

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

POWER THE FUTURE)	
611 Pennsylvania Avenue, SE)	
Suite No. 183)	
Washington, DC 20003)	
)	
Plaintiff,)	
v.)	Case No. 24-cv-2822
)	
UNITED STATES DEPARTMENT OF STATE)	
2201 C Street NW)	
Washington, DC 20451)	
)	
and)	
)	
UNITED STATES DEPARTMENT OF JUSTICE)	
950 Pennsylvania Avenue NW)	
Washington, DC 20530)	
)	
and)	
)	
UNITED STATES ATTORNEY’S OFFICE FOR)	
THE DISTRICT OF COLUMBIA)	
601 D Street NW)	
Washington, DC 20004)	
)	
Defendants.)	

COMPLAINT UNDER THE FREEDOM OF INFORMATION ACT

Plaintiff POWER THE FUTURE (“PTF”), for its Complaint against Defendants UNITED STATES DEPARTMENT OF STATE (“STATE”), UNITED STATES DEPARTMENT OF JUSTICE (“DOJ”), and UNITED STATE’S ATTORNEY’S OFFICE FOR THE DISTRICT OF COLUMBIA (“USAODC”), collectively referred to as “the Government,” alleges as follows:

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.* As the D.C. Circuit has explained,

When a member of the public makes a request for government records, FOIA requires the agency to ‘determine within 20 days’ what responsive records it has and can produce

consistent with FOIA's exemptions... to 'immediately' notify the requester of its determination, *id.*, and to follow up by making nonexempt records 'promptly available...'

Judicial Watch, Inc. v. United States Dep't of Homeland Sec., 437 U.S. App. D.C. 128, 143, 895 F.3d 770, 785 (2018), citing 5 U.S.C. § 552(a)(6)(A)(i).

2. Although the D.C. Circuit has repeatedly made plain that records must be produced promptly, with then-D.C. Circuit Judge Brett Kavanaugh writing that records should ordinarily be produced "within days or a few weeks of a 'determination,' not months or years," *Citizens for Responsibility & Ethics in Wash. v. FEC*, 404 U.S. App. D.C. 275, 283, 711 F.3d 180, 188 (2013), beginning in 2024 the Government began what Plaintiff asserts on information and belief is a new, but regardless is a clear pattern and practice of using direct delays followed by motions practice to delay FOIA requests rather than to timely process or adjudicate them. Under this newly-instituted regime, Plaintiff's requests and those of other FOIA requesters will linger for additional months or years on the docket.
3. More specifically and as more fully set forth below, the Defendants have jointly conspired to develop and implement a system, rising in practice to the level of a policy, to avoid or delay producing records under FOIA. This has a particularly pronounced and pernicious effect upon nonprofit requesters such as the Plaintiff, which relies upon records received under FOIA to further its mission, a significant part of which is public education on the operations of government.
4. Plaintiff is a nonprofit educational institution organized under section 501(c)(4) of the internal revenue code, and submits FOIA requests to various federal agencies, including but not limited to the Department of State, in furtherance of its mission.
5. To date, the Department of State has never timely responded to any FOIA request submitted by the Plaintiff. State routinely declares that requests for, e.g., a single custodian's records of

a sole, particular sort (e.g., email, text messages, calendar invitations, or “chat” logs) present “unusual circumstances”¹ to take a statutory extension but, regardless of whether it takes an extension of time to provide the required, most basic information (e.g., how many records the search returned), the agency offers no evidence it in fact performs the search and does not process any request in the statutory period of time. This is the first step in the system of delays.

6. A FOIA request is not ripe for suit until twenty working days have elapsed from the date the request was received by a component agency, or thirty days if an agency claims “unusual circumstances” prevent a response within twenty working days. 5 U.S.C.S. § 552(a)(6)(A)(i) and (a)(6)(B)(i). Due to weekends and holidays, twenty working days typically is equivalent to thirty calendar days.
7. State’s failure to timely respond to the Plaintiff’s FOIA requests forces Plaintiff to file litigation in this Court. When Plaintiff files such litigation, this Court issues a summons requiring a response by the Government in 30 days pursuant to 5 USC § 552 (a)(4)(C) (setting 30-day timeframe for responses in FOIA cases), rather than a summons calling for the Government to respond in 60 days, which is the default timeframe for most suits against the Government under Fed. R. Civ. P. 12 (a)(2).

¹ Plaintiff alleges that the State Department claims “unusual circumstances” exist systematically, rather than upon consideration, given the proliferation of these claims despite, e.g., a facial implausibility of searches for a single individual’s records entailing “the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request,” 5 USC § 552(a)(6)(B)(iii)(I), and/or despite apparently not having first conducted the required search to know whether the single individual’s records in fact are voluminous or require consultation with another agency or component (5 USC § 552(a)(6)(B)(iii)(II-III)).

