

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FOOD & WATER WATCH, INC.,
1616 P St., NW
Suite 300
Washington, DC 20036,

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Plaintiff,

§
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v.

§

Civ. Action No. 19-3362

U.S. DEPARTMENT OF
AGRICULTURE
1400 Independence Ave., SW
Washington, DC 20250;

§
§
§

and

§

FOOD SAFETY AND INSPECTION
SERVICE
1400 Independence Ave., SW.
Washington, DC 20250;

§
§
§

Defendants.

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§

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I.

Introduction

1. Plaintiff Food & Water Watch, Inc., (“FWW”) brings this action against the above-listed defendants (individually and collectively, “Defendants”) under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 (2018). FWW has sought to evaluate data and other agency records justifying the U.S. Department of Agriculture (“USDA”) New Swine Inspection System (“NSIS”) rules that replace government inspectors with plant employees in performing certain

crucial animal and carcass inspections. The organization submitted four separate FOIA requests that are at issue in this case. Compliance with two of them would require the disclosure of critical agency records underlying the agency's rules. Two were for records pertaining to these FOIA requests and would reveal the Defendants' communications pertaining to, and the final rationale for, failing to disclose the requested records in a timely manner. Over the more than 20 months since FWW filed its first FOIA request seeking records relied upon for the NSIS rulemaking, the Defendants have engaged in dilatory and obstructionist tactics in processing all of FWW's requests—despite that the agency granted FWW's request for expedited processing so that the records could be produced prior to the close of the proposed rules' comment period. The comment period has been closed since May, 2018, and the rules were finalized in mid-September 2019. To-date, the Defendants have failed to disclose records responsive to close to half of the originally requested items; have repeatedly ignored attempts to clarify what they have released; have released inaccurate, non-responsive records; have forced FWW to jump over the procedural hurdle of submitting an additional FOIA request instead of amending the one already being processed; and ignored FWW's requests altogether. The agency's last release of responsive records was July 26, 2019, and there has been no indication that the agency intends to produce any additional records now that its NSIS rules have been finalized.

2. The Defendants have actually or constructively and unlawfully denied these requests and have failed to provide all responsive records. The Defendants have maintained an unlawful policy or practice of withholding or not producing such records in a timely fashion. FWW now asks the Court to enjoin the Defendants to produce all responsive agency records improperly withheld from the Plaintiff and declare Defendants' policy or practice contrary to FOIA.

II.

Jurisdiction and Venue

3. The Court has jurisdiction under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331 (2018). Venue is proper under 5 U.S.C. § 552(a)(4)(B).

III.

Parties

4. Plaintiff FWW is a national, non-profit, public-interest organization that works to ensure safe food and clean water. FWW has long voiced concerns about the Defendants' NSIS rules. FWW is concerned that slaughter plants that opt into the system will produce more adulterated and unwholesome pork product, thereby threatening its members and the general public. FWW also seeks to educate members of the public about the program.

5. Defendant USDA is the U.S. government department that houses Defendant FSIS.

6. Defendant FSIS denied or constructively FWW's FOIA requests at issue. FSIS's staff also wrote and approved the final NSIS rules.

IV.

General Allegations

A. Background on the subject of FWW's FOIA requests: Defendants' New Swine Inspection System Rules

7. Defendants claim authority for their NSIS rules under the Federal Meat Inspection Act. That law dates back to 1907, when Congress provided the Secretary of Agriculture the authority to protect consumer health and welfare by assuring that meat products entering interstate commerce are wholesome, not adulterated, and properly marked, labeled, and packaged, based on findings that "unwholesome, adulterated, or misbranded meat or meat food products are injurious to the public welfare, destroy markets for wholesome, not adulterated, and

properly labeled and packaged meat and meat food products, and result in sundry losses to livestock producers and processors of meat and meat food products, as well as injury to consumers.” 21 U.S.C. § 602 (2018).

