

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

DAREK J. KITLINSKI  
PO Box 40146  
Arlington, VA 22204-7416

Case: 1:22-cv-02976  
Assigned To : Boasberg, James E  
Assign. Date : 10/3/2022  
Description: FOIA (I-DECK)

Plaintiff,

v.

U.S. EXECUTIVE OFFICE OF THE UNITED  
STATES ATTORNEYS  
950 Pennsylvania Avenue NW, Room 2242  
Washington DC 20530-0001

Defendant.

)  
) Case No:  
)  
)  
)  
)  
)  
)  
)  
)  
)

**COMPLAINT**

**I. INTRODUCTION**

1. Plaintiff Darek J. Kitlinski ("Plaintiff") brings this action seeking declaratory and injunctive relief to redress violations of the Freedom of Information Act ("FOIA"), 5 U.S. C. § 552, and the Privacy Act of 1974 ("PA"), 5 U.S.C. § 552(a) *as amended* by Defendant U.S. Executive Office of the United States Attorneys ("Defendant" or "EOUSA") in failing to provide Plaintiff with all non-exempt records responsive to his April 5, 2022, FOIA / PA request ("Request") sent to this Federal Agency, seeking access to records concerning an attorney misconduct complaint Plaintiff filed with the State Board of California against Eastern District of Virginia Assistant United States Attorney ("AUSA") Kimere Kimball.

RECEIVED

OCT 03 2022

1

## II. JURISDICTION

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) (FOIA citizen suit provision) and 28 U.S.C. § 1331 (Federal question).

## III. VENUE

3. Venue in this Court is proper pursuant to 5 U.S.C. § 552(a)(4)(B), 5 U.S.C. § 552a(g)(5), and 28 U.S.C. § 1391(e).

## IV. PARTIES

4. **Plaintiff, Darek J. Kitlinski**, is an individual that, at all times relevant herein, has resided in Alexandria, Virginia.
5. **Defendant, U.S. Executive Office of the United States Attorneys**, is a federal agency of the United States, and as such, is subject to FOIA and PA, pursuant to 5 U.S.C. § 552(f).

## V. LEGAL FRAMEWORK OF FOIA AND PRIVACY ACT

6. FOIA requires, *inter alia*, that all federal agencies must promptly provide copies of all non-exempt agency records to those persons who make a request for records that reasonably describes the nature of the records sought, and which conform with agency regulations and procedures in requesting such records.  
5 U.S.C. § 552(a)(3)(A).
7. FOIA requires federal agencies to make a final determination on all FOIA

requests that it receives within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such request, unless the Agency expressly provides notice to the requester of "unusual circumstances" meriting additional time for responding to a FOIA request. 5 U.S.C. § 552(a)(6)(A)(I).

8. FOIA also requires federal agencies to make a final determination on FOIA administrative appeals that it receives within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal unless the Agency expressly provides notice to the requester of "unusual circumstances" meriting additional time for responding to a FOIA request. 5 U.S.C. § 552(a)(6)(A)(ii).

9. FOIA expressly provides that a person shall be deemed to have constructively exhausted their administrative remedies if the Agency fails to comply with the applicable time limitations provided by 5 U.S.C. § 552(a)(6)(A)(I) - (ii). 5 U.S.C. § 552(a)(6)(C).

10. FOIA provides that any person who has not been provided the records requested pursuant to FOIA, after exhausting their administrative remedies, may seek legal redress from the Federal District Court to enjoin the Agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. Under FOIA, the Federal Agency has the burden to sustain its actions. 5 U.S.C. § 552(a)(4)(B).

11. Pursuant to FOIA, this Court may assess attorney fees and litigation costs

against the United States if the Plaintiff prevails in this action. 5 U.S.C. § 552(a)(4)(E).

12. The PA safeguards the public from the unwarranted collection, maintenance, use, and dissemination of personal information contained in agency records. *Bartel v. F.A.A.*, 725 F.2d 1403, 1407 (D.C. Cir. 1984). It does so by allowing an individual to participate in ensuring that his records are accurate and properly used and by imposing responsibilities on Federal agencies to maintain their records accurately. *Id.*

13. The PA requires an agency, upon request by an individual, to allow the individual to gain access to his record or any information pertaining to him, to review the record, and have a copy of all or any portion thereof. 5 U.S.C. § 552a(d)(1).

14. — Additionally, the PA allows the individual to request an amendment of any records pertaining to the individual. *Id.* § 552a(d)(2)(A). The rationale for disclosure is the greatest, and the limitations on withholding are the most minimal, where individuals seek their own records. *Greentree v. U.S. Customs Service*, 674 F.2d 74, 87 (D.C. Cir. 1982). Within ten (10) business days of a Privacy Act request to amend one's record, an Agency must acknowledge receipt of the request and make any correction of any portion thereof that the individual believes is not accurate, relevant, timely, or complete or inform the individual of its refusal to amend the record and the reason for the refusal. *Id.* § 552a(d)(2)(B).

