

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES DEAN KENDRICK,
Inmate #19301055
USP Allenwood
White Deer, PA 17887
Plaintiff,

v.

DRUG ENFORCEMENT ADMINISTRATION,
HEADQUARTERS
8701 Morrisette Drive
Springfield, Virginia 22152

COMPLAINT FOR INJUNCTIVE RELIEF
Case No. :

Case: 1:21-cv-01624
Assigned To : Unassigned
Assign. Date : 6/14/2021
Description: FOIA/privacy act (I-DECK)

1. This is an action under the Freedom Of Information Act, 5 U.S.C. Section 552, to order the production of agency records, pertaining to Case Files (DEA Investigative File C9-00-0083; and DEA NADDIS File #4960155) and documents which pertain to investigation(s) of the Plaintiff (James Dean Kendrick) and specifically but not limited to DEA Forms 6, 6a, 7, 7a, 7ac, 7c, 202 and 210, as well as all NADDIS access logs and case initiation reports, for an investigation which originated in the year 2000. All DEA Forms which list the disposition of the case and/or the reason for the Government's failure to prosecute, including any No-Bill returned by a Federal Grand Jury and/or a Federal Grand Jury's Findings of Insufficient Evidence to return an Indictment, in relation to the investigation(s) of the Plaintiff, by the Defendant-Drug Enforcement Administration; the number under which Plaintiff is indexed in NADDIS; the originating agency identification numbers (ORI) pertaining to the Plaintiff; the DEA's G-Dep codes; Remarks section containing the date and file number of each DEA Report on the Plaintiff; and photographic and/or micro-photographic records and Electronic Files to be provided to the Plaintiff in hard-copy form. Plaintiff requests all unredacted copies, as well as all documentation pertaining to the destruction of DEA Case File C9-00-0083.
2. This Court has jurisdiction over this action pursuant to 5 U.S.C. Section (a)(4)(b).
3. Plaintiff, James Dean Kendrick, is the subject of the requested Files and documents; and is the requester of the Files and documents; the Defendant has redacted portions of the documents that were released and has withheld

some documents entirely. Plaintiff has requested these Files and documents to help him fight his criminal case, in which, a Rule 33 Motion seeking a new trial, based on newly discovered evidence*1, is currently pending in the District Court for the Western District of New York (Rochester)(United States v. Kendrick, Case No.: 10-cr-6096). Prompt release of the information and documents is important because they support Plaintiff's argument of actual innocence, as to the 18-year Continuing Drug Conspiracy and 18-year Continuing Criminal Enterprise, alleged as Count-1 and Count-2 on the Indictment in Plaintiff's criminal case (United States v. Kendrick, 10-cr-6096). Furthermore, the requested Files and documents support Plaintiff's arguments, in the above-mentioned Rule 33 Motion, of prosecutorial misconduct, Due Process violations, Brady and Giglio violations, as well as Rule 16 Discovery violations. Therefore, Plaintiff herein requests this Court to expedite consideration of this case.

4. Defendant-Drug Enforcement Administration, Department Of Justice, is an agency of the United States and has possession*2 of the Files and documents that the Plaintiff seeks.

5. By letter date July 23, 2016 Plaintiff initiated a Freedom Of Information Act request, to the Drug Enforcement Administration. See Exhibit-A

6. By letter dated August 9, 2016 Plaintiff informed the Drug Enforcement Administration that he had been transferred to a different jail and provided his current mailing address. See Exhibit-B

7. By letter dated August 9, 2016 Plaintiff sent a Freedom Of Information Act request to the DEA Headquarters requesting any and all records and documents pertaining to the DEA's seizure of money, taken from Plaintiff at the time of his arrest. See Exhibit-C

8. By letter dated August 9, 2016 Plaintiff sent an additional Freedom Of Information Act request to DEA Headquarters, which is identical to Plaintiff's July 23, 2016 request (Exhibit-A). See Exhibit-D

9. By letter dated August 30, 2016 Plaintiff received an acknowledgment of receipt of Plaintiff's July 23, 2016

*1. Some of the new evidence mentioned above are the above-mentioned documents that were released in redacted form.

*2. Even if the hard-copy of DEA Investigative File C9-00-0083 has truly been destroyed, the DEA can retrieve said File from their Electronic File System.