8. The Government does not respond to Plaintiff's Complaints in 30 days. Instead, the Department of State routinely requests extensions of time of at least 30 days to respond to Plaintiff's FOIA Complaints. As ostensible grounds for these extensions, the Department of State invariably relies on a claim of "good cause" that the U.S. Attorney's Office only recently assigned defense counsel to a case immediately prior to the Answer being due, notwithstanding that the cases have been served on the Government over three weeks and nearly four weeks prior to the routine act of assignment of defense counsel.
9. Even if the Government timely responded to Plaintiff's suits after State failed to issue a determination, the Government would have effectively granted itself double the statutorily provided time to respond to a FOIA request.
10. But the Government does not timely respond. Because the Government habitually seeks extensions of at least 30 days before even filing responsive pleadings, the Government forces Plaintiff to wait at least *triple* the amount of time Congress intended before the agency will even respond to a FOIA request, in the form of an Answer, which Answer typically still avoids asserting how many records a search returned (i.e., that the search was performed).
11. As such, even after 90 days have elapsed the Government still does not provide a determination in response to Plaintiff's FOIA requests. When this Court issues "meet and confer" orders following receipt of an Answer in a FOIA case, the Government waits until mere days or even a single day before a Meet and Confer or Joint Status Report (JSR) is due to convey its position to Plaintiff's counsel. And invariably, the Government's position is that still further delay is necessary.
12. Plaintiff is a frequent FOIA requester as is inherent in its mission, with numerous pending cases on this Court's docket arising from the Department of State's failure to timely produce

records, and with other requests which have been ignored and are ripe for suit in the face of complete inaction by the Department of State, and Plaintiff intends to continue to seek records from the Department of State in the future.

13. Plaintiff states, on information and belief, that for it and at least certain other requesters, the only way to obtain processing of a FOIA request is to file suit, which initiates the above-described evasions.

14. Plaintiff has every reason to believe that absent the relief sought in this Complaint, the Department of State and its attorneys at the United States Department of Justice and the United States Attorney's Office will continue to take every measure in their power to delay Plaintiff's FOIA requests and Plaintiff's FOIA litigation.

15. Specifically, Plaintiff has every reason to believe that the Department of State will continue to delay conducting and communicating the results of the search as required by statute, will continue to fail to issue determinations with respect to its FOIA requests, and will continue to force Plaintiff to bring litigation to force processing of a FOIA request(s).

16. Plaintiff further has every reason to believe that once litigation is brought, the State Department and its lawyers in the Department of Justice and the U.S. Attorney's Office will routinely and as a matter of practice claim delay is required due to assignment of cases to defense counsel in a tardy manner, ensuring counsel then seek further delays before performing rudimentary and statutorily required duties such that compliance with statutory deadlines for responding to such litigation is impossible.

PARTIES

17. Plaintiff Power the Future is a non-profit organization incorporated in the State of Delaware dedicated to "disseminating research, sharing facts and truths, engaging at the local level and

interacting with the media,” specifically relating to energy and environmental public policy. Power the Future uses FOIA requests to further its nonprofit educational mission. It currently has 14 active suits against the Department of State in this Court dating back to February of this year. All of those suits allege that the Department of State failed to comply with FOIA and specifically with FOIA’s statutory timeframes. The case numbers for those suits are: 1:24-cv-346, 1:24-cv-425, 1:24-cv-465, 1:24-cv-472, 1:24-cv-684, 1:24-cv-768, 1:24-cv-2070, 1:24-cv-2078, 1:24-cv-2120, 1:24-cv-2145, 1:24-cv-2149, 1:24-cv-2151, 1:24-cv-2168, and 1:24-cv-2196. Plaintiff also has requests not in litigation, but which are ripe for litigation, because State continues to refuse to provide the most basic required “determination.” The tracking numbers assigned to these requests are F-2024-15236, F-2024-15482, F-2024-15705, F-2024-16059, F-2024-16269, F-2024-16854, F-2024-17088, F-2024-17410, F-2024-18035, F-2024-18242.

18. Defendant State Department is a federal agency headquartered in Washington, DC, is covered by FOIA, and has possession and control over the records that Plaintiff seeks in the aforementioned cases and requests. Additionally, the State Department will likely be the recipient of future FOIA requests by the Plaintiff and others.
19. The Department of Justice is a federal agency headquartered in Washington, DC. Through the Attorney General and employees reporting to the Attorney General, the Department of Justice supervises the United States Attorney in each judicial district. Plaintiff reasonably anticipates that the DOJ will continue to defend the Department of State when it faces future FOIA litigation.
20. The United States Attorney’s Office for the District of Columbia (“USAODC”) is a component of the DOJ. As relevant to this suit, the USAODC defends the Department of

State when it is sued for violations of FOIA, and routinely takes actions to delay FOIA requests from being processed and to delay FOIA litigation from proceeding to an expeditious resolution. Plaintiff reasonably anticipates that the DOJ will continue to defend the Department of State when it faces future FOIA litigation, whether from this Plaintiff or others, as a result of the Government's pattern and practice of behavior described herein.

JURISDICTION AND VENUE

21. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

Additionally, this Court has jurisdiction for a pattern and practice claim pursuant to *Payne Enterprises, Inc. v. United States*, 837 F.2d 486, 491, 267 U.S. App. D.C. 63 (D.C. Cir. 1988) and subsequent jurisprudence standing for the proposition that injunctive relief is available when a Plaintiff pleads a pattern and practice of FOIA violations at an agency give rise to the belief that the agency "will impair the party's lawful access to information in the future."

22. Venue is proper in this Court under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e), for reasons including but not limited to that the Defendants are all headquartered in this District and the acts giving rise to this Complaint occurred in this District.

23. Plaintiff is not required to pursue administrative remedies before seeking relief in this Court because there are no administrative remedies available to adjudicate the Defendants' collective pattern and practice of delaying Plaintiff's FOIA requests as described herein.

PLAINTIFF'S FOIA REQUESTS

24. Because this Court has held, in *Khan v. United States Dep't of Homeland Sec.*, 2024 U.S. Dist. LEXIS 163952, *8-9 (D.D.C. 2024), that Plaintiff is required to identify "specific requests that any specific Defendants have failed to adjudicate," Plaintiff sets forth here the factual basis for each of its active FOIA suits against the State Department, and how those

individual cases illustrate a broader pattern and practice of delay on the part of the Government.

25. In Case No. 1:24-cv-346, the Plaintiff filed suit on February 6, 2024 because the Government had failed to issue any determination with respect to a request for expedited processing of a January 22, 2024 FOIA request for a one-page record listing the names of officials housed in a newly created office which had become the subject of media and congressional-oversight interest, on which Plaintiff filed suit on March 9, 2024 (1:24-cv-684, consolidated by consent with 1:24-cv-346) because the Government had not issued any determination with respect to the request. This suit was the subject of national media coverage. On March 22, 2024, State released the one-page document but shielding the names of most officials listed therein. State took 60 days and litigation to provide a determination on and release a heavily redacted one-page record of timely and demonstrable public interest, and is still defending before this Court its withholding of information (officials' names) it released unredacted in other document productions responding to thematically similar staff/payroll records requests.

26. In Case No. 1:24-cv-425, the Plaintiff filed suit on February 14, 2024 because the Government had failed to issue any determination with respect to a January 8, 2024 FOIA request. Some, but not all, records were ultimately produced in heavily redacted form only on April 29, 2024. The production totaled only 19 pages representing thirty (30) iterations of the less-than-one-page office staff/payroll roster, such that the agency appears to have processed approximately half a (largely identical) page per day, counting only working days between January 8 and April 29. But notwithstanding that State took over three months to process and produce 19 (largely identical) pages of records, as recently as September 19, 2024 hearing, State continued to argue that it should not be required to defend its withholdings of names of

certain public officials compensated with six-figure salaries and resisted imposition of any briefing schedule.

27. In Case No. 1:24-cv-465, Plaintiff sued on February 19, 2024 because the State Department had provided no substantive response to a January 10, 2024 FOIA request seeking correspondence of certain officials including certain keywords. The Government eventually made two rolling productions of records in May (2 pages) and June (4 pages), totaling six pages of records produced. In that case, the State Department processed Plaintiff's request for records at a rate of approximately one page per month. The parties are now in settlement negotiations.

28. In Case No. 1:24-cv-472, Plaintiff filed suit on February 20, 2024, because the State Department had failed to issue a determination with respect to a January 12, 2024 request for records. On March 20, 2024, the State Department's assigned Assistant United States Attorney reached out to Plaintiff to request 30 additional days to respond to Plaintiff's Complaint, on the grounds that "I'm the AUSA assigned to this FOIA case, for which our Answer is due tomorrow." Unaware that this late-hour assertion of just having been assigned the FOIA case as basis for doubling the time to Answer in fact presaged the subsequent campaign to delay by moving to stay and consolidate,² which USAODC adopted broadly as

² For example, in the *Power the Future v. Dep't. of State* matters, see 24-2078, "I will be representing the United States in the above case. Our answer is due 8/19 and I will be seeking a 30 day extension to answer. The good cause is that I was only recently assigned this case and need time to get up to speed and work with the Agency to determine relevant defenses." Assistant U.S. Attorney by email on August 12, 2024. See also, "We will be making similar requests of the courts in all eight of the recently-filed related [sic] lawsuits—24-2078, 24-2120, 24-2145, 21-2151, 24-2070, 24-2149, 24-2168, and 24-2196. The cause will be, as noted by Dedra below, we were just recently assigned to this matter and need to investigate the claims for this case," another Assistant U.S. Attorney by email on August 12, 2024 (matters served on USAODC, respectively, on July 18, 2024, July 22, 2024, July 24, 2024, July 24, 2024, July 31, 2024, July 24, 2024, July 24, 2024 and July 29, 2024 (from 14 to 25 prior calendar days prior)).

part of this pattern and practice in cases involving other agencies as well (*infra*), Plaintiff ultimately consented to a 21-day extension of time for State to respond to the Complaint in that matter, which extension request was admittedly filed untimely by the State Department. The State Department ultimately produced 249 total pages of records in four tranches (68 pages, 2 pages, 172 pages, 9 pages) before certifying that its production of records had concluded on September 10, 2024. Given that 249 pages of records were produced over a period of 242 days, State processed this request at a rate of approximately one page per day until it certified that its production had concluded.

