

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

_____)
SARAH C. REIDA)
2475 Northwinds Pkwy, Ste 200)
Alpharetta, GA 30009)
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Plaintiff,)
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v.)
))
GENERAL SERVICES ADMINISTRATION)
1800 F Street, NW)
Washington, D.C. 20405)
))
Defendant.)
))
_____)

Case: 1:22-cv-03502
Assigned To : Mehta, Amit P.
Assign. Date : 11/10/2022
Description: FOIA/Privacy Act (I-DECK)

No. _____

COMPLAINT

1. Plaintiff, Sarah C. Reida (“Plaintiff”), an attorney with Legal Meets Practical, LLC, brings this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 (2012), for injunctive and other appropriate relief and seeking disclosure and release of agency records improperly withheld by the General Services Administration (“GSA”).

PARTIES

2. Plaintiff is an attorney with active bar licenses authorizing her to practice law in Virginia and Illinois. Based in Georgia, Plaintiff’s practice focuses exclusively on assisting small businesses, most of these veteran-owned, in competing for and performing federal set-aside contracts and in obtaining relevant federal certifications towards that end. Plaintiff is a Georgia resident, whose office and residence are both located in Fulton County.

3. Defendant is an independent administrative agency of the government of the United States within the meaning of 5 U.S.C. § 551(1).

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B), which confers jurisdiction upon the District Court for the District of Columbia to enjoin the GSA from withholding agency records and to order the production of GSA records improperly withheld under the FOIA. This Court also has jurisdiction under 28 U.S.C. § 1331, which confers jurisdiction on United States District Courts to hear cases arising under the federal laws of the United States, including appeals arising under the FOIA.

5. Venue is proper pursuant to both 5 U.S.C. § 552(a)(4)(B), which provides the United States District Court for the District of Columbia as a venue for cases arising under an appeal of GSA’s denial of a request under the FOIA, and 28 U.S.C. § 1391(e), which provides for cases against the GSA to be brought in the District Court for the District of Columbia as the location where a substantial part of the events giving rise to this claim occurred.

6. This Court has authority to render the injunctive relief requested pursuant to 5 U.S.C. § 552(a)(4)(B).

EXHAUSTION OF ADMINISTRATIVE REMEDIES AND TIMELINESS

7. Plaintiff timely appealed the GSA’s denial of her initial request on December 30, 2021. A final disposition on the appeal was rendered on April 4, 2022. Under these circumstances, Plaintiff has exhausted her administrative remedies.

8. As this Complaint is being filed within six years of the GSA’s final adjudication of Plaintiff’s appeal, it is timely. *See* 28 U.S.C. § 2401(a).

RELEVANT BACKGROUND AND RELATED REQUESTS

9. The GSA is the primary federal agency responsible for maintaining the System for Award Management (“SAM.gov”) database, which is the required registry for all firms

desiring to do business with the federal government. The predecessor to SAM.gov was the Central Contractor Registration (“CCR”), which was maintained by the Department of Defense. There are currently approximately 840,000 registered contractors in SAM.gov.

10. Proxity Electronic Commerce Systems, LLC, a Florida-based firm, had previously requested the information at issue via a FOIA request made to the GSA on June 6, 2010. This requested, among other data, the business phone number and emails for all contractors listed in the SAM.gov registry. While the GSA initially denied Proxity’s request, it reversed its decision that same year and provided the requested information. The GSA also began publishing a downloadable public extract on the SAM.gov website which listed the data Proxity required and consequently obviated Proxity’s need to submit subsequent FOIA requests for this information.

11. Proxity is an employee-owned small business that provides data to roughly 1,500 small businesses, procurement technical assistance centers, and small business development centers. This is designed to assist firms in understanding the federal marketplace, to include identifying competitors and potential teaming partners. As such, having access to a database of current information of these competitors and potential teaming partners assists Proxity in helping its clients connect with these individuals and/or firms.

12. Until approximately August of 2021, the SAM.gov website continued to post a monthly public extract listing the information Proxity required. Then, the GSA began to omit emails and phone numbers from its downloadable public extract. The GSA did maintain a separate extract accessible only to government officials and which included that information. The GSA continues to maintain this non-public extract (the “Non-Public Extract”). As such, it has this record in its possession for purposes of FOIA disclosure.

13. The requested information at issue here is designated as business information

by each SAM.gov registrant because it is the contact information provided for each business in the database.

