

UNITED STATES DISTRICT AND BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

FILED

JUL 21 2014

Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

BARRY R. SCHOTZ
Federal Register Number: 06088-097
USP-Satellite Camp
Post Office Box 24549
Tucson, Arizona 85734-4549
Plaintiff,

versus

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS
Office of the General Counsel
Room 841, HOLC Building
320 First Street, N.W.
Washington, D.C. 20534
Defendant.

CIVIL ACTION NO.[ASSIGNED BY CLERK]

Case: 1:14-cv-01212
Assigned To: Unassigned
Assign. Date: 7/21/2014
Description: Pro Se Gen. Civil

COMPLAINT

NOW COMES BARRY R. SCHOTZ, (hereinafter, "Plaintiff/Schotz"), appearing in propria persona and in forma pauperis (IFP Application attached) to present his **COMPLAINT** regards the Freedom of Information Act("FOIA"), Title 5 U.S.C. §552, for failure and refusal by the Federal Bureau of Prisons("BOP") to produce otherwise readily available responsive non-exempt records(documents) specifically requested by Plaintiff. Therefore, Plaintiff is requesting this Honorable Court issue a Summary Judgment and ORDER BOP provide the requested records(documents) and supply ¹ **VAUGHN INDEX**. FED.R.CIV.P. 56(A)

RECEIVED

JUL 11 2014

Clerk, U.S. District and
Bankruptcy Courts

JURISDICTION

Schotz has exhausted his administrative remedies(refer "Administrative Remedy Exhaustion" @ page 2 this Motion), the agency (BOP) is domiciled in Washington, D.C. and FOIA permits that Plaintiff may appropriately seek this Court's enforcement by filing this Summary Judgment in this Honorable District Court in pursuant 5 U.S.C. §552(a)(4)(B).

Any information withheld is **not** required to be itemized and justified at the administrative stage processing FOIA requests and appeals. See **Bangoura v U.S. Dep't of the Army**, 607 F.Supp. 124, 143 n.8 (D.D.C. 2009) Further Plaintiff requests if documents are claimed as exempt, ORDER BOP to partially produce with only those exempt areas redated and Vaugh Index justifying same.

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U.S. District Court, District of Columbia
Angela D. Casar, Clerk of Court
JUL 11 2014
MAIL ROOM

ADMINISTRATIVE REMEDY EXHAUSTION

To satisfy the FOIA exhaustion requirement Schotz must have requested information in accordance with Defendant's published procedures, **see** 5 U.S.C. §552(a)(1), (2) & (3), and Plaintiff's requests improperly refused. **In re Steele**, 799 F.2d 461, 465-66 (9th Cir. 1986)

It is unambiguous, Schotz exhausted his administrative remedies. EXHIBIT A, B, & C

BACKGROUND

On October 1, 2013, Plaintiff Schotz served his FOIA Request Number: **2014-00871. EXHIBIT B**

On March 14, 2014, Plaintiff Schotz timely appealed BOP March 11, 2014 response. Appeal Number: AP-2014-02343 EXHIBIT C

On June 6, 2014, Appeal Number: 2014-02343 was denied by U.S. Department of Justice Office of Information Policy.² EXHIBIT A

DISCUSSION

In FOIA cases, including the instant case, petitioners seeking disclosure of records are at a disadvantage, because they are in the dark about the nature of the documents they are seeking. As here, Plaintiff is unable to argue with desirable legal precision for the revelation of

² First, **Refer EXHIBIT D** - On June 1, 2014, Schotz was placed in transit for the purpose of being transferred from Federal Correctional Institution @ San Pedro, California (where Exhibit A was originally mailed) to USP-Satellite Prison Camp @ Tucson, Arizona. Upon his arrival at Tucson Schotz was finally provided his property including his legal paperwork on June 13, 2014. ON June 14, 2014, Schotz filed with Office of Information Policy(U.S. Department of Justice) "NOTICE OF CHANGE OF ADDRESS." Utilizing their internal BATCH MAIL system BOP delivered the June 6, 2014 DENIAL of Appeal No. AP-2014-02343 to Plaintiff on July 3, 2014. Hence, Schotz was not provided NOTICE of Denial of Appeal AP-2014-02343 until July 3, 2014 and has timely filed his Appeal. Second, **Refer Exhibit C** - Please note BOP admits that there are other documents responsive to this FOIA request, but stay silent these records otherwise identified within the **NINE** pages of BOP March 11, 2014 response.

