

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Erin Siegal McIntyre,

(Address filed under seal pursuant to
LCvR 5.1(c)(1))

Plaintiff,

v.

U.S. Customs and Border Protection,

1300 Pennsylvania Ave. NW
Washington, DC 20229,

Defendant.

Civil Action No.

COMPLAINT

1. This is an action under the Freedom of Information Act, 5 U.S.C. §552, et seq., seeking production of records responsive to fourteen separate requests submitted by Ms. Siegal McIntyre to the United States Customs and Border Protection.

Jurisdiction and Venue

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the defendants under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201(a), and 2202.
3. Venue is appropriate in this Court under 5 U.S.C. §(a)(4)(B) and 28 U.S.C. §1391.

Parties

4. Plaintiff Erin Siegal McIntyre is an award-winning journalist and photographer and an Assistant Professor at the University of North Carolina Hussman School of Journalism and Media. Her work has appeared in the New Yorker, the Atlantic, the New York Times, Rolling Stone, Latino USA, and various other media outlets.
5. Ms. Siegal McIntyre's work has largely focused on border issues, transnational organized crime syndicates, and foreign policy.
6. Defendant United States Customs and Border Protection ("CBP") is an agency of the United States Department of Homeland Security and an agency under 5 U.S.C. § 552(f)(1) and 5 U.S.C. § 701.
7. Ms. Siegal McIntyre is currently working on a large documentary project about the United States Customs and Border Protection.
8. Defendant CBP has possession, custody, and control of records sought by Ms. Siegal McIntyre.

Ms. Siegal McIntyre's Unanswered FOIA Requests

A. First FOIA Request, CBP-2022-033941 / CBP-AP-2022-034814

9. In 2019 and 2020, former agents revealed that that these hazing assaults had gone on for years throughout the agency. *See, e.g.,* Chantal da Silva, *Former Border Patrol Agent Says She Was Raped at Training Academy by Colleague Who Went on to Have Lifelong Career*, Newsweek (Nov. 21, 2019), <https://www.newsweek.com/border-patrol-agent-raped-training-academy-1447407>; Alan Neuhauser, *Border Patrol Has a Problem With Women Current and*

past agents recount stories of harassment and unfair working conditions, U.S. News and World Report (August 3, 2018), <https://www.usnews.com/news/the-report/articles/2018-08-03/for-women-border-patrol-is-a-hostile-place-to-work>.

10. To investigate, on January 18, 2022, Ms. Siegal McIntyre submitted a FOIA request to CBP for all documents related to the Federal Law Enforcement Training Center in Artesia, New Mexico and the Equal Employment Opportunity Commission (EEOC) and/or referrals involving Border Patrol agents and/or Border Patrol recruits between 2004 and the present.
11. As a member of the media, Ms. Siegal McIntyre also sought a fee waiver.
12. CBP assigned this request tracking number CBP-2022-033941.
13. CBP ruled that this request was not billable and therefore the fee waiver request did not apply.
14. On January 19, 2022, CBP denied the request. CBP stated that the documents requested were not agency records.
15. On January 20, 2022, Ms. Siegal McIntyre administratively appealed the complete denial of records.
16. CBP assigned the appeal tracking number CBP-AP-2022-034814 WAS.
17. On March 25, 2022, Ms. Siegal McIntyre's appeal was granted and remanded to the FOIA Division, with tracking number CBP-OTD-2022-033041.
18. On April 29, 2022, CBP changed the tracking number from CBP-OTD-2022-033941 back to CBP-2022-033941.
19. In the fall of 2022, the Department of Homeland Security transitioned from its old FOIA portal, FOIAonline, to a new portal, Secure Release.

20. While some of Ms. Siegal McIntyre's FOIA requests were assigned new tracking numbers in connection with this transition, this request was not.
21. Since then, CBP has not responded to Ms. Siegal McIntyre with documents or any other substantive response.
22. As of December 12, 2022, when Ms. Siegal McIntyre attempts to check on the status of this request, there is no case in the Secure Release portal.

B. Second Request, CBP-IA-2022-033944 / CBP-2022-033944 / CBP-AP-2022-034810 / CBP-AP-2022-094049

23. Ms. Siegal McIntyre's second FOIA request was submitted on January 18, 2022 and sought all documents related to the CBP's Office of Professional Responsibility (OPR) and the Department of Homeland Security's Office of Inspector General (DHS OIG) related to allegations and complaints of sexual harassment, sexual assault, rape, sex discrimination committed by or perpetrated against Border Patrol agents between the years of 2000 and the present.
24. CBP assigned this request tracking number CBP-IA-2022-033944 and then changed the tracking number to CBP-2022-033944.
25. On January 19, 2022, CBP denied the request. CBP reasoned that the requested documents were not agency records.
26. On January 20, 2022, Ms. Siegal McIntyre administratively appealed the complete denial of records.
27. CBP assigned the appeal tracking number CBP-AP-2022-034810.
28. On March 25, 2022, Ms. Siegal McIntyre's appeal was granted and remanded for processing.

