

UNITED STATES DISTRICT AND BANKRUPTCY COURTS
FOR THE DISTRICT OF COLUMBIA

FILED

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**Clerk, U.S. District and
Bankruptcy Courts**

PLAINTIFF

William S. Price
FRN 19140-045
U.S. Penitentiary Tucson
P.O. Box 24550
Tucson, Arizona 85734

vs.

Civil Action No.

DEFENDANT(S)

U.S. Department of Justice

- a. Executive Office of U.S. Attorneys
600 E Street, Room 7300, N.W.
Washington, D.C. 20037-0001
- b. Federal Bureau of Investigation
170 Marcel Drive
Winchester, Virginia 22602
- c. Office of Information Policy
1425 New York Avenue
Suite 11050, N.W.
Washington, D.C. 20530-0001

Case: 1:14-cv-00847
Assigned To : Leon, Richard J.
Assign. Date : 5/2/2014
Description: FOIA/Privacy Act

COMPLAINT

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**Clerk, U.S. District and
Bankruptcy Courts**



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COMPLAINT FOR INJUNCTIVE RELIEF

1. This action is brought under the Freedom of Information Act ("FOIA"), 5 U.S.C. §552. Plaintiff William S. Price seeks injunctive and other appropriate relief for the processing and release of records requested by Plaintiff involving three federal agencies, all components of Defendant U.S. Dept. of Justice:

- a. Executive Office of United States Attorneys ("EOUSA");
- b. Federal Bureau of Investigation ("FBI"); and
- c. Office of Information Policy ("OIP")

JURISDICTION AND VENUE

2. This court has subject matter jurisdiction over this action, as well as personal jurisdiction over the parties, pursuant to 5 U.S.C. §552(a)(4)(B). Venue lies in this district, also under 5 U.S.C. §552(a)(4)(B).

3. Plaintiff seeks the disclosure of records pertaining to:

- a. Tami Lynn Price; and
- b. searches previously made for the records of Tami Lynn Price

PARTIES

4. Plaintiff William S. Price is a United States citizen, currently incarcerated at the U.S. Penitentiary in Tucson, Arizona.
5. Defendant U.S. Department of Justice, as well as components Executive Office of United States Attorneys ("EOUSA"), Federal Bureau of Investigation ("FBI"), and Office of Information Policy ("OIP") are all "agencies" within the meaning of 5 U.S.C. §552(f).
6. Plaintiff has secured a privacy waiver from Tami Lynn Price, which EOUSA, FBI, and OIP have accepted as valid and authentic.

CLAIMS REGARDING AGENCIES' WITHHOLDING OF RECORDS

7. Plaintiff has submitted requests for records, pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. §552 of two federal agencies: the Executive Office of United States Attorneys ("EOUSA") and the Federal Bureau of Investigation ("FBI"), with subsequent appeals to a third federal agency, the Office of Information Policy ("OIP"). For reasons discussed infra, these federal agencies have failed to meet their obligation to this requester regarding the following FOIA requests:

- a. The Records Of Tami Lynn Price
 1. EOUSA Request No. 11-3818
 - A. FOIA Appeal Subsequent To OIP Appeal No. AP-2012-03451
 2. FBI Request No. 1177991

- b. The Records Of Searches Made Previously
 1. FBI Request No. 1187604
 2. EOUSA Request No. 13-2241
 - A. OIP Appeal No. AP-2012-03280

CAUSE OF ACTION

Violation Of The Freedom Of Information Act By
Wrongly Withholding Agency Records

8. Plaintiff realleges paragraphs 1. through 7.

9. Upon information and belief, the defendant agencies have received Plaintiff's FOIA requests/appeals, as listed in paragraph 7. of this complaint.

10. Each defendant agency has either made an inadequate search for records responsive to Plaintiff's FOIA requests, an inadequate disclosure of such responsive records, or has denied Plaintiff the right to appeal the agency's response.

