

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

OMB WATCH)
1742 Connecticut Avenue, N.W)
Washington, DC 20009,)
)
Plaintiff,)
)
v.) Civil Action
)
ENVIRONMENTAL PROTECTION AGENCY)
Ariel Rios Building)
1200 Pennsylvania Avenue, N.W.)
Washington, DC 20460)
)
Defendant.)
_____)

COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552, for injunctive and other appropriate relief and seeking the disclosure and release of agency records improperly withheld from plaintiff by defendant Environmental Protection Agency.

Jurisdiction and Venue

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

3. Plaintiff OMB Watch is a non-profit research and advocacy organization founded in 1983 and dedicated to promoting government accountability, citizen participation in public policy decisions, and the use of fiscal and regulatory policy to serve the public interest. In 1989, OMB Watch created RTK (Right-to-Know) NET (www.rtknet.org), an online service providing

environmental data to the public. OMB Watch is incorporated as a not-for-profit corporation in the District of Columbia, where it maintains its office.

4. Defendant Environmental Protection Agency (“EPA”) was established in the executive branch as an independent agency pursuant to Reorganization Plan No. 3 of 1970 (5 U.S.C. app.), effective December 2, 1970. EPA is an agency within the meaning of 5 U.S.C. §552(f).

Risk Management Plans and the Public Interest in Their Dissemination

5. Section 112(r) of the Clean Air Act Amendments of 1990 (codified at 42 U.S.C. 7412(r)) requires defendant EPA to promulgate regulations for the prevention and mitigation of accidental releases of extremely hazardous substances. The goals of this program are to prevent accidental releases of chemicals that could cause serious harm to human health or the environment and to reduce the severity of releases that may occur. Covered facilities are required to develop and implement a risk management program that includes a five-year accident history, an offsite consequence analysis, an accident prevention program, and an emergency response program. Companies must also submit to defendant EPA a risk management plan (RMP) describing the source’s risk management program.

6. The risk management program provides a vital community right-to-know tool. Public participation is a critical component in achieving safer facilities. A 1990 EPA-commissioned study found that since 1980, there were at least 15 accidents in the United States that exceeded the Bhopal catastrophe in volume and toxicity of chemicals released. The use, storage and transportation of hazardous chemicals pose significant risks to the public. The public thus has a vital interest in understanding, and participating in, the risk management process to ensure its own safety. Communities use RMP information to proactively engage with neighboring facilities and help prevent releases.

Plaintiff's FOIA Requests and
Defendant EPA's Initial Response

7. By letter to defendant EPA dated May 29, 2003, plaintiff submitted a Freedom of Information Act ("FOIA") request for "electronic copies of all Five-year Accident Histories submitted to EPA for facilities covered by the Risk Management Planning (RMP) program." Plaintiff specified the scope of its request as follows:

Specifically, [we are] requesting that EPA provide the entire set of RMP Five-year Accident Histories (section 6) but not the other parts of the RMP. Section 6 includes information critical to evaluating both the effectiveness of the RMP program and the actions facilities have taken under the program. This request is for all fields of information in section 6, which includes:

Section 6 - Five-Year Accident History

- 6.1. Date of accident
- 6.2. Time accident began
- 6.3. NAICS code of process involved
- 6.4. Release duration
- 6.5. Chemical(s) released
 - 6.5.a.I. Chemical name
 - 6.5.a.II. CAS number
 - 6.5.b. Quantity released (lbs)
 - 6.5.c. Percent weight of chemical if in a mixture (toxics only)
- 6.6. Release event
- 6.7. Release source
- 6.8. Weather conditions at time of event
- 6.9. On-site Impacts
- 6.10. Known off-site impacts (enter numbers)
 - 6.10.g. Environmental damage (select all that apply)
- 6.11. Initiating event
- 6.12. Contributing factors
- 6.13. Off-site responders notified
- 6.14. Changes introduced as a result of the accident (select at least one)

For identification purposes [we are] also requesting basic information that EPA uses to track RMP submissions, which includes the EPA 12 digit ID number, facility name, address, submission type, receipt date, completeness check date, error report date, de-registration date, anniversary date, number of submissions, RMP ID number, whether the RMP is complete, and similar information.

8. By second letter to defendant EPA dated May 29, 2003, plaintiff submitted a FOIA request for “electronic copies of all Executive Summaries submitted to EPA for facilities covered by the Risk Management Planning (RMP) program.” Plaintiff specified the scope of its request as follows:

Specifically, [we are] requesting that EPA provide the entire set of RMP Executive Summaries (section 10) but not the other parts of the RMP. Section 10 includes information vital to understanding and evaluating the basic steps facilities have taken under the RMP program. This request is for all fields of information in the requested section.

[We are] also requesting basic information that EPA uses to track RMP submissions, which includes the EPA 12 digit ID number, facility name, address, submission type, receipt date, completeness check date, error report date, de-registration date, anniversary date, number of submissions, RMP ID number, whether the RMP is complete, and similar information.

9. Plaintiff noted that the records it sought in its two FOIA requests “contain information critical in allowing the public to effectively take steps to better protect communities and workplaces from chemical risks.”

10. By letter to plaintiff dated July 2, 2003, defendant EPA responded to plaintiff’s FOIA requests. Defendant EPA stated, in pertinent part:

Per your request, we are enclosing on a CD some of the information you requested: copies of the Five-Year Accident Histories for all current RMPs, and also the identification and tracking information for RMPs in the RMP database.

We are unable to provide you with the remaining materials you requested, electronic copies of all Executive Summaries submitted to EPA for facilities covered by the RMP program. These materials have been determined to be exempt from mandatory disclosure by virtue of 5 U.S.C. 552(b)(2)(2000), Exemption 2, Internal Agency Rules. This Exemption is applied in light of recent terrorism events and heightened security awareness, and in recognition of the concomitant need to protect the nation’s critical infrastructure (both its elements and records about them).

Defendant EPA advised plaintiff of its right to appeal the agency’s “partial denial of records determination.”

11. By letter to defendant EPA dated July 29, 2003, plaintiff appealed defendant EPA's partial denial of its FOIA requests.

12. To date, defendant EPA has not responded to plaintiff's appeal nor provided all of the records requested by plaintiff in its FOIA requests, notwithstanding the FOIA's requirement of an agency response to an appeal within twenty (20) working days.

13. Plaintiff has exhausted the applicable administrative remedies.

14. Defendant EPA has wrongfully withheld the requested records from plaintiff.

Requested Relief

WHEREFORE, plaintiff prays that this Court:

- A. order defendant EPA to disclose the requested records in their entirety and make copies available to plaintiff;
- B. provide for expeditious proceedings in this action;
- C. award plaintiff its costs and reasonable attorneys fees incurred in this action;
and
- D. grant such other relief as the Court may deem just and proper.

Respectfully submitted,

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