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

STATE OF WASHINGTON,  
  
Plaintiff,

v.

ENVIRONMENTAL PROTECTION  
AGENCY, an agency of the United  
States, and E. SCOTT PRUITT, in his  
official capacity as Administrator,  
  
Defendants.

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 Environmental Protection Agency (EPA).

2. On October 31, 2017, EPA Administrator E. Scott Pruitt issued a directive that purports to prohibit certain people who receive EPA grants from serving on EPA advisory committees.

1 3. On March 12, 2018, the Office of the Attorney General for the State of  
2 Washington (AGO) submitted a request for certain documents to EPA, via both FOIAonline  
3 and the U.S. Postal Service.

4 4. The request sought “All records of any communication from any  
5 Environmental Protection Agency employee or designee (including but not limited to Tamue  
6 L. Gibson, Edward Hanlon, and Aaron Yeow) to any current or former member of any EPA  
7 Federal Advisory Committee, related to Administrator Pruitt’s October 31, 2017 directive  
8 entitled ‘Strengthening and Improving Membership on EPA Federal Advisory Committees’”  
9 from October 31, 2017 to March 1, 2018.

10 5. On March 12, 2018, AGO received an automated notice confirming that the  
11 FOIA request had been received and assigned a tracking number.

12 6. On March 22, 2018, AGO received a notice that its request for a fee waiver  
13 for the FOIA request had been fully granted.

14 7. Aside from the notice regarding the fee waiver, AGO has received no further  
15 communication from EPA responding to the request.

16 8. In the months since Administrator Pruitt’s directive, members of EPA  
17 advisory committees have received correspondence from EPA purporting to implement  
18 Administrator Pruitt’s directive, and inquiring whether they are principal investigators, co-  
19 investigators, or otherwise receive a direct benefit from an EPA grant.

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23 **II. JURISDICTION AND VENUE**

24 9. This Court has jurisdiction over this action under the Freedom of Information  
25 Act, 5 U.S.C. § 552(a)(4)(B), and under 28 U.S.C. § 1331, because this action arises under the  
26

1 laws of the United States, including FOIA and the Declaratory Judgment Act,  
2 28 U.S.C. § 2201.

3 10. Venue is proper in this court under 5 U.S.C. § 552(a)(4)(B), as the FOIA  
4 request was issued from a State of Washington office in Seattle, in the Western District of  
5 Washington.  
6

7 11. Because EPA failed to respond to the State of Washington’s FOIA request, even  
8 to notify AGO of an extension of time, within 20 business days, no administrative appeal is  
9 required under 40 CFR § 2.104(a).

10 **III. PARTIES**

11 12. Plaintiff State of Washington is a sovereign entity and brings this action to  
12 protect its own sovereign and proprietary rights, and as *parens patriae* on behalf of its affected  
13 citizens and residents. The Attorney General is the chief legal adviser to the State of  
14 Washington. The Attorney General’s powers and duties include acting in federal court on  
15 matters of public concern. This challenge is brought pursuant to the Attorney General’s  
16 independent constitutional, statutory, and common law authority to bring suit and obtain relief  
17 on behalf of the State of Washington.  
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19 13. Defendant EPA is an agency of the United States. EPA has possession of and  
20 control over the records sought by the State of Washington in its March 12, 2018 request.  
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22 14. Defendant Edward Scott Pruitt is the Administrator of the EPA, and is named  
23 only in his official capacity.  
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IV. STATUTORY BACKGROUND

15. 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). Additionally, agencies have an affirmative duty to make available “statements of policy and interpretations which have been adopted by the agency . . . .” Id., § 552(a)(2)(B).

16. “[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). EPA’s FOIA regulations also require a response within 20 days. 40 C.F.R. 2.104 (a).

17. An agency may only withhold documents that fall within one of the enumerated exemptions from FOIA.

18. 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 (9<sup>th</sup> 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).

19. 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

1 allegations.” *Nat’l Parks & Conservation Assn’ v. Kleppe*, 547 F.2d 673, 680 (D.C. Cir. 1976).  
2 When the agency fails to sustain its burden, the court may “order the production of any agency  
3 records improperly withheld from the complainant.” 5 U.S. C. § 552(a)(4)(B).  
4

5 **V. STATEMENT OF FACTS**

6 20. On March 12, 2018, the Office of the Attorney General of the State of  
7 Washington (AGO) submitted a request for certain documents to EPA, via both FOIAonline  
8 and the U.S. Postal Service.

9 21. The March 12, 2018 request sought “All records of any communication from  
10 any Environmental Protection Agency employee or designee (including but not limited to  
11 Tamue L. Gibson, Edward Hanlon, and Aaron Yeow) to any current or former member of any  
12 EPA Federal Advisory Committee, related to Administrator Pruitt’s October 31, 2017 directive  
13 entitled ‘Strengthening and Improving Membership on EPA Federal Advisory Committees’”  
14 from October 31, 2017 to March 1, 2018. The request further specified that “This request  
15 includes communications sent, received, or stored on personally owned or controlled email  
16 accounts, mobile phones, computers or other mobile devices;” “This request includes  
17 communications inquiring whether members of Advisory Committees have, administer, or  
18 work on EPA grants;” and “This request includes communications requesting that Advisory  
19 Committee members resign or refrain from re-appointment to Advisory Committees, or recuse  
20 themselves from any matters before the Advisory Committees.”  
21

22  
23 22. On March 12, 2018, AGO received an automated notice confirming that the  
24 FOIA request had been received and assigned a tracking number.  
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1           23.    On March 22, 2018, AGO received a notice that its request for a fee waiver  
2 for the FOIA request had been fully granted.