11. Defendant agencies have violated the applicable time limit for responding to Plaintiff's FOIA request/appeal.
12. Plaintiff has exhausted the applicable administrative remedies.
13. Defendant agencies have wrongfully withheld the requested records from Plaintiff, and have wrongfully denied him the opportunity to appeal an agency response.
14. Defendant agencies have displayed a willful disregard for their duty to Plaintiff under 5 U.S.C. §552 by:
 - a. failing to respond within the allowed time frame to Plaintiff's FOIA request;
 - b. failing to promptly release responsive records to Plaintiff; and
 - c. failing to provide Plaintiff the opportunity to appeal an agency response.
15. Defendant agencies have acted arbitrarily and capriciously by:
 - a. failing to timely respond to Plaintiff's FOIA request;
 - b. knowingly making a false statement in response to Plaintiff's FOIA request; and
 - c. denying Plaintiff his right to appeal an agency response.

DISCUSSION

16. EOUSA Request No. 11-3818, For The Records Of Tami Lynn Price

a. In response to Plaintiff's request for the records of Tami Lynn Price (see Exhibit "A.1 - 3"), EOUSA first states "A search ... has revealed no responsive records ..." (see Exhibit "A.5" ¶2 - EOUSA letter of Dec. 16, 2011). However, upon remand by OIP for "... further review and processing of records located subsequent to your appeal." (see Exhibit "A.8" ¶2 - OIP letter of June 18, 2012), EOUSA found a single page of responsive material, which EOUSA released as their first "supplemental reply" (see Exhibit "A.9" ¶3 & "A.10" - "LIONS-Participant Search"). This document identifies "Tami [Lynn] Price" as a "participant," AUSA Cynthia L. [Phillips] Cordes ("CLC") as the AUSA involved in Ms. Price's participation, and the date this search for responsive records was conducted, "MON, 05-DEC-2011." Importantly, this document also reveals that a "Case Summary" is available ("Move highlight bar to record and press <F3> to GO TO the Case Summary screen."), yet no "Case Summary" was provided to this requester.

b. Plaintiff again appealed EOUSA's response as inadequate, having noted that no Case Summary or other supporting documentation was provided for the "LIONS-Participant Search" record (see Exhibit "A.11"), resulting in a second remand by OIP (see Exhibit "A.13" ¶4) and yet another "supplemental reply" by

EOUSA, consisting of yet another single page - a cover sheet for an entire file titled "United States Attorneys Criminal Complaint" (see Exhibit "A.14"). This second supplemental reply from EOUSA again identifies "Price, Tami [Lynn]," AUSA Cynthia Cordes - maiden name Phillips - ("CP"), as well as "FBI" as the "Gov't Agency" involved with AUSA Cynthia Phillips [Cordes] regarding the participation of Tami [Lynn] Price. Importantly, while this document twice refers to a "file" ("DJ FILE NO." & "THE CONTENTS OF THIS FILE ... "), nothing other than this cover sheet was provided to this requester.

c. Plaintiff asserts that the two supplemental replies of EOUSA (Exhibits "A.10" & "A.14") remain an inadequate response to Plaintiff's FOIA request for the records of Tami Lynn Price. Each released record begs additional supportive documentation; the records describing the initiation and results of Ms. Price's involvement as a "participant," as well as the records describing the reasons AUSA Phillips/Cordes contemplated filing a criminal complaint against Ms. Price for Obstruction of Justice (Exhibit "A.14" at "CODE SECTIONS 18:1501" refers to Title 18 section 1501, "Obstruction Of Justice"). Therefore, it is a reasonable conclusion that additional responsive records do exist, and yet have not been released to this requester.

17. FBI Request No. 1177991 For The Records Of Tami Lynn Price

a. In response to Plaintiff's FOIA request for the records of Tami Lynn Price (see Exhibits "B.1 - B.3"), FBI withheld all responsive records, citing five distinct issues requiring their refusal (see Exhibits "B.5, 6" - FBI December 1, 2011 letter):

1. a Universal Name Index ("UNI") is a law enforcement record, the release of which could reasonably be expected to risk circumvention of the law;
2. the waiver of Plaintiff's right to request these records;
3. compliance with Plaintiff's request would necessitate a creation of records;
4. the requested material does not exist in a readily accessible format; and
5. the requested records are not reasonably described.

b. Universal Name Index ("UNI")

1. Defendant FBI claims it is unable to comply with Plaintiff's request for "printouts of the Universal Name Index ("UNI") ... [because] the material you requested is located in an investigative file which is exempt from disclosure ... " (see Exhibit "B.5" ¶2). Defendant's position is untenable. The UNI is simply a list of potentially responsive files; responsive to the subject's name as subject (main file), or as a reference (reference file).

