutorily required determinations on Plaintiff’s FOIA requests within the time and in the manner required by FOIA. Defendant has failed to release records responsive to Plaintiff’s FOIA requests, and thus is unlawfully withholding responsive records. Further, Defendant has failed to provide estimated completion dates on which Defendant will complete action on Plaintiff’s FOIA requests.

4. Because of Defendant’s violations of FOIA, Plaintiff has no other recourse but to seek declaratory relief establishing that Defendant has violated FOIA and seek injunctive relief directing Defendant to promptly provide Plaintiff with the requested records.

JURISDICTION, VENUE AND BASIS FOR RELIEF

5. This Court has jurisdiction over this action pursuant to FOIA (5 U.S.C. §552(a)(4)(B)), federal question (28 U.S.C. § 1331), and pursuant to the Declaratory Judgment Act (28 U.S.C. section 2201).

6. Venue properly vests in this Court pursuant to 5 U.S.C. § 552(a)(4)(B), which provides venue for all FOIA cases in the District of Columbia.

7. Declaratory relief is appropriate under 28 U.S.C. § 2201.

8. Injunctive relief is appropriate under 28 U.S.C. § 2202 and 5 U.S.C. § 552(a)(4)(B).

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

PARTIES

9. Plaintiff STOP GEOENGINEERING MINNESOTA is an entity whose purpose is to educate the public about how geoengineering and weather modification can impact public health. Plaintiff is a project of the non-profit Minnesota Natural Health Coalition which is a 501(c)(3) tax exempt non-profit organization. SGM regularly informs, educates and counsels the public regarding weather modification and government involvement in implementing and regulating weather modification. SGM has a large and growing base of approximately 500 supporters. Plaintiff uses FOIA to request records of federal agencies and intends to do so in the future. The records requested through FOIA by Plaintiff in this matter will be used by SGM to inform interested parties in government (both elected officials and regulatory agencies), the media, other educational non-profits and the public at large about weather modification, government knowledge of weather modification, and government efforts to restrict public knowledge about weather modification. Plaintiff is adversely affected by Defendant's failure to comply with FOIA as alleged herein, *inter alia*, because Plaintiff will not be able to timely and effectively inform the public about weather modification, government knowledge of weather modification, and government efforts to restrict public knowledge about weather modification. Further, Defendant's failure and refusal to: (1) issue a timely final determination of Plaintiff's FOIA requests; and (2) provide Plaintiff with the estimated completion dates of their requests, has injured Plaintiff's interests in public oversight of governmental operations. Unless the Court grants the requested relief, Plaintiff will continue to be adversely affected by Defendant's failure to comply with FOIA. **10.** Defendant Department of Commerce is an agency of the executive branch of the United States government, and is in possession, custody or control of the records sought by Plaintiff, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f). The National Oceanic and Atmos-

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

pheric Administration (“NOAA”) is an administrative component of the Department of Commerce, and as such, is also subject to FOIA pursuant to 5 U.S.C. § 552(f).

STATUTORY BACKGROUND

11. FOIA’s basic purpose is for government transparency, as it establishes that all federal agency records must be accessible to the public unless such records may be withheld from this disclosure mandate pursuant to one of nine, narrowly construed FOIA exemptions. 5 U.S.C. § 552.

12. FOIA imposes strict and rigorous deadlines on federal agencies. The Act requires a federal agency that receives a FOIA request to determine whether the requested agency records are exempt from disclosure under 5 U.S.C. § 552(b) and to communicate that determination to the requester within 20 business days. 5 U.S.C. § 552(a)(6)(A)(i). If the agency determines the requested records are exempt from public disclosure, the agency must also communicate to the requester that they have a right to appeal that determination. *Id.* If the agency determines the records are not exempt from public disclosure, the agency is required to make the requested records “promptly available” to the requester. 5 U.S.C. § 552(a)(3)(A), (a)(6)(C)(i).