14. The contact information at issue is also obtainable from other registration sources maintained by the GSA. These include eLibrary, which is a catalog of GSA contracts at: <https://gsaelibrary.gsa.gov/ElibMain/home.do>. Also, such information is available with respect to holders of Government-wide acquisition contracts (“GWACs”) at: <https://www.gsa.gov/technology/technology-purchasing-programs/governmentwide-acquisition-contracts-gwacs>. These other databases, however, do not include all SAM.gov registrants, but only those contractors participating in GSA contract opportunities.

15. The Small Business Administration also receives a monthly download from GSA/SAM.gov of new small business registrations. This lists business phone numbers and email addresses and is available at: https://web.sba.gov/pro-net/search/dsp_dsbs.cfm.

16. The U.S. Department of Veterans’ Affairs VetBiz registry also includes a search function for its database all verified service-disabled veteran-owned small businesses and veteran-owned small businesses. This lists the phone numbers and email address for each listed entity. The search function is available at: <https://www.vetbiz.va.gov/basic-search/>.

17. Contact information for individual firms is also available via non-government sites and databases. This includes company websites maintained by businesses themselves, as well as external websites that compile information about federal contractors to include Manta, GovTribe, and others.

18. There is no database similar to, or as inclusive as, the Non-Public Extract. Proximity may be able to re-construct the data at issue here from other sources, but only to a limited extent based on availability. Proximity would be required to research tens of thousands of firms

individually and across various means of validation, rendering the process impossible.

PLAINTIFF’S FOIA REQUEST AT ISSUE

19. Because the accessible public extract now omits business contact details, on September 23, 2021 and at Proximity’s request, Plaintiff submitted a FOIA request for the information (FOIA No. GSA-2021-001723)(the “September Request”). This was done via GSA’s online form, which includes “Contact Information” fields for the requestor. Ms. Reida filled these out using her contact information, as she was the individual submitting the request via a federally-provided form. She did not disclose Proximity as a requestor in the text field provided for purposes of making/describing the request itself.

20. The September Request stated:

“Pursuant to the Freedom of Information Act (“FOIA”), I write to request the following information as maintained by the General Services Administration within the beta.sam.gov database (“Beta Sam”)¹ for each active, registered federal government contractor: Business Name, Business Address, Phone Number, Business Email, Business DUNS.”

GSA’S INITIAL IMPROPER COMMUNICATION OF A “FULL GRANT”

21. On October 15, 2021, GSA responded to the September Request and stated: “Sam.gov registrations do not contain Business Phone Number nor Business Email. As these data elements are not captured, this information cannot be provided.” It also provided instructions for accessing the monthly public extract.

22. The email transmittal referred to the response as a “full grant.” No appeal options were relayed in the GSA October Letter.

23. The next week, Ms. Reida had a conversation with the GSA FOIA Public Liaison. This individual relayed that a report as desired (i.e., one including contact phone numbers and

¹ Around the time of the request, SAM.gov was referred to as Beta.SAM.gov. SAM.gov and Beta.SAM.gov have merged and Beta.SAM.gov was decommissioned. It is now known as SAM.gov.

emails for business contacts) did not exist. The GSA later acknowledged this was incorrect but that it could not be provided due to privacy implications.

**PLAINTIFF’S SUBSEQUENT REQUEST FOR CLARIFICATION AND THE GSA’S
RESPONSE**

24. On October 25, 2021, Ms. Reida sent a follow-up letter via email. This noted: “GSA does maintain a record of contractor information which includes all fields as noted above: Business Name, Business Address, Business Phone Number, Business Email, Business DUNS. As such, if GSA maintains this record and it is disclosable under FOIA, it has the obligation to disclose this information.” (the “October Letter”). This record is the Non-Public Extract.

25. The October Letter requested the GSA to confirm whether the record as requested existed (“i.e., a record of contractor information including phone number and email”); in the event of denial of disclosure, it requested the GSA to provide the basis of the denial and applicable appeal rights.

26. On November 3, 2021, the GSA replied to the October Letter. It cited its determination that “withholding the individual contact telephone numbers and email addresses of SAM.gov registrants is appropriate, as disclosure would constitute a clearly unwarranted invasion of privacy under 5 U.S.C. § 552(b)(6)(the “GSA November Letter”). It noted an increase in the number of registrants who are individuals and stated that “individuals have an expectation of privacy in their contact information, which constitutes an increased security and privacy risk when aggregated on the public extract.”

27. This language appears to cite an internal December 2019 email from the GSA’s Information System Security Officer (“ISSO”), where the ISSO had recommended that GSA remove these fields. Proximity had earlier obtained this email via a FOIA request. Despite the ISSO’s citation to an alleged “Sam.gov security risk that was identified,” no action to remove

these fields was taken by the GSA for a full year and a half. This was also after a more secure, two-step login process was implemented for the SAM.gov website.

