

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

Frente Unido Pro-Defensa del Valle de Lajas A non-profit corporation with its principal place of business in Lajas, Puerto Rico Dr. Carlos Alfredo Vivoni-Remus Spokesperson for the Frente Unido Pro-Defensa del Valle de Lajas Plaintiffs v. National Oceanic and Atmospheric Administration, A component of the United States Department of Commerce Defendant	Civ. No. 25-
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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

NOW COME the Frente Unido Pro-Defensa del Valle de Lajas, through nd its spokesperson, **Carlos Alfredo Vivoni-Remus**, and presents this Complaint for Declaratory and Injunctive Relief, pursuant to the Freedom of Information Act, 5 USC section 552 et seq., to order the defendant agency to

provide full access to public records to which the plaintiff is entitled regarding the project to “restore” the lagoon in the Lajas Valle in Puerto Rico, including but not limited to the submission which was made to the Federal Funding Opportunity which gave rise to the decision by the National Oceanographic and Atmospheric Administration (NOAA) to fund the project to restore the Guánica Lagoon and thereby flood critical agricultural lands.

In support of the relief requested in this Complaint, the plaintiff respectfully states as follows:

A. Introduction

1.1 Plaintiff Frente Unido Pro-Defensa del Valle de Lajas (hereinafter, the Frente”), a non-profit corporation which has worked for decades to protect farmlands and develop sustainable agriculture in Puerto Rico, so as to provide food security for the people of Puerto Rico, and its spokesperson, Dr. Carlos Alfredo Vivoni-Remus seek documents regarding the referenced project.

1.2 Despite multiple attempts to obtain the referenced documents, and in the absence of a long-overdue response to an agency appeal presented by the plaintiffs in late 2024, NOAA has provided only partial disclosures, with critical information so heavily redacted to make it impossible to attain any understanding of the disclosures.

1.3 Plaintiffs maintain that the records are subject to required disclosure under the Freedom of Information Act (“FOIA”) and that the public interest in

disclosure significantly outweighs any conceivable interest in withholding this information, as the project has substantial implications for agricultural land in Puerto Rico, which is of the utmost importance for food security in Puerto Rico.

1.4 To date, the defendant has not provided plaintiffs with critical portions of the documents requested by the Frente and Dr. Vivoni pursuant to the FOIA request. Defendant's failure to disclose and produce the complete records violates the FOIA. Because of Defendant's disregard for the FOIA requirements, the Frente and the people of Puerto Rico have been deprived of important information about the plans for the lagoon restoration in Lajas, and the flooding of local agricultural lands.

1.5 Plaintiffs bring this action seeking declaratory relief that NOAA is in violation of FOIA, and injunctive relief, requiring the agency to release the complete information to which plaintiffs are clearly entitled.

B. Jurisdiction and Venue

2.1 This Court has subject-matter jurisdiction over this matter pursuant to the FOIA, 5 U.S.C. § 552 et seq and 5 USC § 552(a)(4)(B), as well as the general federal question set forth in 28 U.S.C § 1331. Plaintiffs' request for declaratory and other relief is properly subject to this Court's subject-matter jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(F) and 28 2201(a), and 2202.

2.2 This is the proper venue for this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 2.3 U.S.C. § 1391(b)(1), (b)(2), and (e)(1). The venue provision

for claims under FOIA provides that complaints can be brought in the district court of the United States in the district in which the complainant resides, or has [its] principal place of business, or in which the agency records are situated, or in the District of Columbia. 5 U.S.C. § 552(a)(4)(B).

2.3 The plaintiff Frente is incorporated in Puerto Rico and has its principal place of business in this district. The individual plaintiff, Carlos Alfredo Vivoni-Remus, spokesperson for the Frente, resides in Puerto Rico

2.4 Because Defendant has failed to comply with the applicable time-limit provisions of FOIA, with respect to the intra-agency appeal process, as well as the overall request, this Court must deem the Frente to have constructively exhausted their administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i), entitling it to this judicial action enjoining the agency from continuing to withhold agency records and ordering the production of agency records improperly held.