13. An “agency record” subject to a FOIA request is any record that is (1) created or obtained by an agency, and (2) under agency control at the time of a FOIA request. *See, e.g., United States Dep’t of Justice v. Tax Analysts*, 492 U.S. 136, 144-45 (1989).

14. Congress has set forth the circumstances in which federal agencies may obtain more time to make the determination required by 5 U.S.C. § 552(a)(6)(A)(i). In two very limited circumstances the agency may toll the 20-business-day deadline for making that determination. 5 U.S.C. § 552(a)(6)(A)(ii) (providing for up to a 10-day tolling period to allow an agency to seek information from a requester). Additionally, the agency may extend the 20-business-day deadline

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

for making that determination for an additional 10 business days by providing a written notice to the requester that sets forth the “unusual circumstances” that justify the deadline extension and the date on which the agency expects to make the determination. 5 U.S.C. § 552(a)(6)–(B)(ii). The statute includes a specific definition of the term “unusual circumstances.” 5 U.S.C. § 552(a)(6)(B)(iii). When the agency notifies a requester of unusual circumstances and the need for additional time, the agency’s written notification “shall provide the person an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request.” 5 U.S.C. § 552(a)(6)(B)(ii). An agency asserting that unusual circumstances prevents its compliance with FOIA’s deadlines “shall make available its FOIA Public Liaison, who shall assist in the resolution of any disputes between the requester and the agency.” *Id.*

15. Unless an agency subject to FOIA establishes a different timeline for disclosing responsive records by providing sufficient written notice of unusual circumstances, FOIA’s mandate to make public records “promptly available” to a requester requires federal agencies to provide responsive records to a requester within or shortly after the 20-day timeframe set forth in 5 U.S.C. § 552(a)(6)(A)(i).

16. FOIA provides for fee waivers for requests that are in the public interest and not in the primary commercial interest of the requestor. 5 U.S.C. § 552 (a)(4)(A)(iii).

17. FOIA provides that a person shall be deemed to have exhausted their administrative remedies if the agency fails to comply with the applicable time limitations provided by 5 U.S.C. section 552(a)(6)(A)(i)–(ii). 5 U.S.C. § 552(a)(6)(C).

18. A U.S. District Court has jurisdiction “to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complain-

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

ant.” 5 U.S.C. § 552(a)(4)(B). If the government can show that “exceptional circumstances” exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. 5 U.S.C. § 552(a)(6)(C)(i). Notably, the term “exceptional circumstances” does *not* include a delay that results from a predictable agency workload of FOIA request, unless the agency demonstrates reasonable progress in reducing its backlog of pending request. 5 U.S.C. § 552(a)(6)(C)(ii).

19. Under FOIA, the federal agency has the burden to sustain its action. 5 U.S.C. § 552(a)(4)(B).

20. The Court may assess attorney fees and litigation costs against the United States if Plaintiff substantially prevails in this action. 5 U.S.C. § 552(a)(4)(E).

STATEMENT OF FACTS

21. On March 10, 2017, by email and U.S. Mail, Plaintiff sent separate FOIA requests to both

NOAA and the Commerce requesting release of records from January 1, 2015 to the present discussing, documenting, memorializing, or otherwise concerning (1) weather modification within the Weather Service Organization Workforce Analysis, and (2) the reason for adoption of the confidentiality provision of the “Operations and Workforce Analysis (OWA) Project: Charter for All Workstream Core Teams,” a copy of which Analysis was attached to each FOIA request. Plaintiff also requested a public interest waiver of fees. The FOIA requests were sent to the addresses and emails provided by the NOAA and Commerce respective FOIA websites.

22. By email on March 14, 2017, NOAA acknowledged receipt of Plaintiff’s FOIA request on that date, and assigned FOIA request case number DOC-NOAA-2017-000790. Commerce never otherwise acknowledged receipt of the FOIA request sent to Commerce.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

23. By email on March 23, 2017, NOAA requested additional information to adjudicate the request for a fee waiver. On May 26, 2017, Plaintiff provided the requested fee waiver information. On June 19, 2017, Plaintiff emailed NOAA requesting confirmation that a FOIA determination would be provided by June 26, 2017.