28. The GSA November Letter cited to the increase in the number of registrants as individuals since the passage of the American Rescue Plan and other legislation funding pandemic response and economic revitalization measures.

29. On November 12, 2021, Ms. Reida via email sent a letter to clarify that the GSA November Letter constituted a denial of the September Request. GSA confirmed as such via email on November 14, 2021, where it characterized it as a “partial denial.”

30. At no point in time did the GSA allege that a document responsive to Plaintiff’s request did not exist. Nor did it indicate that the Non-Public Extract containing contact information for SAM.gov registrants did not exist or was/is no longer being maintained.

31. The Non-Public Extract does exist and is subject to disclosure under the FOIA.

PLAINTIFF’S ADMINISTRATIVE APPEAL AND SUBSEQUENT DENIAL BY GSA

32. On December 30, 2021, Plaintiff timely filed an appeal of the denial (the “Appeal”). A true and correct copy of this Appeal and the corresponding exhibits, to include the September Request and subsequent letters, is attached to this Complaint as Exhibit “A.”

33. Among other points, the Appeal noted that the information had been specifically and voluntarily designated by the provider as “business information.” It also cited to other public means of accessing this business contact information. While providing reasons for public interest in disclosure, the Appeal argued that any balancing analysis to be conducted following the implication of a privacy interest at 5 U.S.C. § 552(b)(6) was inapplicable. No substantial privacy interest applied. The Appeal re-iterated the request for GSA to “disclose the database it maintains which is currently only provided to federal officials and includes the information as

requested above.”

34. On March 22, 2022, Ms. Reida contacted the FOIA Program Manager at GSA to disclose that the request had been made on behalf of Proximity. She asked if its name could be included on the appeal decision as a requestor, which GSA relayed it could accommodate.

35. On April 3, 2022, the GSA denied Plaintiff’s administrative appeal.² (Exhibit “B,” Final Disposition). Repeating the points made in its previous correspondence, GSA upheld its prior decision not to disclose the Non-Public Extract as including the business contact phone numbers and email addresses of SAM.gov registrants. Again, GSA did not deny that a record responsive to Plaintiff’s request existed.

PRIOR PROCEDURAL HISTORY

36. On August 20, 2022, local counsel for Proximity filed a FOIA action with this Court, naming Proximity as the Plaintiff. This was docketed as Case No. 1:22-cv-02499. Ms. Reida’s later application to appear on a pro hac vice basis was approved on August 25, 2022.

37. On October 19, 2022, Defendant filed a Motion to Dismiss the case on the basis that Proximity was not the initial requestor of the FOIA action being appealed. Rather, the request was filed by Ms. Reida. Although the GSA later acknowledged Proximity as a “requestor” at the appeal stage and listed it on the final determination signed by GSA’s general counsel, the fact remained that Ms. Reida only was the *initial requestor*. Accordingly, Defendant alleged, she was the only party with standing to sue under FOIA.

38. Upon Ms. Reida’s review of the Motion to Dismiss and in the interest of expediting adjudication of this matter, she voluntarily dismissed Case No. 1:22-cv-02499. This suit is now being brought in Ms. Reida’s name as the initial requestor of the documents at issue.

² The decision was later corrected to reflect an error in Proximity’s name and to include its business address.

COUNT I

THE GSA'S DENIAL OF THE NON-PUBLIC EXTRACT IN NON-REDACTED FORM WITH RESPECT TO POINT OF CONTACT PHONE NUMBERS VIOLATES THE FREEDOM OF INFORMATION ACT

39. Plaintiff incorporates by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.

40. Business contact *phone numbers* were properly and timely included within the scope of Plaintiff's September Request, as clarified by the Proximity October Letter which referred to and asked for the Non-Public Extract specifically, noting that "the GSA does maintain a record of contractor information which includes all fields as noted above [and including business phone numbers]".

41. The phone numbers do not elicit, and are designed to disallow, information protected by Exemption 6 to the FOIA. These phone numbers are specifically and voluntarily designated by the registering firm as business phone numbers. The privacy interest protected by Exemption 6 applies only to individuals.

42. Furthermore, there is no significant privacy interest in an entity's registration in SAM.gov. SAM.gov is a database which identifies those registered to do business with the federal government. There is not a significant privacy interest in such a registration or in the identification of a firm or individual owner as associated with such a registration. This contact information is also available from other public and government sources, as described above.