29. In Case No. 1:24-cv-684, Plaintiff sued on March 9, 2024 because State had not complied with a January 22, 2024 request for records. On March 22, 2024, State produced one page of records, with extensive redactions of names of Department officials (later released in less redacted form on July 11, 2024). Thus, State required a full 60 days to initially process one page, and 160 days to release more if not all names of officials listed on this one-page record.
30. In Case No. 1:24-cv-768, Plaintiff filed suit on March 17, 2024 because State had not provided a determination with respect to a February 9, 2024 request for records. State moved to consolidate this case with Case No. 1:24-cv-472, the case in which State produced only a little more than one page of records per day.
31. In Case No. 1:24-cv-2070, Plaintiff filed suit July 17, 2024 because the Department of State had failed to issue a determination with respect to a May 29, 2024 FOIA request. The Government has as yet continued to fail to issue a determination, and produced no records of any kind to the Plaintiff. Instead, the Government began a series of filings to delay the matter through stays and consolidation in lieu of processing records. State initially sought a stay in Case No. 1:24-cv-2070, on August 13, 2024, on the basis that the Government believed the

case was a “related case” to nine others. Then, when this Court denied that Motion, the Government decided the case was related to only three others, and filed a second motion to consolidate in which it expressly took the position that Plaintiff’s litigation against the State Department should not advance except in lockstep with other cases. That second motion by the Government was also denied because the records sought in each matter were highly disparate, but the Government has consistently taken the position that it will fail to produce any records to the Plaintiff unless it agrees that all of its FOIA requests are considered together thereby slowing processing of each through State’s demanded processing rate treating all of Plaintiff’s requests as if they were one request, notwithstanding this Court’s rejection of two separate consolidation motions. The Court found the matters are disparate, yet State persists in refusing to process each of them unless it can minimize releases by treating these disparate requests as one.

32. In Case No. 1:24-cv-2078, the Plaintiff filed suit because the Government had failed to issue a determination in response to a May 30, 2024 FOIA request. The Government first sought a stay of its obligation to respond to Plaintiff’s Complaint on August 13, 2024. It then sought to consolidate Case No. 1:24-cv-2078 with three other cases. This Court granted the Government a temporary stay on September 6, 2024, but later vacated the stay and denied the Government’s motion to consolidate on September 19, 2024. Notwithstanding that the Government’s motion to consolidate has been denied and its stay was vacated as a result of this Court’s ruling on consolidation, the case has not advanced and State has yet to issue even a determination let alone a single page of records with respect to a request that is over four months old. The Government has consistently taken the position that it will not produce any records to the Plaintiff unless it agrees that all of its FOIA requests can be considered

together, notwithstanding this Court's rejection of two separate consolidation motions, and State demands that Plaintiff consent to a processing rate treating all of Plaintiff's requests as if they were one request. The Court found the matters are disparate, yet State persists in refusing to process each of them unless it can minimize releases by treating these disparate requests as one.

33. In Case No. 1:24-cv-2120, Plaintiff filed suit on July 19, 2024 because the Government had failed to issue a determination in response to a May 31, 2024 FOIA request. The Government attempted not to Answer Plaintiff's Complaint, and filed a motion seeking a stay on August 13, 2024. This Court denied that motion for a stay on August 22, 2024, noting that its premise was the Government's initial effort to consolidate Case No. 1:24-cv-2120 with eight other cases, including the "lead" case 1:24-cv-465. But the Government again attempted to consolidate Case No. 1:24-cv-2120, this time noting Case No. 2078 as the supposed "lead" case. When the Government's motion was denied in the second "lead" case, the Government failed to notify the presiding judge in Case No. 1:24-cv-2120, notwithstanding that the Government was very prompt in informing the Court that the underlying motion was pending before it was resolved. To date, the Government has not produced even a determination let alone a single page of records responsive to Plaintiff's May 31, 2024 FOIA request. The Government has consistently taken the position that it will not produce any records to the Plaintiff unless it agrees that all of its FOIA requests can be considered together, notwithstanding this Court's rejection of two separate consolidation motions, and Plaintiff's further agreement to a processing rate treating all of Plaintiff's requests as if they were one request. The Court found the matters are disparate, yet State persists in refusing to process each of them unless it can minimize releases by treating these disparate requests as one.

34. In Case No. 1:24-cv-2145, Plaintiff filed suit on July 24, 2024 because the Government had failed to issue a determination in response to Plaintiff's May 31, 2024 FOIA request. The Government immediately sought to stay Case No. 1:24-cv-2145 on September 13, 2024, and to delay or dispense with the need for the Government to file responsive pleadings. The Government's motion for a stay was denied on August 23, 2024. To date, the Government has produced not even a single page of records responsive to Plaintiff's May 31, 2024 FOIA request, nor has the Government issued a determination of any kind let alone any records. It therefore appears that this is another instance in which State persists in refusing to process this request unless it can minimize releases by treating it with disparate, other requests as one.

35. In Case No. 1:24-cv-2149, Plaintiff filed suit on July 23, 2024 because the Government had failed to issue a determination in response to Plaintiff's May 23 2024 FOIA request. The Government sought a stay on August 13, 2024. It successively decided that Case No. 1:24-cv-2149 should be consolidated with two separate sets of cases and designated two separate "lead" cases. The Court denied the Government's motion for a stay on the ostensible basis of consolidation on September 10, 2024. To date, the Government has produced not even a single page of records responsive to Plaintiff's May 23, 2024 FOIA request, nor has the Government issued a determination of any kind let alone any records. It therefore appears that this is another instance in which State persists in refusing to process this request unless it can minimize releases by effectively consolidating it with disparate, separate requests as if it were one omnibus request, which State can then place in its "complex" track and process as slowly as possible or perhaps not at all over the course of years (by claiming it is processing only other of the Plaintiff's FOIA requests first).