8. In pursuance of this policy, the FMIA and the regulations promulgated under the act establish a scheme for federal government inspection of animals, or “amenable species,” including swine, in slaughterhouses, requiring both ante-mortem inspection of the animal before it is slaughtered, and post-mortem inspection, which occurs on the carcass afterwards. *Id.*, §§ 603-604.

9. On February 1, 2018, Defendants proposed new rules implementing a new inspection system, known as the NSIS rules, for market hogs. 83 Fed. Reg. 4780. The agency took comments until May, but refused FWW’s request for further opportunity to comment.

10. In a nutshell, the rules fundamentally change the way that federal government inspection is performed at market-hog slaughter establishments. Under the new rules, slaughter-plant employees are charged with removing or “sorting” animals and carcasses with condemnable conditions prior to inspection. As a result, crucial government-inspection responsibilities that occur in traditional plants both before slaughter and afterwards are transferred to slaughter-plant employees, with no minimum training and education, while plants are allowed to dramatically increase slaughter-line speeds.

B. FWW’s FOIA request 18-213

11. Because of its concerns about the effects of these rules on public health and the health and safety of its members, FWW submitted a FOIA request, 18-213, on February 23, 2018, during the comment period for Defendants’ proposed NSIS rules. The request, which had 27 separate items, largely sought data that the agency had analyzed in evaluating the Hazard Analysis and Critical Control Point (HACCP) Inspection Models Project (“HIMP”) for market hog slaughter plants. The model plants in this project are supposed to operate as slaughter

plants will under the NSIS rules. FWW also sought more recent data that the agency had not publicly evaluated in a 2014 evaluation of these plants and a draft risk assessment, both of which the Defendants argue support the NSIS rules.

12. FWW sought expedited processing of the request so that the records could be produced before the close of the proposed rules' comment period. On March 6, 2018, the agency granted expedited processing of FWW's request in a formal acknowledgement letter dated March 20, 2018.

13. The Defendants were required to respond to FWW's request no later than March 23, 2018.

14. The Defendants had not issued a final determination on this request. Instead, the agency has made several interim responses on the request, as it has been amended through informal discussions with the agency.

15. Despite the grant of expedited processing, the Defendants have failed to release all responsive records before they finalized the NSIS rules on September 17, 2019 and published them in the Federal Register on October 1, 2019.

16. Over the course of the last 20-plus months or so, the Defendants have failed to release all of the records requested. As of the date of this filing, Defendants have failed to release records responsive to 12 of the 27 items, and some of the information released has been inaccurate and, therefore, not responsive.

17. The Defendants' last release of responsive records was July 26, 2019.

18. On October 8, 2019, FWW filed an appeal for the denial of 18-213.

19. The Defendants were required to respond to FWW's appeal no later than October 23, 2019.

20. The Defendants have not responded to FWW's October 8, 2019 appeal.

21. On November 1, 2019, Defendants sent an email acknowledging that it had received the appeal on October 8, 2019.

22. The Defendants have not indicated that exceptional circumstances exist that would merit an extension of the deadlines for its determination either on the request or the appeal.

C. FWW's FOIA request 19-508

23. In part due to the long delay in processing request 18-213, FWW submitted another FOIA request on August 3, 2019.

24. The request sought “[a]ll records, including all correspondence, memos, notes of telephone calls, electronic messages, transcripts, minutes and notes of meetings and/or other memorializations, including those to and from agents and assigns pertaining to the agency’s processing of FOIA request 18-203[sic].” It also sought expedited processing.

25. In a letter dated September 16, 2019, the Defendants indicated that on September 3, 2019, they received this request, 19-508, seeking records pertaining to 18-213. The letter also indicated it had granted expedited processing.

26. The Defendants were required to respond to FWW’s request no later than October 1, 2019.

27. The Defendants have not responded to FWW’s request nor provided any responsive records.

28. The Defendants have not indicated that exceptional circumstances exist that would merit an extension of the deadlines for its determination either on the request.