24. On June 27, 2017, Plaintiff timely appealed Defendant's failure to determine within 20 business days whether Defendant would comply with FOIA request DOC-NOAA-2017-000790, and failure to notify Plaintiff of Defendant's determination.

25. By email on July 18, 2017, NOAA notified Plaintiff that NOAA had received FOIA request DOC-NOAA-2017-000790 on March 20, 2017, contradicting NOAA's March 14, 2017 notice of receipt, and inquired if Plaintiff still wished to receive the requested records. On July 18, 2017, Plaintiff responded to NOAA that it did wish to receive the records, that a response was due by June 26, 2017, and attaching the June 27, 2017 FOIA appeal.

26. On August 14, 2017, Plaintiff wrote to Defendant and its General Counsel that, to date, no responsive records or any other substantive responsive had been received. Also, Plaintiff requested that Defendant provide an estimated completion date. Further, Plaintiff informed Defendant that unless responsive records were received by August 22, 2017, Plaintiff would file suit the following week.

27. By letter dated August 21, 2017, the Department of Commerce General Counsel wrote to Plaintiff that its appeal was granted because "NOAA has not responded to your FOIA request within the statutory limits," and that "there has been a constructive denial of your request by failure to timely respond." The letter further stated that "We will instruct NOAA to continue processing your request and to provide a response as quickly as possible."

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

28. On August 22, 2017, Plaintiff wrote to Defendant that neither NOAA, Commerce nor the General Counsel had provided an estimated date on which Defendant would complete action on the FOIA request for documents and a fee waiver, despite the affirmative duty to provide this estimated completion date, and requesting a timely response.

29. On August 30, 2017, Plaintiff emailed Defendant that it still had not provided an estimated date on which Defendant would complete action on this FOIA request for documents and a fee waiver.

30. On September 1, 2017, the Department of Commerce Deputy FOIA Officer emailed that he “will ask the NOAA FOIA Office to provide the estimated completion date.”

31. On September 8, 2017, Plaintiff wrote to Defendant that Plaintiff “again requests that you provide an estimated completion date for this FOIA request and request for fee waiver.”

32. FOIA generally requires an agency to issue a final determination resolving a FOIA request within 20 business days from the date of its receipt. 5 U.S.C. § 552(a)(6)(A)(i).

33. At the very latest, based on the May 26, 2017 date that Plaintiff provided the requested fee waiver information, the deadline for issuing a final determination elapsed on June 26, 2017. **34.** Defendant failed to make a final determination resolving FOIA request DOC-NOAA-2017-000790 within 20 business days from receipt.

35. FOIA generally requires an agency to issue a final determination resolving a FOIA appeal within 20 business days from the date of its receipt. 5 U.S.C. § 552(a)(6)(A)(ii).

36. At the very latest, based on the June 27, 2017 date of Plaintiff’s appeal of request DOC-NOAA-2017-000790, the deadline for issuing a final determination elapsed on July 26,

2017. **37.** Defendant failed to make a final determination resolving the appeal of request DOC-NOAA-2017-000790 within the deadline of 20 business days from receipt.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

38. FOIA mandates that Defendant must inform an information requester of “an estimated date on which the agency will complete action on the request.” 5 U.S.C. § 552(a)(7)(B)(ii).

39. FOIA’s estimated decision date requirement does not contemplate that an agency’s suggestion of a response “as quickly as possible” will discharge its mandate to provide an estimated completion date under 5 U.S.C. § 552(a)(7)(B)(ii).

40. Defendant did not provide an estimated completion date for FOIA request DOC-NOAA-2017-000790.

41. Defendant did not provide an estimated completion date for the appeal of FOIA request DOC-NOAA-2017-000790.

42. None of FOIA’s nine exemptions to mandatory disclosure apply to the records, currently being withheld by Defendant, which are responsive to FOIA request DOC-NOAA-2017-000790. **43.** Plaintiff has been required to expend costs and to obtain the services of a law firm to prosecute this claim.

44. Plaintiff’s claims presented herein are not insubstantial within the meaning of 5 U.S.C. § 552(a)(4)(E)(ii)(II).

CAUSES OF ACTION

COUNT I

VIOLATION OF THE FREEDOM OF INFORMATION ACT: CONSTRUCTIVE DENIAL/UNLAWFUL WITHHOLDING

45. The allegations made in all preceding paragraphs are re-alleged and incorporated by reference herein.

46. Plaintiff has a statutory right to the records they seek, which are “agency records” within the meaning of FOIA, and there is no legal basis for Defendant to assert that any of FOIA’s nine disclosure exemptions apply. *See* 5 U.S.C. § 552(b)(1)-(9).

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

47. Defendant violated Plaintiff's rights under FOIA by failing to comply with FOIA's decision deadlines and thus constructively withholding information responsive to Plaintiff's FOIA request.

48. Based on the nature of Plaintiff's professional activities, they will undoubtedly continue to employ FOIA's provisions in information requests to Defendant in the foreseeable future. **49.** Plaintiff's professional activities will be adversely affected if Defendant is allowed to continue violating FOIA's disclosure provisions as it has in this case.

50. Unless enjoined and made subject to a declaration of Plaintiff's legal rights by this Court, Defendant will continue to violate the rights of Plaintiff to receive public records under FOIA. **51.** Plaintiff is entitled to reasonable costs of litigation, including attorneys' fees and costs pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

COUNT II

VIOLATION OF THE FREEDOM OF INFORMATION ACT: DECISION DEADLINE VIOLATION

52. The allegations made in all preceding paragraphs are re-alleged and incorporated by reference herein.

53. Plaintiff has a statutory right to have Defendant process their FOIA request and appeal in a manner which complies with FOIA. Plaintiff's rights in this regard were violated when the Defendant unlawfully delayed its response to Plaintiff's information request and appeal beyond the determination deadlines imposed by FOIA. 5 U.S.C. §§ 552(a)(6)(A)(i), (ii).

54. Defendant is unlawfully withholding public disclosure of records sought by Plaintiff, to which Plaintiff is entitled, and for which no valid disclosure exemption applies.

55. Based on the nature of Plaintiff's professional activities, they will undoubtedly continue to employ FOIA's provisions in information requests to Defendant in the foreseeable future. **56.** Plaintiff's professional activities will be adversely affected if Defendant is allowed to

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

continue violating FOIA's decision deadlines as it has in this case.

57. Unless enjoined and made subject to a declaration of Plaintiff's legal rights by this Court, Defendant will continue to violate the rights of Plaintiff to have SGM's information requests processed as required by FOIA.

58. Plaintiff is entitled to reasonable costs of litigation, including attorney fees pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

COUNT III

VIOLATION OF THE FREEDOM OF INFORMATION ACT: FAILURE TO COMPLY WITH 5 U.S.C. § 552(a)(7)(B)(ii)

59. The allegations made in all preceding paragraphs are re-alleged and incorporated by reference herein.

60. FOIA requires that each agency must provide information about the status of a request to the person making an information request including an estimated date on which the agency will complete action on the request. 5 U.S.C. § 552(a)(7)(B)(ii).

61. Plaintiff asked Defendant numerous times for an estimated date of completion for its pending FOIA request. In so doing, Plaintiff invoked 5 U.S.C. § 552(a)(7)(B)(ii).

62. Defendant has repeatedly failed to provide estimated date of completion for Plaintiff's FOIA request and appeal at issue in this case.

63. Upon information and belief, Defendant's failure to provide a specific estimated date of completion for Plaintiff's FOIA request and appeal represents an ongoing policy, practice, and standard operating procedure.

