

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

PAULINE DALE STONEHILL)
Co-Executor and Co-Special Administrator)
Estate of Harry S. Stonehill)
Calle Guillermo Tell 14)
Churriana 29140 Malaga, ESP)

Plaintiff)

Civil Action No. ____

v.)

UNITED STATES DEPARTMENT OF)
JUSTICE CRIMINAL DIVISION)
950 Pennsylvania Avenue, N.W.)
Washington, D.C. 20530-0001)

Defendant)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff Pauline Dale Stonehill (“Mrs. Stonehill”), Co-executor and Co-special administrator of the Estate of Harry S. Stonehill (“Stonehill”), by and through her undersigned counsel, brings this action against the Department of Justice Criminal Division (“Criminal Division”) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). As grounds therefor, Plaintiff alleges as follows:

NATURE OF ACTION

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”) to obtain agency records that the Criminal Division has improperly withheld from Mrs. Stonehill, the Co-executor and Co-administrator of her husband’s estate. The withheld documents relate to information about Criminal Division files that were stored at the Washington National

Records Center (“WNRC”), including two files that were returned to the Criminal Division, placed in a Criminal Division safe, selectively introduced by Department of Justice Tax Division attorneys in the Rule 60(b) proceeding (Stonehill v. U.S.) and then purportedly lost one year after Stonehill filed an FOIA request for the same documents. The files contain information about the Government’s role in the investigation and wiretapping of Stonehill, the subsequent illegal raids on his businesses in the Philippines in 1962 and the use of Stonehill’s lawyer as a government informant.

2. On September 19, 2018, the undersigned counsel, Robert E. Heggstad (“Heggstad”) filed an FOIA request on behalf of Mrs. Stonehill, seeking: (1) all Stonehill Criminal Division files transferred to the Washington Records Center; (2) all documents which reference or describe Criminal Division files transferred to or from the Washington Records Center; (3) all records that were located in response to a March 23, 2017 FOIA request filed by Bethany McLean; (4) and all records related to the destruction of potentially responsive documents. One year later, on September 26, 2019, the Criminal Division acknowledged receipt of Mrs. Stonehill’s FOIA request and extended the time to respond for an additional 10 days because the request presented “unusual circumstances (See 5 U.S.C. sec. 552(a)(B)(i)-(iii).”

3. On March 24, 2020, eighteen months after the FOIA request was filed, the Criminal Division reported that documents “potentially responsive” to the request (which had then been pending for 375 business days) “have been received and are under review.” The Criminal Division informed Heggstad in November 2020 and on December 9, 2020, that the search for responsive documents had been completed and the documents were under review. On June 4, 2021, the Criminal Division again informed Heggstad that records “potentially responsive” to the request (which had then been pending for 651 business days) “have been

received and are under review.” In September 2021, Heggstad spoke to Amanda Jones (“Jones”), Chief of the Criminal Division’s FOIA/PA Unit and requested information about the status of Mrs. Stonehill’s FOIA request. Jones agreed to contact the disclosure officer assigned to review documents responsive to the FOIA request and to ask the disclosure officer to contact Heggstad to report the status of the review. Heggstad contacted Jones on October 29, 2021, November 6, 2021, and February 1, 2022 about the status of Mrs. Stonehill’s FOIA request, which has now been pending for more than three years.

4. Jones has not responded to Heggstad’s requests or provided any additional information since September 2021.

5. The Criminal Division’s extraordinary delay in processing Mrs. Stonehill’s FOIA request is part of the decades-long effort by the Government to delay and to prevent disclosure of documents which show government misconduct during the original Stonehill investigation and its participation in the subsequent raids which were precipitated by a January 10, 1962, American Embassy cable that said:

It is imperative for American Interests in the Philippines that some way be found to get Stonehill out of the Philippines and break his stranglehold here...the only attack that can be made on Stonehill is through the IRS.¹

Seven weeks later, on March 2, 1962, seventeen Stonehill corporations were raided by the Philippine National Bureau of Investigation (“NBI”) and Stonehill was arrested and deported. FBI documents reflect that J. Edgar Hoover personally oversaw the raids and related strategy.

