

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

MARTIN H. GARVEY  
11 School Street, Apt. 11  
Clinton, NJ 08809

Plaintiff

v.

U.S. DEPARTMENT OF JUSTICE  
600 E Street, N.W.  
Washington, DC 20530

Defendant

C.A. No.

**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 which seeks the disclosure and release of agency records improperly withheld from plaintiff by defendant U.S. Department of Justice (DOJ). This is a proceeding in equity.

**Jurisdiction and Venue**

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the defendant 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 Martin Garvey is an adult citizen of the State of New Jersey.

4. Defendant DOJ is a Department within the Executive Branch of the United States Government.

**Relevant Background**

5. On January 29, 2008, Federal Grand Jury No. 07-703, S.D. Fla., indicted Michael Lauer, Martin Garvey, Milton Barbarosh, Laurence Isaacson, and Eric Hauser for stock fraud. *United States v. Lauer et al.*, No.08-20071-Cr.-AJ, S.D.Fla.

6. The district court ordered the proceedings and trial of Garvey and Lauer severed from those of their codefendants.

7. In subsequent and separate trials Lauer and Garvey were acquitted in 2011 and Isaacson was convicted. Isaacson's conviction is presently on appeal in the United States Court of Appeals for the Eleventh Circuit.

8. The Government concealed the existence of certain relevant and important documents that are the subject of this FOIA action.

9. The disclosure of the alleged conflict of interest and the alleged investigation of the conflict did not take place until after the acquittal of Lauer and Garvey.

**FOIA Request**

10. Garvey seeks copies of four documents in this action:

- a. The signed and unredacted indictment in *United States v. Lauer et al.*, No.08-20071-Cr.-AJ, S.D.Fla., filed by Grand Jury No. 07-703, S.D. Fla.
- b. The document reflecting or revealing the vote of the grand jurors in ¶ 9(a).
- c. The request for a formal ethics opinion by the Assistant United States Attorney assigned to *United States v. Lauer, supra*, Harold Schimkat, to the General Counsel at the Executive Office for United States Attorneys (or other person) referenced in DE 1223 in *United States v. Lauer, supra*. The request for the ethics opinion related to conflicts of interest arising out of the employment of Mr. Schimkat's spouse at the law firm of Carlton Fields.

d. The actual ethics opinion issued by the General Counsel at the Executive Office for United States Attorneys (or other person) identified in ¶ 9(c).

**Plaintiff's FOIA Request and Defendant's Failure to Comply Timely**

10. On September 20 & 24, 2013, plaintiff filed two FOIA requests with Executive Form DOJ-361, to Ms. Susan Gerson, Assistant Director, Executive Office for United States Attorneys, Freedom of Information & Privacy Staff, 600 E Street, N.W., Suite 7300, Washington, DC 20530-0002, for the four documents described above. Plaintiff offered to pay the reasonable expenses of providing the documents requested.

11. On October 22, 2013, defendant confirmed receipt of the two requests as No. 13-3567 and No. 13-3568.

12. When more than twenty working days passed without a responsive answer, plaintiff mailed a follow-up letter dated December 3, 2013 to the above-described person and address pointing out the department's delinquency.

13. When more than twenty additional working days passed without a responsive answer, plaintiff sent a third letter on January 6, 2014, once again pointing out the department's delinquency. More than twenty working days have transpired since plaintiff's third letter.

14. The DOJ has not refused the request for the documents plaintiff requests, has not requested further information from plaintiff, has not provided the documents plaintiff requests, and has not provided a date certain when it will decide whether or not to provide the documents plaintiff requests, notwithstanding the FOIA's requirement of an agency or department response within twenty working days, and plaintiff's efforts.

15. Plaintiff has exhausted the applicable administrative remedies with respect to his FOIA request.

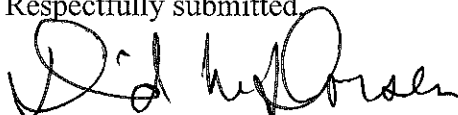
16. The DOJ has wrongfully withheld the requested records from plaintiff.

**Requested Relief**

WHEREFORE, plaintiff prays that this Court:

- A. Order defendant to produce the requested records in their entireties and make legible and unredacted copies available to plaintiff or, if the documents do not exist, so state;
- B. Provide for expedited proceedings in this action;
- C. Award plaintiff his costs and reasonable attorneys' fees incurred in this action; and
- D. Grant such other relief as this Court may deem just and proper.

Respectfully submitted,



DAVID M. DORSEN  
D.C. Bar No. 199653  
2900 K Street, N.W.  
Suite 500  
Washington, DC 20007  
202 204-3706  
Dorsen35@aol.com

February 10, 2014

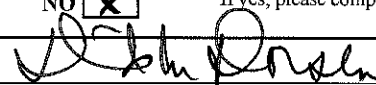


<input type="radio"/> <b>G. Habeas Corpus/ 2255</b>  <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> <b>H. Employment Discrimination</b>  <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation)  *(If pro se, select this deck)*	<input type="radio"/> <b>I. FOIA/Privacy Act</b>  <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act)  *(If pro se, select this deck)*	<input type="radio"/> <b>J. Student Loan</b>  <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> <b>K. Labor/ERISA (non-employment)</b>  <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ref. Inc. Security Act	<input type="radio"/> <b>L. Other Civil Rights (non-employment)</b>  <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> <b>M. Contract</b>  <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> <b>N. Three-Judge Court</b>  <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

**V. ORIGIN**  
 1 Original Proceeding  
  2 Removed from State Court  
  3 Remanded from Appellate Court  
  4 Reinstated or Reopened  
  5 Transferred from another district (specify)  
  6 Multi-district Litigation  
  7 Appeal to District Judge from Mag. Judge

**VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)**  
 5 U.S.C. § 552; SEEKING DOJ RECORDS UNDER FOIA

<b>VII. REQUESTED IN COMPLAINT</b>	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	DEMAND \$ _____	JURY DEMAND: YES <input type="checkbox"/> NO <input type="checkbox"/>
<b>VIII. RELATED CASE(S) IF ANY</b>	(See instruction)	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	If yes, please complete related case form

DATE: 02/11/2014	SIGNATURE OF ATTORNEY OF RECORD: 
------------------	---

**INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44**  
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I.** COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III.** CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV.** CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI.** CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII.** RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT  
for the

MARTIN H. GARVEY

Plaintiff

v.

U. S. DEPARTMENT OF JUSTICE

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

U. S. DEPARTMENT OF JUSTICE  
ATTORNEY GENERAL OF THE UNITED STATES  
950 PENNSYLVANIA AVE., N. W.  
WASHINGTON, DC 20530

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

DAVID M. DORSEN, ESQ.  
SUITE 500  
2900 K ST., N.W.  
WASHINGTON, DC 20007

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Clerk or Deputy Clerk

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT  
for the

MARTIN H. GARVEY  
Plaintiff

v.

Civil Action No.

U.S. DEPARTMENT OF JUSTICE  
Defendant

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

U.S. DEPARTMENT OF JUSTICE  
CIVIL PROCESS CLERK  
UNITED STATES ATTORNEY  
555 4TH ST, N.W.  
WASHINGTON, DC 20530

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

DAVID M. DORSEN, ESQ  
SUITE 500  
2900 K ST, N.W.  
WASHINGTON, DC 20007

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Clerk or Deputy Clerk