

**FILED**

AUG 17 2007

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

NANCY MAYER WHITTINGTON, CLERK  
U.S. DISTRICT COURT

DAMON ELLIOTT 31034-037

U.S.P. P.O. BOX 26030

BEAUMONT, TX. 77720,

Plaintiff,

v.

Case: 1:07-cv-01491

Assigned To : Kollar-Kotelly, Colleen

Assign. Date : 8/17/2007

Description: FOIA/PRIVACY ACT

UNITED STATES POSTAL SERVICE

475 L'ENFANT PLAZA S.W.

WASHINGTON, D.C. 20260,

Defendant.

JUDICIAL REVIEW COMPLAINT

Plaintiff exhausted his administrative remedy under the F.O.I.A. see attach

The Chief Counsel stated: " there were no responsive records on certified mail # 7000 1530 0003 8065 4468."

Plaintiff consider the letter to be a denial of his right of access pursuant to the F.O.I.A. to any Postal Service records and seek judicial review, because plaintiff have the certified mail receipt as proof of delivery.

What records were searched by whom, and through what process?

**RECEIVED**

AUG 08 2007

NANCY MAYER WHITTINGTON, CLERK  
U.S. DISTRICT COURT

Elliott Damon 31034-037

F.C.C. U.S.P.

P.O. Box 1034

Coleman, Fl. 33521

April 5, 2007

RE: CERTIFIED MAIL RECEIPT

NO: 7000 1530 0003 8065 4468

Dear U.S. Postal Service:

I mail out postage prepaid certified mail in 2001 of September and I want to purchase the documents, and/or any other records responsive to my request.

*Sincerely,*

*Elliott Damon*

RECORDS OFFICE



May 02, 2007

Elliott Damon  
Federal Correctional Complex  
PO BOX 1034  
Coleman, FL 33521

RE: FOIA Case No. 2007-FPRO-00353

Dear Mr. Damon:

This is in response to your request for records dated April 5, 2007, pursuant of the Freedom of Information Act. A search for the requested records yield no results. Please see the attached documents of the search.

If you interpret this as denial, you have the right to appeal this response by writing to the Chief Counsel, Customer Protection and Privacy, United States Postal Service, 475 L'Enfant Plaza, SW, Room 6138, Washington, DC 20260, within 30 days of the date of this letter. The letter of appeal should include a statement about the action or failure to at being appealed, the reasons why it is believed to be erroneous, and the relief sought, along with copies of your original request, this letter, and any other related correspondence.

Sincerely,

A handwritten signature in cursive script that reads "Alice M. Parks".

ALICE M PARKS  
Consumer Research Analyst



[Home](#) | [Help](#)

[Track & Confirm](#)

## Track & Confirm

### Search Results

Label/Receipt Number: 7000 1530 0003 8065 4468

There is no record of this item.

[Track & Confirm](#)

Enter Label/Receipt Number.

### Why Are You Receiving This Message?

1. Event information may not be available if your item was mailed recently. Please try again later.
2. The number was entered incorrectly. Be sure to enter all of the letters and numbers as they appear on your mailing label or receipt.



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Damon Elliott 31034-037  
United States Penitentiary  
P. O. Box 26030  
Beaumont, Tx. 77720

May 30, 2007

RE: FOIA APPEAL

FOIA Case No. 2007-FPRO-00353

Certified Receipt No. 7000 1530 0003 8065 4468

Dear Chief Counsel:

I interpret the response a denial because I mailed out a postage prepaid certified letter in 2001 of September and I have the return receipt as merchandise to prove it.

I ask for a search of records, and I want to purchase the documents, and/or any other records responsive to my request.

I make this declaration under the substitute of taking an oath, declaring under the penalty of perjury that the above is true and correct.