As detailed herein, over several decades and continuing to the present, the efforts of Mr. Stonehill, when he was alive, and his wife as his executor, to obtain vital documents from the

¹ Memorandum dated January 10, 1962, from Robert Chandler, Revenue Service Representative in Manila to C. I. Fox, Director, IRS Office of International Operations. (Exhibit 1(a))

federal government through various FOIA requests have been thwarted through various government wrongdoing, apparently ranging from mere negligence and sloth, to false statements and representations to various courts, to outright apparent document destruction of incriminating documents, to which we believe culpable individuals were given access. The documents that Mrs. Stonehill seeks to compel production have already been or readily could be assembled –the requests herein are very focused, and the Criminal Division has asserted no ground, much less good ground, for its continued failure to produce them--thus necessitating this action.

JURISDICTION AND VENUE

6. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552 (a)(4)(B) and 28 U.S.C. §1331.

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391 (e).

PARTIES

8. Plaintiff is the Co-executor and Co-special administrator of the Estate of Harry S. Stonehill, and she resides at Calle Guillermo Tell 14, Churriana 29140, Malaga, Spain.

9. The Defendant is an agency of the United States and is headquartered at 950 Pennsylvania Avenue, N.W., Washington, DC 20530. Defendant has possession, custody, and control of public records to which Plaintiff seeks access.

STATEMENT OF FACTS

The Original Proceedings

10. In 1962, Philippine authorities conducted warrantless raids of Stonehill's Philippine enterprises.

11. Of the approximately 1,000,000 documents seized, the IRS selected and copied only 30,000 as relevant to the IRS net worth case subsequently brought against Stonehill and his partner Robert P. Brooks (“Brooks”).

12. The Philippine Supreme Court found that the raids were “illegal searches and seizures” under the Philippine constitution, but the Philippine government never returned Stonehill’s documents and Stonehill was never provided access to the remaining 970,000 records—which later he was told were “destroyed by a typhoon.” *See e.g. United States v. Stonehill*, 702 F. 2d 1288 (9th Cir. 1983)

13. The United States used these materials to commence both civil and criminal tax proceedings against Stonehill.

The Government’s Criminal Prosecution of Stonehill

14. On February 9, 1962, the Assistant U.S. Attorney for the District of Columbia declined to prosecute Stonehill for the FBI’s Fraud Against the Government (FAG) allegations against Stonehill based on his view that “any possible violation of Fraud Against the Government is so attenuated as not to warrant prosecution....” Exhibit 1-b)

15. On March 7, 1962, the Assistant Attorney General of the Criminal Division, Herbert J. Miller, Jr. informed the legal Advisor of the State Department that despite the declination to prosecute Stonehill, the Criminal Division was “requesting further investigation into certain aspects of the case.” (Exhibit 1-c).

16. The United States subsequently filed criminal proceedings in New York against Stonehill, his associates and Stonehill’s company, Universal New York Inc., for violations of the Bills of Lading Act.

17. On March 3, 1967, the indictment against Stonehill for Bills of Lading Act violations was dismissed.

18. On May 11, 1967, Stonehill's business associates and his company Universal New York were acquitted in the Bills of Lading criminal proceeding following a bench trial. (5/12/67 Memo from SAC New York to FBI Director J. Edgar Hoover- Exhibit 1(d))

19. On January 19, 1971, the 1966 and 1967 indictments in the criminal tax case against Stonehill were dismissed. *United States v. Stonehill*, 325 F. Supp. 233 (S.D.N.Y 1971)

Civil Tax Litigation

20. In the civil tax litigation, Stonehill moved to suppress the seized documents on the theory that the United States, acting without a valid warrant, actually instigated, and helped plan the raids in violation of the Fourth Amendment to the United States Constitution.

21. The Government vehemently denied these charges to both the United States District Court of California and the United States Court of Appeals for the Ninth Circuit. ("Ninth Circuit")

22. After producing a handful of documents related to Government instigation and participation in the raids during the suppression hearings in 1967, the Government further represented to the Ninth Circuit that "[e]very piece of relevant correspondence, memoranda, cablegrams etc. whose existence has been identified in either the extensive discovery conducted on behalf of the taxpayers or at the trial had been produced."