36. In Case No. 1:24-cv-2151, Plaintiff filed suit on July 23, 2024 because the Government had failed to issue a determination or produce records with respect to a June 6, 2024 FOIA request. The Government filed a motion to stay on August 13, 2024, which the Court denied on September 20, 2024. Notwithstanding the denial of the Motion for a stay and Plaintiff's attempt to confer with the Government regarding this request as recently as September 20, 2024, to date, the Government has not produced a determination let alone a single page of records responsive to Plaintiff's May 23, 2024 FOIA request. Notwithstanding this Court's orders denying consolidation, the Government continues to assert that it will produce no records until Plaintiff agrees that the Government can treat the FOIA request at issue in Case No. 1:24-cv-2151 as if it is but one subpart of a larger request engineered by the Government. State persists in refusing to process this request unless it can minimize releases by treating it with disparate, other requests as one.

37. In Case No. 1:24-cv-2168, Plaintiff filed suit on July 24, 2024 because the Government had not issued a "determination" in response to a June 5, 2024 FOIA request. The Government continued its pattern cited above, and its Motion seeking a stay rather than file an Answer was denied on August 22, 2024. The Government then decided that Case No. 1:24-cv-2168 should be consolidated with two separate sets of cases and designated two separate "lead" cases, first Case No. 1:24-cv-465 and later Case No. 1:24-cv-2070. The Court denied the Government's motion for a stay on the ostensible basis of consolidation on September 10, 2024. To date, the Government has not produced a determination let alone a single page of records responsive to Plaintiff's June 5, 2024 FOIA request. Notwithstanding this Court's orders denying consolidation, finding the disparate requests are just that, yet the Government persists in refusing to process each of them unless it can minimize releases by treating these

disparate requests as one, asserting that it will produce no records at all until Plaintiff agrees that the Government can treat the FOIA request at issue in Case No. 1:24-cv-2168 as if it is but one subpart of a larger request engineered by the Government. Plaintiff anticipates that zero records will be released through at least December of 2024.

38. In Case No 1:24-cv-2196, Plaintiff filed suit on July 25, 2024 because the Government had not issued a “determination” or produced records in response to a June 7, 2024 FOIA request. As with numerous other cases filed by Plaintiff, the Government successively decided that Case No. 1:24-cv-2196 should be consolidated with two separate sets of cases and successively designated two separate “lead” cases, first Case No. 1:24-cv-465 and later Case No. 1:24-cv-2070. The Court denied the Government’s motion for a stay on the ostensible basis of consolidation on September 6, 2024, and both of the Government’s efforts to force consolidation were rejected by this Court. To date, the Government has not produced a determination let alone a single page of records responsive to Plaintiff’s June 7, 2024 FOIA request. Again, notwithstanding this Court’s orders denying consolidation, the Government continues to assert that it will produce no records at all until Plaintiff agrees that the Government can treat the FOIA request at issue in Case No. 1:24-cv-2196 as if it is but one subpart of a larger request engineered by the Government.

39. Defendant has also now sought additional time to file its Motion to Consolidate these FOIA suits over distinct requests involving separate custodians, differing periods of time, and five different classes of records found on at least three distinct communication platforms in addition to non-communication records, none of which beginning with the May 2024 requests the Defendant has responded to in any way other than with these delaying tactics.

40. Whether for political (i.e., election), strategic, or for other reasons, the USAODC contemporaneously adopted this same posture in other matters on behalf of other agencies, both in response to Plaintiff's requests and other requesters which undersigned counsel represents.
41. Other PTF FOIA requests to State (F-2024-15236, F-2024-15482, F-2024-15705, F-2024-16059, F-2024-16269, F-2024-16854, F-2024-17088, F-2024-17410, F-2024-18035, F-2024-18242), also have received no determination despite statutory deadlines passing. Absent filing suit, the requester is simply being ignored, leaving requester no choice in order to try and obtain the requested records within some (relatively) reasonable period of time by entering the litigation labyrinth the Government has constructed. Plaintiff anticipates that it will be forced to file suit with respect to each of these requests, at great expense, but Plaintiff knows that relief the Court grants in each of these matters will be delayed by the Defendants at every turn and will not resolve the extreme likelihood that Defendants will continue to delay Plaintiff's FOIA requests and related litigation in the future, as is their pattern and practice.
42. Based on Plaintiff's own FOIA cases and other requests described above, Plaintiff asserts that the Government's pattern, practice, and/or policy is to delay the release of records to Plaintiff through all available means and far in excess of statutory deadlines, as follows:
- a) First, the Government almost certainly fails to follow the statutory timeframe for issuing a determination. To the best of undersigned counsel's recollection, the Department of State has never issued a "determination" in response to any of Plaintiff's requests within twenty days (or even thirty days).

- b) Second, the Government will respond to litigation by seeking endless delay, usually beginning with a failure to file responsive pleadings in a timely manner.
- c) Then, even after losing its efforts before this Court to force consolidation, Defendants will continue to refuse to process PTF's requests unless PTF agrees to pretend the agency in fact won.

43. Plaintiff alleges that because this pattern, practice, and policy by the Government has arisen in over a dozen open cases filed by Plaintiff (as well as other cases involving other Government agencies represented by the same counsel at the U.S. Attorney's Office), Plaintiff expects that the Government will continue to take all measures within its power to unlawfully delay responding to Plaintiff's FOIA requests, to force Plaintiff to file suit in order to receive any response at all to its FOIA requests, and to stall litigation relating to Plaintiff's FOIA requests through baseless pleadings having no outcome other than delay while wasting Government, Plaintiff and judicial resources in this pattern of delay.
44. This behavior will continue given the apparent confidence that consequences will never ensue or, if they do, are worth avoiding release of the information sought.
45. Absent injunctive relief, Plaintiff will continue to suffer from the patterns, practices, and policies described herein.

Other Requesters and Their Experiences with State

46. The pattern and practice of using motions to delay processing of requests, specifically for enlargements of time to answer followed by motions to stay then motions to consolidate discrete, disparate requests into much more complex matters that will languish on the docket for extra months or years, described above, emerged in 2024. This coordinated pattern and

practice compounds Defendant State's longstanding practice of disregarding its FOIA obligations.

47. The Department of State publishes an Annual Report regarding the FOIA requests it receives and its processing of those requests. The most recent annual report is for calendar year 2023, and indicates that State routinely fails to comply with the statutory timeframe to issue a "determination" with respect to FOIA requests and administrative appeals. For example, the average response time for what State calls a "simple" request is 326 days, while requests for "expedited processing" linger for an average of 519 days. State thus appears to have a pattern and practice of penalizing those who request "expedited processing" by processing records slower than it would for requesters which did not seek "expedited processing." State also admits in its report that it has administrative appeals which have not been adjudicated despite being pending since 2016, notwithstanding the legal obligation for State to issue a "determination" on such appeals within 20 working days (or thirty working days, if "unusual circumstances" prevent a quicker response).

48. Public interest group Government Accountability & Oversight ("GAO") submitted a request on August 9, 2022 (F-2022-11529). State claimed "unusual circumstances" exist and took a 10-day extension of time to respond, but thereafter never issued a determination let alone released a single record. Absent requester filing suit, the request has simply been ignored, rather than delayed through the labyrinth of litigation delays the Government has constructed.

49. GAO did file suit on two subsequent requests that did not receive the required determination, 1:24-cv-431 (F-2024-04966, January 12, 2024), and 1:24-cv-1459 (F-2024-09787, April 5, 2024). In the former, State released 33, 36, 63, and 65 pages per month and will not

substantively respond, through counsel, to repeated expressions of concern over the rate of processing; in the latter, State took 120 days to produce in heavily redacted form 2 records totaling 35 pages.

50. GAO's subsequent requests, F-2024-16842 (August 5, 2024), and F-2024-17065 (August 7, 2024), also have received no determination. Absent filing suit, the requester has simply been ignored, leaving the requester no choice but to enter the litigation labyrinth constructed by the Government in order to obtain the requested records.

51. The more one looks the more one sees the Department's longstanding insouciance. Another non-profit with whom undersigned counsel work, Energy Policy Advocates, submitted a request on April 14, 2021 (F-2021-05165). State claimed "unusual circumstances" exist and on April 15, 2021 took a 10-day extension of time to respond. That three-and-a-half year old request remains outstanding with no determination let alone any records released. Absent requester filing suit, the request has simply been ignored, rather than delayed through the labyrinth of litigation delays the Government has constructed.

52. These examples are illustrative and not exclusive even in undersigned counsel's experience.

DOJ's participation in the Pattern and Practice of Delay

53. DOJ's pattern and practice is to aid and abet agencies in their pursuit of avoiding their FOIA obligations and specifically to extend their efforts to delay the release of records.

54. A quick search of this Court's dockets indicates that in the vast majority of FOIA cases, the Department of Justice seeks extensions of time to file responsive pleadings, as a near-ritual, thereby systematically abrogating Congress's intent that responsive pleadings are due on an expedited basis pursuant to 5 USC § 552 (a)(4)(C).

55. A sample of the cases involving Plaintiff specifically indicates at least the following cases where DOJ has claimed it habitually assigns attorneys to defend FOIA matters in a tardy fashion by which it ensures its client agencies cannot or do not comply with its statutory deadlines. These are in addition to the eight *PTF v. State* matters in which Defendants acted similarly and cited in FN 3, *supra*:

- a. In *Power the Future v. Dep't. of Energy*, Case No. 24-1833, the Assistant U.S. Attorney indicated by phone on July 24, 2024 that DOJ sought extension of 30 days to file responsive pleadings in a matter served on USAODC on July 2, 2024.
- b. In *Power the Future v. Council on Environmental Quality*, 24-1840, the Assistant U.S. Attorney sought “additional time to review the complaint and figure out our next steps” by email dated July 31, 2024, notwithstanding that the matter was served on USAODC on July 2, 2024.
- c. In *Power the Future v. Dep't. of Energy*, 24-1860, the Assistant U.S. Attorney communicated with undersigned counsel by phone on July 24, 2024 and sought an extension of 30 days, notwithstanding that this matter was served on USAODC on July 2, 2024.
- d. In *Power the Future v. Council on Environmental Quality*, Case No. 24-1889, the Assistant U.S. Attorney wrote that “this one was only recently assigned to me,” in a July 25, 2024 email relating to a matter served on USAODC on July 2, 2024.
- e. In *Power the Future v. Dep't. of Energy*, Case No. 24-1923, the Assistant U.S. Attorney sought an extension of 30 days by phone on July 24, 2024, notwithstanding that this matter was served on USAODC on July 2, 2024.

- f. In *Power the Future v. Dep't. of Energy*, Case No. 24-1935, the Assistant U.S. Attorney indicated by phone on July 24, 2024 that DOJ sought extension of 30 day notwithstanding that this matter was served on July 3, 2024.
- g. In *Power the Future v. Council on Environmental Quality*, Case No. 24-1942, the Assistant U.S. Attorney sought enlargement by email dated July 29, 2024 in a matter served on USAODC on July 3, 2024.
- h. In *Power the Future v. Dep't. of Interior*, Case No. 24-1979, the Assistant U.S. Attorney wrote in an email dated July 29, 2024 that “I have just been assigned the above-captioned case for the government.” This matter was served on USAODC on July 9, 2024.
- i. In *Power the Future v. Environmental Protection Agency*, Case No. 24-1995, the Assistant U.S. Attorney sought 30 days of additional time to respond by email dated Friday August 9, 2024 in a matter served on USAODC on July 11, 2024 and with an Answer initially due on Monday August 12, 2024.
- j. In *Power the Future v. Environmental Protection Agency*, Case No. 24-2040, the Assistant U.S. Attorney wrote on August 14, 2024 that “I just received this case assignment.” This matter was served on USAODC on July 17, 2024. It therefore appears DOJ waited until the even of the response deadline before even assigning an attorney to defend this matter.
- k. In *Power the Future v. Dep't. of Interior*, Case No. 24-2045, the Assistant U.S. Attorney sought additional time by email dated August 12, 2024 in a matter served on USAODC on July 18, 2024.

- l. In *Power the Future v. Environmental Protection Agency*, 1:24-cv-2081, on August 16, 2024, the Assistant U.S. Attorney wrote to Plaintiff's counsel "I have been assigned the defense of the above matter. A response to the complaint is due on August 19, 2024. I will be moving for an extension of 30-days within which to respond," in a matter served on the USAODC on July 18, 2024.
- m. In *Power the Future v. Dep't. of Interior*, Case No. 24-2101, the Assistant U.S. Attorney sought additional time by email dated August 12, 2024 in a matter served on USAODC on July 18, 2024.
- n. In *Power the Future v. Environmental Protection Agency*, 1:24-cv-2152, on August 19, 2024, the Assistant U.S. Attorney wrote to Plaintiff's counsel, "I was just assigned this case over the weekend. The Answer is due this Friday," in a matter served on the USAODC on July 24, 2024.
- o. In *Power the Future v. Environmental Protection Agency*, 1:24-cv-2218, on August 27, 2024, counsel for Defendant requested an additional 30 days to respond to the Complaint and stated, in an August 28, 2024 Motion for Extension of Time to Answer, *inter alia*, "undersigned counsel was only recently assigned this matter." 1:24-cv-2218, ECF 4.
- p. In *Power the Future v. Environmental Protection Agency*, 1:24-cv-2242, on August 29, 2024, the Assistant U.S. Attorney wrote to Plaintiff's counsel, "Me again, with the same question; this time for Case No. 24-2242, which is due next Tuesday. Let me know," in a matter served on the USAODC on August 1, 2024, referencing an email in 24-2152 stating "I was just assigned this case over the weekend. The Answer is due this Friday".

- q. In *Government Accountability & Oversight v. Council on Environmental Quality*, Case No. 24-1340, the Assistant U.S. Attorney wrote to request an extension and indicated on June 4, 2024 that “This short extension is required because I was just assigned the case late yesterday.” This matter was served on the U.S. Attorney’s Office on May 13, 2024.
- r. In *Government Accountability & Oversight v. Dep’t. of Energy*, Case No. 24-1829, the Assistant U.S. Attorney emailed requesting an extension on July 26, 2024. This matter was served on July 6, 2024.
- s. In *Government Accountability & Oversight v. Dep’t. of Energy*, Case No. 24-1887, in a July 29, 2024 filing, the Assistant U.S. Attorney informed the Court “This case was assigned to Assistant United States Attorney Brenda González Horowitz last week.” This matter was served on July 2, 2024.
- t. In *Government Accountability & Oversight v. Dep’t. of Energy*, Case No. 24-1957, on August 6, the Assistant U.S. Attorney wrote that “I have been assigned the defense of the above FOIA case. I will be moving for a 30-day extension of the time to answer the complaint, which is presently due tomorrow.” This matter was served on July 8, 2024.
- u. In *Government Accountability & Oversight v. Dep’t. of Energy*, Case No. 24-2027, on August 7, 2024 the Assistant U.S. Attorney wrote “I only recently assigned to this case.” This matter was served on July 15, 2024.
- v. In *Government Accountability & Oversight v. Dep’t. of Energy*, Case No. 24-2039, the U.S. Attorney sought additional time to file responsive pleadings by email dated August 8, 2024 in a matter served on USAODC on July 15, 2024.