the concealed information. **Vaughn v Rosen**, 448 F.2d 820, 825 157 U.S. App. D.C. 340 (D.C. Cir. 1973) Only the party possessing the documents is in a position to make statements categorizing the information. **Id.** To compensate for this imbalance of knowledge as currently exists between plaintiff and defendants DOJ and BOP, **Vaughn REQUIRES** an "index." This "index" should satisfy the following:

(1) The index should be contained in one document, complete in itself;

(2) The index must adequately describe each withheld document or deletion from a released document; and,

(3) The index must state the exemption claimed for each deletion or withheld document, and explain why the exemption is relevant [or why a record(s) responsive are **NOT produced**]. **Voinche v FBI**, 412 F.Supp. 2d 60, 65 (D.D.C. 2006); **Yonemoto v Dep't of Veterans Affairs**, 648 F.3d 1049, 1062 (9th Cir. 2011),

specificity is the defining requirement of the Vaughn Index. **Id.**

@ 979 The DOJ and BOP ("defendants") **must** disclose as much information as possible without thwarting the [claimed] exemption purpose. **Ing v U.S. Dept. of Justice**, 830 F.2d 210, 224, 265 U.S. App. D.C. 62 (C.A.D.C. 1987) Defendants disclosure must demonstrate a logical connection between the information and the claimed exemption. **Salisbury v U.S.** 690 F.2d 966, 970, 233 U.S. App. D.C. 243 (D.C. Cir. 1982)

Defendants know FOIA creates a presumption in favor of disclosure of requested documents. **Dept. of the Air Force v Rose**, 425 U.S. 352, 360-61, 96 S.Ct. 1592, 48 L.Ed.2d 11 (1976) BOP may withhold a document **only** if

3 5 U.S.C. § 552(a)(4)(B)

the information contained in the document falls within one of the nine statutory exemptions to the disclosure requirements set for in 5 U.S.C. § 552(b). **Bowen v U.S. Food and Drug Admin.**, 925 F.2d 1225, 1226 (9th Cir. 1991) Without exception, these exemptions are to be narrowly construed. **Cal-Almond, Inc. v U.S. Dept. of Agriculture**, 960 F.2d 105, 107 (9th Cir. 1992); **United States Dept. of Justice v Julian**, 486 U.S. 1, 7, 108 S.Ct. 1606, 100 L.Ed.2d 1 (1988)

Defendants cannot rely on conclusory and generalized allegations of exemptions to satisfy its burden establishing that one of the nine exemptions applies on a narrowly construed bases. **Vaughn** @ 826 Defendants proof **must** be detailed enough for the district court to make a **de novo** assessment of the BOP's claim of exemption. **Maricopa Audubon Soc'y v U.S. Forest Serv.**, 108 F.3d 1089, 1092 (9th Cir. 1997)(quoting **Doyle v FBI**, 722 F.2d 554, 555-56 (9th Cir. 1983)

Furthermore, even if part of a document is FOIA exempt, Defendants still **must** disclose any portions which are not exempt and must address it in their Vaugh Index why the remaining information is not segregable.⁴

⁴ The burden remains with the agencies when it seeks to justify the redaction of identifying information in a particular document, as well as, when it seems to withhold entire documents. ³ **U.S. Dep't of State v Ray**, 502 U.S. 164, 173, 112 S.Ct. 541, 116 L.Ed.2d 526 (1991)

The district court **must** make specific factual findings on the issue of segregability to establish that the required de novo review of defendant's withholding decision has in fact taken place. **Wiener**, 943 F.2d @ 988 In fact, the court may **not** simply approve the withholding of an entire document without entering a finding on segregability. *Id.* citing **Church of Scientology**, 611 F.2d @ 744

PLAINTIFF'S FOIA REQUEST AND APPEAL APPLICATIONS

REQUEST - Refer Exhibit B - Plaintiff Schotz details and makes clear the records he is seeking. These records requested were properly identified by dates, events, locations and all BOP Staff known to Schotz at the time of the records requests. These requests were for access to a variety of records detailed in the request concerning **three** Health Services Utilization Review Committee proceedings (one at FCI Big Spring and two at FCC Tucson - all identified by date and the date of the resulting "REPORT" provided to subject inmates). Ignoring their obligation to comply with FOIA 5 U.S.C. §552, instead, BOP's March 11, 2014 response consisted of documents BOP knew by exercise of remedial due diligence, Plaintiff Schotz had already received from BOP and were already known to Schotz. Further, BOP knew these were dimidius.