15. Pursuant to the PA, an agency is required to collect information "to the greatest extent practicable" from the individual when the information "may result in adverse determinations about an individual's rights, benefits, and privileges under Federal Programs." *Id.* § 552a(e)(2).
16. The PA authorizes agencies to exempt certain filing systems from the foregoing requirements, however, the Agency must show that the information is properly subject to an identified PA exemption. *Id.* 5 U.S.C. § 552a(j)-(k).
17. To withhold documents from a requester's twin FOIA/PA request, an agency must demonstrate that the records fall within some exception under each act. *Martin v. Office of Special Counsel, MSPB*, 819 F.2d 1181, 1184 (D.C. Cir. 1987). If a FOIA exemption 7 covers the documents, but a PA exemption does not, the documents must be released under the PA; if a PA exemption but not a FOIA exemption applies, the documents must be released under FOIA. *Id.*

## VI. FACTUAL ALLEGATIONS

18. On or about April 12, 2022, Plaintiff submitted a FOIA/PA request via the EOUSA Public Access Link website <https://eousafoia.usdoj.gov>, for access to email communications sent and/or received by AUSA Kimere Kimball containing information regarding an attorney misconduct complaint to the State Board of California filed in March 2019, by the Plaintiff against AUSA Kimere Kimball. The date range for the record search was from 03/01/2019 to 10/01/2020. Plaintiff submitted an endorsed Form DOJ-361 Certificate of

Identity with the request. *See Exhibit "A"*

19. On or about April 12, 2022, Plaintiff sent an automated email acknowledging receipt of the request, which was assigned case number EOUSA-2022-001602.

*See Exhibit "B"*

20. On or about June 30, 2022, Plaintiff sent an electronic message via the EOSUA Public Access Link website to inquire about the status of Plaintiff's request. Plaintiff also offered to re-scope his request to a keyword search. Plaintiff specifically requested access to the journaled emails stored within the email service, not the emails retained by AUSA Kimball. *See Exhibit "C"*

21. On or about August 29, 2022, Plaintiff submitted an administrative appeal to the Department of Justice Office of Information Policy ("OIP") for the failure of EOUSA to provide Plaintiff access to the records requested in April 2022. *See Exhibit "D"*

22. On or about August 30, 2022, OIP sent Plaintiff an automated email acknowledging receipt of the appeal, which was assigned case number A-2022-02003. *See Exhibit "E"*

23. On or about August 31, 2022, OIP Associate Chief Christina D. Trioani notified Plaintiff that OIP would take no action on the Plaintiff's appeal. *See Exhibit "F"*

24. As of the date of the filing of this action, Plaintiff has not received copies of the records he requested from his April 12, 2022, FOIA/PA request.

25. As of the date of this filing of this action, Plaintiff has not received a response from his June 30, 2022, status inquiry.

## **VII. CLAIMS FOR RELIEF**

26. Plaintiff realleges, as if fully set forth herein, paragraphs 1-25 previously set forth herein.

27. Defendant violated FOIA and PA by failing to provide Plaintiff with all non-exempt responsive records for his April 12, 2022, FOIA/PA request and by failing to complete an adequate search reasonably calculated to locate all responsive records to this FOIA/PA request.

28. By failing to provide Plaintiff with all non-exempt responsive records to his April 12, 2022, FOIA/PA request as described in paragraph 18 by failing to perform an adequate search for responsive records, Defendant has denied Plaintiff's right to this information as provided by the law under FOIA and PA.

29. Defendant has violated FOIA and PA by failing to perform an adequate search reasonably calculated to locate all responsive records to Plaintiff's April 12, 2022, FOIA/PA request at issue in this action.

30. By failing to perform an adequate search reasonably calculated to locate all responsive records to Plaintiff's April 12, 2022, FOIA/PA request, Defendant has denied Plaintiff's right to this information, as provided by law under FOIA and PA.

31. Unless enjoined by this Court, Defendant will continue to violate Plaintiff's

legal rights to be provided with copies of the records he requested in his FOIA/PA request described in paragraphs 18.

32. Plaintiff is directly and adversely affected and aggrieved by Defendant's failure to provide responsive records to his FOIA/PA request described above.

33. Plaintiff has been required to expend costs, such as court filing fees, to prosecute this action.

34. If Plaintiff attains legal counsel to assist in this litigation, Plaintiff is entitled to reasonable costs of litigation, including attorney fees pursuant to FOIA 5 U.S.C. § 552(a)(4)(E).

#### **VIII. REQUEST FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court enter Judgment for Plaintiff providing the following relief:

35. Declare Defendant has violated FOIA and PA by failing to provide Plaintiff with all non-exempt records responsive to his April 12, 2022, FOIA/PA request.

36. Declare Defendant has violated FOIA and PA by failing to complete an adequate search for records responsive to Plaintiff's April 12, 2022, FOIA/PA request.

37. Direct by injunction that Defendant perform an adequate search for records responsive to his April 12, 2022, FOIA/PA request and provide Plaintiff with all non-exempt responsive records to Plaintiff's April 12, 2022, FOIA/PA request.

37. Grant Plaintiff's costs of litigation as provided by FOIA, 5 U.S.C. §

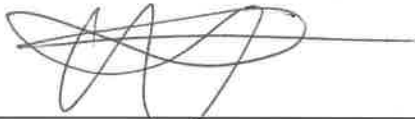


552(a)(4)(E); and,

38. Provide such other relief as the Court deems just and proper.

DATED: This 3<sup>rd</sup> day of October 2022.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'DAREK J. KITLINSKI', written over a horizontal line.

DAREK J. KITLINSKI  
PO Box 40146  
Arlington VA 22204-7416  
Mobile: (858) 442-4429  
Fax/Message (800) 688-5429  
darek@kitlinski.net