

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FRANK MOORE,

Plaintiff,

Case No:

Hon:

vs.

UNITED STATES POSTAL SERVICE,

Defendants.

_____/

JAMES S. CRAIG (P52691)
FIEGER, FIEGER, KENNEY & HARRINGTON, P.C.
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_____/

COMPLAINT AND JURY DEMAND

NOW COMES Plaintiff FRANK MOORE by and through his attorneys and
in support of his Complaint states as follows:

GENERAL ALLEGATIONS

1. This Court has jurisdiction over this action under 39 U.S.C. § 409(a),
which provides that the United States District Courts have original jurisdiction
over all actions by or against the United States Postal Service, (hereafter
“USPS”).

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2. Venue is proper under 28 U.S.C. §1402(b) as this action has been filed in the jurisdiction where the incident occurred, and the USPS resides.

3. At all times material hereto, the Plaintiff, FRANK MOORE was a resident of Dearborn Heights, County of Wayne, and State of Michigan.

4. Defendant USPS is an agency within the meaning of 5 U.S.C. § 552 and 5 U.S.C. § 702. The USPS is an independent establishment of the executive branch of the federal government charged with running the postal services of the United States. 39 U.S.C. §§ 201, 403. The USPS may sue and be sued in its official name. *Id.* § 401.

5. At all times material hereto, Defendant USPS operated a branch office in the City of Detroit, County of Wayne, and State of Michigan, located at 1401 West Fort Street, Detroit, MI 48.

6. This is an action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as amended, challenging the United States Postal Service's (the "USPS") improper withholding of agency records concerning an incident that occurred on November 29, 2018, at the Detroit Post Office located at 1401 W Fort St in the City of Detroit, State of Michigan.

7. This action seeks declaratory relief that Defendant USPS violated FOIA by improperly withholding the requested records, disobeying subpoenas and Court Orders and seeks injunctive relief ordering the USPS to immediately

make available and produce the requested records in their entirety without claiming any exemptions.

FACTS

8. On November 29, 2018, Plaintiff FRANK MOORE was on the United States Postal Service property located at 1401 West Fort Street, Detroit, MI and was injured when a truck pulled away from the loading dock before Plaintiff had secured the door, causing Plaintiff to lose his footing and fall to the ground.

9. On April 25, 2019, Plaintiff submitted a FOIA request to the United States Post Office, 1401 West Fort Street, Detroit, MI 48216 requesting any and all records from the United States Postal Service pertaining to the 11-29-2018 personal injury incident involving Frank Moore d/o/b: 09/01/1955 at the Main Post Office, 1401 West Fort Street, Detroit, Michigan.

10. Defendant did not respond during the proscribed time period.

11. On May 16, 2019, Plaintiff sent Defendant another Freedom of Information Act (FOIA) request requesting any and all records pertaining to the 11-29-18 personal injury incident involving Frank Moore d/o/b 09/01/1955 at the Main Post Office, 1401 W. Fort Street, Detroit, Michigan.

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12. Defendant USPS responded on May 23, 2019, stating that Plaintiff request was received and would be forwarded to the USPS-National Tort Center, 1720 Market Street, Room 200, St. Louis, MO 63155.

13. Plaintiff received no records following that correspondence.

14. On June 5, 2019, Plaintiff sent another request to the USPS located at 1401 West Fort Street, Detroit, Michigan requesting all records and reports pertaining to the 11-29-2018 personal injury incident involving Frank Moore d/o/b 09/01/1955 at the Main Post Office, 1401 W. Fort Street, Detroit, Michigan.

15. Plaintiff subsequently received a letter from USPS dated July 6, 2019, stating that a search was conducted of the files maintained by Detroit District Human Resources Safety Department at the Detroit District Offices and that despite this diligent search, the USPS was unable to locate responsive documents.

16. On December 20, 2019, defense counsel in the underlying case, Robert Holt, then sent a subpoena to the USPS requesting United States Postal Service and its agents and record keepers to provide to the parties, in response to subpoena, complete and unredacted records, correspondence, statements, reports, recordings, videos and all other written or electronically stored information pertaining to Frank Moore, date of birth September 1, 1955,

including but not limited to information pertaining to a personal injury accident involving Frank Moore, occurring on November 29, 2018, in Detroit, Michigan.

17. Sent with the Subpoena was an Order from the Honorable David Allen, Wayne County Circuit Court, which ordered production of unredacted records pertaining to the injury accident involving Frank Moore, occurring November 29, 2018, in Detroit, Michigan.

18. Defendant USPS responded with a 2-page accident report. No other documents were produced.

19. On February 25, 2021, Plaintiff sent a subpoena to the USPS Accident & Tort Claim: 310 W. 11 Mile Road, Royal Oak, MI 48607-9991, requesting any and all notes, reports, investigative material, videos, or other such documents from any agency including the USPS Postal Police relating to Frank Moore's, d/o/b: 09/01/1955, injury on or about 11/29/2018 at the Detroit Postal Office located at 1401 W. Fort St., Detroit, MI.

20. On March 9, 2021, the USPS responded by producing redacted records pertaining to the 11-29-2018 personal injury incident involving Frank Moore d/o/b 09/01/1955 at the Main Post Office, 1401 W. Fort Street, Detroit, Michigan. The records were produced by the USPS General Law Service Center, by Frank Bartholf and Brittany Lindsay, 1720 Market Street Room 2400, St. Louis, MO 63155-9948.

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21. On March 18, 2021, Plaintiff again requested that the USPS provided unredacted records concerning the incident. The records produced contained potential eyewitnesses to the incident in question, but the names were redacted.

22. On April 8, 2021, Plaintiff then sent a letter to Mr. Frank Bartholf, Managing Counsel / General Law Service Center, United States Postal Service located at 1720 Market Street, Room 2400, St. Louis, MO 63166-9948. In this letter, Plaintiff again requested unredacted records related to the incident which occurred on November 29, 2018, involving Frank Moore. With said letter, Plaintiff enclosed a copy of the Order from the Honorable David Allen, Wayne County Circuit Court, which ordered production of unredacted records pertaining to the injury accident involving Frank Moore, occurring November 29, 2018, in Detroit, Michigan.

23. To date, Defendant USPS has not complied with FOIA requests, Subpoenas or Court Order.

CLAIM FOR RELIEF
Improper Withholding of Agency Records - 5 U.S.C. § 552

24. Plaintiff re-alleges the allegations contained in paragraphs 1-23. Defendant is currently in possession and control of the records Plaintiff requested.

25. Defendant has refused and continues to refuse to provide Plaintiff with the requested records in violation of 5 U.S.C. § 522(a)(3)(A).

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26. Plaintiff has exhausted all administrative remedies available.

27. Defendant's improper withholding of the records Plaintiff requested constitutes a violation of 5 U.S.C. § 552, as such records are subject to disclosure and production and none of the exemptions, whether or not defendant claimed them, apply to such records.

28. The legal standard of de novo review applies, and the burden of proof justifying withholding is on defendant. 5 U.S.C. § 552(a)(4)(B).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter an order: Declaring defendant USPS violated FOIA by improperly withholding the requested records;

- a. Issue an Order to Show Cause why the USPS should not be found in civil contempt for failing to obey a Court Order which ordered the USPS to produce unredacted records pertaining to the injury accident involving Frank Moore, occurring November 29, 2018, in Detroit, Michigan;
- b. Declaring that defendant's actions in denying Plaintiff's requests were "so flagrant to be arbitrary and capricious," and making a specific finding of that fact.
- c. Directing defendant to immediately disclose and produce copies of the requested UNREDACTED records to Plaintiff;
- d. Awarding Plaintiff reasonable attorney's fees and costs incurred in this matter pursuant to 5 U.S.C. § 552(4)(E)(i); and

- e. Granting Plaintiff such other and further relief as the Court deems just and proper.

Respectfully submitted,

FIGER, FIGER, KENNEY & HARRINGTON, P.C.

/s/ *James S. Craig*

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Date: August 12, 2021