APPEAL - Refer Exhibit C - Plaintiff's March 14, 2014 Appeal Number 2014-00871 drilled down and clarified for BOP further what they were to produce pursuant to FOIA 5 U.S.C. §552. This included the dimidius **NINE** page records response of March 1, 2014. For example, Plaintiff utilized a YELLOW HIGHLIGHTER to note

on "Page 3 of 3" pursuant -

"Request Approval Actions:

Disapproved by Fritz, Susan RN/IDC/IOP acting in the role of UR Committee on 10/20/2010.

Comments: Per URC 10/19/10."

Schotz naturally questioned the UR Committee's Notes which clearly BOP Health Services are required to maintain. Further, who were the other participants of the URC? In fact, until this FOIA Requested record was disclosed Plaintiff was unaware of a **Susan Fritz, RN/IDC/IOP** involvement with this URC meeting!

SUMMARY JUDGMENT

A court will grant a summary judgment motion if the pleadings, the discovery, and disclosure materials on file, and any affidavits and declarations show that no genuine issue as to any material fact exists and the Plaintiff is entitled to judgment as a matter of law. Fed.R.Civ.P 56(a) FOIA cases, such as this instant case, are typically decided on motions for summary judgment. **Defenders of Wildlife v U.S. Border Patrol**, 623 F.Supp. 2d 83, 87 (D.D.C. 2009); **Bigwood v U.S. Agency for Int'l Dev**, 484 F.Supp. 2d 68, 73 (D.D.C. 2007) Because the instant case does **not** involve issues of disputed fact, the court need not utilize the typical summary judgment standard. **Minier v Central Intelligence Agency**, 88 F.3d 796, 800 (9th Cir. 1996) Instead, this Honorable Court conducts a two-step inquiry.

First, this court weighs whether Defendants have established that it fully discharged their obligations under FOIA. **Zemansky v EPA**, 767 F.2d 569, 571 (9th Cir. 1985) Defendants can establish this by showing that it conducted a search reasonably calculated to uncover all relevant documents. **Id.**; **Weisberg v U.S. Dep't of Justice**, 705 F.2d 1344, 1350-51, 227 U.S. App. D.C. 253 (D.C. Cir. 1983) Defendants **cannot** meet this burden (refer **Exh. A, C & G**; n.4 @ page 5). otherwise, the **Second** step would be for this Honorable Court to consider whether the Defendants have shown that any information **not** disclosed falls within one of the nine FOIA Exemptions. 5 U.S.C. §552(a)(4)(B); n.2 @ page 4; **Dobronski v FCC**, 17 F.3d 275, 277 (9th Cir. 1994) Thus, defendants to prevail on the instant summary judgment motion, they **must** prove that they have adequately searched for Schotz' requested documents, responded to Schotz' clarifying inquires providing defendants requested details and that any withheld document information clearly and narrowly fall with an Exemption. They **cannot!**

SUMMARY

The Supreme Court recently emphasized that FOIA strongly favors openness and "broad disclosure" with narrowly construed exceptions. **Milner**, 131 S.Ct. @ 1265-66; see **Lion Raisins, Ince. v U.S. Dep't of Agric.**, 354 F.3d 1072, 1079 (9th Cir. 2004)

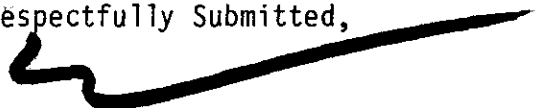
FOIA **requires** defendants establish they conducted a search reasonably calculated to uncover **all** relevant documents, full disclosure of same and even when material falls within one of FOIA's nine published Exemptions, defendants, **must** disclose "any reasonably segregable portion of a record ... after deletion of the portions which are exempt." 5 U.S.C. § 552(b)(1)-(9)

CONCLUSION

WHEREFORE, based upon the above facts and Exhibits Plaintiff Schotz respectfully requests this Honorable Court **GRANT** Summary Judgment, ORDER Defendants produce requested record documents and prepare and deliver to Schotz and this Court a **VAUGH INDEX**, to include a statement specifying **each** record defendants were otherwise required to have produced but failed and otherwise refused to produce, and why (and if an exemption is now at this late date alleged by BOP).

Respectfully Submitted,

July 7, 2014


Barry R. Schotz, Pro Se Plaintiff