23. In reliance on the Government representations, a divided Ninth Circuit panel found that the Government did not instigate or help plan the raids, which they acknowledged would be illegal if instigated by the U.S. *See Stonehill v. United States*, 405 F. 2d 738 (9th Cir. 1968)

24. The dissenting judge concluded that, despite Government representations otherwise, the evidence indicated that the Government instigated and helped plan the raids without a warrant, thereby rendering the search illegal. See *id.* (Browning, J., dissenting).

25. The Government ultimately obtained a tax judgment against Stonehill in 1984 and receivership proceedings continued for twelve years thereafter. The Government economically destroyed Stonehill.

Stonehill's 1979 FOIA Request to the Criminal Division

26. On October 19, 1979, Stonehill filed an FOIA request with the Criminal Division of the Department of Justice. (Exhibit 2-a).

27. Stonehill's FOIA request was referred to the Department of Justice Tax Division ("Tax Division") for processing. (Exhibit 2-b).

28. Six years after the FOIA request was filed, the Tax Division produced four files responsive to the request. *Id.*

29. Stonehill never received documents responsive to the 1979 FOIA request from the Criminal Division.

Stonehill's 1999 FOIA Request to the Department of Justice

30. In 1998, Stonehill filed an FOIA request with the Internal Revenue Service ("IRS"). On January 6, 1999, the IRS disclosure officer, Stephen Flesner, claimed that only 5 responsive documents could be located and suggested that the FOIA request be refiled with the Department of Justice, "where the case was litigated ...for a number of years." (Exhibit 2 (c))

31. On January 8, 1999, Stonehill filed a new FOIA request with the Justice Department. (Exhibit 2 (d)).

32. On January 26, 1999, the Justice Department Management Division advised Stonehill that the request had been forwarded to the Executive Office for U.S. Attorneys (“EOUSA”) as the Department’s “component that was most likely to have the records.” (Exhibit 2-e).

33. The Justice Department advised Stonehill on February 5, 1999, that the records responsive to the request had been destroyed. (Exhibit 2-f).

34. In response to Stonehill’s FOIA requests filed with the State Department and the FBI, documents were obtained which contained evidence that Robert Hawley (“Hawley”), the FBI Legal attaché in Manila, had testified falsely during his deposition. On April 23, 2000, Stonehill filed a Rule 60(b) motion to vacate the judgement based upon fraud on the Court.

Tax Division Access to Criminal Division files Previously Claimed to have been Destroyed

35. On October 2, 2000, the Tax Division advised Stonehill’s counsel that “nine sections of a DJ file pertaining to a criminal prosecution in the Southern District of New York were also processed” but that those sections were “no longer available” and that “they may have been destroyed 15 years after the closing, pursuant to record retention schedules.”

36. On October 3, November 8 and November 29, 2000, attorneys representing the Tax Division in the Rule 60(b) proceeding submitted selected documents from Criminal Division files obtained from a safe at the Criminal Division.

37. On February 8, 2001, the undersigned counsel requested that the Tax Division provide copies of all of the Stonehill documents from the Criminal Division safe. (Exhibit 3(a))

38. On February 9, 2001, the Chief of Special Litigation for the Tax Division responded that the FOIA request Stonehill filed with the Justice Department on January 8, 1999,

did not reach Criminal Division files and that a “Privacy Act or FOIA request for Criminal Division files would have to be made to the Criminal Division.” (Exhibit 3-b).

39. On February 12, 2001, the undersigned counsel filed an FOIA request with the Chief of the Criminal Division, Thomas McIntyre (“McIntyre”) on behalf of Stonehill, requesting: (1) documents related to Menhart Spielman (“Spielman”) or his December 18, 1961 meeting with Robert Chandler (“Chandler”); (2) correspondence between Chandler or the U.S. Department of Justice relating to Spielman, Stonehill or the U.S. Tobacco Company; (3) documents related to the January 9, 1962 meeting between Chandler and Howard Parsons; (4) documents relating to meetings or telephone conversations between Chandler and Spielman and/or Colonel Lukban; (5) documents related to communications between Chandler and the National Bureau of Investigation; and (6) notes or correspondence related to the February 11, 1962 meeting arranged by Chandler between Justice Secretary Diokno and the Executive Assistant to Robert Kennedy. Stonehill requested expedited processing of the FOIA request. (Exhibit 3-c).