*Sincerely*

*Damon Elliott*

CORPORATE LAW



*CERTIFIED MAIL – RETURN RECEIPT REQUESTED*

June 26, 2007

Mr. Elliott Damon  
Federal Correctional Complex  
P.O. Box 1034  
Coleman, FL 33521-1034

Freedom of Information Act and Privacy Act Appeal 07-092

Dear Mr. Damon:

This responds to your letter dated May 30, 2007, which was received by this office on June 4, 2007. In your letter you appeal the "no records" response from the U.S. Postal Service pursuant to your request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

As background, by letter dated April 5, 2007, you requested "the documents and/or any other records" relating to a letter that you state was mailed in September 2001 and marked as certified mail #7000 1530 0003 8065 4468. By letter dated May 2, 2007, Ms. Alice Parks, Consumer Research Analyst, notified you that there were no responsive records. She enclosed a copy of a Track and Confirm report stating that "[t]here is no record of this item." After consulting with responsible persons in our Records Office, we consider that the search conducted in response to your request was appropriate. We uphold the initial determination that there are no responsive records to your request.

As information, the FOIA generally requires government agencies to disclose reasonably described "records" within their possession. However, the FOIA contains several exemptions that permit agencies to withhold certain records. See 5 U.S.C. § 552(b)(1)-(9). To qualify as agency records under the FOIA, requested materials must be created or obtained by an agency, and they must be within the agency's possession and control at the time the FOIA request is made. Department of Justice v. Tax Analysts, 492 U.S. 136, 144-45 (1989).

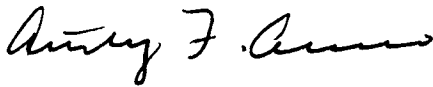
Under the FOIA, agencies are required only to conduct searches reasonably calculated to discover requested records. See, e.g., Safecard Servs., Inc. v. Sec. and Exch. Comm'n, 926 F.2d 1197, 1201 (D.C. Cir. 1991). Speculation that records may exist does not require an agency to search for records that have not been located through a reasonable search. Id. In this instance, a "Track and Confirm" computer search report was provided as a courtesy to provide proof that the

responsive records do not exist. The Postal Service retains records for a period of time as prescribed under a system of records. The Postal Service retains domestic mail delivery records for one year and domestic mail acceptance receipt records for two years. These requirements are consistent with the retention and disposal procedures in USPS System of Records 840.000, Customer Mailing and Delivery Instructions, and USPS System of Records 820.200, Mail Management and Tracking Activity. See Handbook AS-353 Appendix, Section E, Part 8. Because there are no responsive records, we do not consider this to be a denial of your right to access to Postal Service records pursuant to the FOIA. The absence of records does not, however, constitute a denial of records.

For the reasons stated above, we do not consider this letter to be a denial of your right of access pursuant to the FOIA to any Postal Service records. Nevertheless, we are required to inform you that the Act provides that you may seek judicial review of this decision by bringing suit for that purpose in the United States District Court for the district in which you reside or have your principal place of business, the district in which the records are located, or in the District of Columbia.

Thank you for your interest.

For the General Counsel,



Anthony F. Alverno  
Chief Counsel  
Customer Programs

cc: Ms. Parks  
Ms. Eyre

CORPORATE LAW



***CERTIFIED MAIL – RETURN RECEIPT REQUESTED***

July 10, 2007

Mr. Elliott Damon 31034-037  
United States Penitentiary  
P.O. Box 26030  
Beaumont, TX 77720-6030

RE: Freedom of Information Act Appeal: 07-089

Dear Mr. Damon:

The enclosed letter dated June 26, 2007, which responds to your Freedom of Information Act (FOIA) appeal, was returned to our office because your identification number was inadvertently omitted from the letter. We are accordingly enclosing a copy with this correspondence. I apologize for any inconvenience.

Thank you for your interest.

For the General Counsel,

A handwritten signature in cursive script, appearing to read "Anthony F. Alverno".

Anthony F. Alverno  
Chief Counsel  
Customer Programs

Enclosure