D. FOIA request 2019-519

29. On September 6, 2019, FWW submitted a third request pertaining to the Defendants’ NSIS rules.

30. As detailed in FWW’s subsequent appeal, the request was the culmination of months of back-and-forth discussions with the Defendants to get them to release records that FWW

believed were responsive to items 7 and 18 of request 18-513, either as that request was originally written and subsequently clarified, or alternatively amended by FWW in a July 26, 2019, correspondence.

31. As detailed in the following paragraphs, the history of this request reflects the dilatory and obstructionist tactics that Defendants have employed in processing FWW's requests related to the NSIS rules. Defendants would release some information, without much explanation of how it was responsive, which would force FWW to seek clarification. The Defendants would not respond. Instead, it would release new information that it claimed was actually responsive. This cycle, with slight modifications, occurred four separate times prior to the Defendants' ultimate denial of the request.

32. Items 7 and 18 were as follows:

7) To the extent that any exist, any records that show the sorting and condemnation rates in the five HIMP and 21 non-HIMP facilities for [Calendar Year ("CY")] 2014-2017, as the agency's Hog HIMP Report provided for CY 2012-2013 in Table 3-7; and to the extent that no such records already exists, any records in spreadsheet form that detail the number of carcasses sorted and condemned at the five HIMP and 21 non-HIMP facilities for CYs 2014-2017.

* * *

18) Any records identifying the 40 swine slaughter plants the agency expected to opt into the New Swine Slaughter Inspection System, along with all inspection data, microbiological and residue testing, and food safety assessments for these plants dating from CY 2006 to present.

33. By its terms, item 7 sought the number of animals and carcasses that slaughter-plant employees sort in the plants that modeled the NSIS rules and traditional plants, as well the numbers of animals and carcasses that were condemned as adulterated in both types of plants.

34. On April 27, 2018, a few days before the proposed-NSIS-rules comment period closed, Defendants released some data in an attempt to respond to item 7 of request 18-213. But

the production ostensibly pertaining to this item did not provide any explanation about how the various data points in the released spreadsheet entailed either the numbers of animals or carcasses condemned or sorted. The released spreadsheet also indicated that Defendants had redacted the numbers of animals slaughtered in the plants.

35. On December 20, 2018—after a meeting that FWW had with the Defendants’ FOIA office about its delinquency in responding to much of FWW’s 18-213 request, in general, as well as the deficiencies in producing records responsive item 7, in particular—FWW asked that the agency provide the aggregate hog-head counts for each year for all of the plants to avoid the confidentiality issues that the agency claimed for item 7.

36. On April 10, 2018, having not received any other records pertaining to item 7, including aggregate numbers, FWW asked if the information in one of the columns (Column J) of the spreadsheets that Defendants had already provided a year earlier, on April 27, 2018, was responsive to item 7 of FWW’s request and included the numbers of animals sorted. The agency never responded to this inquiry.

37. On April 12, 2019, Defendants requested that FWW narrow the scope of item 18 in the 2018-213 request, which pertains to data about all plants that the agency expected to operate under NSIS (whereas item 7 only pertained to a 21-comparator set of plants).

38. On April 15, 2019 FWW made clear what it wanted for all such plants, including the 21 plants mentioned in item 7, if it had not already been provided:

Total number of carcasses sorted and condemned for those 14 plants. I believe that you have already provided the information for the hog HIMP and 21 non-hog HIMP comparator set in column J of a spreadsheet titled “FOIA 2018-213_Part7_March 16, 2018_Redacted,” but I have not heard confirmation of this. If this is incorrect, then we want it for all 40 plants.

39. On May 1, 2019, the Defendants produced a second spreadsheet that it indicated was responsive to item 7, as amended to be responsive to item 18. It included the data requested for all plants expected to adopt NSIS and aggregated the number of animals slaughtered in plants Defendants explained:

Also included on all tabs are the number [of animals/carcasses] sorted by the establishments ante-mortem and post-mortem; the number of suspects [animals] identified by the establishments; and the number of FSIS ante-mortem and post-mortem condemnations.