40. On March 6, 2001, McIntyre acknowledged receipt of the request, warning that “due to the age of the records (pre-1980), we cannot conduct the searches in this Unit, so the search process takes longer.” (Exhibit 3-d).

41. On March 14, 2001, Plaintiff’s counsel informed McIntyre that the documents requested had been made available to Tax Division attorney, Seth Heald (“Heald”), who “obtained copies of the documents from a file of the Justice Department’s Criminal Division.” (Exhibit 3-e).

42. On March 28, 2001, the undersigned filed an FOIA appeal addressed to McIntyre confirming McIntyre and Heald’s acknowledgement that certain documents submitted by the

Tax Division in the Rule 60(b) proceeding had been located “in a safe” at the Criminal Division. (Exhibit 3-f).

43. On March 30, 2001, McIntyre advised Plaintiff’s counsel that his clients did not meet the standards for expedited processing of the FOIA request and that he “would ordinarily have expected to find that documents of this vintage had either been destroyed or, if of historic value, accessioned by the National Archives, some time ago.” (Exhibit 4-g).

44. On April 3, 2001, Heald confirmed that documents attached to the Declaration of Herbert Miller in the Rule 60(b) proceeding and documents attached to Tax Division correspondence dated November 8, 2000 and November 29, 2000 came from a Criminal Division file which contained two folders stored in a safe. (Exhibit 4-h).

45. On January 8, 2002, the undersigned counsel filed an FOIA complaint against the Criminal Division, the EOUSA and the Tax Division.

46. On February 6, 2002, approximately one year after Stonehill’s February 12, 2001 FOIA request had been filed, McIntyre reported to Plaintiff’s counsel that “we have been unable to locate any documents responsive to your request at this time” and that “material which it appears we previously did have...can no longer be located...” (Exhibit 3-i).

47. On March 22, 2002, statements were provided to Plaintiff’s counsel from Leslie H. Rowe (“Rowe”), a Records Consultant with the Criminal Division and Jennifer Wang (“Wang”), a trial attorney in the Tax Division, describing the review of the files stored in the safe and the subsequent efforts to locate the files. (Exhibit 3-j).

48. Rowe stated the documents originally stored in the Records Unit Vault were transferred to a new Vault in December 2000 and could not be located anywhere.

49. On April 3, 2002, based on Rowe's statement and on McIntyre's February 6, 2002 letter to Plaintiff's counsel reporting that the Criminal Division was "unable to locate any records" responsive to the February 12, 2001 FOIA request, Plaintiff's counsel agreed to sign a Stipulation dismissing the action against the Criminal Division with prejudice.

The Loss of Chief Counsel, Criminal Tax Division Attorney Notes and Papers for Review of the Stonehill and Brooks Cases

50. On March 15, 2001, Stonehill's counsel contacted the original IRS Disclosure Officer, Steven Flesner, and asked Flesner why IRS documents produced by the Tax Division were not also available in IRS files requested in 1998. Fletcher, who had initially reported that only 5 documents could be located, admitted to Stonehill's counsel that the documents which were responsive to Stonehill's 1998 FOIA request were located and still available at the Office of the Associate Chief Counsel, International Operations Branch.

51. Following his discussion with Fletcher, Heggstad wrote to Catherine Campell, Manager of IRS Headquarters Disclosure Office on March 15, 2001 and informed her that documents responsive to Stonehill's July 10, 1998 FOIA request "can be located and should be readily accessible in the Office of the Associate Chief Counsel. (Exhibit 4-a)

52. On May 18, 2001, Carroll Field ("Field"), a Tax Specialist at the IRS Headquarters Disclosure Office, advised Stonehill's counsel that 8 boxes of documents related to the Stonehill case had been located in the Associate Chief Counsel's Office.

53. On October 16, 2001, the IRS informed Stonehill that 86 additional boxes of Stonehill documents had been located at the IRS's Washington Records Center in Suitland, Maryland ("the Records Center"). (Exhibit 4-b)

54. On March 20, 2002, Harry Stonehill died; his wife, Pauline Stonehill was substituted as the Co-Representative and Co-Administrator of the Estate of Harry S. Stonehill in the Rule 60(b) litigation.