This list of potentially responsive files is not itself part of any "investigative file," except as the repository of many and various files organized according to the subject's name or referenced name. One might as well purport that the entire FBI is "part of an investigative file," and therefore any files in their possession are "exempt from disclosure." Such a position is unreasonable, and effectively nullifies the Freedom of Information Act regarding FBI records.

2. Importantly, while Defendant refuses Plaintiff's request for a UNI printout, UNI's have already been released by FBI to other FOIA requesters. Requester Seth Rosenfeld received a portion of Ronald Reagan's UNI in response to his litigated FOIA request (Rosenfeld v. DOJ, No. D 07-32402008 WL 3925633 (N.D. Cal. 2008)). Additionally, requester William L. Pickard received his entire UNI from FBI in response to his unlitigated FOIA request. In Changzhou Laosen Group v. United States Customs and Border Protection Bureau, 588 F. Supp. 2d 56, U.S. Dist. LEXIS 7075 Civil Action No. 04-1919 (ESH)(D.D.C. 2005), the court determined that "[r]elease of information under the Freedom of Information Act (FOIA), 5 U.S.C. §552, is a release to the general public, not solely to [the requester]." (id. at "Memorandum Opinion; Legal Analysis; V. Exception 5," ¶2). Therefore, Defendant FBI cannot arbitrarily release records to one requester, having determined such records suitable for public release, and then capriciously deny the same or similar records when requested by another requester. Such a response

is expressly prohibited by 5 U.S.C. §552(a)(4)(F)(i).

3. Comparatively, UNI is to FBI what NADDIS is to DEA. Both UNI and NADDIS are pointer indices used to locate files in which a subject's name appears as subject or as a reference. In Yeager v. DEA, Civil Action No. 76-973, 1979 U.S. Dist. LEXIS 15374 (D.D.C. 1979), the court found NADDIS to be subject to FOIA, ordering a Vaughn Index to be produced by DEA regarding the withheld NADDIS. In making this order, the court stated, "NADDIS is essentially an index ... " (id. at "II. Substantive Records; The Court's Analysis," ¶7). Therefore, it is reasonable that the pointer index used by FBI when locating responsive files - UNI - is also subject to FOIA.

c. FOIA Waiver

1. Defendant FBI claims that the records requested are not to be disclosed to this requester, due to a FOIA waiver found in Plaintiff's plea agreement. However, a close examination of this waiver reveals that it is very limited in scope. Only those records " ... pertaining to the investigation or prosecution of this [Plaintiff's criminal case] ... " are subject to this waiver (see Exhibit "C.1" ¶16).

2. The prosecutor of Plaintiff's criminal case, AUSA Cynthia L. Phillips/Cordes described the investigation and resulting prosecution of Plaintiff's criminal case as beginning on June 12,

2006, without any prior involvement by the authorities. AUSA Cordes expressly states, "The computer search that produced the incriminating pictures, and that contributed to the building of probable cause, was conducted by the computer technician, a private individual, under the request of Tami [Lynn Price] as co-owner of the computer, and before the technician alerted the authorities ... " (see Exhibit "C.2" line 18 through "C.3" line 2 - 8th Dist., Western Dist. of Mo., Case 5:10-cv-06120-NKL, Document 11 - Government's Response to Plaintiff's §2255).

3. Echoing this sequence of events in his 06/19/2006 report, FBI Special Agent Kurt Lipanovich states, "Tami [Lynn Price] subsequently took the computer to a computer store in Cameron, Missouri, where the technician was able to pull up the data on [Plaintiff's] password protected hard drive." (see Exhibit "D.2" ¶4 - FBI form FD-302 for file #305-KC-89543 by Kurt Lipanovich on 06/19/2006).

