

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

GARDERE WYNNE SEWELL LLP

§

Plaintiff,

§

v.

§

§

C.A. NO. _____

§

UNITED STATES DEPARTMENT OF
LABOR, OCCUPATIONAL SAFETY
AND HEALTH ADMINISTRATION

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§

§

Defendant.

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PLAINTIFF’S ORIGINAL COMPLAINT

Gardere Wynne Sewell LLP (“Gardere”) complains of the United States Department of Labor, Occupational Safety and Health Administration (“OSHA”), and for cause would show unto the Court the following:

JURISDICTION AND VENUE

1. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331 because this action arises under the Freedom of Information Act (“FOIA”) and the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*

2. Venue is proper in the Southern District of Texas pursuant to 5 U.S.C. § 552(a)(4)(B) because Gardere’s principal place of business is within this district.

PARTIES

3. Plaintiff, Gardere Wynne Sewell LLP is a Texas limited liability partnership.

4. Defendant, the United States Department of Labor, Occupational Safety and Health Administration is a U.S. governmental entity. For service in accordance with Federal Rule of Civil Procedure 4(i)(2), OSHA may be served by sending a copy of the summons and the complaint by registered or certified mail to the agency at 200 Constitution Avenue, NW,

Washington, D.C. 20210. Further, pursuant to Rule 4(i)(2) and 4(i)(1), the complaint must also be served upon the United States through the United States attorney for the Southern District of Texas at 1000 Louisiana, Ste. 2300, Houston, Texas 77002 and by sending a copy by registered or certified mail to the Attorney General of the United States at the U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20531-0001.

FACTUAL STATEMENT

5. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, as amended, to order the defendant United States Department of Labor, Occupational Safety and Health Administration (“OSHA”) to produce information related to an official investigation.

6. On January 18, 2014, Amando Godines, Sr. was killed in an oilfield accident while working in the course and scope of his employment with Precision Drilling Company, LP (“Precision”). OSHA began its investigation into the death of Mr. Godines on January 20, 2014. OSHA interviewed a number of Precision employees, and potentially the employees of other third parties who were present at the time of the accident. OSHA did not cite Precision for any wrongdoing in the death of Mr. Godines.

7. On April 16, 2014, the spouse of Mr. Godines filed Cause No. 14-04-53134-CV, styled *Diana Godines, et al v. Precision Drilling (US) Corporation et al*, in the 79th Judicial District Court of Jim Wells County, Texas (the “Underlying Litigation”). The Underlying Litigation has since been transferred to Midland County, Texas. Gardere represents Precision in the Underlying Litigation.

8. In the Underlying Litigation, a number of witnesses have been deposed who have testified that they gave statements to OSHA regarding Mr. Godines’ accident, but that they did not have copies of their statements.

9. On March 2, 2015, the law firm of Gardere made a formal request for a copy of OSHA's complete file regarding its investigation into the death of Mr. Godines. The request expressly stated "[p]lease be sure to include statements taken from any individual as part of the investigation, with the appropriate redactions as permitted by the Fifth Court of Appeals in *Cameron Corp. v. U.S. Dept. of Labor*, 280 F.3d 539, 554 (5th Cir. 2002)."

10. On March 4, 2015, OSHA provided a portion of its file and assigned request #2015-770537, but advised that "[c]ertain information contained in the investigative file has been redacted." Upon information and belief, it appears that many of the witness statement have been redacted in their entirety.

11. On April 6, 2015, a formal appeal was filed in Request #2015-770537.

12. On April 17, 2015, Raymond E. Mitter Jr., Counsel for FOIA Appeals, wrote to Gardere to "acknowledge receipt of your letter appealing a denial of information by a Department of Labor official. Your appeal is being processed." Mr. Mitter also advised that "[t]he law generally requires that appeals be sequenced for action on a first-in first-out basis, consistent with the guidance by the courts. *See Open America v. Watergate Special Prosecution Force*, 547 F.2d 605 (D.C. Cir. 1976)."

13. On June 17, 2015, Gardere responded to Mr. Mitter's letter and advised:

Based upon applicable law, [OSHA] is required to "make a determination with respect to any appeal within twenty days (excepting Saturdays, Sunday, and legal public holidays) after the receipt of such appeal." 5 U.S.C.A. § 552. As such, the deadline for ruling on this appeal was May 4, 2015. Your reliance on the court's opinion in *Open America v. Watergate Special Prosecution Force*, 547 F.2d 605 (D.C. Cir. 1976), is misplaced as Congress amended the Freedom of Information Act ("FOIA") in 1996 and tightened the standards for any stay of the deadlines present in 5 U.S.C.A. § 552. *See Donham v. U.S. Dept. of Energy*, 192 F. Supp.2d 877, 880 (S.D. Ill. 2002).

As the *Donham* court noted, “FOIA is intended to ensure prompt disclosure of information, not its suppression.” *Id.* at 882. “Congress wrote a tough statute on agency delay in FOIA compliance, and recently made it tougher.” *Id.* “Congress gave agencies twenty days to respond to FOIA requests.” *Id.*

14. OSHA did not respond to this letter, but in a phone call on August 4, 2015, OSHA advised that it had not even begun working on the appeal.

CAUSE OF ACTION: FOIA VIOLATIONS

15. Plaintiff incorporates paragraphs 5 through 14 by reference as if fully set forth in this section.

16. The requested records in Gardere’s FOIA request are agency records subject to FOIA. *See Cameron Corp. v. U.S. Dept. of Labor*, 280 F.3d 539, 554 (5th Cir. 2002).

17. Upon information and belief, OSHA has records responsive to Gardere’s FOIA request in their possession. Namely, OSHA has witness statements obtained during the OSHA investigation into the death of Mr. Godines.

18. Gardere has a statutory right to the records it seeks, and there is no legal basis for OSHA’s refusal to produce them.

19. OSHA’s failure to produce responsive records violates FOIA, 5 U.S.C. § 552(a).

20. Alternatively, OSHA’s failure to produce the requested documents is arbitrary and capricious.

21. OSHA failed to respond to Gardere’s request and to its appeal within the statutory time period. Thus, Gardere is deemed to have exhausted its administrative remedies.

22. No exceptional circumstances prevent OSHA from responding to Gardere’s FOIA request.

