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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

STATE OF WASHINGTON,

Plaintiff,

v.

U.S. GENERAL SERVICES
ADMINISTRATION, an agency of the
United States,

Defendant.

NO.

COMPLAINT

Freedom of Information Act, 5 U.S.C. § 552

I. INTRODUCTION

1. This is an action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, seeking the release of records unlawfully withheld by the U.S. General Services Administration (GSA) related to the proposed sale of the federal facility that houses the National Archives at Seattle. More than six months have passed since the Office of the Attorney General (AGO) filed a FOIA request seeking documents on this important issue, but GSA has still not provided a single document to the State even though it said it would begin producing materials this spring.

2. On January 26, 2020, the Office of Management and Budget (OMB) approved a recommendation of the Public Buildings Reform Board (PBRB) to sell the Federal Archives and Records Center located at 6125 Sand Point Way NE, Seattle, WA 98115 (the Seattle Facility). The Seattle Facility is currently owned by GSA and occupied by the U.S. National Archives and

1 Records Administration (NARA). The National Archives at Seattle is housed at the Seattle
2 Facility.

3 3. The National Archives at Seattle provides public access to permanent records
4 created by Federal agencies and courts in Alaska, Idaho, Oregon, and Washington. It houses a
5 significant body of tribal and treaty records relating to the federally recognized tribes and native
6 corporations in the Pacific Northwest, including records from Bureau of Indian Affairs offices
7 and Indian agencies and schools in Alaska, Idaho, Oregon, and Washington. It also maintains
8 50,000 files related to the Chinese Exclusion Act of 1882, as well as some records related to the
9 internment of Japanese-Americans in World War II. The National Archives at Seattle is routinely
10 used by researchers, historians, genealogists, and tribes in the Pacific Northwest.

11 4. The report recommending the sale of the Seattle facility (the PBRB Report¹)
12 indicates that the federal records and archival materials at the Seattle facility, including the
13 materials at the National Archives at Seattle, would be removed from the Pacific Northwest and
14 relocated to NARA facilities in Kansas City, Missouri, and Riverside, California.

15 5. Neither PBRB nor OMB conducted outreach to state, local, or tribal officials prior
16 to publicly announcing the sale of the facility housing the National Archives at Seattle. As a
17 result, state, local, and tribal officials were not given the opportunity to present information
18 detailing how the pending sale would harm them. There were also no public hearings in
19 Washington, Idaho, Oregon, or Alaska, where members of the public could have provided input
20 and information about the importance of keeping records at the Seattle facility in the Pacific
21 Northwest.

22 6. The PBRB Report indicates that “GSA solicited each Federal agency subject to
23 the [Federal Assets Sale and Transfer Act of 2016 (FASTA)] for properties recommended for
24 disposal or consolidation under FASTA’s expedited process” and that “[o]n its own initiative”

25
26 ¹ <https://www.pbrb.gov/assets/uploads/20191227%20High%20Value%20Assets%20Report%20as%20Required%20by%20FASTA.pdf> (last visited Aug. 13, 2020).

1 GSA conducted additional analysis to identify other potential high-value candidates for PBRB
2 to sale under FASTA.

3 7. On February 3, 2020, the AGO submitted a request for certain documents to GSA
4 (the FOIA Request), via both electronic mail and the U.S. Postal Service.

5 8. The FOIA Request sought “[a]ll records and communications” between GSA and
6 PBRB/OMB “related to the Federal Archives and Records Center located at 6125 Sand Point
7 Way NE, Seattle, WA 98115 from May 10, 2019 to January 28, 2020,” as well as records related
8 to another federal facility in Washington State and GSA’s role in identifying “high value”
9 properties for PBRB under FASTA.

10 9. On February 4, 2020, the AGO received an electronic mail message from
11 admin@foiaonline.gov “confirm[ing] your request submission to the FOIA online application”
12 and listing the “Date Submitted: 02/03/2020.” The electronic mail message listed the tracking
13 number for the FOIA Request as GSA-2020-000467.

14 10. Later on February 4, 2020, the AGO received an acknowledgement notice letter
15 from GSA, which stated that “we anticipate response on or prior to March 4, 2020.” It further
16 stated that “[w]e have twenty (20) workdays in which to respond (excluding weekends and
17 Federal Holidays).” It explained that if it was not possible to provide the documents within this
18 time period, “we may take an extension and will advise you.”

19 11. In April 2020, counsel for the State of Washington received a telephonic
20 communication from GSA regarding the FOIA Request, in which an agency employee explained
21 that responsive documents had been identified and would be provided to the State in four stages.
22 The GSA employee further stated that the first stage was complete and those documents would
23 be mailed to the State on a thumb drive following review by GSA counsel.