C. Parties

Plaintiffs

3.1 The **Frente Unido pro Defensa del Valle de Lajas**, a non-profit corporation founded in 1995, is a pro-conservation organization which has worked for over three decades to protect agricultural lands in the Lajas Valley (hereinafter “the Valley”), so as to assure a better quality of life for the residents on the area. Its street address is in San Germán Puerto Rico, and its mailing

address is in Lajas, Puerto Rico. Its resident agent is Dr. Carlos Alfredo Vivoni, in Lajas, Puerto Rico.

3.2 The work of the Frente focuses on the protection of agricultural lands and education in the community, academia and in legislative and adjudicative forums with the goal of protecting agricultural lands, so as not to lose this precious non-renewable resource critical to the people of Puerto Rico.

3.3 An example of the work of the Frente to protect agricultural lands in Puerto Rico is its leading role in the promotion of community involvement in opposition to as the establishment of radar antennas by the United States military, which were planned to occupy some 1,000 acres of irrigated lands of the Valley, as well as the provision of professional expertise to analyze the projection.

3.4 The Frente has also offered counsel to both Municipal legislative bodies and the Puerto Rico Legislative Assembly with respect to the approval of important environmental legislation in Puerto Rico, promoting community participation and the protection of farmland. A prominent example is the approval of Law 277-1999, which protects agricultural lands from elimination.

3.5 The Frente has presented legal actions before pertinent judicial forums. An example is the successful effort by the Frente, in conjunction with professional groups, to prevent the development of an urbanization of some 400 residences in irrigated farmland in the Valley, eventually leading to an Opinion of the Supreme Court of Puerto Rico by virtue of which a Regulation of Special

Zoning for the Agricultural Reserves of the Lajas Valley was declared invalid. *See, Junta de Planificación de Puerto Rico v. Frente Unido Pro Defensa del Valle de Lajas, et al, 2005 TSPR 117.*

3.6 The Frente's standing to question governmental efforts which threaten farmland in the Lajas Valley has been recognized by the Supreme Court of Puerto Rico. *Id.*

3.7 Largely due to work carried out by the Frente in administrative, legislative and judicial forums, the Planning Board of Puerto Rico rectified the delimitation of the Agricultural Reserve of the Lajas Valley.

3.8 For the last several election cycles, the Frente has called on candidates to commit to the protection of agricultural lands and has educated the public about the positions taken by candidates on this issue, publishing extensive analysis regarding the protection of farmlands, the Land Use Plan for Puerto Rico, and renewable energy proposals, and the positions taken by candidates with respect thereto.

3.9 The Frente is represented herein by its spokesperson, plaintiff **Carlos Alfredo Vivoni-Remus**, a retired professor and employee of the Servicio de Extensión Agrícola of the University of Puerto Rico and, like the Frente, a resident of Puerto Rico.

Defendant National Oceanic and Atmospheric Administration

3.10 Defendant **National Oceanic and Atmospheric Administration (NOAA)**, established in 1970, is a component agency of the United States Department of Commerce.

3.11 It is headquartered in Washington, D.C. and is an agency within the meaning of 5 U.S.C. § 552(f)(1).

3.12 NOAA has regulatory, operational, and information service responsibilities with respect to weather forecasts, severe storm warnings, and climate monitoring to fisheries management, coastal restoration and supporting marine commerce.

3.13 The agency leads such efforts through research programs, vessels, satellites, science centers, laboratories and analysis by experts.

3.14 Defendant NOAA has custody and control over the records the Frente seeks to make publicly available under 5 U.S.C § 522(a)(2).

D. The Project to Restore the Guánica Lagoon

4.1 On April 21, 2023, the then Vice President of the United States announced that NOAA was funding several environmental projects in Puerto Rico.

