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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

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CLERK-SANTA FE

NUCLEAR WATCH NEW MEXCO,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF  
ENERGY, NATIONAL NUCLEAR  
SECURITY ADMINISTRATION,

Defendant.

GNV-06-221 BB/WPL

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**I. INTRODUCTION**

1. This is an action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, to compel release of agency records unlawfully withheld from the Plaintiff by the Albuquerque Service Center of the National Nuclear Security Administration (NNSA), a sub-agency within the United States Department of Energy (DOE). This suit seeks to compel DOE/NNSA to produce records sought in FOIA requests submitted to the agency by Plaintiff on December 22, 2004, April 21, 2005, and October 14, 2005. Plaintiff's FOIA requests sought, in pertinent part, NNSA agency records consisting of the Ten Year Comprehensive Site Plans (TYCSPs) prepared for the Los Alamos National Laboratory (LANL) for the years 2003, 2004, 2005 and 2006.

**II. JURISDICTION AND VENUE**

2. This court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

3. Venue in this court is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

### III. PARTIES

4. Plaintiff NUCLEAR WATCH NEW MEXICO (“Nuclear Watch”) is an organization based in Santa Fe, New Mexico, and a project of the Southwest Research and Information Center (SRIC), a 501(c)(3) nonprofit corporation located in Albuquerque and incorporated in the State of New Mexico. Nuclear Watch’s mission is to provide timely and accurate information to the public on nuclear issues in New Mexico and the Southwest. Through the resulting empowerment of effective citizen action, Nuclear Watch seeks to promote both greater safety and environmental protection at regional nuclear facilities, and federal policy changes that encourage international efforts to curb the proliferation of nuclear weapons. Nuclear Watch particularly focuses its efforts on monitoring the activities of the Los Alamos National Laboratory (LANL).

5. Nuclear Watch maintains an award-winning web site ([www.nukewatch.org](http://www.nukewatch.org)) that receives approximately 420,000 hits or 78,000 visits a year, and provides near-daily posts LANL-related information for the public benefit. For the last six years, Nuclear Watch has mailed its quarterly newsletter to approximately 2,000 people and organizations, the majority of which are located in northern New Mexico. That newsletter always contains Lab-related information. Nuclear Watch also airs bi-weekly cable access TV shows, which frequently address LANL-related issues. The members of Nuclear Watch’s Steering Committee and staff work and reside within 25 geographical miles of LANL, regularly attend meetings and hearings in Los Alamos, and commonly recreate in the Jemez Mountains around the Lab.

6. Defendant UNITED STATES DEPARTMENT OF ENERGY (DOE), through the NNSA, is responsible for overseeing the operations of LANL. LANL is a government-owned, contractor-operated facility of the NNSA, which is a semi-autonomous sub-agency within the DOE responsible for management of the nation’s nuclear weapons facilities. DOE, through the NNSA, is responsible for responding to FOIA requests made to it concerning records regarding LANL’s operations and activities and therefore is sued as a Defendant in this action.

### IV. FACTS

7. LANL is a government-owned, contractor-operated facility of the NNSA. LANL’s main mission is nuclear weapons research, testing, production and maintenance, with an increasing emphasis on possible new designs. The NNSA requires each of its seven sites, including LANL, to prepare Ten Year Comprehensive Site Plans (TYCSPs) every federal fiscal year. These plans then largely form the basis for the NNSA’s Congressional Budget Request for its nuclear weapons activities for the following fiscal year. In the NNSA’s own words:

The site TYCSPs are the foundation for the strategic planning for the physical [nuclear weapons] complex, incorporating the programs' technical requirements, performance measures, budget and cost projections within the funding constraints of the approved Future-Years Nuclear Security Program (FYNSP).... [FYNSP contains 5-year budget projections.]

Uses of the TYCSP..... 7. Facilitates assessment of the current status of the facilities and infrastructure within the NNSA complex to support the Nuclear Posture Review (NPR)'s focus on Responsive Infrastructure; ... 9. Establishes realistic planning for, and execution toward, the intended NNSA [nuclear weapons] complex of the future; ... 13. Defines the high-level linkages among weapons workload and production capability with facility requirements; ... 14. Provides the foundation for development of an Integrated Site Plan/Enterprise Plan for the NNSA nuclear weapons complex... (NNSA FY06 TYCSP Guidance, December 2004, pp. 1 & 3-4.)

