

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

RECEIVED

OCT 27 2022

AT 8:30 \_\_\_\_\_ M  
WILLIAM T. WALSH  
CLERK

THOMAS A. BIGGINS  
1229 Chestnut Street, #157  
Philadelphia, PA 19107

Civil Action No.: \_\_\_\_\_

*Plaintiff,*

*-against-*

*Civil Action*

UNITED STATES POSTAL SERVICE  
475 L'Enfant Plaza, SW  
Washington, DC 20260

**COMPLAINT**

*Defendant(s).*

Thomas A. Biggins, proceeding *pro se* in this matter, as and for his complaint against Defendant, alleges as follows:

**PRELIMINARY STATEMENT**

1. This is a simple matter. This is a Freedom of Information Act civil action for, *inter alia*, declaratory and injunctive relief for Defendant's violations of the federal Freedom of Information Act and to obtain the expedited release of records requested by Plaintiff from Defendant.

2. There is no reasonable expectation Defendant will voluntarily be brought within the ambit of its duties under FOIA without judicial review.

**JURISDICTION**

3. Plaintiff's action is brought as the first of six (6) Freedom of Information Act civil actions against Defendant, pursuant to 5 U.S.C.A. § 552(a)(4)(B), as amended, popularly known as the Freedom of Information Act, ("FOIA") and the Administrative Procedure Act, *Pub.L. 79-404, 60 Stat. 237*, ("APA") seeking, *inter alia*, declaratory and injunctive relief against Defendant for violations of the Acts, directing the expedited release of agency records properly requested by Plaintiff and held by Defendant, and challenging Defendant's wrongful, arbitrary and capricious acts, omissions, and policies to withhold documents otherwise subject to FOIA requests for reasons outside the statutory exemptions in direct violation of APA.

4. This court has personal and subject matter jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

5. This court also has jurisdiction over this matter pursuant to 28 U.S.C. § 1361 because the Complaint alleges violations of federal law and seeks to compel Defendant to perform duties owed to Plaintiff and members of the public.

#### VENUE

6. Venue is properly laid in this District pursuant to 5 U.S.C. § 552(a)(4)(B) as this District is the situs in which the agency records are created, stored, and maintained, and where the USPS acts and omissions complained of occurred. *5 U.S.C. § 703, 28 U.S.C. § 1391(e), and 28 U.S.C. § 1331.*

7. Plaintiff has exhausted all applicable administrative remedies prior to the filing of this action. *5 U.S.C. § 552(a)(6)(C)(i)*.

## PARTIES

8. Plaintiff, Thomas A. Biggins, (“Biggins”) is and was at all times material to this action a citizen of the United States and the Commonwealth of Pennsylvania with an address of 1229 Chestnut Street, #157, Philadelphia, PA 19107.

9. Biggins submitted the FOIA requests forming the genesis of this litigation to the United States Postal Service and its agents and employs at post office Stations at Princeton Junction, New Jersey 08850 (“Princeton Junction Station”) and Princeton, New Jersey 08550 (“Princeton Station”) (collectively “USPS”).

10. The United States Postal Service is and was at all times material to this action subject to FOIA as an independent establishment within the executive branch of the government of the United States under the Postal Reorganization Act of August 12, 1970, (*Public Law 91-375, 84 Stat. 719*) with its principal place of business located at 475 L'Enfant Plaza SW., Washington, DC 20260.

11. USPS, together with its agents and employs, Princeton Junction Station and Princeton Station constitute an “agency” as that term is contemplated by the meaning and definition of FOIA, *5 U.S.C. § 552(f)(1)*, and regularly conducts business within this Judicial District. *See: Church of Scientology of California v. U.S. Postal Service, 633 F.2d 1327, 6 Media L. Rep. (BNA) 2434 (9th Cir. 1980)*.

12. FOIA requires USPS to make its records available to the public, subject to certain exemptions, exclusions, and other laws allowing USPS to withhold certain types of records and information from the public.

13. The records requested by Biggins do not fall within the scope of any of the enumerated exemptions or exclusions under FOIA, or any other laws allowing USPS to withhold certain types of records and information from the public.

14. USPS's improper failure and refusal to produce records sought by Biggins constitutes an impermissible and unlawful denial of the requests that does not fall within one of the statutorily designated exemptions or exclusions under FOIA.