Freedom Of Information Act request (Exhibit-A). See Exhibit-E

10. By letter dated September 7, 2016 the DEA advised Plaintiff that his request had been assigned to a Government Information Specialist. See Exhibit-F

11. By letter dated September 13, 2016 Plaintiff inquired as to the status of his August 9, 2016 request (re: seized money). See Exhibit-G

12. By letter dated September 26, 2016 the DEA advised Plaintiff that the DEA had received all of Plaintiff's letters and have combined all of Plaintiff's letters to be processed under one Freedom Of Information Act request number (16-00551-P). See Exhibit-H

13. On October 4, 2016 Plaintiff mailed a Certification of Identity, to the DEA, dated September 28, 2016 authorizing the DEA to release any and all information, pertaining to Plaintiff, to a Private Investigator. See Exhibit-I

14. By letter dated October 14, 2016 the DEA informed the Plaintiff that the DEA was in receipt of the Certification of Identity (Exhibit-I), and further advised the Plaintiff that the records that he "seeks require searches in another office or offices, and so your request falls within 'unusual circumstances.'" The DEA also advised the Plaintiff that due to the circumstances, they were extending the time limit to respond to Plaintiff's request beyond the ten additional days provided by the Statute. See Exhibit-J

15. By letter dated November 4, 2016 the DEA released, in redacted form, 10 pages from the Asset Forfeiture Unit; and 4 pages that were obtained through the Electronic File Room at DEA Headquarters. The exemptions asserted by the agency (DEA) are as follows: Section 552 (b)(7)(C); (b)(7)(E); and (b)(7)(F). In said letter, the DEA advised the Plaintiff that the DEA Investigative File (C9-00-0083) "has been destroyed." See Exhibit-K

16. By letter dated November 13, 2017 Plaintiff wrote to the DEA Headquarters and advised said agency that Plaintiff had a Private Investigator speak with a New York DEA Agent regarding Plaintiff's request and said agency's response, that Plaintiff's Private Investigator had been informed, by said New York DEA Agent, that the records that Plaintiff has requested are never destroyed. Based on this information, Plaintiff therein made a new request for any and all records pertaining to Plaintiff, and further informed the DEA that even if DEA Investigative File C9-00-0083 has been destroyed, Plaintiff knows that the documents can be retrieved from "Electronic Files." Plaintiff further requested

information regarding the alleged destruction of said File. See Exhibit-L

17. By letter dated November 13, 2017 Plaintiff informed the Office of Information Policy that he filed an appeal, with said Office, in January of 2017 and had not yet received a response to his appeal. Plaintiff, further requested a response as a soon as possible. See Exhibit-M

18. On or about December 11, 2017 Plaintiff received a letter, dated May 25, 2017, from the United States Department of Justice, Office of Information Policy, informing the Plaintiff that his request was being remanded in part to the Drug Enforcement Administration for a further search for additional responsive records. See Exhibit-N

19. By letter dated December 11, 2017 Plaintiff wrote to the Drug Enforcement Administration Headquarters informing said agency of the Office of Information Policy's remand and provided the Drug Enforcement Administration Headquarters with a copy of the Office of Information Policy's May 25, 2017 letter. See Exhibit-O

20. By letter dated December 11, 2017 (Certification of Identity dated December 18, 2017) Plaintiff sent a Freedom Of Information Act request, to the Drug Enforcement Administration Headquarters, seeking any and all requests for information, Files and investigations of James Kendrick [Plaintiff]; whether by subpoena; E-mail; Formal Letter; Informal Letter; or by any other means; made to the Drug Enforcement Administration by any Federal Agent; by any Federal Prosecutor; by any Federal Prosecutor's Office; by any Local Authorities; by any District Attorney; or by any District Attorney's Office; made specifically but not limited to the timeframe between September 1, 2009 through March 2, 2011; and any and all responses from the Drug Enforcement Administration regarding said request; a notification from the Drug Enforcement Administration as to whether any records, documents, or files were reviewed by the requester; and a copy of the receipt for the release of records, documents and files for all records, documents and files that were turned over to any agency, or to any individual. Plaintiff, further requested copies of all NADDIS access logs-showing each time that a Prosecutor, Agent, or authorized person accessed NADDIS in relation to James Kendrick [Plaintiff]. See Exhibit-P

21. By letter dated December 22, 2017 the Defendant-Drug Enforcement Administration sent documents, to Plaintiff, which refer to DEA Investigative File C9-00-0083 being destroyed. However, said documents are insufficient to support the DEA's claim that said File has been destroyed and the insufficiencies are as follows:

Response to Case No.: 16-00551-P:

1. The Certification is based on "to the best of my Knowledge," of the person who authored it.
2. The time spent searching is not listed.
3. Grade/Series of searcher(s) is not certain.
4. There was no search conducted of E-mails; Databases; Hard Drives; or other systems.
5. It is not certified under penalty of perjury.

Response to Case No.: 14-00033-F (Requester: Geoffrey Resnick):

1. Initially, this certification is not signed by the person who authored it.
2. It is not dated.
3. The author claims that the Archives and Records Center sent a box containing the wrong file.
4. The time spent searching is not listed.
5. Grade/Series of searcher(s) is not listed.
6. The Certification does not list that any searches have been conducted of E-mails; Databases; Hard Drives; or other systems.
7. The Certification is also based on "the best of my knowledge," of the person who authored it, and that the File was destroyed "sometime in December 2010."

Therefore, the Certifications provided, by the Defendant-Drug Enforcement Administration, are inadequate to satisfy the Defendant's (DEA) duty to search for and locate records and documents, pursuant to Freedom Of Information Act requests. See Exhibit-Q

22. On December 26, 2017 Plaintiff received a response*3, dated June 15, 2017, in relation to the remand of the Plaintiff's request. Said response was accompanied by two redacted NADDIS access logs, after a search from the

*3. The response was apparently sent to the wrong address and returned to the defendant (DEA), prior to being mailed to the Plaintiff.

Office of Administration (SA). Additionally, a redacted three page NADDIS Report also accompanied said response.

The exemption(s) asserted by the agency (DEA) are as follows: 5 U.S.C. Section 552 (b)(7)(C). See Exhibit-R

23. By letter dated January 9, 2018 (Case No.: 18-00110-P) the Defendant-Drug Enforcement Administration

informed the Plaintiff that "no further information other than that previously sent is available to you." See Exhibit-S

24. By letter dated January 12, 2018 Plaintiff appealed, to the Director, Office of information Policy (OIP),

seeking all the requested documents that have not been released. See Exhibit-T

25. By letter dated January 25, 2018 Plaintiff sent two Freedom Of Information Act Appeals, to the Director,

Office of Information Policy (OIP), Department of justice. One FOIA Appeal is dated January 20, 2018; and the second

FOIA Appeal is dated January 25, 2018. Plaintiff informed the Director, in said letter, that the reason that both FOIA

Appeals were being sent together is because the Drug Enforcement Administration, when responding to Plaintiff's FOIA

requests, used the same Case Number (18-00110-P) on two responses, to separate FOIA requests.

January 20, 2018 Appeal argues:

1. That the response received is not sufficient because it does not demonstrate that DEA personnel conducted a reasonable search for the requested information.
2. The responsive records were not provided or identified with the response.
3. The page labeled "Page 1," on the bottom of the page, does not list the time spent searching.
4. The page labeled "Page 2," on the bottom of the page, lists under comments: File was destroyed. However, under description of records system/files searched (including search terms), no boxes have been checked off as having been searched.
5. The requested records can be retrieved electronically.
6. Plaintiff's Private Investigator was advised, by a New York DEA Agent, that the records that Plaintiff is seeking are never destroyed.
7. The page labeled "Page 3," on the bottom of the page, which was provided to Geoffrey Resnick(Case No.: 14-00033-F), is not signed or dated and, therefore, is not a proper or sufficient "Certification."
8. The Author's request, "beginning in November of 2013," to the

Archives and Records Center for File C9-00-0083. And statement that "On January 28, 2013 I received a box from the Center but it did not contain the requested file." Cannot have been in relation to the request made by Geoffrey Resnick, as Mr. Resnick's request was made in the year 2014, according to the Case Number (14-00033-F).

9. The Certification's mention of a December 16, 2010 e-mail received, in relation to seized property files, from the Archives and Records Center, implies that requests for said File (C9-00-0083) were made prior to the 2013 stated request(s).
10. The Certification is based on "the best of my knowledge," of it's author that "File C9-00-0083 was in fact destroyed."
11. DEA Investigative File C9-00-0083 was not destroyed, but in fact, was requested by and turned over to another federal agency, in or about March of 2010, or sometime thereafter, and was in fact a drug investigative file.

January 25, 2018 Appeal argued:

1. The Freedom Of Information Act request dated December 11, 2017 did not seek documents from DEA Case File C9-00-0083.
2. Said request did seek any and all requests for information, files and investigations of James Kendrick [Plaintiff]; whether by subpoena; E-mail; Formal Letter; Informal Letter; or by any other means.
3. Said requests being made to the DEA by any Federal Agent; by any Federal Prosecutor; by any Federal Prosecutor's Office; by any Local Authorities; by any District Attorney; or by any District Attorney's Office.
4. Said request being made specifically but not limited to the timeframe between September 1, 2009 through March 2, 2011.
5. Copies of any and all responses from the DEA regarding said request.
6. A notification from the DEA as to whether any records, or files were reviewed by the requestor(s).
7. A copy of the receipt for the release of records, documents, or files for any records, documents, or files that were turned over to any agency, or to any individual.
8. Copies of all NADDIS access logs showing the time that a Prosecutor, Agent, or authorized person accessed NADDIS in relation to James See Exhibit-U