55. On November 14, 2002, after the completion of the review of the 86 IRS Stonehill boxes and shortly before oral argument in the Ninth Circuit, the IRS Disclosure Officer notified Stonehill's counsel that boxes 17 and 83 were "missing from the Federal Records Center." (Exhibit 4-c).

56. Box 17 (previously numbered Box 53) contained "Chief Counsel Criminal Tax Division attorney notes and papers for the review of the Stonehill and Brooks cases in preparation of the Chief Counsel's memorandum dated May 20, 1966." (Exhibit 4-d).

57. The May 20, 1966 Chief Counsel's memorandum described the IRS investigation of Stonehill's allegations concerning wiretapping and the illegal search and seizure by the Philippine National Bureau of Investigation ("N.B.I.) and the alleged participation by United States personnel.

Rule 60(b)(6) Ninth Circuit Decision

58. On July 14, 2010, the District Court denied Stonehill's motion to vacate the judgment and on September 8, 2010, Stonehill appealed the District Court's decision.

59. On September 28, 2011, the Court of Appeals for the Ninth Circuit issued its decision denying Stonehill's Rule 60(b) motion, stating that "although the evidence uncovered by the Taxpayers shows some misconduct on the part of the government, it is insufficient to demonstrate fraud on the court." *United States v. Stonehill*, 650 Fed. 3d 415 (9th Cir. 2011).

60. The Ninth Circuit found that: (1) the “documents uncovered by Taxpayers through their FOIA requests demonstrate that Hawley [the FBI Special Agent in charge of the Stonehill investigation] lied in his deposition about his knowledge of the raid.” *Id.* at 447-448.

61. The Ninth Circuit found that statements made to the court by John J. McCarthy, the attorney who represented the Government in the Stonehill investigation and litigation for more than two decades, “were not forthright. They concealed rather than revealed the true state of affairs known to the government.” *Id.* at 446.

62. The Ninth Circuit found that there was evidence that Damaso Nocon (“Nocon”), the Philippine National Bureau of Investigation (“NBI”) agent who conducted the raid on Stonehill’s companies “worked for the CIA, especially in connection with wiretapping activities...,” but the “fact that Nocon, and perhaps Lukban (the NBI Director) at some point worked with the CIA does not make everything they did the action of the U.S. government for purposes of a suppression hearing.” *Id.* at 448-449.

63. The Ninth Circuit found that Stonehill’s lawyer William Saunders was an informant who cooperated with the government. *Id.* at 453-454.

64. The Ninth Circuit concluded that “the government’s misrepresentations or false statements made by government witnesses or attorneys were on largely tangential issues and did not substantially undermine the judicial process by preventing the district court or this court from analyzing the case.” *Id.*

Criminal Division FOIA Requests filed by Bethany McLean

65. On July 10, 2014, Bethany Mclean (“McLean”), an investigative journalist, filed an FOIA request with the Criminal Division, on behalf of Mrs. Stonehill, for documents related to Stonehill. McLean also filed an FOIA request with the National Archives and Records

Administration (“NARA”) for all documents transferred to NARA from the Department of Justice Criminal Division.

66. On July 22, 2014, Martha Wagner Murphy, (“Murphy”) NARA Chief, Special Access and FOIA Staff responded to McLean stating that NARA did not have legal custody of records stored at the Washington National Records Center and that Legal Custody still belongs to the originating agency- the Department of Justice. Murphy informed McLean that to access these records she would need to file an FOIA request with the Department of Justice. (Attached to Exhibit 5-a).

67. On August 29, 2014, Kenneth Courter (“Courter’), the Acting Chief of the FOIA/PA Unit for the Criminal Division, informed McLean that “should the records you are seeking still exist, they would be maintained by the National Archives and Records Administration.” Courter suggested that McLean file an FOIA request with NARA. (Attached to Exhibit 5-a).

68. On October 10, 2014, McLean wrote to NARA and the Criminal Division and requested clarification as to whether she would be allowed to access Criminal Division records stored at NARA (or the Washington National Records Center) concerning Harry Stonehill. (Exhibit 5(a)).

69. On October 21, 2014, Murphy wrote to McLean and informed her that “DOJ was attempting to inform you that if any records relating to your topic still exist, they would have been scheduled as permanent and transferred to NARA.”

70. On January 23, 2017, McLean requested that NARA provide copies of the records responsive to her July 10, 2014 FOIA request which were stored at the Washington National Records Center (“WNRC”) under the name of Robert P. Brooks (DJ# 46-16-704, Accession

#60-90-467 and transferred to NARA as permanent records from the Criminal Division.
(Exhibit 5-b)

71. On March 23, 2017, McLean filed an FOIA request with the Criminal Division for “All documents transferred to the Washington National Records Center from the Department of Justice (DOJ) Criminal Division, including but not limited to two file jackets filed under the name of Robert P. Brooks (Mr. Stonehill’s co-defendant) DJ 46-16-704, Accession #60-90-467. (Exhibit 5-c)

72. On September 26, 2017, Amanda Marchand Jones (“Jones”) responded to Mclean stating that “we have found reference to records potentially responsive to your request.... However, after a thorough search, some of the records could not be located. The remaining records that might have been responsive to your request were destroyed pursuant to the Criminal Division’s record retention and disposition schedules.... Therefore, we are closing your request administratively.” (Exhibit 5-d).

September 19, 2018 FOIA Request

73. On September 19, 2018, the undersigned counsel filed a FOIA request on behalf of Mrs. Stonehill, for all “documents transferred to the Washington National Records Center from the Department of Justice (DOJ) Criminal Division, including but not limited to two file jackets filed under the name of Robert P. Brooks (Mr. Stonehill’s co-defendant) DJ#46-16-704. Accession #60-90-467.” (Exhibit 6-a). The FOIA request referenced the Criminal Division’s September 26, 2017 response to McLean and asked that in addition, the Criminal Division provide copies of all electronic correspondence and records which reference the records potentially responsive to the request or which related to the destruction of documents responsive to the request.

74. On September 26, 2018, the Criminal Division acknowledged receipt of the FOIA request, extending the time for response by 10 days because the request “presents unusual circumstances.” (Exhibit 6-b)

75. On March 18, 2020, approximately 1 1/2 years after the initial Criminal Division response to the September 19, 2018 FOIA, Heggstad requested that the Criminal Division provide a status report. (Exhibit 6-c)

76. On March 24, 2020, the Criminal Division wrote to Heggstad and advised him that the request was being processed on the complex track, “which on average...takes the FOIA/PA Unit 301 days to process...” The Criminal Division acknowledged that at “this time, your request has been pending for 375 business days” and that “[p]otentially responsive records have been received and are under review.” The Criminal Division suggested Heggstad “follow up with the FOIA/PA Unit in sixty days if you would like another status update on your request.” (Exhibit 6-d).

77. On June 4, 2020, Heggstad wrote to the Criminal Division requesting a final response prior to June 20, 2020. (Exhibit 6-e)

78. On June 19, 2020, the Criminal Division reported to Heggstad that the request, which had then been pending for 432 business days, was being processed on a complex track which on the average takes 301 days to process. The Criminal Division reported that “[p]otentially responsive records have been received and are under review” and that Heggstad should “feel free to follow up with the FOIA/PA Unit in 60 days” if he wanted another status report. (Exhibit 6-f)

79. On November 20, 2020, Heggstad wrote to the Chief of the FOIA/PA Division confirming a conversation with a staff member, Mrs. Tiffany, who had confirmed that “the

search for responsive documents had been completed and the documents requested are under review.” (Exhibit 6-g)

80. On December 9, 2020, the Criminal Division confirmed that “the search has been completed and the request is under review.... it was expected to “be completed within 6 months.” (Exhibit 6-h).

81. On April 13, 2021, Heggstad requested that the Criminal Division provide an estimated date on which a determination was expected to be dispatched. (Exhibit 6-i)

82. On June 4, 2021, the Criminal Division reported that the request had been pending for 651 business days, the estimated time for completion was six months and potentially responsive records have been received and are under review. (Exhibit 6-j)

83. On September 13, 2021, the undersigned counsel wrote to Jones to confirm that Jones had agreed to contact the disclosure officer who was reviewing documents responsive to the FOIA request to ask that an update on the status of the review be provided to Heggstad. Heggstad requested that Jones follow up with the disclosure officer. (Exhibit 6-k).