4.2 One of the projects to receive funding of up to \$7.4 million dollars was the organization Protectores de Cuencas, Inc. (hereinafter, “Protectores”), for the purpose of “Restoring the Historic Guánica Lagoon to Reduce Land-based Sources of Pollution in a Priority Watershed in Puerto Rico”; funded by the Transformational Habitat Restoration and Coastal Resilience Grants.

4.3 This project was selected by NOAA on the basis of a written submission by Protectores in response to a notice of Federal Funding Opportunity. According to NOAA, it was selected for funding by a competitive process, after undergoing a technical and merit review process.

4.4 Public participation in this process is critical to the project design, as described in correspondence with NOAA. According to NOAA, stakeholder meetings with concerned groups such as the local agricultural community, including farmers, should provide opportunities for Protectores, the grantee, to share project information with and solicit feedback from a range of community members.

4.5 NOAA has stated that the input from concerned stakeholders such as the Frente, will help to establish a “strategy for restoring the Guánica Lagoon while taking into account stakeholder feedback.”

4.6 Although the Frente and Protectores both carry out important ecological work in Puerto Rico, they differ with respect to the re-establishment of a lagoon on agricultural lands in the Lajas Valley.

4.7 The Frente represents the agricultural sector which would be most significantly affected by artificially creating the lagoon and flooding significant amounts of the farmland which remains in Puerto Rico.

4.8 Despite its status as a major stakeholder with respect to the flooding of lands in the Lajas Valley, the agricultural sector was not consulted before Protectores submitted their project to NOAA.

4.9 The Frente previously expressed its opposition to proposals to re-establish the lagoon and eliminate these agricultural lands.

4.10 It has been some seventy (70) years since the lagoon was drained. The draining was part of the “Proyecto del Suroeste” (Southwest Project), a multi-million project led by agencies of the United States and Puerto Rico, for the purpose of improving agricultural productivity, preventing flooding of nearby communities, through the construction of irrigation and drainage infrastructure.

4.11 The Southwest Project increased agricultural productivity, reduced soil salinity levels, and improved the overall economy of the area. The area became one of only four irrigation districts in Puerto Rico, thus it is a major important agricultural production area.

4.12 The geographical area where the lagoon was located is now part of the Lajas Valley Agricultural Reserve, and it is identified in Puerto Rico’s Land Use Plan of 2015. The area is classified by the USDA-NRCS as “Prime farmland if

irrigated and reclaimed of excess salt and sodium.” Under Puerto Rico law, other uses or the elimination of such agricultural lands are not permitted.

4.13 In the last sixty (60) years, approximately seventy percent (70%) of farmland has been lost. This loss is reflected in the fact that some eighty-five percent (85%) of food is imported in Puerto Rico.

4.14 The protection of farmlands in Puerto Rico is critical to avoid food insecurity for the population of Puerto Rico. Agriculture in Puerto Rico is very vulnerable to shocks and stresses due to climate extremes, with many farmers going out of business due to limited financing and reduced land accessibility.

4.15 The Frente opposes any funding for projects, by NOAA or any other entity, if reflooding of the area where the lagoon existed signifies the clear and significant loss of agricultural land.

4.16 Despite the Frente’s interest in being heard with respect to the loss of agricultural lands provoked by the contemplated flooding of the area, and despite NOAA’s stated commitment to community participation, the defendant agency has withheld from the Frente major portions of the file containing the submission by Protectores in response to a notice of Federal Funding Opportunity.

E. The FOIA request, the exemptions, and the unanswered appeal

5.1 On May 11, 2024, Dr. Vivoni, spokesperson for the non-profit Frente, submitted a duly completed on-line request for all documents related to NOAA’s

Sponsored project entitled “Restoring the Historic Guánica Lagoon to Reduce Land-based Sources of Pollution in the priority Watershed in Puerto Rico.” *See, Exhibit 1.*

5.2. The request, which was designated as being for non-commercial or educational purposes, was submitted on an expedited basis, since, according to the plaintiff, Protectores de Cuencas “is working rapidly to achieve the ‘restoration’ and the agricultural sector needs to understand the full scope of the project.”