15. USPS has exclusive possession of the records Biggins seeks.

16. USPS, and its agents and employs, wrongfully, arbitrarily, capriciously, and impermissibly withheld agency records from Biggins without lawful reason or excuse.

17. Biggins is entitled to relief the relief requested herein as provided by FOIA.

### **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

18. Biggins has exhausted each and every exhaustion-of-remedies requirement that must be satisfied to bring and maintain this proceeding.

19. More than twenty (20) working days have passed since USPS's receipt of Biggins's FOIA requests, and USPS has not produced the records Biggins requested. Thus, Biggins has exhausted his administrative remedies. *U.S.C.A. § 552(a)(6)(A)(i) and 5 U.S.C.A. § 552(a)(6)(C)(i)*.

20. More than twenty (20) working days have passed since USPS's receipt of Biggins's FOIA requests, and USPS has not notified Biggins as to whether or when it will fully comply with the requests. Thus, Biggins has exhausted his administrative remedies. *U.S.C.A. § 552(a)(6)(A)(i) and 5 U.S.C.A. § 552(a)(6)(C)(i)*.

21. Biggins has a right under FOIA of prompt access to the requested records and there is no legal basis for denial of such access by USPS, or its agents or employs at Princeton Junction Station. *5 U.S.C.A. § 552(a)(3)*.

## STATEMENT OF FACTS

### **Original September 2021 Requests for Change of Address Information Needed for Service of Legal Process**

22. Biggins originally sought access to USPS agency records maintained at either Princeton Junction Station or Princeton Station required for service of original legal process in a contemplated New Jersey state court action in or about September 2021.<sup>1</sup> (Now pending as of June 6, 2022, as *Biggins v. Zhao, et al., Superior Court of New Jersey for Essex County, No.: ESX L 00331-22*).

23. At that time, Biggins made five (5) "Address Information Requests" of Princeton Junction Station, Princeton Station, and New York, NY 10025 Station.

24. Because USPS does not have a standard form for use when requesting third party address information required for service of legal process, requesters are "encouraged" by USPS to use its "standard format Exhibit 5-2b" to USPS

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<sup>1</sup> Two requests for each address were submitted to the two Stations because there was confusion at the Stations as to which Station serviced the addresses – as is often the case.

Administrative Manual. A true and correct copy of USPS Administrative Manual Exhibit 5-2b is attached hereto as Exhibit "A" and incorporated herein by reference.<sup>2</sup> Biggins does not attach hereto the original requests because they were lost due to a USB drive failure. They were in all respects identical to the requests detailed below save for the date of submission.

25. When none of the requests were timely fulfilled and Biggins was unable to contact Princeton Junction Stations by telephone for anticipated production dates, he telephoned Ms. Daniesha White, public liaison, at USPS FOIA Field Requester Service Center at USPS St. Louis General Law Service Center. Ms. White refused to provide any assistance to Biggins, refused to contact the local New Jersey Stations, refused to intake or fulfill the requests, and failed to extend to Biggins any common courtesies of any kind. Ms. White was at turns rude, dismissive, flippant, caustic, and smug.

26. After the great displeasure of having to deal with Ms. White, Biggins telephoned Ms. Nancy Chavannes-Battle, public liaison, at USPS FOIA Headquarters Requester Service Center who similarly refused to provide any assistance to Biggins, refused to contact the local New Jersey Stations, refused to intake or fulfill the requests, and failed to extend to Biggins any common courtesies of any kind. Ms. Chavannes-Battle was every bit the equal of Ms. White in her rude, dismissive, flippant, caustic, and smug attitude.

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<sup>2</sup> <https://about.usps.com/who/legal/foia/documents/coa-or-boxholder-form.pdf> last accessed October 26, 2022.

27. Biggins must ascertain state court Defendant Zhao's current residence state and address to establish the forum and to thereafter effectuate service of original process in the New Jersey state court action as abovesaid.

28. Informal discovery including New Jersey and New York county-level real property ownership and tax assessment records, review of numerous municipal-level statutory enforcement actions, and the scouring of multiple databases and internet searches, show Defendant has nearly a dozen residence addresses on file in New York and New Jersey with various state and local agencies – most of which, if not all but one, must necessarily be outdated.