43. Last, there is no cognizable security and/or privacy risk "when aggregated on the public extract," as is cited by the GSA in its Final Disposition with no elaboration. Any perceived risk must be minimal considering the GSA did not implement the ISSO's

recommendation with respect to removing the information for over a year and a half. Also, the GSA had also since implemented a two-step login process for Sam.gov users, which it still utilizes.

44. While a balancing act is not required because there is no implication of a privacy interest, any minimal intrusion is outweighed by the disclosure of the information. Making this information available makes these contractors more accessible to potential teaming partners and others within the federal marketplace. With respect to Proximity's use of the information, this is disseminated to procurement technical assistance centers and private firms for purposes of contacting contractors with teaming opportunities and to offer services and resources that may better their ability to compete in the federal marketplace. This enhances those goods and services offered to the federal government.

45. The GSA's failure to disclose the Non-Public Extract as including phone numbers in response to the September Request constitutes a violation of the FOIA.

COUNT II

THE GSA'S DENIAL OF THE NON-PUBLIC EXTRACT IN NON-REDACTED FORM WITH RESPECT TO POINT OF CONTACT EMAIL ADDRESSES VIOLATES THE FREEDOM OF INFORMATION ACT

46. Plaintiff incorporates by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.

47. Business contact email addresses were properly and timely included within the scope of Plaintiff's September Request, as clarified by the Proximity October Letter which referred to and asked for the Non-Public Extract specifically, noting that "the GSA does maintain a record of contractor information which includes all fields as noted above [and including business phone emails]".

48. Business contact email addresses do not elicit, and are designed to disallow, information protected by Exemption 6 to the FOIA. These email addresses are specifically and voluntarily designated by the registering firm as business email addresses. The privacy interest protected by Exemption 6 applies only to individuals.

49. As set forth above in Count I, there is no significant privacy interest in an entity's registration in SAM.gov. Nor is there a cognizable security and/or privacy risk "when aggregated on the public extract," as is cited by the GSA in its Final Disposition with no elaboration. Furthermore, while a balancing act is not required because there is no implication of a privacy interest, any minimal intrusion is outweighed by the disclosure of the information. (*See* Paragraphs 42-44).

50. The GSA's failure to disclose the non-public extract as including email addresses in response to the September Request constitutes a violation of the FOIA.

COUNT III

THE GSA'S FAILURE TO PRODUCE THE NON-REDACTED, NON-PUBLIC EXTRACT IN GENERAL VIOLATES THE FREEDOM OF INFORMATION ACT

51. Plaintiff incorporates by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.

52. The Non-Public Extract is the document to be disclosed which is responsive to Plaintiff's September Request, as it contains the information requested. This is a document which lists all active SAM.gov registrants and includes fields additional to those contained in the downloadable public extract currently accessible on SAM.gov.

53. For the same reasons as set forth in Counts I and Counts II, there is no significant privacy interest implicated in any other information that would be produced via the disclosure of the Non-Public Extract. Any such information is business information which does not implicate

privacy considerations. Nor is there a cognizable security risk to consider. Thus, to the extent the Non-Public Extract includes information other than the specific information sought in the September Request not falling under a FOIA exemption, redaction of the Non-Public Extract would be improper because the document is directly responsive to the September Request.

54. The GSA's failure to disclose the non-redacted, Non-Public Extract as being responsive to the September Request constitutes a violation of the FOIA.

REQUESTED RELIEF


WHEREFORE, Plaintiff respectfully prays that this Court enter an order:

1. Declaring that the GSA has wrongfully withheld the requested agency records (the Non-Public Extract) and finding the GSA's actions in violation of the FOIA;
2. Requiring the GSA to disclose the Non-Public Extract in its non-redacted form which includes entity point of contact phone numbers (Count I) and email addresses (Count II) and to refrain from further redactions of the Non-Public Extract because this document is responsive to Plaintiff's September Request and no other FOIA exemptions are implicated (Count III);
3. Declaring that the Non-Public Extract in its non-redacted form is properly disclosable under future FOIA requests;
4. Enjoining the GSA from refusing future FOIA requests for the non-redacted non-public extract;
5. Requiring the GSA to include business contact information in its public extract as available on Sam.gov, to include such information as included until August 2021;
6. Awarding Plaintiff its costs, expenses, and reasonable attorneys' fees incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and

7. Granting such other relief as the Court may deem just and proper.

Dated: November 10, 2022

Respectfully submitted,

A handwritten signature in cursive script that reads "Sarah Reid".

Sarah C. Reid, Esq.*
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