4. The statements of both AUSA Cordes (¶17.c.2) and FBI Special Agent Kurt Lipanovich (¶17.c.3), that the investigation of Plaintiff's criminal case began following the computer search on June 12, 2006, is in agreement with and verified by the affidavit of the computer technician that actually performed the computer search, Randy Widener. In his affidavit of 6-13-2006, Mr. Widener states, "I came in the June 12, 2006 and she [Tami Lynn Price] brought in her computer and I [performed the search]. [After the search], I picked up my phone and I called 911 and told the person

on the phone what I had found and that I needed the police." (see Exhibit "C.4" lines 8, 9 and "C.5" lines 14 - 16 -- Affidavit Of Randy Widener). Thus, the investigation of Plaintiff's criminal case did begin on June 12, 2006, and any records responsive to Plaintiff's FOIA request and dated prior to June 12, 2006 have been wrongly withheld from Plaintiff, as these records are not excluded by the FOIA waiver in Plaintiff's plea agreement.

5. Notably, there is evidence that records both responsive to Plaintiff's FOIA request and dated prior to the initiation of his criminal investigation on June 12, 2006, do exist. One such record entitled "United States Attorney Criminal Complaint" (discussed supra at ¶16) states, "Date of Offense 6/1/06" (see Exhibit "A.14"). This EOUSA document clearly identifies FBI as a participant in EOUSA's independent action against Tami Lynn Price, the subject of this FOIA request, eleven days before the initiation of Plaintiff's criminal investigation (id. Exhibit "A.14" at "Gov't Agency FBI" & "Date of Offense"). Therefore, the existence of corresponding FBI files resulting from FBI's involvement with AUSA Cordes in this Obstruction of Justice charge against Tami Lynn Price is a reasonable conclusion. In other words, the independent criminal complaint against Tami Lynn Price, including all related documentation of FBI involvement, predates the criminal investigation/prosecution of Plaintiff. Therefore, these records have been wrongly withheld from Plaintiff, as this requester did not waive his right to access records predating his criminal investigation/prosecution.

d. Creation Of Records

While Defendant FBI claims that "... responding to your request would require FBI to create a new record." (see Exhibit "B.6" ¶1 - FBI letter of December 1, 2011), this claim is without merit. Plaintiff seeks records known to exist prior to the submission of his FOIA request, as evidenced by the record from EOUSA discussed supra at ¶16 and ¶17.c.5 (Exhibit "A.14").

e. Readily Accessible Format

In refusing Plaintiff's request for records, Defendant FBI states, "the material you have requested does not exist in a readily accessible format ..." (see Exhibit "B.6" ¶1 - FBI letter of December 1, 2011). That responsive records exist is not disputed, only that the records exist in a format that is not "readily accessible." 5 U.S.C. §552(a)(3)(B) instructs agencies regarding their choice of format for storing records subject to FOIA: "Each agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section." As a result, FBI records are routinely printed in response to FOIA requests, and Defendant's objection regarding the format of the responsive records is indefensible.

f. Requested Records Not Reasonably Described

Defendant FBI's response of December 1, 2011 states, " ... since your request does not specify ... " (see Exhibit "B.6" ¶2). However, Plaintiff's request is most specific when describing the desired records, providing the subject's full name, date of birth, social security number, and even the exact databases likely to contain the requested records. Furthermore, FBI apparently had no difficulty locating the requested records when crafting their reasons for refusing Plaintiff's FOIA request. Whatever the rationale used by FBI to excuse them from fulfilling their obligation to Plaintiff under FOIA, it is not a lack of specificity in Plaintiff's request (see 5 U.S.C. §552(a)(3)(A)(i) requiring requests be "reasonably described").