64. A policy, practice, or "standard operating procedure" of refusing to provide estimated dates of completion to requesters is in violation of FOIA. Such a practice constitutes outrageous conduct for purposes of the broad equitable powers provided by FOIA to the Court. Such a policy is arbitrary, capricious, an abuse of discretion, and otherwise contrary to law.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

65. Based on the nature of Plaintiff's professional activities, they will undoubtedly continue to employ FOIA's provisions in information requests to Defendant in the foreseeable future. **66.** Plaintiff's professional activities will be adversely affected if Defendant is allowed to continue violating FOIA's requirement to provide an estimated completion date as it has in this case.

67. Unless enjoined and made subject to a declaration of Plaintiff's legal rights by this Court, Defendant will continue to violate the rights of Plaintiff to have their information requests processed as required by FOIA.

68. Plaintiff is entitled to reasonable costs of litigation, including attorney fees pursuant to FOIA, 5 U.S.C. § 552(a)(4)(E).

COUNT IV

VIOLATIONS OF FOIA:

ENGAGING IN A PATTERN OR PRACTICE OF UNLAWFUL CONDUCT

69. The allegations made in all preceding paragraphs are re-alleged and incorporated by reference herein.

70. Defendant has engaged in a pattern or practice of violating FOIA in responding to Plaintiff's FOIA request and appeal. Defendant's policies, practices, and standard operating procedures for responding to FOIA requests have resulted in violations of Plaintiff's rights as alleged above. Additionally, Defendant's policies, practices, and standard operating procedures for responding to FOIA requests are likely to result in future violations of FOIA that will harm Plaintiff because they are likely to continue seeking public documents from Defendant.

71. Even if Defendant fully discloses all documents responsive to Plaintiff's FOIA request and appeal, Plaintiff is entitled to a declaration that Defendant's actions violated FOIA, and to an injunction barring Defendant from violating FOIA in the future when responding to their FOIA

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

requests. Declaratory and injunctive relief will clarify and settle the legal relations at issue and afford relief from the uncertainty and controversy giving rise to these proceedings.

72. Defendant's unlawful pattern and practice of violating FOIA when responding to Plaintiff's FOIA request and appeal entitles Plaintiff to an award of reasonable attorney fees and other litigation costs pursuant to 5 U.S.C. § 552(a)(4)(E) or 28 U.S.C. § 2412.

REQUESTS FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

- 1.** Order Defendant in the form of injunctive relief to promptly provide Plaintiff all of the records sought in this action;
- 2.** Declare Defendant's failure to disclose the information requested by Plaintiff to be unlawful under FOIA, 5 U.S.C. § 552(a)(3);
- 3.** Declare Defendant's failure to make a timely determination on Plaintiff's FOIA requests to be unlawful under FOIA, 5 U.S.C. § 552(a)(6)(A)(i);
- 4.** Declare Defendant's failure to provide Plaintiff with an estimated completion date of their FOIA request and appeal, to be unlawful under FOIA, 5 U.S.C. § 552(a)(7)(B)(ii);
- 5.** Award Plaintiff their costs and reasonable attorney fees pursuant to 5 U.S.C. § 552(a)(4)(E) or any other applicable law;
- 6. Expedite this action in every way pursuant to 28 U.S.C. § 1657(a); and**
- 7. Grant such other and further relief as the Court may deem just and proper.**

Respectfully submitted for the Court's consideration, this 21st day of September, 2017.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

/s/ Brian Gaffney

Brian Gaffney (California Bar No. 168778)

Pro hac vice application forthcoming

Law Offices of Brian Gaffney APC 446 Old County Road, Suite 100-310 Pacifica, CA 94044

13

LASG attorney Julio Gomez also initiated an NOAA freedom of information request the online government for FOIA submissions, and got the same results, complete stonewalling.