29. As such, Biggins must pinpoint and establish defendant's *current* residence state and address to properly serve process and litigate to its ultimate disposition said state court action.

30. Failure to properly serve the state court Defendant at her current residence address renders any further actions by Biggins to litigate the matter *void ab initio* because the attachment of in personam jurisdiction is a prerequisite in the New Jersey state courts.

31. On October 22, 2022, Biggins received an Order of Court, dated October 21, 2022, by the Hon. Russell J. Passamano of the Superior Court of New Jersey for Essex County, styled "Lack of Prosecution Dismissal Warning Notice" advising "...THE COURT WILL DISMISS THE ABOVE... PARTIES FOR LACK OF PROSECUTION..." (*Emphasis original*) for Biggins's failure to serve legal process

as a direct and proximate result of USPS's failure to provide Biggins the agency records required by FOIA and needed for service of legal process.

32. Because USPS has failed and refused to perform its *mandatory duty* under FOIA to provide Biggins with the state court Defendant's address information needed for service of legal process as *required*, Biggins's state court Complaint is now at grave jeopardy of the ultimate sanction of outright dismissal for failure to timely serve the parties with original process. A true and correct copy of the Superior Court's 21 October Order styled Lack of Prosecution Dismissal Warning Notice is attached hereto as Exhibit "B" and incorporated herein by reference.

#### **The June 24, 2022 FOIA Requests**

33. On or about June 24, 2022, Biggins, pursuant to FOIA, 5 U.S.C.A. § 552(a), requested by letters of even date, and "USPS standard format Exhibit 5-2b" forms styled "Request for Change of Address or Boxholder Information Needed for Service of Legal Process", that USPS, through its appropriate components, Stations, agents and employs at Princeton Junction Station and Princeton Station, "furnish the new address" of Emily Zhao, Defendant in the pending New Jersey state court civil action as abovesaid. True and correct copies of the letters and requests are attached hereto as Exhibits "C1" and "C2" and "D1" and "D2," respectively, and incorporated herein by reference.



34. FOIA requires USPS and its components, Stations, agents, and employs to respond to such “Address Information Requests” within twenty (20) working days or, on or before July 22, 2022. *5 U.S.C. § 552(a)(6)*.

35. USPS has failed, refused, or willfully neglected to respond to the requests as required by FOIA.

36. Biggins received no request from USPS for clarifying information as of the date of this filing and the time for doing so has run. *5 U.S.C. § 552(a)(6)(a)*.

37. Biggins received no notification from USPS with respect to any unusual circumstances necessitating an extension of time for the determination of the requests as of the date of this filing and the time for doing so has run. *5 U.S.C. § 552(a)(6)(B)(i)*.

38. The failure of USPS to provide a written responses to such “Address Information Requests” within twenty (20) working days is deemed a denial of the requests because the agency failed to comply and perform its duties under FOIA within the applicable time limit provisions thereof. *5 U.S.C. § 552(a)(6)(C)(i)*. See also: *Jenks v. U.S. Marshals Ser.*, 514 F. Supp. 1383, 1386 (S.D. Ohio 1981).

39. Biggins made numerous telephone calls multiple times per day between 11 July and 22 July to both Stations to check on the requests to no avail. No one ever answered the telephones at these Stations and the Stations have no active voicemail capabilities.

40. The failure, refusal, or willful neglect to fulfill such FOIA Address Information Requests needed for service of legal process by USPS is a spiraling

problem nationwide as USPS Stations simply ignore such requests with ever greater frequency in direct violation of their mandatory FOIA duties.

41. Biggins's administrative remedies were exhausted on July 22, 2022, and he is therefore free to seek judicial review of the matters complained of.

### **The August 1, 2022 Appeal**

42. Although not required to do so, on or about August 1, 2022, Biggins filed a timely Appeal of the New Jersey Stations' denials to *foiaappeal@usps.gov* seeking an amicable resolution of USPS's FOIA failures without the need for the intervention of the courts. A true and correct copy of the Appeal dated August 1, 2022, is attached hereto as Exhibit "E" and incorporated herein by reference.

43. USPS had twenty (20) working days after receipt of the 1 August Appeal to respond in writing but failed to do so within the time allowed, or as of the date of this filing, and the time for doing so has run. (*5 U.S.C. § 552(a)(6)(A)(ii)*).