3           24.    Aside from the notice regarding the fee waiver, AGO has received no further  
4 communication from EPA responding to the request.

5           25.    EPA was required by FOIA to respond to the State of Washington's FOIA  
6 request by April 9, 2018.

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8                               **VI.    FIRST CLAIM FOR RELIEF**

9                               **Violation of the Freedom of Information Act – Failure to Respond (All Defendants)**  
10                               **5 U.S.C §§ 552(a)(3), (a)(4)(B)**

11           26.    Plaintiff realleges and incorporates by reference each of the allegations set forth  
12 in the preceding paragraphs.

13           27.    Defendants violated FOIA by failing to respond to the State of Washington's  
14 request for records within 20 business days.

15                               **VII.   SECOND CLAIM FOR RELIEF**

16                               **Violation of the Freedom of Information Act – Failure to Produce Records (All**  
17                               **Defendants)**  
18                               **5 U.S.C §§ 552(a)(3), (a)(4)(B)**

19           28.    Plaintiff realleges and incorporates by reference each of the allegations set forth  
20 in the preceding paragraphs.

21           29.    Defendants further violated FOIA by failing to conduct searches reasonably  
22 calculated to locate the requested records, and promptly provide records, or reasonably  
23 segregable portions of lawfully exempt responsive records, in response to the State of  
24 Washington's request for records.

**VIII. PRAYER FOR RELIEF**

The State of Washington respectfully requests that this Court:

1. Declare that the Defendants violated FOIA by failing to make a determination on the FOIA requests within the time period prescribed by law;

2. Declare that Defendants violated FOIA by failing to conduct searches reasonably calculated to locate the requested records, and promptly provide all responsive records;

3. Order Defendants to provide a determination on the State of Washington's FOIA request, at no cost to the State.

4. Order Defendants to conduct searches reasonably calculated to locate the requested records, and release all records responsive to the FOIA request within twenty days of this Court's order, at no cost to the State of Washington.

5. Enjoin Defendants from withholding agency records and order the production of all agency records improperly withheld from the State of Washington;

6. Retain jurisdiction over this action to ensure the processing of the State of Washington's FOIA request is in compliance with FOIA and any orders of this Court;

7. Award Plaintiff its costs of litigation, including reasonable attorney fees as provided by FOIA, and any other applicable provision of law; and

8. Grant such other relief as the Court may deem just and proper.

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DATED this 3<sup>rd</sup> day of May, 2018.

Respectfully submitted,

By: s/ William R. Sherman

OFFICE OF THE ATTORNEY GENERAL  
ROBERT W. FERGUSON  
Attorney General

WILLIAM R. SHERMAN, WSBA #29365  
Assistant Attorney General  
800 5th Ave Suite 2000, TB-14  
Seattle, WA 98104-3188  
(206) 464-6430



CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
STATE OF WASHINGTON
(b) County of Residence of First Listed Plaintiff King County, Washington
(c) Attorneys (Firm Name, Address, and Telephone Number)
ATTORNEY GENERAL OF WASHINGTON, Counsel for Environmental Protection, 800 5th Ave, Ste. 2000, TB-14, Seattle, WA 98104-3188 (206) 326-5494

DEFENDANTS
ENVIRONMENTAL PROTECTION AGENCY, an agency of the United States, and E. SCOTT PRUITT, in his official capacity as Administrator,
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question
4 Diversity

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country

IV. NATURE OF SUIT (Place an "X" in One Box Only)
Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
5 U.S.C. Section 552
Brief description of cause:
Freedom of Information Act

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND \$
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions):
JUDGE
DOCKET NUMBER

DATE 5/3/2018
SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Washington

STATE OF WASHINGTON

Plaintiff(s)

v.

ENVIRONMENTAL PROTECTION AGENCY, an agency of the United States, and E. SCOTT PRUITT, in his official capacity as Administrator

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

ATTORNEY GENERAL OF WASHINGTON
Counsel for Environmental Protection
William R. Sherman, AAG
800 5th Ave., Ste. 2000, TB-14
Seattle, WA 98104-3188

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the summons unexecuted because \_\_\_\_\_; or

Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Washington

STATE OF WASHINGTON )

\_\_\_\_\_  
*Plaintiff(s)* )

v. )

ENVIRONMENTAL PROTECTION AGENCY, an )  
agency of the United States, and E. SCOTT PRUITT, )  
in his official capacity as Administrator )

\_\_\_\_\_  
*Defendant(s)* )

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

E. Scott Pruitt, Administrator  
Environmental Protection Agency  
1200 Pennsylvania Ave, NW  
Washington, DC 20460

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

ATTORNEY GENERAL OF WASHINGTON  
Counsel for Environmental Protection  
William R. Sherman, AAG  
800 5th Ave., Ste. 2000, TB-14  
Seattle, WA 98104-3188

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: