

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

VILLAGE OF HOBART
2990 S. PINE TREE ROAD
HOBART, WI 54155

Plaintiff,

v.

U.S. DEPARTMENT OF THE INTERIOR
1849 C STREET, N.W.
WASHINGTON, DC 20240,

U.S. DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
DIVISION OF INDIAN AFFAIRS
1849 C STREET, NW
MS 6513-MIB,
WASHINGTON, DC 20240,

Case No.

and

U.S. DEPARTMENT OF THE INTERIOR
OFFICE OF TRUST SERVICES
DIVISION OF LAND TITLES AND RECORDS
1849 C STREET, NW
MS-4620-MIB
WASHINGTON, DC 20240,

Defendants.

COMPLAINT

NATURE OF ACTION

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 et seq., for injunctive and

other appropriate relief, seeking the immediate processing and release of records requested by Plaintiff from Defendants.

JURISDICTION AND VENUE

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties, 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 and 5 U.S.C. §§ 701-706. Venue is appropriate under 5 U.S.C. § 552(a)(4)(B).

PARTIES

3. Plaintiff, Village of Hobart (“Hobart”), is a Wisconsin municipality which maintains its principal offices at 2990 South Pine Tree Road, Hobart, Wisconsin.
4. Defendant, Department of Interior (“DOI”) is a Department of the Executive Branch of the United States Government. DOI is an agency within the meaning of 5 U.S.C. § 552(f). The components of DOI include the Office of the Solicitor, Division of Indian Affairs, and Office of Trust Services, Division of Land Titles and Records.

FOIA REQUEST TO THE OFFICE OF TRUST SERVICES, DIVISION OF LAND TITLES AND RECORDS

5. On July 9, 2014, the Village, through its legal counsel, submitted a FOIA Request to the Division of Land Titles and Records, requesting the following documents:

Land index reports, title status reports, title documents, ownership records, instruments, conveyance and encumbrance documents, and any other documents showing the status of title ownership, for all trust land located within the following section, township, ranges, in the Village of Hobart, Brown County, WI:

- a. Section 3, Township 24 North, Range 19 East
- b. Section 10, Township 24 North, Range 19 East
- c. Section 11, Township 24 North, Range 19 East

- d. Section 12, Township 24 North, Range 19 East
- e. Section 15, Township 24 North, Range 19 East
- f. Section 14, Township 24 North, Range 19 East
- g. Section 13, Township 24 North, Range 19 East
- h. Section 22, Township 24 North, Range 19 East
- i. Section 23, Township 24 North, Range 19 East
- j. Section 35, Township 24 North, Range 19 East
- k. Section 36, Township 24 North, Range 19 East
- l. Section 2, Township 23 North, Range 19 East
- m. Section 1, Township 23 North, Range 19 East
- n. Section 10, Township 23 North, Range 19 East
- o. Section 11, Township 23 North, Range 19 East
- p. Section 12, Township 23 North, Range 19 East
- q. Section 15, Township 23 North, Range 19 East
- r. Section 14, Township 23 North, Range 19 East
- s. Section 13, Township 23 North, Range 19 East
- t. Section 22, Township 23 North, Range 19 East
- u. Section 23, Township 23 North, Range 19 East
- v. Section 24, Township 23 North, Range 19 East
- w. Section 27, Township 23 North, Range 19 East
- x. Section 26, Township 23 North, Range 19 East
- y. Section 25, Township 23 North, Range 19 East

- z. Section 34, Township 23 North, Range 19 East
- aa. Section 35, Township 23 North, Range 19 East
- bb. Section 3, Township 22 North, Range 19 East
- cc. Section 2, Township 22 North, Range 19 East
- dd. Section 10, Township 22 North, Range 19 East
- ee. Section 18, Township 24 North, Range 20 East
- ff. Section 17, Township 24 North, Range 20 East
- gg. Section 20, Township 24 North, Range 20 East
- hh. Section 6, Township 23 North, Range 20 East
- ii. Section 7, Township 23 North, Range 20 East
- jj. Section 8, Township 23 North, Range 20 East
- kk. Section 18, Township 23 North, Range 20 East
- ll. Section 17, Township 23 North, Range 20 East
- mm. Section 19, Township 23 North, Range 20 East

6. Upon information and belief, based upon the return receipt, the FOIA Request was delivered on July 25, 2014, as it was signed by Heather Garcia on that date.
7. Having received no response of any kind, the Village, through its legal counsel, sent follow-up correspondence to the Division of Land Titles and Records on August 28, 2014, which stated, in pertinent part, as follows:

This office represents the Village of Hobart (“Village”). On behalf of the Village, we sent the enclosed Freedom of Information Act (FOIA) Request on July 9, 2014, via certified mail, return receipt requested. To date, we have not received any response. The return receipt, also enclosed, indicates that the request was received on July 25, 2014, which means that twenty (20) working days have passed since receipt. Given

that the timeline for response has already passed, please provide the requested documents within five (5) business days of this letter.

8. The Village did not receive a response of any kind to the August 28, 2014, letter.
9. To date, the Village has not received a determination on its FOIA Request, nor any responsive documents.
10. The Village has constructively exhausted administrative remedies under 5 U.S.C. § 552(a)(6)(C) and may seek immediate relief.