40. The spreadsheet had two columns labeled “EstUSSuspects” that contained data for model plants, but none for the traditional plants. FWW believed that this was the number of animals placed in “U.S. Suspect” pens. These are pens that animals suspected of disease are placed prior to slaughter. On May 4, 2019, FWW sent an email asking for clarification on why there was no “U.S. Suspect” data for traditional plants.

41. On May 9, 2019, the Defendants responded by saying that it was providing additional information and re-releasing the data.

42. On May 10, 2019, Defendants released the third spreadsheet with the explanation:

FSIS added the # of EstUSSuspects to the original 21 non-HIMP plants and to the 35 non-HIMP plants. The animals that are placed in the suspect pens are examined by FSIS PHV for the final determination on its disposition. This is not affected by HIMP/non-HIMP status.

43. On May 23, 2019, FWW publicly released and submitted an extensive analysis of this “U.S. Suspect” data to the agency. It found that fewer animals per year per plant with symptoms of disease were tagged as U.S. Suspect in model plants annually, compared to traditional plants. FWW requested that Defendants consider this as they determined whether to finalize the NSIS rules, since the data show that symptomatic animals in pilot plants were not receiving the same level of attention as they were in traditional plants.

44. Defendants never responded to this letter, but more than full month later on June 27, 2019, Defendants indicated that they were re-doing the production for items 7 (as amended to be responsive to item 18). When FWW asked why, the Defendants indicated that there was a labeling issue. The agency also indicated that “things have to be cleared by additional people now which seems to be taking a longer than expected[,]” suggesting that programmatic staff were involved in the review and production.

45. On July 26, 2019, Defendants released a fourth spreadsheet ostensibly responsive to item 7 in order to correct the labeling issue. Gone from the database was any column labeled “EstUSSuspects” for either the model plants or the traditional plants. The Defendants had replaced this with a column for the model plants labeled “U.S. Subject.” The spreadsheet also had a column ostensibly detailing post-mortem dispositions, but it did not have similar data for ante-mortem. The Defendants explained the problems with the earlier spreadsheet:

In the previous release, the Agency inadvertently mislabeled the column headings in the Excel document that contained disposition information. The “EstU.S.Suspect” column on the tab for HIMP establishments should have been labeled as “EstUSSubject”. The “Est U.S. Suspect” column on the tab for traditional inspection plants should have been labeled as “Total Dispositions.”

The “EstUSSubject” column represents the number of market swine sorted into the “Subject” pen in a HIMP establishment.

46. In response, FWW sent two emails asking for clarification on the same day:

this explanation fails to make any sense. The agency has provided no data for “U.S. Suspects” for either type of plant. Why is this? It surely tracks them, and my previous email amended my request to include this data . . .

you claim the “U.S. Suspects” in the first release should have been labeled “total dispositions.” This is highly suspicious at worst end extremely sloppy at best. Please send me the dispositions numbers, [antemortem] and [postmortem], for HIMP and non-HIMP plants. Plus, we need the “U.S. Suspect” numbers for both types of plant. Please consider our prior request so clarified and amended.

47. On July 31, 2019, Defendants asked for a clarification of what precise records FWW was seeking.

48. FWW responded on the same day:

We need “US Suspect” numbers for the HIMP and non Himp plants. I thought this was an obvious part of our request from our prior emails, but insofar It wasn’t thus far made [*sic*] clear, then consider our request now so amended. We also need the disposition numbers for antemortem inspection. This is needed to substantiate the claim that the prior “US suspect” numbers were errantly labeled and were really disposition numbers. The agency’s explanation indicates that it has produced this information but it only produced the post-mortem dispositions

49. The agency indicated that it understood our request via email the same day.

50. On August 7, 2019, a news reporter from the New York Times informed FWW that a Defendant staff member had told the reporter that the analysis that FWW had compiled and submitted on May 23, 2019, was incorrect because Defendants had provided FWW the wrong data. The Defendants did not provide the correct data to the reporter or indicate how it was otherwise able to make this determination.