44. On or about August 2, 2022, Biggins received a telephone call from (202) 268-2030 for 5 minutes 51 seconds. (Research shows telephone number (202) 268-2030 to be a number maintained within USPS' FOIA offices).

45. The woman who placed the telephone call refused to identify herself. ("Jane Doe").

46. Doe improperly insisted the records requested by Biggins fell under The Privacy Act of 1974, *5 U.S.C. 552a*, ("Privacy Act") and USPS would not release agency records as *required* by FOIA.

47. Biggins happened to have the research open in front of him at the time of receipt of the call and cited Doe to:

<https://about.usps.com/handbooks/as353/welcome.htm> which contains USPS's

“Handbook AS-353, Guide to Privacy, the Freedom of Information Act, and Records Management,” (the “Handbook”) as well as to the FOIA exception to the Privacy Act. Doe continued to improperly insist the records requested by Biggins were not subject to FOIA but solely to the Privacy Act.

48. Biggins then cited Doe to section 5-2 of the Handbook “Requests for Employee or Customer Information” that permits disclosure of address information needed for service of legal process which states, in pertinent part:

“d. *Customer Names and Addresses.* The procedures related to the disclosure of customer names and addresses are as follows (*see also 39 CFR § 265.14*):

“...5-2(d)(3)(b)(ii) *To persons serving legal process.* This includes persons empowered by law... or a party who is acting pro se... The USPS does not have a standard form for use when requesting address information. Requesters are encouraged to use the standard format in Exhibit 5-2b. If the requester uses the standard format on its own letterhead, the standard format must be used in its entirety, and the warning statement and certification must appear immediately before the signature block... (Emphasis supplied).

[https://about.usps.com/handbooks/as353/as353c5\\_002.htm](https://about.usps.com/handbooks/as353/as353c5_002.htm) last accessed October 24, 2022.

49. Section 265.14 of Title 39 of the Code of Federal Regulations is the central filing of the original acts enacted by Congress and the original documents, regulations, and notices of proposed rulemaking and other notices, submitted to the Director by officials of agencies such as USPS of the executive branch of the Federal Government. Put differently, 39 CFR § 265.14 is USPS's own official statement of

FOIA and squarely incorporates the records Biggins requested as solely subject to FOIA.

50. After much back and forth wherein Doe refused to cite any law or statute permitting USPS to deny Biggins access to the information requested and required, Doe finally said, in words or substance, “there will be no written decision on the Appeal.” Doe then hung up the telephone.

51. Biggins respectfully requests this Honorable Court take judicial notice of the fact USPS maintains its Administrative Manual Exhibit 5-2b suggested “Request for Change of Address or Boxholder Information Needed for Service of Legal Process” on its FOIA page – and not on its Privacy page.

<https://about.usps.com/who/legal/foia/documents/coa-or-boxholder-form.pdf>

52. Every attorney in all of the fifty sister states is familiar with this USPS form as it is the sole means of acquiring, and proving to the satisfaction of the Courts nationwide, the current residential address of state and federal court Defendants by a co-equal branch of government.

53. By and through 39 CFR § 265.14 USPS therefore admits such Address Information Requests are exceptions to the Privacy Act.

54. By and through 39 CFR § 265.14 USPS therefore admits such Address Information Requests are subject to FOIA.

55. On information and belief, all the information sought by Biggins is within the provisions of FOIA and is required to be disclosed by USPS in a timely manner. 5

*U.S.C.A. § 552(a)(3).*

56. USPS's failure and refusal to furnish the requested information is unlawful, arbitrary, capricious, or otherwise not in accordance with law, and irreparably injures Biggins by depriving him of the public information he is entitled to access to effectuate service of original process in the New Jersey state court action as described herein.

57. USPS's failure and refusal to furnish the requested agency information is unlawful, arbitrary, capricious, or otherwise not in accordance with law, and irreparably injures Biggins because he is now in grave jeopardy of the ultimate sanction of dismissal of his state court Complaint for failure to timely serve the parties with original process. The imminent peril Biggins must grapple with in the state court is a direct and proximate result of USPS's failure, refusal, or willful to perform its mandatory duty under FOIA to provide Biggins with agency information needed for service of legal process as required.