18. EOUSA Request No. 13-2241, For The Records Of the Previous Search Made In Response To Request No. 11-3818 (For The Records Of Tami Lynn Price)

On March 15, 2012, Plaintiff sent a FOIA request to EOUSA for the records created by EOUSA's search in response to Plaintiff's previous request, number 11-3818, discussed supra at ¶16 (see Exhibit "E.1"). On May 18, 2012, this request was repeated by facsimile (see Exhibit "E.2") and by certified mail (see Exhibit "E.3, 4"). For 16 months, EOUSA did not respond to this repeated request (see Exhibit "E.22"), a clear violation of 5 U.S.C. §552(a)(6)(A)(i), requiring a

determination be made whether to comply and notification of same be sent to the requester within 20 days of the receipt of a FOIA request. In fact, EOUSA has still not made a decision whether to comply with or deny Plaintiff's FOIA request, even though approximately two years have elapsed since EOUSA received Plaintiff's FOIA request.

19. FBI Request No. 1187604, For The Records Of The Search Made In Response To Request No. 1177991 (For The Records Of Tami Lynn Price)

a. Plaintiff requested the records created by Defendant FBI's search in response to Plaintiff's previous request, number 1177991 (discussed supra at ¶17). Surprisingly, Defendant FBI here claims that "[t]his office did not conduct a search in response to FOIPA Request Number 1177991-000." (see Exhibit "F.2" ¶1). If Defendant's statement is truthful, one of only two possible conclusions must also be accepted:

1. Conclusion #1 - Defendant FBI did not perform a search in response to request 1177991, and admits to failing to perform its duty under FOIA. Moreover, Defendant FBI admits to knowingly making false statements in its previous response to Plaintiff's FOIA request no. 1177991 (discussed supra at ¶17), justifying the denial of responsive records without ever having conducted a search, much less having assessed the suitability of any responsive records for release. However, no examination of

records, no determination of records responsive to the request, no determination of the suitability of responsive records for release, and no lawful application of the available exemptions could have been made without Defendant first having conducted a search in response to Plaintiff's FOIA request. Consequently, Defendant FBI admits to knowingly making false statements in its previous response to request 1177991 (Exhibit "B.5, 6"), intentionally and wrongly withholding all responsive records from this requester, and failing in their obligation to promptly provide responsive records to Plaintiff; or

2. Conclusion #2 - Defendant FBI admits to knowingly making the false statement, "[t]his office did not conduct a search in response to FOIPA Request Number 1177991-000." (Exhibit "F.2" ¶1) intentionally and wrongly withholding all responsive records from this requester, and failing in their duty to promptly provide responsive records to Plaintiff.

20. OIP's Denial Of Plaintiff's Right To Appeal

a. 5 U.S.C. §552(a)(6)(A) states, "Each agency ... shall ... notify the person making such a request ... of the right of such person to appeal to the head of the agency any adverse determination;" Defendant OIP has denied this requester his right to appeal regarding EOUSA request no. 11-3818 (discussed supra at ¶16) and an EOUSA request dated March 15, 2012, now identified as

request number 13-2241 (discussed supra at ¶18).

1. Appeal Of EOUSA Request No. 11-3818

A. Plaintiff did file two appeals of EOUSA's responses to request 11-3818; an appeal of EOUSA's initial response (see Exhibit "A.6" - AP-2012-01039) and an appeal of EOUSA's first supplemental reply (see Exhibit "A.11" - AP-2012-03451). In response to Plaintiff's second appeal, EOUSA made a second supplemental reply (discussed supra at ¶16.b). Plaintiff is entitled to appeal this second supplemental reply (Exhibit "A.14"), regardless of the previous appeals (AP-2012-01039 & AP-2012-03451). In their Oct. 31, 2012 second supplemental reply letter, EOUSA did correctly state, "You may appeal this decision on this request by writing to the Office of Information Policy ... " (see Exhibit "A.13" ¶5). However, before Plaintiff could file such an appeal, a Nov. 20, 2012 letter was received from OIP which states, "I am releasing one page in full to you, a copy of which I have enclosed [Exhibit "A.16"]. I am otherwise affirming EOUSA's action on your request." (see Exhibit "A.15" ¶2). In this instance, OIP confuses the duty of the agency of whom records have been requested - EOUSA - with OIP's own duty, to provide Plaintiff with the opportunity to appeal the release by EOUSA. By this action, OIP failed to provide Plaintiff the opportunity to appeal, foreclosing any appeal before one could be submitted.

