

NOV 05 2021

ROBERT Z. WHIPPLE, III,  
Plaintiff,

Clerk, U. S. District Court  
Eastern District of Tennessee  
At Knoxville

v.

No. 3:21cv378

Crytzer/Poplin

DAVID JOLLEY,  
ELAINE RIVERA,  
CHARLOTTE LUCKSTONE,  
US MARSHALS SERVICE,  
US DEPT. OF JUSTICE,  
UNITED STATES,  
Defendants.

VERIFIED COMPLAINT

INTRODUCTION

This is a complaint for violations of the Freedom of Information Act ("FOIA") (5 U.S.C. § 552) and the Privacy Act of 1974 ("PA") (5 U.S.C. § 552a).

JURISDICTION AND VENUE

1. This court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B) and 5 U.S.C. § 552a(g)(1)(B).
2. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 5 U.S.C. § 552a(g)(5).

## PARTIES

3. Plaintiff, Robert Z. Whipple, III is a pretrial detainee in the custody of Defendant David Jolley ("Jolley"). Prior to incarceration, Plaintiff was a resident of Crossville, TN.
4. Defendant US Department of Justice ("DOJ") is a Department of the Executive Branch. The DOJ is an agency within the meaning of 5 U.S.C. § 552 (f).
5. Defendant US Marshals Service ("USMS") is a component of the DOJ. The USMS is an agency within the meaning of 5 U.S.C. § 552 (f).
6. Jolley is the US Marshal for the Eastern District of Tennessee. His Knoxville office has custody, possession, and control of the records Plaintiff seeks.
7. Defendants Elaine Rivera ~~and~~ ("Rivera") and Charlotte Lickstone ("Lickstone") are employed by the USMS and work in the Office of General Counsel.

## FACTS

8. In April 2021, Plaintiff requested all records concerning himself in USMS files by mailing a letter to Jolley's Knoxville office.
9. On June 4, 2021, Plaintiff received a letter from the USMS Office of General Counsel. This letter was sent by Rivera on behalf of Lickstone. The letter confirmed that the USMS received Plaintiff's FOIA/PA request on May 6, 2021, assigned a request number (#2021USMS36244), and indicated that a privacy waiver (DOJ-361) would be required "for the USMS to address [Plaintiff's] request."
10. Plaintiff executed the privacy waiver and mailed it back to Lickstone and Rivera on June 4, 2021.

11. Having received no response, Plaintiff wrote to Lockstone on August 10, 2021 to inquire as to the status of the FOIA/PA request.
12. Defendants have not responded, nor have they made a determination as to Plaintiff's FOIA/PA request as of November 1, 2021.
13. Plaintiff's request is six (6) months old and, more importantly, 126 business days have elapsed with no response or determination.
14. By statute, Defendants are required to respond and make a determination within twenty (20) business days. 5 U.S.C. 552(a)(6)(A).
15. Therefore, the USMS failed to comply with the time limits and Plaintiff is "deemed to have exhausted his administrative remedies." 5 U.S.C. (a)(6)(C)(i).

### COUNT 1:

#### VIOLATION OF FOIA/PA

16. This Count realleges and incorporates by reference all of the preceding paragraphs.
17. Defendants have violated the FOIA and PA by failing to respond or make a determination within twenty (20) business days.
18. Defendants have violated the FOIA and PA by improperly withholding records responsive to Plaintiff's FOIA/PA request (#2021USMS36244).

## RELIEF

Plaintiff requests that this Court:

- A. Declare Defendants' failure to comply with FOIA and PA to be unlawful;
- B. Enjoin Defendants from continuing to withhold the records responsive to Plaintiff's FOIA/PA request and otherwise order Defendants to produce the requested records without further delay;
- C. Grant Plaintiff an award of attorney's fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § (a)(4)(E)(i) and 5 U.S.C. § 552a (g)(3)(B); and
- D. Grant Plaintiff such other and further relief that the Court deems proper.

## VERIFICATION

Pursuant to 28 U.S.C. § 1746, Plaintiff declares under penalty of perjury that the foregoing is true and correct. Given to prison officials for mailing on November 1, 2021.

Robert Z. Whipple, III  
Robert Z. Whipple, III  
Plaintiff, pro se  
440 Hammock Rd  
London, KY 40744

Robert Whipple  
440 Hammock Rd  
London, KY 40399

LEGALS  
MAIL

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U.S. DISTRICT COURT  
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Eastern District of Tennessee  
At Knoxville

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