51. On August 13, 2019, the Defendants indicated that it would be releasing the U.S. Suspect and disposition data “soon.”

52. On August 30, 2019, the Defendants indicated that FWW would need to submit an additional FOIA request because the information sought was outside of the scope of FWW’s original request. But the agency indicated that it would use FWW’s July 26, 2019 email as this request.

53. FWW responded by email on the same day, among other things. clarifying that it also wanted the total disposition numbers:

Four points

1. You *did* previously provide us the “US Suspect” numbers, and you did so because you interpreted an earlier email from me as amending our original request to ask for them. You gave us what you later explained are the wrong numbers. But regardless of your error, this response was an admission that you read our previous email as amending the request and you complied with it. The email you cut and pasted below requested this information again. Regardless, you are more than 20 days late on all of these requests.
2. Your office or someone from FSIS told the NY Times that you gave us the wrong data. If you were confident enough to know that you gave us the right data, you have easy access the right data. if you have it, you can give it to us promptly. Your delay on this is unwarranted.
3. The email you copied [*sic*] below also includes a request for disposition numbers. We asked for this because the agency indicated that what it had errantly labeled was the “US Suspect” numbers were in fact disposition numbers, but then it did not give us any ante-mortem disposition numbers to in fact verify this is true. Again, since you have release [*sic*] the post-mortem disposition numbers and referenced releasing the total disposition numbers, you obviously believe that this is responsive to the request, and is an admission that we do not need to file a new request.
4. We want the “U.S. Suspect” numbers and the disposition numbers, and am tired of getting run around on this. If you cannot promptly provide us this information (like in the next couple of days), please let me know and we will take this through more formal avenues.

54. In a separate telephone conversation, the Defendants indicated that they would process this as a separate request and do so expeditiously.

55. The Defendants sent a formal acknowledgement of this request in a letter dated September 16, 2019. The letter indicated that the request was dated September 6, 2019, received on September 9, 2019, and sought “records regarding all the ‘US Suspect numbers for the HIMP and non HIMP plants from 2006-2017.’”

56. What followed for the next five weeks were a series of emails from the Defendants indicating that they were processing the request. In a separate conversation, the Defendants indicated that they might not be able to provide the data from the model plants without first compiling the data from plants out in the field. FWW suggested that the Defendants release all

of the data (for some years or plants) that it could ,as soon as it could, but the Defendants then recanted and indicated that they *did track this information* and did not need to collect it from the field.

57. On September 20, 2019 the Defendants indicated that they were still working on pulling the data for the model plants.

58. On September 24, 2019, the Defendants indicated that they would have the data “in the next couple of days”

59. On September 27, 2019, the Defendants indicated that they were doing a quality check of the data.

60. Then, without any explanation whatsoever, on Friday, October 4, 2019, at 6:15pm ET, the Defendants suddenly stopped this process and issued a final denial letter: “Please be advised that FSIS does not track the data you requested. Therefore, a search by knowledgeable staff in FSIS failed to locate any data that would be responsive to your request.”

61. On Monday, October 7, 2019, FWW filed an appeal via email, which among other things, clarified that the organization was seeking disposition numbers, that the request was filed no later than July 26, 2019, and that it was subject to expedited processing. Further, FWW argued that the Defendants had indicated that it tracked the data.

62. Even without expedited processing, the Defendants were required to respond to FWW’s appeal no later than November 6, 2019.

63. On November 1, 2019, Defendants sent an email acknowledging that it had received the appeal on October 8, 2019.

64. The Defendants have not responded to FWW’s October 8, 2019 appeal.

65. The Defendants have not indicated that exceptional circumstances exist that would merit an extension of the deadlines for its determination either on the request or the appeal.