B. In spite of OIP's foreclosure, Plaintiff did attempt to appeal EOUSA's second supplemental reply (see Exhibit "A.17, 18"), submitting a "Supplement To Appeal No. AP-2012-03451" by facsimile and certified mail, which OIP did receive on or before December 13, 2012 (see Exhibit "A.19, 20"). However, OIP has failed to respond to Plaintiff's Supplement To Appeal No. AP-2012-03451. 5 U.S.C. §552(a)(6)(A)(ii) describes the duty of OIP regarding such an appeal: "[t]o make a determination with respect to any appeal within 20 days ... after receipt of such appeal." OIP has failed to fulfill their obligation to Plaintiff, and has wrongly deprived him of the opportunity to appeal the second supplemental reply of EOUSA to FOIA request no. 11-3818.

2. Appeal Of EOUSA Request No. 13-2241, Dated March 15, 2012
For The Records Of EOUSA's Previous Search

A. In a Sept. 12, 2012 letter (see Exhibit "E.6"), Defendant OIP did acknowledge receipt of Plaintiff's appeal regarding his March 15, 2012 FOIA request, now known as request no. 13-2241 (discussed supra at ¶18), identifying the appeal as "AP-2012-03280." On Oct. 17, 2012, OIP notified Plaintiff of its decision regarding appeal AP-2012-03280 stating, "... your appeal from EOUSA's failure to respond ... is moot. Accordingly, I am closing your appeal file in this office." (see Exhibit "E.7" ¶2). Apparently, OIP confused EOUSA's response to Plaintiff's earlier FOIA request (11-3818) for the missing response of EOUSA to the

FOIA request now known as 13-2241. However, EOUSA made no response whatsoever to Plaintiff's March 15, 2012 request until July 10, 2013 (see Exhibit "E.22" - the initial response letter of EOUSA to Plaintiff's March 15, 2012 FOIA request). Therefore, OIP erred in declaring Plaintiff's appeal (AP-2012-03280) "moot," as EOUSA had failed to respond to Plaintiff's March 15, 2012 request at the time OIP's closed Plaintiff's appeal. As the March 15, 2012 FOIA request (13-2241) is separate and distinct from Plaintiff's previous FOIA request (11-3818), OIP did wrongly deprive this requester of the opportunity to appeal EOUSA's failure to comply with the clear instructions of the FOIA.

B. In an attempt to resolve OIP's apparent confusion concerning these two separate requests, Plaintiff sent a request to reopen appeal AP-2012-03280 (see Exhibit "E.8"), including ten pages of relevant documents (see Exhibit "E.11 thru "E.20") and a list describing the significance of each document (see Exhibit "E.9, 10"). OIP did receive this clarification and request to reopen appeal AP-2012-03280 on November 13, 2012 (see Exhibit "E.21"), however, OIP has made no response. Defendant OIP's refusal to consider Plaintiff's appeal of EOUSA's failure to respond to the March 15, 2012 FOIA request (later identified as request no. 13-2241) effectively denied Plaintiff his right to appeal EOUSA's failure, a clear violation of 5 U.S.C. §552(a)(6)(A)(i). Furthermore, the July 10, 2013 response of EOUSA (see Exhibit "E.22") to Plaintiff's March 15, 2012 FOIA request does not excuse OIP's

refusal to address Plaintiff's appeal (AP-2012-03280) during the intervening ten months. Therefore, OIP did wrongly deprive this requester of his right to appeal EOUSA's failure to respond to his FOIA request.

REQUESTED RELIEF

WHEREFORE, Plaintiff asks that this court order both EOUSA and FBI to immediately release to Plaintiff all records responsive to the FOIA requests addressed in this complaint - in their entirety and without cost to Plaintiff - as well as any other relief deemed appropriate by this court.

Respectfully submitted,



William S. Price

FRN 19140-045

USP Tucson

P.O. Box 24550

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