FOIA REQUEST TO THE OFFICE OF THE SOLICITOR

11. On July 10, 2014, the Village, through its legal counsel, submitted a FOIA Request to the U.S. Department of the Interior, Office of the Solicitor, requesting the following:

Any documents, including but not limited to, correspondence, e-mails, memoranda, or anything else, sent *from the Oneida Tribe of Indians of Wisconsin* and any of its representatives, to the United States Department of the Interior, including any department or office thereunder, relating to the authorization for, construction of, payment of compensation for, the title status of, claims of any interest in, and anything else in any way relating to the right-of-way, for railroad purposes, granted to the Green Bay and Lake Pepin Railway Company (and all of its successors and assigns) within the “Oneida Reservation” located within Brown County, Wisconsin, as described in “an Act granting the right-of-way to the Green Bay and Lake Pepin Railway Company for its road across the Oneida Reservation in the State of Wisconsin.” 16 Stat. 588 (March 3, 1871).

Any documents, including but not limited to, correspondence, e-mails, memoranda, or anything else, sent *from the United States Department of the Interior*, including any department or office thereunder, to the Oneida Tribe of Indians of Wisconsin and any of its representatives relating to the authorization for, construction of, payment of compensation for, the title status of, claims of any interest in, and anything else in any way relating to the right-of-way, for railroad purposes, granted to the Green Bay and Lake Pepin Railway Company (and all of its successors and assigns) within the “Oneida Reservation” located within Brown County, Wisconsin, as described in “an Act granting the right-of-way to the Green Bay and Lake Pepin Railway Company for its road across the Oneida Reservation in the State of Wisconsin.” 16 Stat. 588 (March 3, 1871).

12. Upon information and belief, based upon a USPS Tracking Report, the FOIA Request was delivered on July 15, 2014.

13. Having received no response of any kind, the Village, through its legal counsel, sent follow-up correspondence to the U.S. Department of the Interior, Office of the Solicitor, on August 29, 2014, which stated, in pertinent part, as follows:

This office represents the Village of Hobart (“Village”). On behalf of the Village, we sent the enclosed Freedom of Information Act (FOIA) Request on July 10, 2014, via certified mail, return receipt requested. To date, we have not received any response. The USPS Internet print-out, also enclosed, indicates that the request was delivered on July 15, 2014, which means that twenty (20) working days have passed since receipt. Given that the timeline for response has already passed, please provide the requested documents within five (5) business days of this letter.

14. The Village did not receive a response to the August 29, 2014, letter.

15. On October 21, 2014, well after 20 work days had passed, the U.S. Department of the Interior, Office of the Solicitor, sent a letter via e-mail to the Village’s legal counsel, which acknowledged receipt of the July 10, 2014, FOIA Request, and assigned a control number of SOL-2014-00072. It also classified the FOIA Request as “other-use.” Further, it stated that “[y]our request falls into the Exceptional processing track. We therefore expect your request could take over sixty work days to process.” Finally, it stated the Village could limit the scope of its request, or agree to an alternative time period for processing.

16. The October 21, 2014, letter did not inform the Village of the scope of the documents that the Office of the Solicitor would produce, nor did it state the scope of the documents that it plans to withhold under any FOIA exemptions. There was also no time frame to produce the documents other than the general reference that it “could take over sixty days.”

17. The Village waited in excess of 120 days and has received no documents and no further communication from the Solicitor.
18. To date, the Village has not received a determination on its FOIA Request, nor any responsive documents.
19. The Village has constructively exhausted administrative remedies under 5 U.S.C. § 552(a)(6)(C) and may seek immediate relief.

CAUSES OF ACTION

First Cause of Action: **Violation of the FOIA for Failure to Make Promptly Available the** **Records Sought by Plaintiff's Request**

20. Plaintiff hereby incorporates all preceding paragraphs as if fully set forth herein.
21. Defendants' failure to comply with the applicable time limit provisions of the FOIA, and failure to make promptly available the records sought by Plaintiff's requests, violates the FOIA and corresponding agency regulations.
22. Plaintiff is entitled to an award of attorney's fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E).

Second Cause of Action: **Violation of the Administrative Procedure Act for** **Failure to Grant Requests for Records**

23. Plaintiff hereby incorporates all preceding paragraphs as if fully set forth herein.
24. Defendants' failure to grant Plaintiff's requests for information was arbitrary, capricious, an abuse of discretion, not in accordance with applicable law, and without observance of procedure required by law, all in violation of the Administrative Procedure Act, 5 U.S.C. § 701, et seq.

25. The Plaintiff is entitled to an award of attorney's fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E).

REQUESTED RELIEF

WHEREFORE, Plaintiff prays that this Court:

- A. Enjoin Defendants from withholding agency records;
- B. Order Defendants to immediately conduct a thorough search for the information requested;
- C. Order Defendants to immediately process the requested records;
- D. Order Defendants, upon completion of such expedited processing, to disclose the requested records in their entirety and make copies available to Plaintiff;
- E. Provide for expeditious proceedings in this action;
- F. Award Plaintiff its costs and reasonable attorney's fees incurred in this action;
and
- G. Grant such other relief as the Court may deem just and proper.

Dated this 2nd day of March, 2015.

Respectfully Submitted,
Attorneys for Defendant, Village of Hobart

s/Frank W. Kowalkowski
Frank W. Kowalkowski (WI Bar No. 1018119)
Davis & Kuelthau, s.c.
318 S. Washington Street, Suite 300
Green Bay, WI 54301
Telephone: 920.435.9378
Facsimile: 920.431.9391

Jenna E. Clevers (WI Bar No. 1065236)
Davis & Kuelthau, s.c.
318 S. Washington Street, Suite 300
Green Bay, WI 54301
Telephone: 920.435.9378
Facsimile: 920.431.9391

Direct contact information:

Frank W. Kowalkowski 920.431.2221 direct dial
 920.431.2261 direct fax
 fkowalkowski@dkattorneys.com

Jenna E. Clevers 920.431.2227 direct dial
 920.431.2267 direct fax
 jclevers@dkattorneys.com