### **FIRST CLAIM**

#### **Failure to Disclose Public Records Pursuant to Freedom of Information Act**

58. Paragraphs 1 through 57 of this Complaint are incorporated herein by reference and are repeated and realleged as if set forth at length and in detail.

59. Despite Biggins's repeated inquiries regarding the status of his FOIA requests, USPS failed, refused, or willfully neglected, and continues to fail, refuse, or willfully neglect, to provide Biggins with a complete response to his requests, nor has USPS stated when its response might be forthcoming.

60. Biggins has a right of prompt access to the requested information under FOIA and there is no legal basis or excuse for denial of such access by USPS or its agents, employs, components, or Princeton Junction Station or Princeton Station. *5 U.S.C.A. § 552(a)(3)*.

61. Biggins was harmed as a direct and proximate result of USPS' violation of FOIA because Biggins has been denied the rights and protections provided under that law.

## **SECOND CLAIM**

### **Failure to Comply with Administrative Procedure Act**

62. Paragraphs 1 through 61 of this Complaint are incorporated herein by reference and are repeated and realleged as if set forth at length and in detail.

63. USPS is required to comply with FOIA and has an obligation to release public records upon request. *5 U.S.C.A. § 552*.

64. USPS' failure and refusal to release the requested information was arbitrary, capricious, or otherwise not in accordance with law under APA. *5 U.S.C. § 706*.

65. The APA empowers the Court to: i) interpret the statutory provisions of FOIA, ii) compel USPS action unlawfully withheld or unreasonably delayed, iii) hold unlawful and set aside USPS actions, findings, and conclusions found to be, as here, arbitrary, capricious, or otherwise not in accordance with FOIA because USPS's actions are in excess of its statutory jurisdiction, authority, or limitations, or otherwise short of statutory right without observance of the procedures required by FOIA.

66. Despite Biggins's repeated and continual inquiries regarding the status of his FOIA request, USPS has failed and refused, and continues to fail and refuse, to provide Biggins with a response to his request.

67. USPS has effectively stated by its actions and omissions, as well as its failures and refusals to provide written denials of the original requests and the timely appeal its response will never be forthcoming under any circumstances without judicial review.

68. Biggins has a right of prompt access to the requested information under and there is no legal basis or excuse for denial of such access by USPS. *5 U.S.C.A. § 552(a)(3)*.

69. Biggins was harmed as a direct and proximate result of USPS' violation of FOIA and APA because Biggins has been denied the benefits and protections provided by compliance with those laws.

### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests this Honorable Court:

Expedite this action as provided for in 28 U.S.C.A. § 1657(a) to allow Plaintiff to effectuate overdue service of original process in the state court action at the earliest possible date to prevent dismissal of Plaintiff's Complaint in that matter;

Deem the information sought by Plaintiff to constitute public information within the meaning of the Freedom of Information Act, as amended, *5 U.S.C.A. § 552(a)*;

Enter a Judgment determining or declaring Defendant's failure to provide Plaintiff with the requested information needed for service of legal process in the state court action was unlawful and without excuse;

Issue a written finding, pursuant to 5 U.S.C.A. § 552(a)(4)(F), that the circumstances surrounding the improper withholding of agency information raise questions of whether agency personnel acted unlawfully, arbitrarily, capriciously, or otherwise not in accordance with law with respect to said withholding;

Enjoin Defendant from withholding the requested information from Plaintiff;

Order Defendant, United States Postal Service, its components, agents, employs, and post office Stations at Princeton Junction, New Jersey 08850 and Princeton, New Jersey 08850 to promptly make the information requested available to Plaintiff as required under the Freedom of Information Act at the earliest possible date;

Award Plaintiff costs and reasonable attorney's fees in this action pursuant to 5 U.S.C.A. § 552(a)(4)(E); and


Grant Plaintiff any and all other and further relief that may be granted pursuant to Freedom of Information Act and/or Administrative Procedures Act but not explicitly or specifically requested elsewhere in this request for relief; and,

Grant Plaintiff such other and further relief as this Honorable Court deems just and proper.

I declare under penalty of perjury the foregoing is true and correct to the best of my knowledge, information, and belief.

Respectfully submitted,

Dated: Trenton, New Jersey  
October 27, 2022



Thomas A. Biggins  
Plaintiff

1229 Chestnut Street, #157  
Philadelphia, PA 19107  
(215) 756-3644