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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

FRED J. SCHOEFFLER, a single man

Plaintiff,

NO.

COMPLAINT

v.

UNITED STATES DEPARTMENT OF
AGRICULTURE,

Defendant.

Plaintiff Fred J. Schoeffler (Plaintiff” or “Schoeffler”), by and through undersigned counsel, alleges the following facts and claims against Defendant United States Department of Agriculture (“USDA” or “Defendant”).

THE PARTIES

1. Plaintiff Fred J. Schoeffler is a citizen of the United States of America and a resident of the State of Arizona.

2. The United States Department of Agriculture is an agency of the United States of America. The USDA has possession, custody and control of the records that Plaintiff seeks.

1 **JURISDICTION AND VENUE**

2 3. This action arises under the Freedom of Information Act (“FOIA”), and
3 Privacy Act, 5 U.S.C. § 552.
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5 4. This Court has jurisdiction over the parties and subject matter pursuant to
6 5 U.S.C. § 552(a)(4)(B).

7 5. Venue is proper in this District pursuant to 5 U.S.C. § 552(a)(4)(B).
8

9 **STATEMENT OF THE FACTS**

10 6. On June 2, 2016, Plaintiff sent a FOIA request to the USDA’s Forest
11 Service requesting access to documents from June 30, 2013, between 3:00 p.m. and
12 5:00 p.m. as follows: a) all voice recordings and written transcripts thereof related to the
13 June 30, 2013, Yarnell Hill Fire (“YHF”) Panebaker and/or Moore and/or United States
14 Forest Service Aerial Firefighting Study, also known as the Aerial Firefighting Study,
15 AIR-TO-GROUND (“A2G and/or A/G”) Radio Transmissions; and b) between, to
16 and/or from any and all air resources and any and all Incident Management Team and
17 any and all operational and ground personnel.
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19 7. On June 16, 2016, USDA caused correspondence to be sent to Plaintiff
20 acknowledging receipt of Plaintiff’s June 2, 2016, FOIA, assigning it case number
21 2016-FS-R3-04232-F.
22

23 8. The USDA also stated in their June 16, 2016, correspondence that it did
24 not find any responsive records to items 1 or 2 of Plaintiff’s request, that they would
25 “re-route” Plaintiff’s request to the Forest Service, Washington Office FOIA Service
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1 Center for processing, that Plaintiff should check with the Arizona Department of
2 Forestry & Fire Management and lastly, that Plaintiff could file his appeal in 45 days.

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4 9. Upon information and belief, Plaintiff is certain that these AIR-TO-
5 GROUND records exist. In fact, in some of the videos that the USDA has released to
6 the public, the AIR-TO-GROUND transmissions can be heard.

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8 10. Plaintiff became aware that an employee of the Coconino National Forest
9 (“COF”), Duane Tewa, had stated that numerous individuals submitted records
10 regarding Plaintiff, and because of Plaintiff, “Yarnell Hill Fire ‘drama’ is being directed
11 toward the COF.” As such, on June 7, 2016, Plaintiff submitted an FOIA and Privacy
12 Act request to the USDA and an addendum on June 9, 2016, requesting the following
13 information for the time period June 30, 2013, through June 7, 2016, as follows: a) all
14 records related to Fred J. Schoeffler and the June 30, 2013, Yarnell Hill Fire; b)
15 between, to, and/or from any and all COF, and any/all other Federal, State, and/or
16 municipal Wildland Fire personnel and private citizens and/or legal entities, including
17 but not limited to: Amanda Marsh, Holly Neill, Elizabeth Nowicki, and/or Deanna
18 Thompson.
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21 11. On June 16, 2016, the USDA caused correspondence to be sent to Plaintiff
22 acknowledging their receipt of his FOIA and assigned it case no. 2016-FS-R3-04284-F.

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24 12. On September 23, 2016, the USDA sent a CD to Plaintiff which contained
25 584 pages of records purporting to be responsive to Plaintiff’s FOIA. However, the
26 records that were sent were Plaintiff’s training and fire experience records. The
27 documents were in no way responsive to Plaintiff’s request.
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1 13. On October 11, 2016, Plaintiff filed an appeal to FOIA 2016-FS-R3-
2 04284-F which was acknowledged by the USDA on October 18, 2016, and assigned
3 case no. 2017-FS-WO-00013-A.
4

5 14. On July 26, 2016, Plaintiff submitted a FOIA request to the USDA
6 requesting access to documents from June 30, 2013, through July 26, 2016, as follows:

7 a) all records related to Fred J. Schoeffler and the June 30, 2013, Yarnell Hill Fire
8 between, to, and/or from any and all COF, Federal, State, and/or municipal Wildland
9 Fire personnel and private citizens and/or legal entities, including but not limited to:
10 Amanda Marsh, Holly Neill, Elizabeth Nowicki, and/or Deanna Thompson; b) any and
11 all COF and/or Southwest Regional direction to its employees regarding any and all
12 dialogue and/or conversations and/or encounters with Fred J. Schoeffler.
13
14

15 15. On July 28, 2016, Plaintiff called Marie DeRobertis, USDA FOIA
16 Specialist, who acknowledged receipt of Plaintiff's July 26, 2016, request and advised
17 that she was backlogged with many FOIA cases. The USDA has never made any
18 further responses to Plaintiff's request.
19

20 16. On July 27, 2016, Plaintiff submitted a FOIA request to the USDA and
21 was acknowledged and assigned Case No.: 2016-FS-WO-5736-F.