84. On October 29, 2021, Heggstad wrote to Jones to advise her that the disclosure officer had not provided an update on the status and estimated date for completion. Heggstad asked Jones “whether this request is still being processed and whether it will be processed by your office.” (Exhibit 6-l)

85. On November 26, 2021, Heggstad wrote to Jones and informed her that if he did not receive a meaningful response to his October 19, 2021 letter, he would proceed to file a complaint on behalf of his client, Mrs. Stonehill. (Exhibit 6-m)

86. On January 31, 2022, Heggstad wrote to Jones to summarize the history of the Criminal Division’s response to Mrs. Stonehill’s FOIA and its failure to respond to his requests

for information on September 13, 2021, October 29, 2021 and November 26, 2021. (Exhibit 6(n).)

87. Jones has not replied to Heggstad's September 13, 2021, October 29, 2021, November 26, 2021 and January 31, 2022 requests for information regarding the status of Mrs. Stonehill's FOIA.

Documents Requested in this Action

88. The documents related to the Criminal Division files that have been transferred to or from the National Records Center have already been or readily could be assembled by the government.

89. Stonehill is not seeking to compel the production of Stonehill documents that were responsive to the February 12, 2001 FOIA request which sought: (1) documents related to Menhart Spielman ("Spielman") or his December 18, 1961 meeting with Robert Chandler ("Chandler"); (2) correspondence between Chandler or the U.S. Department of Justice relating to Spielman, Stonehill or the U.S. Tobacco Company; (3) documents related to the January 9, 1962 meeting between Chandler and Howard Parsons; (4) documents relating to meetings or telephone conversations between Chandler and Spielman and/or Colonel Lukban; (5) documents related to communications between Chandler and the National Bureau of Investigation; and (6) notes or correspondence related to the February 11, 1962 meeting arranged by Chandler between Justice Secretary Diokno and the Executive Assistant to Robert Kennedy. These records were the subject of the complaint for Declaratory and Injunctive Relief filed on January 8, 2002, filed against the Criminal Division, the EOUSA and the Tax Division in *Robert E. Heggstad v. United States Department of Justice Criminal Division, et al.*

90. Stonehill is seeking information about: (1) the transfer of Criminal Division files to or from the National Records Center, containing Stonehill related documents; (2) the transfer of Stonehill files that were stored in a Criminal Division safe and transferred to a Criminal Division vault at a different location in December 2000; (2) information about records located by the Criminal Division which were “potentially responsive” to Mclean’s March 23, 2017 FOIA request; and (3) records related to the destruction of potentially responsive documents.

91. Because Defendant failed to comply with the time limit set forth in 5 U.S.C. §552(a)(6)(A)-(B), Plaintiff is deemed to have exhausted any and all administrative remedies with respect to her FOIA requests, pursuant to 5 U.S.C. §552(a)(6)(C).

COUNT 1

(Violation of FOIA, 5 U.S. C. §552)

92. Plaintiff realleges paragraphs 1-82 as if fully stated herein.

93. Defendant is unlawfully withholding records requested by Plaintiff pursuant to 5 U.S.C. §552.

94. The Defendant failed to make a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.

95. The Defendant failed to make a good faith effort to determine and communicate the scope of the documents it intends to produce and withhold, and the reasons for withholding any documents; and to inform the Plaintiff that she can appeal whatever portion of the “determination” is adverse.

Plaintiff is being irreparably harmed by reason of Defendant's unlawful withholding of requested records, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to conform its conduct to the requirements of the law.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court: (1) order Defendant to conduct a search for any and all responsive records to Plaintiff's FOIA requests, and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA requests; (2) order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA requests and a *Vaughn* index of any responsive records withheld under claim of exemption; (3) enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA requests; (4) grant Plaintiff an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. §552(a)(4)(E); and grant Plaintiff such other relief as the Court deems just and proper under the circumstances herein.

Dated: 02/04/22

Respectfully submitted.

/s/ Robert E. Heggstad

Robert E. Heggstad

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CERTIFICATE OF SERVICE

I hereby certify that on February 4, 2022, I electronically filed the foregoing document with the Clerk of the court using the CM/ECF system which will send notification of such filing to all parties in this action.