26. By letter dated January 30, 2018 the Office of Information Policy informed the Plaintiff that his appeal had been received. See Exhibit-V
27. By letter dated February 15, 2018 the Office of Information Policy informed the Plaintiff that his Freedom Of Information Act Appeal had been received. See Exhibit-W
28. By letter dated July 30, 2018 the Office of Information Policy affirmed the DEA's action on Plaintiff's request, "on partly modified grounds." See Exhibit-X
29. By letter dated July 31, 2018 the Office of Information Policy affirmed the DEA's action on Plaintiff's remanded request. See Exhibit-Y
30. Plaintiff chose this Court as the place for venue with the hope of finding an unbiased and impartial Judge.
31. As mentioned above, Plaintiff was charged in a criminal case (United States v. Kendrick, 10-cr-6096), in the Western District of New York, with an 18-year Continuing Drug Conspiracy (Count-1); and an 18-year Continuing Criminal Enterprise (Count-2), from 1993 to March of 2011. Plaintiff argued in a Supplemental Motion that the Government investigated the Plaintiff back in 1999-2000, as Rule 16 Discovery contained documents evidencing involvement by the United States Attorney's Office and the DEA. However, the prosecuting attorney argued that the Government never became involved until after October of 2009. In a Motion relating to pre-indictment delay, the Defense alerted the Court and the Government that "we will supplement the Motion in the event we obtain additional evidence that would support a dismissal motion." During a conference held on July 2, 2013 Judge Feldman stated that he would allow the Defense to bring a prosecutorial misconduct claim alleging that the Government was involved as early as 2000, in contrast to the representation made, by the Government, during the March 18, 2011 Detention Hearing. However, the Defense did not obtain additional new evidence showing Federal involvement because the Government withheld said evidence from the Defense.
32. It is evident, from the documents that the Defendant-Drug Enforcement Administration has released, that the United States Attorney's Office was aware of and investigating the Plaintiff's 2000 States drug charges. However, the prosecuting attorneys that prosecuted the Plaintiff, in his criminal case (10-cr-6096) intentionally withheld this

information and all of the documents pertaining to said investigation(s), from the Plaintiff's Attorney. This is a clear Brady violation, as well as a violation of Rule 16 Discovery. Moreover, the prosecuting attorneys inexplicable behavior of withholding said information and documents, from the Defense, violated the Plaintiff's Constitutional Right to Due Process (5th Amendment) and a fair trial. The withholding of said information and documents prevented the Plaintiff and his co-defendants from filing a pre-trial motion for the Due Process violations for the Government's delay in bringing the criminal case (United States v. Kendrick, 10-cr-6096). Moreover, the withholding of said documents, from the Defense, prejudiced the Plaintiff at trial. The Defense pursued a multiple conspiracy defense at trial. Had the Defense been able to show the Trial Jury that fact that government agencies investigated the Plaintiff, in the year 2000, but in fact, never brought a case against the Plaintiff until 2011, the Trial Jury may not have believed the Government's theory of an 18-year Continuing Drug Conspiracy (Count-1); and 18-year Continuing Criminal Enterprise (Count-2), as alleged in the Indictment of the Plaintiff's criminal case (United States v. Kendrick, 10-cr-6096).

33. It is probable that the records and documents, specifically DEA Form 210, which the Plaintiff has been seeking, through FOIA, would have changed the quantum of proof in the Plaintiff's favor during the trial of his criminal case. Because the records and documents relate to the issues and arguments that the Plaintiff has made, in his Rule 33 Motion seeking a new trial, which is currently pending in the District Court for the Western District of New York (Rochester), Plaintiff's request that this Court expedite consideration of this case is justified. The reason that the Plaintiff did not bring this action sooner is because he was restricted in time because he proceeded Pro Se on Direct Appeal of his criminal case and because of his financial situation, then the added issue of the Covid-19 Pandemic and the modified movements within the prison (USP Allenwood) due to the pandemic.

34. Plaintiff has the right to access of the requested information under 5 U.S.C. Section 552 (a)(3), and there is no legal basis for Defendant's denial of such access.

WHEREFORE, Plaintiff requests this Court:

- (1) Order Defendant to provide Plaintiff access to the requested documents;
- (2) Expedite this proceeding as provided for in 28 U.S.C. Section 1657;
- (3) Order Defendant to provide, to this Court, for in-camera review, all records and documents of the Defendant's

Files which pertain to the Plaintiff, so the Court can discern which documents must be disclosed;

(4) Award Plaintiff costs and reasonable attorney fees in this action, as provided in 5 U.S.C. Section 552 (a)(4)(E);

and

(5) Grant such other and further relief as this Court may deem just and proper.

Respectfully submitted,

James Dean Kendrick

Inmate #19301055
USP Allenwood
P.O. Box 3000
White Deer, PA 17887

VERIFICATION

I, James Dean Kendrick, do swear and state under penalty of perjury that I am the Plaintiff in the above-captioned complaint, that I have read the foregoing complaint and know the contents thereof, that the same is true and correct, to my own knowledge, except as to those matters based upon information and belief, which matters I believe to be true.

Dated: June 3, 2021

Print: James Dean Kendrick

Sign: James Dean Kendrick