8. There is strong national public interest in obtaining unclassified information concerning the NNSA's operation of and planning for the nation's nuclear weapons complex, including LANL, which in the past has caused massive environmental degradation and potential threats to the public's health, safety, and welfare. The public interest includes obtaining information concerning both the present facilities that NNSA operates now, and the future nuclear weapons complex that NNSA is responsible for planning and executing. There is strong public interest in the nuclear weapons policies enunciated in the 2001 Department of Defense/DOE Nuclear Posture Review (NPR), which the TYCSPs are intended to support. Some key issues in the NPR are future new-design nuclear weapons, the "Responsive Infrastructure" that will design and produce them, and the future composition of the nuclear arsenal and the research and production complex that will support it.

9. There is also a very strong public interest in northern New Mexico over the future of LANL, for which the Lab's annual TYCSPs are probably the best unclassified indicators. In addition, the LANL TYCSPs are consistently listed as primary reference documents in LANL's various public risk analyses required by the National Environmental Policy Act for new "major federal actions." Furthermore, the LANL TYCSPs are integral to the DOE's cleanup efforts at the Lab, a subject in which there is clearly a strong and compelling public interest. In November 2003, LANL prepared and released to interested parties a draft cleanup plan that stated:

The risk-based end-state vision describes cleanup goals that would be protective under the planned future uses described in two planning documents. The first is LANL's *Ten Year Comprehensive Site Plan*, which describes NNSA's facility and operations over a 10-year planning window; the second is *Land Transfer Report to Congress under Public law 105-119...* The Proposed Risk-Based End-State Vision for Completion of the EM Cleanup Mission at LANL, pre-decisional draft, LANL, November 2003, p. 1/11. (Italics in the original.)

10. Notwithstanding the obvious and compelling public interest in obtaining non-classified information concerning these aspects of LANL's operations and activities, under NNSA's current policies, the

TYCSPs are apparently not made available to the public, except in heavily redacted form, even though those plans have never been characterized by NNSA as “classified” agency records to which the public should be denied access under the FOIA. In fact, in the not-so-distant past NNSA has made copies of the FY2000 and FY2001 TYCSPs for LANL available to the public with no redactions whatsoever. The FY2000 plan was made available on the world wide web at [www.lanl.gov/csp2000](http://www.lanl.gov/csp2000). In addition, Nuclear Watch received a completely unredacted copy of the FY2001 TYCSP for LANL after repeated requests to the NNSA’s Los Alamos Site Office, without even having to submit a FOIA request to the agency.

11. On December 22, 2004, Nuclear Watch sent a request for information under the FOIA to the FOIA Officer in NNSA’s Albuquerque Service Center. The request sought, among other agency records which are not at issue in this litigation, the TYCSPs prepared for LANL for the years 2003, 2004, and 2005. Nuclear Watch’s FOIA request also contained a request for a fee waiver for any costs associated with processing the request.

12. On December 27, 2004, the NNSA’s FOIA Officer sent Nuclear Watch a confirmation that the agency had received the December 22 FOIA request on December 23, 2004.

13. On April 21, 2005, in an effort to expedite NNSA’s processing of its original FOIA request, Nuclear Watch submitted two additional separate FOIA requests to the FOIA Officer in NNSA’s Albuquerque Service Center which again sought the TYCSPs prepared for LANL for the years 2004 and 2005.

14. On April 22, 2005, the NNSA’s FOIA Officer sent Nuclear Watch a confirmation that the agency had received the April 21 FOIA requests, but which indicated that the agency would continue working on the December 2004 FOIA request which Nuclear Watch had previously submitted for the TYCSPs prepared for LANL for the years 2003, 2004, and 2005.

15. On October 14, 2005, the NNSA’s FOIA Officer sent Nuclear Watch a confirmation that the agency was still working on the December 2004 FOIA request for the TYCSPs prepared for LANL for the years 2003, 2004, and 2005. The NNSA’s FOIA Officer also acknowledged that the agency had received Nuclear Watch’s verbal request on that same date for the TYCSP prepared for LANL for the year 2006. The NNSA’s response stated that the agency would add that request to the scope of the December 2004 FOIA request.

16. On October 20, 2005, NNSA sent Nuclear Watch a letter which, in pertinent part, stated that the agency had still not “received” copies of the TYCSPs prepared for LANL for the years 2003, 2005, and 2006. The NNSA’s letter did, however, reference and include a severely redacted copy (more than 40%) of the TYCSP prepared for LANL for the year 2004. Unfortunately, and contrary to the explicit requirements of the FOIA,

the NNSA's letter completely failed to discuss or justify the basis for the agency's apparent determination that it was justified in withholding the substantial amounts of information redacted from that document. The NNSA's letter also specifically deferred making any determination on the fee waiver sought in conjunction with Nuclear Watch's FOIA request.

