

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

Carlton Hooker Jr.,

Plaintiff

Vs

Department of Veterans Affairs

Defendant

Case: 1:21-cv-01691  
Assigned To : Unassigned  
Assign. Date : 6/21/2021  
Description: FOIA/Privacy Act (I-DECK)

USDC No. \_\_\_\_\_

Date: \_\_\_\_\_

**FREEDOM OF INFORMATION ACT COMPLAINT**

This is a complaint under the Freedom of Information Act, 5 U.S.C. § 552, for injunctive and other appropriate relief and seeking the disclosure and release of agency records improperly withheld from (Plaintiff, Carlton E. Hooker Jr.) by (Defendant, Department of Veterans Affairs ("VA"))

**Jurisdiction and Venue**

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. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

Judicial Proceedings against an Agency

The Freedom of Information Act provides for federal district court jurisdiction in proceedings brought against an agency to enjoin its withholding of records. See 5 U.S.C. Sec. 552(a)(4)(B). Previously this was subsection (a)(4)(D) of the FOIA, not (c), and it has now been repealed- see Pub.L. No. 98-620, 98 Stat. 3335 (1984). In addition, amendments to the Act require the government to answer or otherwise plead within 30 days after service, unless an extension is obtained; this halves the 60-day period normally permitted in a federal case. See 5 U.S.C. 552(a)(4)(C).

PARTIES

Plaintiff, Carlton Hooker Jr. ("Plaintiff"), maintains his primary residence in Pinellas County at 2678 N. McMullen Booth Rd. Apt #8111, Clearwater, Florida 33761.

Defendant, Department of Veterans Affairs ("VA"), is a department or agency within the executive branch of the United States government.

STATEMENT IN SUPPORT OF CLAIM IN WHICH RELIEF CAN BE GRANTED

Plaintiff alleges improper withholding of a document which was used by the Defendant in a Request for No Engagement Memorandum dated October 4, 2016, to ban the Plaintiff from the Bay Pines VA Healthcare System illegally for life on December 9, 2016 for which that document is in the possession of Bay Pines Regional Counsel Attorney, Karen Lynn Mulcahy.

COUNT 1: VA's FAILURE TO COMPLY WITH FOIA REQUEST No. FOIA # 21-03853-F

1. On February 26, 2021, Plaintiff submitted a FOIA Request for Karen Mulcahy's copy of Attachment A that she submitted with the 10/4/16 Request for No. Engagement Memorandum on Carlton Hooker to the OGC FOIA Request Mailbox for which I requested the following: Attachment A: November 21, 2013 - Order of Dismissal from EEOC Administrative Judge, William Rodriguez in EEOC Case No. 2001-0516-2013101717, in which that judge described my behavior as "contumacious, antagonistic, and very aggressive. (1)
  
2. On March 26, 2016, the FOIA Officer, Mr. Gregory Draves, issued an initial agency decision (IAD) in response. In the IAD, Mr. Draves provided that the assigned FOIA number was 21-03853-F. (2)
  
3. Mr. Graves in the IAD states as follows: In conducting a search for information possibly responsive to your very specific request, which included a search of the Office of General Counsel's internal database, your name was utilized as the key term for the search. Upon conducting the search of the internal database, I was unable to locate "No Engagement Letter Attachment A". Therefore, I am providing a "no records" response.
  
4. However, on March 26, 2021, I appealed that decision, because the OGC failed to get the copy of Attachment A from the person only person who could attach is a Supporting

Documentation to the October 4, 2016, Request for No Engagement Memorandum, and that person is OGC Regional Counsel Attorney, Karen Mulcahy. (3)

5. On March 26, 2021, Ms. Tracy Knight acknowledged receipt of my FOIA appeal under Appeal #154009. (4)

**COUNT 2: VA's FAILURE TO COMPLY WITH FOIA Appeal No. FOIA # 154009**

1. On the date of March 26, 2021, the U.S. Department of Veterans Affairs - Office of General Counsel - Information and Administrative Law Group acknowledged receipt of my appeal of the March 26, 2021, decision by the OGC under OGC #154009.
2. Under the United States Department of Justice memo titled - OIP Guidance: Adjudicating Administrative Appeals under the FOIA it states as follows: Absent "unusual circumstances," the FOIA provides that agencies should make a determination with respect to an appeal within twenty working-days of its receipt by the agency.
3. As of June 21, 2021, it has been 56 working days and counting, and based on the Agency's failure to comply, the Plaintiff can now file suit.

NOTICE

FOIA obligations require agency records either belong to the agency, by creating or obtaining them, or be within its control. See *Wolfe v. Dep't of Health & Human Servs.*, 711 F.2d 1077, 1079 (D.C. Cir. 1983) (defining agency record as either created or obtained by agency).

PRAYER FOR RELIEF

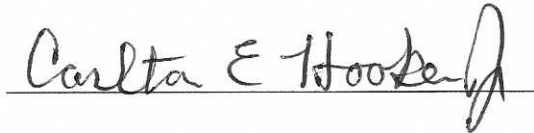
Plaintiff, Pro-Se Carlton E. Hooker Jr. hereby request that the Court issues the following:

- A Court Order instructing the Department of Veterans Affairs, to produce and turn over the EEOC Order Attachment A, which was submitted as Supporting Documentation only by OGC Regional Counsel Attorney, Karen Lynn Mulcahy in the October 4, 2016 Request for No Engagement on the Plaintiff.

NOTE: Failure to comply with a court order to produce the records in question may also result in punishment for contempt the responsible official, Bay Pines OGC Regional Counsel Attorney, Karen Lynn Mulcahy, who may be charged with Concealment or Destruction of a Government Record under 18 USC 2071(b)

- Plaintiff hereby requests sanctions against the above referenced individual agencies employee, OGC Regional Counsel Attorney - Karen Lynn Mulcahy and anyone else who instructed her to conceal a government record in accordance with the following: United States Department of Justice, 137. SANCTIONS FOR VIOLATING FOIA where it states as follows: Action against Individual Employees: Sanctions may be taken against

individual agency employees who are found to have acted arbitrarily or capriciously in improperly withholding records. Additionally, the court must award attorney fees and other litigation costs against the government and Plaintiff hereby requests in accordance with United States Department of Justice, 137. SANCTIONS FOR VIOLATING FOIA as follows: When the statutory requirements are found by the Court to have been met, the Merit Systems Protection Board (MSPB) must promptly initiate a proceeding to determine whether disciplinary action is warranted against the office or employee who is primarily responsible for the withholding. The MSPB, after investigating and considering the evidence, submits its findings and recommendations to the agency concerned which then is required to take the corrective action recommended by the Board. See 5 U.S.C. Sec. 552(a)(4)(F). Additionally, there now exists independent jurisdiction for such MSPB investigations under 5 U.S.C. Sec. 1206(e)(1) (1982).



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