

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division

MICCOSUKEE TRIBE OF INDIANS
OF FLORIDA, a sovereign nation and
Federally recognized Indian tribe,

Case No. _____

Plaintiff,

vs.

U.S. DEPARTMENT OF JUSTICE, and its
components the OFFICE OF TRIBAL JUSTICE,
OFFICE OF INFORMATION POLICY,
EXECUTIVE OFFICE FOR UNITED STATES
ATTORNEYS, OFFICE OF THE INSPECTOR
GENERAL, and OFFICE OF PROFESSIONAL
RESPONSIBILITY

Defendants.

_____ /

COMPLAINT FOR INJUNCTIVE RELIEF

COMES NOW, Plaintiff, the Miccosukee Tribe of Indians of Florida (hereinafter, the Miccosukee Tribe”) by and through its undersigned counsel and brings this action under the Freedom of Information Act, 5 U.S.C. §552 *et seq.*, for injunctive relief and other appropriate relief and seeking the immediate disclosure and release of agency records previously requested and improperly withheld from the Miccosukee Tribe by the Defendants, the U.S. Department of Justice (hereinafter, the “DOJ”), and its components the Office of Tribal Justice, Office of Information Policy, Executive Office for United States Attorneys, Office of the Inspector General, and Office of Professional Responsibility. In support thereof the Miccosukee Tribe states as follows:

JURISDICTION AND VENUE

1. This Court has both subject matter jurisdiction over this suit and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552 (a)(4)(B) and 552 (a)(6)(E)(iii). This Court also has federal question jurisdiction pursuant to 28 U.S.C. §1331.
2. Venue is proper pursuant to 5 U.S.C. § 552 (a)(4)(B), because the Miccosukee Tribe resides in this district and this district is its principal place of business.

PARTIES

3. The Miccosukee Tribe, located in Miami-Dade County, Florida, is a sovereign nation and federally recognized Indian tribe exercising powers of self-governance under a Tribal Constitution approved by the Secretary of the Interior, pursuant to the Indian Reorganization Act of 1934, 25 U.S.C. § 461 *et. seq.*
4. The DOJ is a Department of the Executive Branch of the United States government, and is an agency within the meaning of 5 U.S.C. § 552 (f)(1).
5. Additionally, the DOJ has possession and control over the records that the Miccosukee Tribe seeks.
6. The Office of Tribal Justice is a component of DOJ. *See* 28 C.F.R. §0.134.
7. The Office of Tribal Justice has possession of and control over the records that the Miccosukee Tribe seeks.
8. The Office of Information Policy is a component of DOJ. *See* 28 C.F.R. §0.24.
9. The Office of Information Policy has possession of and control over the records that the Miccosukee Tribe seeks.
10. The Executive Office for United States Attorneys is a component of DOJ. *See* 28 C.F.R. §0.22.

11. The Executive Office for United States Attorneys has possession of and control over the records that the Miccosukee Tribe seeks.
12. The Office of the Inspector General is a component of DOJ. *See* 28 C.F.R. §0.29.
13. The Office of the Inspector General has possession of and control over the records that the Miccosukee Tribe seeks.
14. The Office of Professional Responsibility is a component of DOJ. *See* 28 C.F.R. §0.39.
15. The Office of Professional Responsibility has possession of and control over the records that the Miccosukee Tribe seeks.
16. Guy Lewis (hereinafter, “Mr. Lewis”) was a professional attorney simultaneously representing both the former chairman of the Miccosukee Tribe, Billy Cypress, in his individual capacity, and the Miccosukee Tribe as a governmental entity.

FACTUAL BACKGROUND

17. The Miccosukee Tribe brings this action to enforce the Freedom of Information Act (FOIA), 5 U.S.C. § 552.
18. The Miccosukee Tribe challenges the Department of Justice’s and its components’ failure to produce the records in response to the Miccosukee Tribe’s FOIA Requests.
19. The FOIA requests sought agency records that detail any investigations, internal inquiries, disciplinary actions, or reprimands of Mr. Lewis, who served as a former Director of the Executive Office of U.S. Attorneys from the time period of 2002 through 2004.
20. The information sought in the Miccosukee Tribe’s FOIA requests is needed for the reasons stated in the requests, as well as other reasons not stated, and is essential for the two pending lawsuits filed by the Miccosukee Tribe against Mr. Lewis, in order to adequately prosecute him. A copy of the First Amended Complaint for the *Miccosukee Tribe v. Cypress*,

Case No. 13-35956-CA-40 (Fla. 11th Cir. Ct. 2013) and the Complaint for the *Miccosukee Tribe v. Lewis Tein*, Case No. 12-12816-CA-40 (Fla. 11th Cir. Ct. 2012)¹ is attached herein as **Composite Exhibit 1**².