24 12. After no documents were received, counsel for the State of Washington followed
25 up with the GSA employee, who indicated that documents were still being reviewed by counsel
26 and would be provided shortly.

1 13. The AGO has received no documents from GSA and no further communications
2 from the agency regarding the FOIA Request.

3 14. In light of the critical regional importance of the records held at the
4 National Archives of Seattle, Washingtonians and all residents of the Pacific Northwest,
5 including the many federally-recognized tribes and native corporations in this region, deserve to
6 know how the decision was made to sell the Seattle facility.

7 **II. JURISDICTION AND VENUE**

8 15. This Court has jurisdiction over this action under the Freedom of Information
9 Act, 5 U.S.C. § 552(a)(4)(B), and under 28 U.S.C. § 1331, because this action arises under the
10 laws of the United States, including FOIA and the Declaratory Judgment Act, 28 U.S.C. § 2201.

11 16. Venue is proper in this court under 5 U.S.C. § 552(a)(4)(B), as the FOIA Request
12 was issued from a State of Washington office in Seattle, in the Western District of Washington.

13 17. Because GSA failed to respond to the FOIA Request within twenty business days,
14 no administrative appeal is required under 5 U.S.C. § 552(a)(6)(C).

15 **III. PARTIES**

16 18. Plaintiff State of Washington is a sovereign entity and brings this action to protect
17 its own sovereign and proprietary rights, and as *parens patriae* on behalf of its affected citizens
18 and residents. The Attorney General is the chief legal adviser to the State of Washington.
19 The Attorney General’s powers and duties include acting in federal court on matters of public
20 concern. This challenge is brought pursuant to the Attorney General’s independent
21 constitutional, statutory, and common law authority to bring suit and obtain relief on behalf of
22 the State of Washington.

23 19. Defendant General Services Administration is an agency of the United States.
24 GSA has possession of and control over the records sought by the AGO in its February 3, 2020
25 FOIA Request.
26

IV. STATUTORY BACKGROUND

20. FOIA requires agencies to “make available to the public information.” 5 U.S.C. § 552(a). Any information subject to FOIA must be disclosed. “[E]ach agency, upon any request for records . . . shall make the records promptly available to any person.” *Id.* § 552(a)(3).

21. “[U]pon any request for records made under [§ 552(a)](1), (2), or (3),” an agency has 20 business days to determine whether to comply. *Id.* § 552(a)(6)(A). GSA’s FOIA regulations also require a response within 20 days or notification to the requester that “unusual circumstances” prevent GSA from making a decision within 20 working days and that “an extension of time, not to exceed an additional 10 workdays” is needed. 41 C.F.R. § 105-60.402-2.

22. An agency may only withhold documents that fall within one of the enumerated exemptions from FOIA. If an agency withholds documents, it must provide a “*Vaughn* Index” that adequately identifies the specific documents withheld. *See Vaughn v. Rosen*, 484 F.2d 820, 827 (D.C. Cir. 1973). “A withholding agency must describe *each* document or portion thereof withheld, and for *each* withholding it must discuss the consequences of disclosing the sought-after information.” *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original). *See Wiener v. FBI*, 943 F.2d 972, 978 (9th Cir. 1991) (requiring a *Vaughn* Index and finding it inadequate); *Andrus v. United States Dep’t of Energy*, 200 F. Supp. 3d 1093, 1105 (D. Idaho 2016) (same).

23. A court may review an agency’s decision to withhold documents, and “the burden is on the agency to sustain its action.” 5 U.S.C. § 552(a)(4)(B). An agency cannot justify its withholding by offering nothing more than “[c]onclusory and generalized allegations.” *Nat’l Parks & Conservation Ass’n v. Kleppe*, 547 F.2d 673, 680 (D.C. Cir. 1976). When the agency fails to sustain its burden, the court may “order the production of any agency records improperly withheld from the complainant.” 5 U.S. C. § 552(a)(4)(B).

V. STATEMENT OF FACTS

24. On February 3, 2020, the AGO submitted a request for certain documents to GSA, via both electronic mail and the U.S. Postal Service.