E. FWW's FOIA request dated October 7, 2019

66. On the same day that FWW submitted its October 7, 2019 appeal for FOIA request 19-519, it emailed another FOIA request seeking “[a]ll records, including all correspondence, memos, notes of telephone calls, electronic messages, transcripts, minutes and notes of meetings and/or other memorializations, including those to and from agents and assigns pertaining to the agency’s processing of FOIA request 2019-00519.” FWW’s request sought expedited processing.

67. The Defendants have never acknowledged receipt of this request nor assigned it a number.

68. The Defendants were required to respond to FWW’s request for expedited processing no later than October 22, 2019.

69. The Defendants have not responded to FWW’s request for expedited processing.

70. Regardless of expedited processing, the Defendants were required to respond to FWW’s request no later than November 5, 2019.

71. The Defendants have not responded to FWW’s request nor provided any responsive records.

72. The Defendants have not indicated that exceptional circumstances exist that would merit an extension of the deadlines for its determination either on the request or the appeal.

V.

First Claim for Relief

**Defendants Have Violated FOIA by Failing to Respond
to FWW's Request 18-213.**

73. FWW re-alleges and incorporates by reference the allegations set forth in paragraphs 1-72 in the complaint as if fully set forth herein.

74. Under FOIA, “[e]ach agency, upon any request for records . . . shall . . . determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of . . . such determination and the reasons therefor . . . and . . . the right of such person to appeal to the head of the agency” 5 U.S.C. § 552(a)(6)(A)(i)(I)-(III)(aa).

75. Defendants were required to respond to FWW's request no later than March 23, 2018.

76. Defendants never notified FWW of its determination regarding their request.

77. FWW exhausted its administrative remedies by filing a timely appeal.

78. Therefore, Defendants have violated FOIA by failing to respond to FWW's request.

VI.

Second Claim for Relief

**Defendants Have Violated FOIA by Failing to Disclose Records
Responsive to FWW's Request 18-213.**

79. FWW re-alleges and incorporates by reference the allegations set forth in paragraphs 1-78 in the complaint as if fully set forth herein

80. Under FOIA “each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.” 5 U.S.C. § 552(a)(3)(A).

81. FWW’s request reasonably described the agency records it sought and was made in accordance with Defendants’ rules and procedures.

82. An agency shall process as soon as practicable any request for records to which the agency has granted expedited processing. *Id.*, §552(a)(6)(E)(iii).

83. The Defendants granted FWW expedited processing for request 18-213.

84. The Defendants have effectively denied the request by failing to provide all responsive documents as soon as practicable.

85. FWW exhausted its administrative remedies by filing a timely appeal.

86. There is no legal justification for Defendant to withhold the requested records.

87. Therefore, the Defendants have violated FOIA by failing to disclose the requested records.

VII.

Third Claim for Relief

Defendants Have Violated FOIA by Failing to Respond to FWW’s Request 19-508.

88. FWW re-alleges and incorporates by reference the allegations set forth in paragraphs 1-87 in the complaint as if fully set forth herein.

89. Defendants were required to respond to FWW’s FOIA 19-508 request no later than October 1, 2019.

90. Defendants never notified FWW of its determination regarding their request.

91. FWW exhausted its administrative remedies under 5 U.S.C. § 552(a)(6)(C)(i) because Defendants have failed to meet the applicable 20-day deadline for providing a response.

92. Therefore, Defendants have violated FOIA by failing respond to FWW's request.

VIII.

Fourth Claim for Relief

Defendants Have Violated FOIA by Failing to Disclose Records Responsive to FWW's Request 19-508.

93. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1-92 in the complaint as if fully set forth herein.

94. FWW's request 19-508 reasonably described the agency records it sought and was made in accordance with Defendants' rules and procedures.

95. The Defendants granted the Plaintiff expedited processing for request 18-508.

96. The Defendants have effectively denied the request by failing to provide all responsive documents as soon as practicable.

97. FWW exhausted its administrative remedies under 5 U.S.C. § 552(a)(6)(C)(i) because Defendants have failed to meet the applicable 20-day deadline for providing a response.