21. The Miccosukee Tribe will not be able to obtain these relevant records through any other means.

22. The lawsuits filed by the Miccosukee Tribe against Mr. Lewis are to redress wrongful conduct by Mr. Lewis, which was detrimental to the Miccosukee Tribe with respect to the money and property belonging to the Miccosukee Tribe and its People.

23. The Miccosukee Tribe has alleged in the aforementioned lawsuits that Mr. Lewis's intentional wrongful actions against the Miccosukee Tribe and its People have resulted in the loss of millions of dollars.

24. The Miccosukee Tribe has alleged in the aforementioned lawsuits that Mr. Lewis misrepresented and concealed to the Miccosukee Tribe the reason for his termination from employment from the DOJ, which the Miccosukee Tribe believes involved travel malfeasance and theft.

25. The Miccosukee Tribe alleged in the aforementioned lawsuits that Mr. Lewis was hired by the Miccosukee Tribe as a result of the above misrepresentation.

26. The Miccosukee Tribe has alleged in the aforementioned lawsuits that Mr. Lewis engaged in the same pattern of misconduct, including travel malfeasance and theft, against the Miccosukee Tribe and its People.

¹ The Case of the *Miccosukee Tribe v. Lewis Tein*, Case No. 12-12816-CA-40 (Fla. 11th Cir. Ct. 2012), was dismissed on December 16, 2013. The court granted Lewis Tein's Motion for Summary Judgment and in the alternative dismissed the case for lack of subject matter jurisdiction. However, the Miccosukee Tribe has filed an appeal of this case with the Florida Third District Court of Appeal.

² The complaints that make up **Composite Exhibit 1** are being filed without the corresponding exhibits as a result of the restriction on file size when uploading to the CM/ECF.

27. As the chief law enforcement department of the United States government, the DOJ is charged by law with carrying out the legal duties and responsibilities of the United States as trustee for Indian Tribes, including the Miccosukee Tribe.

28. The United States' Office of Tribal Justice has the legal obligation to act as the point of contact within the DOJ to listen to the concerns of Indian Tribes, such as the Miccosukee Tribe, and other parties interested in Indian affairs and to communicate the DOJ's policies to the Tribes and the public.

MICCOSUKEE TRIBE'S FOIA REQUEST

29. By letter dated July 14, 2012, the Miccosukee Tribe submitted a FOIA request to the FOIA/PA Specialist of the DOJ's Office of the Inspector General for: (1) Agency records that detail any Department of Justice investigation, or any other internal inquiry of Mr. Lewis for alleged wrongdoing in his capacity as Director of the Executive Office of U.S. Attorneys; (2) Agency records that detail the findings of such an investigation or any other internal inquiry; (3) Agency records that detail any recommended disciplinary actions related to a Department of Justice investigation, or any other internal inquiry, of Mr. Lewis for alleged wrongdoing in his capacity as Director of the Executive Office of U.S. Attorneys; and (4) Agency records of any disciplinary actions, reprimands, or related actions taken by the Department of Justice against Mr. Lewis during his tenure at the EOUSA Executive Director. Such letter was sent via certified mail, with return receipt requested. A copy of this letter is attached as **Exhibit 2**.

30. By letter dated July 16, 2012, the Miccosukee Tribe submitted a FOIA request to the FOIA/Privacy Staff of the DOJ's Executive Office for United States Attorneys for: (1) Agency records that detail any Department of Justice investigation, or any other internal inquiry, of Mr. Lewis for alleged wrongdoing in his capacity as Director of the Executive Office of U.S.