17. On November 16, 2005, Nuclear Watch submitted an appeal to the Director of DOE's Office of Hearings and Appeals challenging the NNSA's October 20, 2005 decision to release a copy of the 2004 LANL TYCSP without any stated justification or legal basis for the redaction of more than 40% of the information contained in that document. The appeal also challenged the NNSA's constructive denial of Nuclear Watch's FOIA request for the TYCSPs prepared for LANL for the years 2003 and 2005.

18. On December 12, 2005, the DOE's Assistant Director for the agency's Office of Hearings and Appeals issued a response to Nuclear Watch's FOIA appeal. The DOE's response acknowledged that the appeal challenged NNSA's provision of a redacted version of the 2004 TYCSP because it contained no description of the withheld portions or justification for the withholdings. DOE's response also acknowledged that the appeal challenged NNSA's failure to issue a determination regarding the remaining LANL TYCSPs for the years 2003, 2005, and 2006 within the FOIA's statutory time limit. However, the DOE's response to Nuclear Watch's FOIA appeal further stated that it had contacted the NNSA's Albuquerque Service Center and had concluded that the agency had not actually issued a determination regarding the applicability of the FOIA to the unredacted 2004 TYCSP because the NNSA purportedly believed that Nuclear Watch had expressed a "willingness" to accept the heavily-redacted "publicly-available" version of that document. The DOE's response took the position that the NNSA had therefore not actually "denied" Nuclear Watch's FOIA request. On that basis, DOE's response dismissed the appeal in its entirety, and remanded the FOIA request to the NNSA to "continue processing" the request for the 2004 TYCSP, as well as for the additional TYCSP's sought in Nuclear Watch's FOIA request "under the FOIA."

19. Since the time Nuclear Watch submitted its original December 22, 2004 FOIA request to NNSA, and subsequent to the date that the DOE dismissed Nuclear Watch's November 16, 2005 FOIA appeal on December 12, 2005, Nuclear Watch has communicated numerous times with the agency's FOIA Officer for the agency's Albuquerque Service Center in an effort to determine when the NNSA would issue the required determination on its FOIA request for the TYCSPs prepared for LANL for the years 2003, 2004, 2005, and 2006. However, as of the date that this action was filed, Plaintiff Nuclear Watch has not received any notice from the NNSA of any determination on its FOIA request for any of the four TYCSPs sought in its FOIA

requests to the agency.

## V. CAUSE OF ACTION

20. The FOIA, 5 U.S.C. § 552(a)(6)(A)(i) requires any agency to which a FOIA request has been made to make a determination on the request within twenty working days, and to immediately notify the person making the request of the determination and the agency's reasons for the determination.

21. The FOIA requires the Defendant to provide the records that the Plaintiff requested and Defendant has failed to do so. The FOIA requires the Defendant to make a determination on Plaintiff's request within twenty working days and to provide the requested information and Defendant has failed to do so.

## VI. CLAIM FOR RELIEF

22. Because of these violations, Defendant has improperly withheld agency records from Plaintiff in violation of the FOIA within the meaning of 5 U.S.C. § 552(a)(4)(B).

23. Plaintiff is adversely affected by Defendant's failure to provide the required information under the FOIA because without that information Plaintiff cannot inform the public concerning the subject of the request, which will contribute significantly to the public's understanding of the operations or activities of the government.

24. 5 U.S.C. § 552(a)(6)(C) states in relevant part that: "Any person making a request to any agency for records . . . shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph."

25. The FOIA gives this court jurisdiction to order Defendant to provide Plaintiff with the records he has requested pursuant to 5 U.S.C. § 552(a)(4)(B).

26. This court may assess reasonable attorneys fees against the United States if the Plaintiff substantially prevails in this action pursuant to 5 U.S.C. § 552(a)(4)(E).

## VII. REQUEST FOR RELIEF

27. FOR THESE REASONS, Plaintiff respectfully requests that this court enter judgment providing the following relief:

a. Declare that Defendant UNITED STATES DEPARTMENT OF ENERGY has improperly withheld agency records from Plaintiff by: 1) failing to provide the requested information, and 2) failing to comply with the procedural time limits established by the FOIA;

b. Direct by injunction that the Defendant immediately provide Plaintiff with the records it has requested;

c. Grant Plaintiff its costs of litigation, including reasonable attorneys fees as provided by the FOIA, 5 U.S.C. § 552(a)(4)(E); and

d. Provide such further relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED,

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