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL WEATHER SERVICE
1325 East-West Highway
Silver Spring, Maryland 20910-3283
THE DIRECTOR

MAY 1 2017

Mr. Julio C. Gomez
Gomez LLC Attorney At Law
152 Paterson Road
Fanwood, NJ 07023

Re: Request No. DOC-NOAA-2017-000768

Dear Mr. Gomez:

This letter is in response to your Freedom of Information Act (FOIA) request entered into FOIAonline on March 15, 2017, in which you requested copies of all reports submitted to the Secretary of Commerce concerning "weather modification" from 1971 to present.

Our search of the National Oceanic and Atmospheric Administration records failed to identify any records in our files that are responsive to your request. I regret we are unable to assist you.

Although no records were located during our search, you have the right to appeal a "no document found" response. Your appeal must be received within 90 calendar days of the date of this response letter by the Assistant General Counsel for Administration. Address your appeal to the following office:

Assistant General Counsel for Administration
Room 5898-C
U.S. Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Your appeal may be sent by email to FOIAAppeals@doc.gov; by facsimile (fax) to (202) 482-2552 or by FOIAonline, if you have an account at <https://foiaonline.regulations.gov>. Your appeal must include a copy of the original request and response. The submission (including e-mail, fax, and FOIAonline submissions) is not complete without the required attachments. The appeal letter, the envelope, the email subject line, and the fax cover sheet should be clearly marked "**Freedom of Information Act Appeal.**"

The e-mail, fax machine, FOIAonline, and Office are monitored only on working days during normal business hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday). FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business



NOAA response to the FOIA request from LASG

From: Denise Hamilton - NOAA Federal [mailto:denise.hamilton@noaa.gov]

Sent: Thursday, May 11, 2017 12:21 PM

To: Julio Gomez

Subject: Voice Message

Hi Mr. Gomez,

Wanted to cknowledge that I did receive your call and have asked Mrs. Beverly Hernandez to respond. Mrs. Hernandez managed this particular case and I have provided her with your contact information.

Thank you.

Have a good day.

Denise

--

*Denise M. Hamilton, MSA
Management & Program Analyst
NOAA's National Weather Service
Management & Organization Division*

www.EngineeringWatch.org

LASG response to NOAA

From: Julio Gomez

Sent: Thursday, June 1, 2017 9:39 AM

To: beverly.hernandez@noaa.gov

Cc: 'Denise Hamilton - NOAA Federal' <denise.hamilton@noaa.gov>

Subject: FOIA Request No. DOC-NOAA-2017-000768

Ms. Hernandez:

Good morning.

Pursuant to Ms. Denise Hamilton's referral in the email below I am writing to you because I have questions about how my FOIA request was handled.

As you know, I requested: "Copies of all reports submitted to the Secretary of Commerce pursuant to 15 U.S.C. Section 330a, concerning "weather modification" as defined by federal law 15 U.S.C. Section 330, from 1971 (the date this federal law was enacted) to the present." I received a letter indicating that no documents were located. I am attaching a copy of the letter I received for your convenience.

I am also attaching a copy of the federal statute passed 46 years ago that I relied upon to make my request. Federal law 15 USC Section 330. Section 330a of this federal law states that "No person may engage, or attempt to engage, in any **weather modification activity** in the United States unless he submits to the Secretary such reports with respect thereto, in such form and containing such information, as the Secretary may by rule prescribe. The Secretary may require that such reports be submitted to him before, during, and after any such activity or attempt." Additionally, Section 330 of the same federal law, states that the term "**weather modification**" means "**any activity performed with the intention of producing artificial changes in the composition, behavior, or dynamics of the atmosphere.**" See Copy of federal law, attached.

Weather modification programs, particularly in the form of cloud seeding, have been conducted in the United States for decades. *For example,* see <http://www.nbcnews.com/id/34383443/ns/weather/t/cloud-seeding-rain-growth-area-us/#.WTAWAmjyviU>. And according to Bloomberg News, it is a global business. See <https://www.bloomberg.com/features/2015-cloud-seeding-india/>. There is even a Weather Modification Association based in Utah with corporate sponsors, see <http://www.weathermodification.org/corporateroster.php>, and it is engaged in weather modification projects right now in several states, including California, Utah, Colorado and Texas among others. See <http://www.weathermodification.org/projectlocations.php>.