5.3 Dr. Vivoni noted in his FOIA request that Protectores had resisted when asked to share the proposal with the Frente.

5.4 The FOIA request was assigned Number DOC-NOAA 2024-00491, and the agency indicated that the expected completion date would be June 19, 2024. *See, Exh. 2.*

5.5 It was not until August 28, 2024, that NOAA responded to the FOIA request, partially denying the same while providing some documentation.

5.6 Large portions of the documents were redacted to the point of making it impossible to discern any content in those parts. *See, Exh. 3.*

5.7 The redactions were based on exceptions (b)(4) and (b)(6) of FOIA, 5 USC sec. 552(b)(4) and (b)(6), which provisions exempt from disclosure

confidential or commercial information, and private information about individuals within “personnel and medical files, and similar files.”

5.8 On September 12, 2024, in response to an inquiry by Dr. Vivoni, a NOAA representative informed him that although “the final decision for all redactions were [sic] made by NOAA; however, the Originator (grantee) [i.e. Protectores] was afforded an opportunity to provide NOAA with any redactions they could justify in accordance with the FOIA and 15 CFR sec. 4.9.” *See, Exh. 4.*

5.9 On November 18, 2024, the plaintiffs presented to the agency an appeal of the partial denial of their FOIA request. *See, Exh. 5.* The appeal was assigned case tracking number DOC-InfoLaw-2025-000023.

5.10 In their appeal, the plaintiffs asserted *inter alia* that the asserted exemptions did not apply.

5.11 For non-trade-secret information to qualify under Exemption 4, an agency must establish that the information is: “(1) commercial or financial, (2) obtained from a person, and (3) privileged or confidential.” The “information must be commercial “in and of itself,” meaning it “serves a ‘commercial function’ or is of a commercial nature.”

5.12 For its part, Exemption 6 protects personal privacy interests by Exemption number 6, which permits the government to withhold all information about individuals in “personnel and medical files and similar files” when the

disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy."

5.13 Despite the limited nature of this exemption, it was used by NOAA in response to this FOIA request to redact the names of persons who will participate in the project, as well as the authors of the academic and scientific references provided by Protectores in support of its proposal.

5.14 In their appeal, plaintiffs requested NOAA to consider the impact of documents which they had independently obtained from the Puerto Rico Department of Natural Resources and the Municipality of Guánica, both of which had endorsed the Protectores project for the re-establishment of the Guánica lagoon.

5.15 An initial analysis of the released documents raised the possibility that the submissions to the Puerto Rico entities and to the federal agency, NOAA, were not identical. This suggests that the locally procured endorsements may be vitiated, as they may have been based on incomplete information, which, in and of itself, is a matter of concern, and which also undermines any conceivable claim of confidentiality.

5.16 In their intra-agency appeal, plaintiffs also pointed out that there were portions of locally produced documents which appear to be identical to *redacted* portions of the FOIA disclosures. The information revealed by the Puerto Rico entities demonstrates the inapplicability of the exemptions claimed.

5.17 As an example, plaintiffs included in their appeal, a timeline table, included in both the (redacted) federal FOIA disclosure and the disclosures provided by the Puerto Rico entity:

The federal disclosure, with the (b)(4) exemption

(S) timeline

A summary and timeline of the proposed project activities:

Activity	Estimated Start Date	Estimated End Date
Kick-off meeting and work plan	(b) (4)	(4)
Project surveys		
Outreach and coordination		
Land management agreement		
Final design		
Final environmental compliance and permitting		
Guánica Lagoon restoration		
Wetland reforestation		
Irrigation and maintenance		
Pre- and post-implementation monitoring		
Interim reports		
Final report		

The Puerto Rico disclosures:

(S) timeline

Proposed project activities are:

Activity	Estimated Start Date	Estimated End Date
Kick-off meeting and work plan	March 1, 2023	March 15, 2023
Project surveys	March 15, 2023	May 15, 2023
Outreach and coordination	April 1, 2023	February 1, 2026
Land management agreement	March 15, 2023	September 15, 2023
Final design	May 15, 2023	November 1, 2023
Final environmental compliance and permitting	November 1, 2023	March 1, 2024
Guánica Lagoon restoration	March 1, 2024	February 28, 2025
Wetland reforestation	March 1, 2024	February 28, 2025
Irrigation and maintenance	March 1, 2024	February 28, 2026
Pre- and post-implementation monitoring	February 1, 2024	February 28, 2026
Interim reports	April 2023	October 2025
Final report	November 1, 2025	February 28, 2026

5.18 The information obtained from Puerto Rico governmental entities demonstrates the folly of the (b)(4) and (b)(6) exemption assertions made by NOAA. Such matters as a timetable are not entitled to redaction. The fact that Protectores made the disclosure to the Puerto Rico agencies also further undermines any conceivable claim of confidentiality.

5.19 All of the above lends credit to the conclusion, as alleged in the intra-agency appeal, that NOAA did not exercise its own judgment or independent scrutiny but rather relied on the judgment of Protectores as it pertained to the redactions of the documents.

5.20 Although the applicable rules provide for input from the proposing entity, in this case Protectores, the agency must exercise its own independent judgment regarding appropriate redactions.

5.21 Under FOIA, NOAA had twenty (20) working days (excluding Saturdays, Sundays, and federal holidays), after November 18, 2024, to decide the appeal, unless the agency extended the deadline for up to ten (10) working days.

5.22 The agency response to plaintiffs' appeal was due no later than twenty (20) working days after the appeal, on or before December 17, 2024.

5.23 The agency has not informed the Frente or Dr. Vivoni of any request to extend the time limit.

5.24 After the deadline expired, plaintiffs' representative contacted the agency-designated FOIA representative, Allyson Detrick, who is the Chief of the Information Division of the Office of General Counsel of the United States Department of Commerce.

5.25 On one occasion, Ms. Detrick stated that the Department of Commerce was waiting for input from the proponent of the Project, Protectores, before deciding the appeal.

5.26 The Frente's representative again questioned the undue reliance on a third party to assert unjustifiable redactions.

5.27 On other occasions, phone calls from the undersigned simply went unanswered.

5.28 Pursuant to the 2016 Freedom of Information Act Improvement Act (FIA), there is a presumption in favor of disclosure. "An agency may withhold information only if the redacted material falls within an exemption of FOIA **and** at least one of two additional requirements are met: (i) the agency reasonably foresees that disclosure would harm an interest protected by an exemption described in subsection (b); or (ii) disclosure is prohibited by law." 5 U.S.C. § 552(a)(8)(A)(i)(I)-(II).

CLAIM FOR RELIEF

6.1 Plaintiffs repeat the allegations in the foregoing paragraphs and incorporate them as though fully set forth herein.

6.2 Plaintiffs properly requested records within the possession, custody, and control of Defendant, an agency subject to FOIA,

6.3 Defendant has improperly invoked exemptions to disclosure, which are unjustified and has improperly withheld responsive records.

6.4 Defendant has failed for several months to respond to the appeal filed by the plaintiffs.

6.5 Due to defendant's failure to respond to Plaintiffs' FOIA appeal within the time period required by law, as well as plaintiffs' affirmative steps to question the agency determinations, Plaintiffs have constructively exhausted their administrative remedies and seek immediate judicial review.

6.6 Plaintiffs have the right to the requested records, and the public interest will be served by the requested disclosures.

6.7 Plaintiffs are entitled to injunctive and declaratory relief requiring Defendants to promptly provide the requested documents, with no redactions whatsoever.

WHEREFORE, plaintiffs respectfully request that this Court:

a. Declare that defendant's failure to disclose the complete records responsive to plaintiffs' request is unlawful;

b. Order defendant to expeditiously release all responsive records, and enjoin defendant from improperly withholding records;

c. Award Plaintiffs reasonable attorneys' fees and other litigation costs incurred in this litigation; and

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

Dated: November 5, 2025

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