

IN THE UNITED STATES DISTRICT COURT FOR

DMITRY KRUGLOV

Plaintiff,

-against-

UNITED STATES CUSTOMS & BORDER PROTECTION

Defendant

Case: 1:22-cv-00260

Assigned To : Unassigned

Assign. Date : 2/1/2022

Description: FOIA/Privacy Act (I-DECK)

**COMPLAINT FOR  
DECLARATORY  
AND INJUNCTIVE  
RELIEF**

X

**STATEMENT of CLAIM**

Plaintiff Dmitry Kruglov, brings this action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, challenging the failure of the Defendant UNITED STATES CUSTOMS & BORDER PROTECTION (CBP) to issue a determination as to Plaintiff's FOIA requests within the statutorily prescribed time period and seeking the disclosure and release of agency records improperly withheld by Defendants.

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B), 5 U.S.C. § 552(a)(6)(C)(i), and 28 U.S.C. § 1331, because this action arises under FOIA, and Plaintiff has exhausted its administrative remedies.
2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e) and 5 U.S.C. § 552(a)(4)(B).
3. This Court has authority to award injunctive relief pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 2202. This Court has authority to award declaratory relief pursuant to 28 U.S.C. § 2201.

**PARTIES**

4. Plaintiff, Dmitry Kruglov, is a resident of the State of New York
5. Defendant CBP is an agency of the United States within the meaning of 5 U.S.C. § 552(f)(1) and is headquartered at 1300 Pennsylvania Ave. NW, Washington, DC 20229. Defendant is in control and possession of the records sought by Plaintiff.

**FACTUAL ALLEGATIONS**

6. On 07/29/2021 Plaintiff issued a FOIA request to Defendant
7. To summarise, the Plaintiff requested: all records, communications or video records of Defendant related to Plaintiff's crossings of the United States-Mexico border in July of 2021
8. Plaintiff submitted its FOIA Request and receipt was acknowledged.  
EXHIBIT 1 – acknowledgment letter
9. No other correspondence has been received from Defendant

**CAUSE OF ACTION**

**COUNT I: Violation of the Freedom of Information Act**

10. Plaintiff re-alleges and incorporates by reference the preceding paragraphs of this Complaint as if fully stated herein.
11. The federal FOIA establishes a 20-day deadline by which a federal agency must make and issue a decision regarding compliance with a request for records made pursuant to the statute. 5 U.S.C. § 552(a)(6)(A)(i).
12. Pursuant to 5 U.S.C. § 552(a)(6)(A), Defendant was required to determine whether to comply with Plaintiff's request within twenty (20) days, excepting Saturdays, Sundays, and legal public holidays. Pursuant to this same provision, Defendant was also required to notify Plaintiff immediately of the determination, the reasons therefor, and the right to appeal any adverse determination to the head of the agency.
13. Defendant's 20-day periods expired.
14. As of the date of this Complaint, the Defendant have failed to notify Plaintiff of any determination about whether they will comply with Plaintiff's FOIA request, including the scope of records the Defendant intend to produce, or the scope of records they intend to withhold, and the reasons for any such determination – all clearly required by the FOIA.
15. As of the date of this Complaint, the Defendant have failed to produce any records responsive to the request and have not indicated when (or even whether) any responsive records will be produced, or demonstrate that

responsive records are exempt from production – all as clearly required by the FOIA.

16. Defendant have not requested information from Plaintiff that would toll the 20-day period as contemplated by 5 U.S.C. § 552(a)(6)(A)(i)(I).
17. The FOIA permits a federal agency, in unusual circumstances, to extend the 20-day response deadline for a period not to exceed ten (10) additional working days. 5 U.S.C. § 552(a)(6)(B)(i).
18. There are no “unusual circumstances” that justify Defendant prolonged delay in responding as required by law to Plaintiff’s lawful FOIA requests, but regardless, Defendant did not comply with the clear statutory requirements to trigger the extension provided by 5 U.S.C. § 552(a)(6)(B).
19. Plaintiff has a statutory right to have Defendant process Plaintiff’s FOIA request in a timely manner and in accordance with the requirements set forth in 5 U.S.C. § 552(a)(6).
20. Defendant is unlawfully withholding records requested by Plaintiff pursuant to the FOIA.
21. The FOIA provides a cause of action for a complainant from whom a federal agency has withheld requested records. 5 U.S.C. § 552(a)(4)(B).
22. Through continued delay and outright failure to properly respond to Plaintiff’s lawful request for records, and its improper withholding of such requested records, Defendant have failed to comply with FOIA’s prescribed deadlines for responding to a request for records and has violated Plaintiff’s statutory rights.
23. Pursuant to 5 U.S.C. § 552(a)(6)(C), because Defendant failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A), Plaintiff is deemed to have exhausted any and all administrative remedies with respect to its FOIA request.
24. Plaintiff is being irreparably harmed by reason of Defendant’s unlawful withholding of requested records, and Plaintiff will continue to be irreparably

harméd unless Defendant is compelled to conform its conduct to the requirements of the law.

25. The FOIA imposes no limits on Courts' equitable powers in enforcing its terms, and this Court should exercise its equitable powers to compel the Defendant to comply with the clear requirements of the FOIA.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully requests that the Court enter judgment against Defendant, and provide Plaintiff with the following relief:

26. An Order that the Defendant conduct a diligent, expedited search for any and all records responsive to Plaintiffs FOIA request and demonstrate that they employed reasonable search methods most technologically likely to lead to the discovery of records responsive to Plaintiffs FOIA request, selected from among those methods available to Defendant
27. An Order that the Defendant produce, by a date certain, any and all non-exempt records responsive to Plaintiffs FOIA request and a *Vaughn* index of any responsive records withheld under claim of exemption;
28. An Order enjoining the Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiffs FOIA request;
29. A declaration that the Defendant's actions violated Plaintiff's statutory rights under 5 U.S.C. § 552;
30. An Order awarding to Plaintiff its reasonable attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E);
31. A written finding as to whether the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, and,
32. An Order granting all further relief to which Plaintiff may be entitled.

Respectfully submitted, /s/Dmitry Kruglov

EXHIBIT 1

Mr. Dmitry Kruglov

22 Tricor ave  
New Paltz, NY, 12561

07/30/2021

CBP-2021-089225

Dear Mr. Dmitry Kruglov:

This notice acknowledges receipt of your Freedom of Information Act (FOIA) request to U.S. Customs and Border Protection (CBP) received on 07/29/2021. Please use the following unique FOIA tracking number CBP-2021-089225 to track the status of your request. If you have not already done so, you must create a FOIAonline account at <https://www.foiaonline.gov>. This is the only method available to check the status of your pending FOIA request.

Provisions of the Act allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS FOIA regulations outlined on the DHS website, <https://www.federalregister.gov/documents/2016/11/22/2016-28095/freedom-of-information-act-regulations>. By submitting your request, you have agreed to pay up to \$25.00 in applicable processing fees, if any fees associated with your request exceed this amount, CBP shall contact you; however, the first 100 pages are free.

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Consistent with 6 C.F.R. Part 5 §5.5(a) of the DHS FOIA regulations, CBP processes FOIA requests according to their order of receipt. Although CBP's goal is to respond within 20 business days of receipt of your request, FOIA does permit a 10-day extension of this time period in certain circumstances pursuant to 6 C.F.R. Part 5 §5.5(c).

For additional information please consult CBP FOIA website please click on [FOIA Act Resources](#) or visit <http://www.cbp.gov/site-policy-notices/foia>.

Sincerely,

U.S. Customs and Border Protection