Since this activity is so prevalent, I find it unbelievable that no one has ever submitted a report to the Secretary of Commerce about this activity specially since federal law requires such a report to be submitted to the Secretary and that federal law was enacted 46 years ago. Is anyone enforcing this requirement or complying with this law?

Please advise:

1. Why was my FOIA request transferred to NOAA when the Secretary of Commerce is specifically required to receive the reports I am requesting according to federal law, not NOAA?
2. Did anyone search the Secretary of Commerce records, archives, databases or speak to anyone in the Secretary's office to try to locate such reports?
3. What specific steps did you take to locate any documents responsive to my request?

Thank you.

Regards,
Julio Gomez



NOAA response to LASG

From: Denise Hamilton - NOAA Federal [<mailto:denise.hamilton@noaa.gov>]

Sent: Monday, June 12, 2017 10:57 AM

To: Julio Gomez

Cc: beverly.hernandez@noaa.gov

Subject: Re: FOIA Request No. DOC-NOAA-2017-000768

Hi Mr. Gomez,

We're contacting another NOAA Office that may have this information. Hope to have something soon.

Thanks for your patience.

Denise



The next FOIA's to be filed by LASG

1. DEPARTMENT OF COMMERCE
 - a. National Oceanic and Atmospheric Administration (NOAA)
 - b. National Weather Service (NWS)
2. DEPARTMENT OF DEFENSE (DOD)
 - a. Defense Contract Management Agency (DCMA)
3. DEPARTMENT OF ENERGY
 - a. Climate and Environmental Sciences Division
- i. ARM Climate Research Facility
 4. CENTRAL INTELLIGENCE AGENCY (CIA)
 5. COUNCIL ON ENVIRONMENTAL QUALITY
 6. DEFENSE ADVANCED RESEARCH PROJECTS (DARPA)
 7. ENVIRONMENTAL PROTECTION AGENCY (EPA)
 8. FEDERAL AVIATION ADMINISTRATION (FAA)
 9. NATIONAL SECURITY AGENCY (NSA)
 10. NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (NASA)
 11. OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA)
 12. Office of Science and Technology Policy
 13. U.S. NAVY
 14. U.S. AIR FORCE

TO: Department of Commerce

Re: Weather modification federal statute (the definitions of federal law 15 U.S.C. § 330 apply to this request).

1. Copies of all reports submitted to the Secretary of Commerce, required by federal law 15 U.S.C. § 330a, concerning “weather modification” activity from 1971 to the present.
2. Copies of all records maintained by the Secretary of Commerce, as required by federal law 15 U.S.C. § 330b subparagraph (a), of weather modification activities, including attempts, which take place in the United States, from 1971 to the present.
3. Copies of all summaries of weather modification activities published by the Secretary of Commerce, as required by federal law 15 U.S.C. § 330b subparagraph (a), from 1971 to the present.
4. Copies of any and all testimony, books, records or other writings obtained by the Secretary of Commerce pursuant to the authority in federal law 15 U.S.C. § 330c subparagraph (a), from 1971 to the present.
5. Copies of any subpoenas issued by the Secretary of Commerce pursuant to the authority in federal law 15 U.S.C. § 330c subparagraph (a), to any person, from 1971 to the present.
6. Copies of all records of any fines imposed upon any person for violations of federal law 15 U.S.C. § 330a, as required by federal law 15 U.S.C. § 330d, from 1971 to the present.

7. Copies of all records of expenditures with monies appropriated under federal law 15 U.S.C. § 330e, from 1971 to the present.

The LASG team will continue making every possible effort to fully expose and halt the ongoing illegal climate engineering assault.