98. There is no legal justification for the Defendants to withhold the requested records.

99. Therefore, the Defendants have violated FOIA by failing to disclose the requested records.

IX.

Fifth Claim for Relief

**Defendants Have Violated FOIA by Failing to Disclose Records
Responsive to FWW's Request 19-519.**

100. FWW re-alleges and incorporates by reference the allegations set forth in paragraphs 1-99 in the complaint as if fully set forth herein.
101. FWW's request 19-519 reasonably described the agency records it sought and was made in accordance with Defendant's rules and procedures.
102. The Defendants denied the request.
103. FWW exhausted its administrative remedies by filing a timely appeal.
104. There is no legal justification for Defendants to withhold the requested records.
105. Therefore, the Defendants have violated FOIA by failing to disclose the requested records.

X.

Sixth Claim for Relief

**Defendants Have Violated FOIA by Failing to Respond
to FWW's FOIA Request dated October 7, 2019.**

106. FWW re-alleges and incorporates by reference the allegations set forth in paragraphs 1-105 in the complaint as if fully set forth herein.
107. Defendants were required to respond to FWW's FOIA requested dated October 7, 2019, no later than November 5, 2019.
108. Defendants never notified FWW of its determination regarding their request.
109. FWW exhausted its administrative remedies under 5 U.S.C. § 552(a)(6)(C)(i) because Defendants have failed to meet the applicable 20-day deadline for providing a response.

110. Therefore, Defendants have violated FOIA by failing respond to FWW's request.

XI.

Seventh Claim for Relief

Defendants Have Violated FOIA by Failing to Disclose Records Responsive to FWW's FOIA Request dated October 7, 2019.

111. FWW re-alleges and incorporates by reference the allegations set forth in paragraphs 1-110 in the complaint as if fully set forth herein.

112. FWW's request dated October 7, 2019 request reasonably described the agency records it sought and was made in accordance with Defendants' rules and procedures.

113. The Defendants have effectively denied the request by failing to provide all responsive documents as soon as practicable.

114. FWW exhausted its administrative remedies under 5 U.S.C. § 552(a)(6)(C)(i) because Defendants have failed to meet the applicable 20-day deadline for providing a response.

115. There is no legal justification for Defendants to withhold the requested records.

116. Therefore, Defendants have violated FOIA by failing to disclose the requested records.

XII.

Eighth Claim for Relief

Defendants' Policy or Practice of Not Releasing Or Delaying the Release of Records Pertaining to NSIS Violates FOIA.

117. FWW re-alleges and incorporates by reference the allegations set forth in paragraphs 1-116 in the complaint as if fully set forth herein.

118. It is Defendants' policy or practice to withhold or delay the release of records pertaining to NSIS.

119. Defendants have applied this policy or practice in refusing to release or delay the release of records that FWW has requested.

120. This policy or practice is not permitted under FOIA.

121. Therefore, Defendants' policy or practice violates FOIA by unlawfully withholding and delaying the release of responsive records that are required to be released under FOIA.

XIII.

Relief Requested

WHEREFORE, FWW respectfully requests that this Court:

- A. Declare as unlawful Defendants' failure to disclose all records responsive to FWW's FOIA request 18-213;
- B. Declare as unlawful Defendants' failure to disclose all records responsive to FWW's FOIA request 19-508;
- C. Declare as unlawful Defendants' failure to disclose all records responsive to FWW's FOIA request 19-518;
- D. Declare as unlawful Defendants' failure to disclose all records responsive to FWW's FOIA request dated October 7, 2019.
- E. Declare as unlawful the Defendants' policies or practices pertaining to the release of NSIS records;
- F. Order Defendants to expeditiously provide all the records requested by FWW;
- F. Exercise close supervision over Defendants while they provide all responsive records;
- G. Award Plaintiff its costs and reasonable attorney's fees pursuant to 5 U.S.C. § 552(a)(4)(E); and