22 17. The FOIA requested the following information: a) all voice recordings
23 and written transcripts related to the June 30, 2013, Yarnell Hill Fire Aerial Firefighting
24 Use and Effectiveness ("AFUE"); b) all voice recordings and written transcripts related
25 to the June 30, 2013, Yarnell Fire Panebaker and/or Moore and/or USFS Aerial
26 Firefighting Study, also known as the Aerial Firefighting Study, AIR-TO-GROUND
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1 (A2G and/or A/G) radio transmissions; c) between, to, and/or from any and all Yarnell
2 Hill Fire air resources and any and all Yarnell Hill Fire Incident Management Team and
3 any and all Yarnell Hill Fire operational and ground personnel; d) between, to, and/or
4 from any and all Yarnell Hill Fire air resources and any and all Yarnell Hill Fire
5 Incident Management Team and any and all Yarnell Hill Fire operational and ground
6 personnel; and any and all AFUE members, chairs, project leaders, project coordinators,
7 and module leaders as follows: i) Bob Roth, AFUE Committee Chair, FS Fire and
8 Aviation, 406-829-6712; ii) Ryan Becker, Project Leader, San Dimas T&D Center, 909-
9 599-1267 #260; iii) Zach Holder, Program Coordinator, Missoula T&D Center, 406-
10 214-6178; iv) Chris Bolz, R5 Module Leader, San Dimas T&D Center, 909-635-7519;
11 v) Erik Rodin, R1 Module Leader, Missoula T&D Center, 909-635-7519; vi) Shannon
12 Moore, R4 Module Leader, NIFC, 909-635-9624; and vii) Dan Matthews, R3 Module
13 Leader, Prescott, AZ, 909-635-9691. The timeframe for the request is June 30, 2013,
14 between 3:00 p.m. and 5:00 p.m. for the AFUE records and from July 15, to July 28,
15 2016, for any and all e-mail records regarding Schoeffler FOIA/PA Request
16 submissions.

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21 18. On July 29, 2016, Plaintiff submitted his appeal to FOIA 2016-FS-R3-
22 04232-F which was acknowledged by the USDA on August 4, 2016, and assigned
23 FOIA 2016-FS-WO-00272-A.

24
25 19. On August 30, 2016, Plaintiff received an e-mail from the USDA Forest
26 Service with a Dropbox link to documents which were wholly unresponsive to any of
27 Plaintiff's requests. Particularly, one document that Defendant supplied contained
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1 “notes” regarding AIR-TO-AIR transmissions that *referred* to the AIR-TO-GROUND
2 transmissions, but none of the AIR-TO-GROUND transmissions were supplied.

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4 20. On October 11, 2016, Defendant USDA caused correspondence to be sent
5 to Plaintiff responding to both the June 2, 2016, FOIA and its appeal, and the July 27,
6 2016, FOIA, and stating that they had conducted a search for responsive records and
7 had provided “all of the information that we have in relation to the Yarnell Hill Fire.”
8 Defendant provided the same Dropbox link it had previously provided that did not
9 contain any information responsive to Plaintiff’s request.

10
11 21. Under 5 U.S.C. § 552(a)(6)(A)(i), Defendant was required to respond to
12 Plaintiff’s June 2, 2016, FOIA request within 20 working days or by June 30, 2016.
13 Here, Defendant first produced a link to documents, albeit not responsive, on August
14 30, 2016, and again on October 11, 2016.

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16 22. Under 5 U.S.C. § 552(a)(6)(A)(ii), Defendant was required to respond to
17 Plaintiff’s October 11, 2016, appeal regarding his June 7, 2016, FOIA within 20
18 working days or by November 8, 2016. To date, Plaintiff has not received a response.

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20 23. Under 5 U.S.C. § 552(a)(6)(A)(i), Defendant was required to respond to
21 Plaintiff’s July 26, 2016, request within 20 working days or by August 23, 2016. To
22 date, Plaintiff has not received a response.

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24 24. Under 5 U.S.C. § 552(a)(6)(A)(i), Defendant was required to respond to
25 Plaintiff’s July 27, 2016, request within 20 working days or by August 24, 2016. Here,
26 Defendant first produced a link to non-responsive documents on August 30, 2016, and
27 again on October 11, 2016.

1 25. As of the date of this Complaint, the USDA has failed to produce any
2 records responsive to Plaintiff's June 2, 2016, June 7, 2016, July 26, 2016, or July 27,
3 2016, FOIA or Privacy Act requests or explain why such records are exempt from
4 production.
5

6 26. Under 5 U.S.C. § 552(a)(6)(C)(i), Plaintiff is deemed to have exhausted
7 his administrative remedies because the USDA has failed to comply with the statutory
8 time limit.
9

10 **COUNT 1**

11 **VIOLATION OF FOIA**

12 27. This Count realleges and incorporates by reference all of the preceding
13 paragraphs.
14

15 28. Defendant has violated FOIA by failing to provide an estimated date of
16 completion.
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18 29. Defendant USDA has violated FOIA by failing to produce records
19 responsive to Plaintiff's June 2, 2016, June 7, 2016, July 26, 2016, and July 27, 2016,
20 FOIA requests.

21 30. Plaintiff and the public have been and will continue to be irreparably
22 harmed until Defendant is ordered to comply with Plaintiff's FOIA requests.
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24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff respectfully requests that this Court:

26 A. Declare Defendant's failure to comply with FOIA to be unlawful;
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1 B. Enjoin Defendant from continuing to withhold the public records
2 responsive to Plaintiff's FOIA requests and otherwise order Defendant to produce the
3 requested public record without further delay;
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5 C. Grant Plaintiff an award of attorneys' fees and other litigation costs
6 reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E)(i); and

7 D. Grant Plaintiff such other and further relief which the Court deems proper.
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10 **DATED:** January 6, 2017.

11 **UDALL SHUMWAY PLC**

12
13 By /s/Bradley D. Gardner

14 Bradley D. Gardner, Esq.

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