- w. In *Government Accountability & Oversight v. Dep't. of Energy*, Case No. 24-2077, by email dated August 12, 2024, the Assistant U.S. Attorney stated “I was only assigned to this case yesterday evening.” This matter was served on USAODC on July 18, 2024.
 - x. In *Government Accountability & Oversight v. Dep't. of Energy*, Case No. 24-2099, by email dated August 12, 2024, the Assistant U.S. Attorney stated “I was only just assigned to the case referenced above today.” This matter was served on USAODC on July 18, 2024.
56. As illustrated above, DOJ more often than not (and indeed almost without fail) seeks extensions from the Court rising to a practice and policy of effectively abrogating Congress’s expedited timeframe for FOIA complaints to be answered. As good cause, DOJ ordinarily cites its own pattern and practice of assigning cases to defense counsel on a late basis, or the mere fact that the DOJ is burdened by voluminous litigation, which is a significant part of DOJ’s reason for existence, and appears to be exaggerated by DOJ’s own serial failures to bring its client agencies into compliance with the law and DOJ’s insistence on delaying the litigation which its client agencies face, such that dockets continue to grow.
57. DOJ itself routinely fails to comply with FOIA’s deadlines with respect to requests it receives itself, which illustrates why DOJ is so comfortable in defending and encouraging its client agencies in the same behavior. DOJ’s FOIA report for calendar.
58. In but two examples involving undersigned counsel Matthew Hardin’s clients:
- a. Victoria Toensing has a suit pending in this Court under Case No. 1:24-cv-2444. This Complaint alleges that DOJ failed to respond to a FOIA administrative appeal within statutory timeframes. As with the list of cases set forth above, DOJ

indicated it would seek an extension of thirty days to file responsive pleadings in Ms. Toensing’s case. In its Motion, DOJ indicated that “due to an influx of cases in the U.S. Attorney’s Office, undersigned counsel was only recently assigned this matter.”

- b. Joshua Moon submitted a FOIA request submitted to DOJ on June 6, 2024, to which DOJ has never responded.
59. In *Pub. Health & Med. Pros. v. FDA*, 672 F. Supp. 3d 253, 256 (N.D. Tex. 2023), the DOJ sought “a production schedule that would take at least 23.5 years.” Despite DOJ’s request, which DOJ asserted was based solely upon its client agency’s resources rather than any intentional effort to delay or avoid transparency, the court informed DOJ that “the number of resources an agency dedicates to such requests does not dictate the bounds of an individual's FOIA rights.” *Id.*
60. Notwithstanding the ruling against DOJ in the above case, DOJ continues to assert that individuals may be denied or delayed their statutory rights under FOIA because its client agency, or DOJ itself, are busy or unable to devote appropriate resources to processing a request.

COUNT I:
Pattern-and-Practice of FOIA Violations

61. Plaintiff restates and incorporates by reference each of the foregoing paragraphs as if fully set forth herein.
62. Non-exempt records are to be made “promptly available” under FOIA. *Judicial Watch, Inc. v. United States Dep't of Homeland Sec.*, 437 U.S. App. D.C. 128, 138, 895 F.3d 770, 780 (2018), citing 5 U.S.C. § 552(a)(3)(A).

63. When an agency has established a “pattern and practice” of unlawful responses by an agency to FOIA requests, relief is available under *Payne Enters., Inc. v. United States*, 267 U.S. App. D.C. 63, 837 F.2d 486 (1988) and its progeny.
64. To prevail in a “pattern and practice” claim, “the plaintiff must allege a pattern of prolonged delay amounting to a persistent failure to adhere to FOIA's requirements and that the pattern of delay will interfere with its right under FOIA to promptly obtain non-exempt [***21] records from the agency in the future.” *Judicial Watch, Inc. v. United States Dep't of Homeland Sec.*, 437 U.S. App. D.C. 128, 138, 895 F.3d 770, 780 (2018).
65. Plaintiff alleges herein that the Department of State has a clearly established pattern and practice of noncompliance with FOIA and delay in releasing non-exempt records and even FOIA “determinations.”
66. Plaintiff alleges herein that the USAODC and DOJ have a clearly established pattern and practice of encouraging and abetting agencies, including the Department of State, in their noncompliance with FOIA and delay in releasing non-exempt records and even FOIA “determinations.”

PRAYER FOR RELIEF

Power the Future respectfully requests this Court:

1. Assume jurisdiction in this matter, and maintain jurisdiction until the Defendants comply with FOIA and every order of this Court;
2. Declare Defendants have violated FOIA by engaging in a pattern and practice of unlawful delay and constructive denial of Plaintiff's FOIA requests;
3. Declare that the Plaintiff is entitled to prompt access to documents under FOIA;

4. Enjoin the Defendants from engaging in any behavior which would delay the “prompt” release of information in its existing litigation against the Department of State or in any pending or future FOIA requests to that agency.
5. Order the Government to timely provide a “determination” in response to all extant and future FOIA requests submitted by Plaintiff, and to promptly assign attorneys to any matters in litigation;
6. Award Plaintiff’s attorneys their fees and other litigation costs reasonably incurred pursuant to 5 U.S.C. § 552(a)(4)(E); and
7. Grant such other relief as this Court deems just and proper.

Respectfully submitted this the 3rd day of October, 2024,

POWER THE FUTURE

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