25. The AGO’s February 3, 2020 FOIA Request sought:

a. “All records and communications with the Public Buildings Reform Board related to the Federal Archives and Records Center located at 6125 Sand Point Way NE, Seattle, WA 98115 from May 10, 2019 to January 28, 2020.”

b. “All records and communications with the Public Buildings Reform Board related to the Auburn Complex located at 400 15th Street SW, Auburn, WA 98001, from May 10, 2019 to January 28, 2020.”

c. “All records and communications with the Office of Management and Budget related to the Federal Archives and Records Center located at 6125 Sand Point Way NE, Seattle, WA 98115 from May 10, 2019 to January 28, 2020.”

d. “All records and communications with the Office of Management and Budget related to the Auburn Complex located at 400 15th Street SW, Auburn, WA 98001, from May 10, 2019 to January 28, 2020.”

e. “All records and communications related to the identification of “high value” properties pursuant to the Federal Assets Sale and Transfer Act of 2016 (FASTA) from December 16, 2016 to January 28, 2020.”

f. “All records and communications with the Government Services Administration to identify “high value” properties in response to the Federal Assets Sale and Transfer Act of 2016 (FASTA) from December 16, 2016 to January 28, 2020.”

26. On February 4, 2020, the AGO received an electronic mail message from admin@foiaonline.gov “confirm[ing] your request submission to the FOIA online application.” The electronic mail message stated as follows:

- Tracking Number: GSA-2020-000467

- 1 • Requester Name: Lauryn K Fraas
- 2 • Date Submitted: 02/03/2020
- 3 • Request Status: Submitted
- 4 • Description: All records and communications with the Public Buildings Reform Board related to the Federal Archives and Records Center located at 6125 Sand Point Way NE, Seattle, WA 98115 from May 10, 2019 to January 28, 2020.

5 27. Later on February 4, 2020, the AGO received an acknowledgement notice letter
6 from GSA, which stated that “[w]e received your request in the U.S. General Services
7 Administration (GSA) Freedom of Information Act (FOIA) Office and assigned control
8 GSA-2020-000467” and “we anticipate response on or prior to March 4, 2020.” In its letter, GSA
9 recognized that it had “twenty (20) workdays in which to respond (excluding weekends and
10 Federal Holidays)” and explained that if it was not possible to respond in that time frame “we
11 may take an extension and will advise you.” GSA further advised that “[y]ou will be notified of
12 fees, time frames and any other issues prior to and throughout the process.”

13 28. GSA was required by FOIA to respond to the FOIA Request by March 4, 2020.

14 29. On or about April 16, 2020, counsel for the State of Washington received a call
15 from GSA employee, Hyacinth Perrault, regarding the FOIA Request. Ms. Perrault sought to
16 confirm the address to which responsive documents should be sent. She explained that GSA
17 was processing the FOIA Request and that the agency anticipated making four stages of
18 productions. Ms. Perrault further indicated that the first stage was complete and that those
19 documents would be mailed to the State on a thumb drive following review by GSA counsel.
20 Counsel for the State confirmed that the responsive materials should be sent to the AGO’s Seattle
21 Office.

22 30. On or about May 18, 2020, counsel for the State of Washington called
23 Ms. Perrault to follow up on the status of the FOIA Request and to inquire as to whether any
24 materials had been sent. Ms. Perrault indicated that the materials were still with GSA counsel
25 and would be provided to the State shortly.
26

1 31. The AGO has received no communication from GSA regarding the FOIA
2 Request since the State’s call to Ms. Perrault on May 18, 2020, and no materials have been
3 provided to the State.

4 32. GSA has not notified the AGO that additional time is needed to process the FOIA
5 Request, nor has GSA asked the AGO to clarify or modify the FOIA Request.

6 **VI. FIRST CLAIM FOR RELIEF**
7 **Violation of the Freedom of Information Act – Failure to Respond**
8 **5 U.S.C §§ 552(a)(3), (a)(4)(B)**

9 34. Plaintiff realleges and incorporates by reference each of the allegations set forth
10 in the preceding paragraphs.

11 35. GSA violated FOIA by failing to respond to the FOIA Request for records within
12 20 business days.

13 **VII. SECOND CLAIM FOR RELIEF**
14 **Violation of the Freedom of Information Act – Failure to Produce Records**
15 **5 U.S.C §§ 552(a)(3), (a)(4)(B)**

16 36. Plaintiff realleges and incorporates by reference each of the allegations set forth
17 in the preceding paragraphs.

18 37. GSA further violated FOIA by failing to promptly provide records, or reasonably
19 segregable portions of lawfully exempt responsive records, in response to the AGO’s request for
20 records.

21 **VIII. PRAYER FOR RELIEF**

22 The State of Washington respectfully requests that this Court:

23 1. Declare that GSA violated FOIA by failing to make a determination on the
24 FOIA Request within the time period prescribed by law;

25 2. Declare that GSA violated FOIA by failing to promptly provide all responsive
26 records;