Attorneys; (2) Agency records that detail the findings of such an investigation or any other internal inquiry; (3) Agency records that detail any recommended disciplinary actions related to a Department of Justice investigation, or any other internal inquiry, of Mr. Lewis for alleged wrongdoing in his capacity as Director of the Executive Office of U.S. Attorneys; and (4) Agency records of any disciplinary actions, reprimands, or related actions taken by the Department of Justice against Mr. Lewis during his tenure at the EOUSA Executive Director. Such letter was sent via certified mail, with return receipt requested. A copy of this letter is attached as **Exhibit 3**.

31. By letter dated July 16, 2012, the Miccosukee Tribe submitted a FOIA request to the Chief of Staff of the DOJ's Office of Information Policy for: (1) Agency records that detail any Department of Justice investigation, or any other internal inquiry, of Mr. Lewis for alleged wrongdoing in his capacity as Director of the Executive Office of U.S. Attorneys; (2) Agency records that detail the findings of such an investigation or any other internal inquiry; (3) Agency records that detail any recommended disciplinary actions related to a Department of Justice investigation, or any other internal inquiry, of Mr. Lewis for alleged wrongdoing in his capacity as Director of the Executive Office of U.S. Attorneys; and (4) Agency records of any disciplinary actions, reprimands, or related actions taken by the Department of Justice against Mr. Lewis during his tenure as the EOUSA Executive Director. Such letter was sent via certified mail, with return receipt requested. A copy of this letter is attached as **Exhibit 4**.

32. By letter dated July 16, 2012, the Miccosukee Tribe submitted a FOIA request to the Assistant Counsel and Special Counsel for Freedom of Information and Privacy Acts of the DOJ's Office of Professional Responsibility for: (1) Agency records that detail any Department of Justice investigation, or any other internal inquiry, of Mr. Lewis for alleged wrongdoing in his

capacity as Director of the Executive Office of U.S. Attorneys; (2) Agency records that detail the findings of such an investigation or any other internal inquiry; (3) Agency records that detail any recommended disciplinary actions related to a Department of Justice investigation, or any other internal inquiry, of Mr. Lewis for alleged wrongdoing in his capacity as Director of the Executive Office of U.S. Attorneys; and (4) Agency records of any disciplinary actions, reprimands, or related actions taken by the Department of Justice against Mr. Lewis during his tenure as the EOUSA Executive Director. Such letter was sent via certified mail, with return receipt requested. A copy of this letter is attached as **Exhibit 5**.

33. By letter dated July 18, 2012, the Miccosukee Tribe submitted a FOIA request to the Acting Assistant Director of the DOJ's Office of Tribal Justice FOIA/Privacy Unit: (1) Agency records that detail Office of Tribal Justice collaboration with Mr. Lewis; (2) Agency records that detail Office of Tribal Justice collaboration with the office of AOUSA during the time period of 2002 through 2004; (3) Agency records related to any complaints against the office of AOUSA from Indian Country, individual Native-Americans or Native American Indian Tribes during the time period of 2002 through 2004; (4) Agency records that detail the alleged professional misconduct that led to Mr. Lewis's termination in 2004. Such letter was sent via certified mail, with return receipt requested. A copy of this letter is attached as **Exhibit 6**.

34. By letter dated August 6, 2012, the Office of the Inspector General, a component of the DOJ, acknowledged receipt of the Miccosukee Tribe's FOIA request and assigned the request control number of 12-OIG-215. A copy of this letter is attached as **Exhibit 7**.

35. To date, the Office of Inspector General has not provided the records sought in the Miccosukee Tribe's FOIA request, nor has it provided any answer to such request.

36. By letter dated November 2, 2012, the Office of Professional Responsibility denied the Miccosukee Tribe's FOIA request and assigned the request number of F12-0092. A copy of this letter is attached as **Exhibit 8**.

37. By letter dated December 28, 2012, the Miccosukee Tribe timely appealed the Office of Professional Responsibility's denial of the FOIA request to the DOJ's Office of Information Policy. Such letter was sent via FedEx Priority Overnight. A copy of this letter is attached as **Exhibit 9**.

38. By letter dated January 10, 2013, the Office of Information Policy, a component of the DOJ, acknowledged receipt of the Miccosukee Tribe's administrative appeal and assigned the appeal number of AP-2013-01289. A copy of this letter is attached as **Exhibit 10**.

39. To date, the DOJ and its components have not provided the records sought in the Miccosukee Tribe's FOIA requests.

40. Under 5 U.S.C. § 552 (a)(6)(A)(i) the agency must respond within twenty (20) days.

41. To date, the Office of Information Policy, a component of the DOJ, has not made a determination regarding the denial of the Miccosukee Tribe's FOIA requests.

42. Under 5 U.S.C. § 552 (a)(6)(A)(ii) the agency must make a determination within twenty (20) days of receipt of the appeal.

43. The Miccosukee Tribe has exhausted the applicable administrative remedies, as is required by 5 U.S.C. § 552 (a)(6)(C)(i), with respect to the FOIA requests to the DOJ and its components.

44. The DOJ and its components have wrongfully withheld the requested records from the Miccosukee Tribe.

COUNT I

**VIOLATION OF THE FOIA FOR FAILURE TO EXPEDITE THE PROCESSING OF
THE MICCOSUKEE TRIBE'S REQUESTS**

45. The Miccosukee Tribe realleges and reavers the allegations of paragraphs 1 through 44 of this Complaint as though fully set forth herein.

46. The DOJ and its components have failed to expedite the processing of the Miccosukee Tribe's requests by failing to respond to the Miccosukee Tribe's request as soon as practicable.

47. Approximately a year and half has passed from the time of the Miccosukee Tribe's FIOA request.

48. This is a violation of 5 U.S.C. §552 (a)(6)(E)(iii) of the FOIA.

COUNT II

**VIOLATION OF THE FOIA FOR FAILURE TO MAKE PROMPTLY AVAILABLE
THE RECORDS SOUGHT BY THE MICCOSUKEE TRIBE'S REQUESTS**

49. The Miccosukee Tribe realleges and reavers the allegations of paragraphs 1 through 44 of this Complaint as though fully set forth herein.

50. The Miccosukee Tribe has a statutory right pursuant to 5 U.S.C. §552 (a)(3)(A) to the records requested.

51. The DOJ and its components have failed to promptly make available the records sought in the Miccosukee Tribe's requests.

52. Approximately a year and half has passed from the time of the Miccosukee Tribe's FIOA request.

53. This is a violation of 5 U.S.C. §552 (a)(3)(A) of the FOIA.

COUNT III

**VIOLATION OF THE FOIA FOR FAILURE TO TIMELY RESPOND TO THE
MICCOSUKEE TRIBE'S REQUEST**

54. The Miccosukee Tribe realleges and reavers the allegations of paragraphs 1 through 44 of this Complaint as though fully set forth herein.

55. The DOJ and its components have failed, with the exception of the Office of the Inspector General and Office of Professional Responsibility, to timely respond within twenty (20) days to the Miccosukee Tribe's FIOA requests.

56. This is a violation of 5 U.S.C. §552 (a)(6)(A)(i) of the FOIA.

COUNT IV

**VIOLATION OF THE FOIA FOR FAILURE TO RELEASE THE RECORDS SOUGHT
IN THE MICCOSUKEE TRIBE'S REQUEST**

57. The Miccosukee Tribe realleges and reavers the allegations of paragraphs 1 through 44 of this Complaint as though fully set forth herein.

58. The DOJ and its components have failed to release the records sought in the Miccosukee Tribe's requests.

59. This is a violation of 5 U.S.C. §552 (a)(3) of the FOIA.

RELIEF REQUESTED

WHEREFORE, the Miccosukee Tribe respectfully requests that this Honorable Court grant the following relief:

- A. Order the DOJ and its components to disclose the records and documents requested in the Miccosukee Tribe's FOIA requests, and make copies available to the Miccosukee Tribe;
- B. Provide for expeditious proceedings in this action;

C. Award the Miccosukee Tribe its costs and reasonable attorneys fees incurred in this action, as provided in 5 U.S.C. § (a)(4)(E); and

D. Grant such other relief as this Court may deem just and proper.

Respectfully submitted this February 20, 2014.

s/Bernardo Roman III
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