29. On May 25, 2022, the CBP FOIA Division partially granted and partially denied Ms. Siegal McIntyre's request, releasing one document—a redacted seven-page spreadsheet listing responsive files in the CBP's Joint Integrity Case Management System.
30. On June 18, 2022, Ms. Siegal McIntyre administratively appealed that FOIA response.
31. She objected to the redactions of the dates of each infraction listed on the seven-page document, as well as the failure to provide documents related to the incidents themselves. As a minimum, Ms. Siegal McIntyre requested documents showing the sector where each infraction or alleged infraction occurred be released. Finally, she objected to the adequacy of the search itself, noting that it is not possible that just seven pages represent the constellation of responsive and releasable records that exist under CBP's purview, since the time frame requested spanned twenty-three years, and Border Patrol employs up to approximately 19,000 agents.
32. To support her argument that the search was inadequate, Ms. Siegal McIntyre pointed to a released draft report from the Office of the Inspector General, which found that the prevalence of alleged instances of sexual harassment, sexual assault, rape, and sex discrimination at CBP is high. *See, e.g.,* Chris Cameron, *Homeland Security Watchdog Omitted Damaging Findings From Reports*, N.Y. Times (Apr. 7, 2022), <https://www.nytimes.com/2022/04/07/us/politics/homeland-security-inspector-general.html>.
33. CBP assigned the appeal tracking number CBP-AP-2022-094049.
34. On July 14, 2022, Ms. Siegal McIntyre's appeal was partially affirmed and partially reversed and remanded the request to the FOIA Division.

35. While the appeals division upheld the adequacy of the initial search, It did conclude that the original spreadsheet was over-redacted. It produced to Ms. Siegal McIntyre a less-redacted version which was inexplicably nine pages and included sector information and incident dates. The appeal division did not release the underlying documents.
36. As grounds for upholding the adequacy of the initial search, the appeals division described search methodology which included four keywords: “SEXUAL ASSAULT,” “SEXUAL DISCRIMINATION,” “RAPE,” and “SEX DISCRIMINATION.”
37. Ms. Siegal McIntyre continues to dispute the adequacy of the search, as the key words do not correspond with any kind of CBP incident categorization and therefore excludes the vast majority of cases. Given the nature of the requested incidents the search should include all incidents reported by or related to female agents.
38. Ms. Siegal McIntyre further disputes the failure to produce the files referenced in the produced spreadsheet, and the breadth of the remaining redactions.

C. Third Request, CBP-2022-033947

39. On January 18, 2022, Ms. Siegal McIntyre submitted a FOIA request seeking all documents related to deceased Border Patrol agent Esteban Manzanares. She requested records between the years 2008 to the present. She noted that she was not seeking records she had received previously or that were available on the FOIA Reading Room website.
40. As a member of the media, Ms. Siegal McIntyre also sought a fee waiver.
41. On January 19, 2022, CBP assigned this request tracking number CBP-2022-033947.

42. CBP refused to process this request, claiming it was essentially an appeal of an earlier request and therefore improper.
43. It was not a repeat request— it merely referenced incomplete information produced in response to an earlier FOIA request.
44. Even if it was a repeat request, repetition is not a ground for denying a FOIA request.
45. Either way, the request has not been responded to as of the date of this filing.

D. Fourth Request, CBP-2022-033969 / CBP-AP-2022-130081 / CBP-AP-2023-000105

46. On January 18, 2022, Ms. Siegal McIntyre submitted a FOIA request seeking records from female border patrol agents between 2003 and the present alleging employee misconduct, including but not limited to email messages to Joint.Intake@dhs.gov; calls made to the toll-free Joint Intake Center Hotline at 1-877-2INTAKE, faxed sent to (202) 344-3390; messages to servicing CBP Internal Affairs (IA) Offices, communications mailed to the Joint Intake Center at P.O. Box 14475, 1200 Pennsylvania Avenue, NW, Washington, DC 20044; calls made to the DHS Office of Inspector General (DHS-OIG) at 1-800-323-8603; and e-mails sent to OIG at DHSOIGHOTLINE@dhs.gov, and reports filed online at <http://www.oig.dhs.gov>.
47. On September 1, 2022, CBP provided an eighty-page redacted spreadsheet detailing responsive records available and closed the request. The spreadsheet again lacked sector information related to each line item/incident.
48. On September 15, Ms. Siegal McIntyre administratively appealed the response asking for the records, not just a spreadsheet of available records.

49. The appeal was assigned tracking number CBP-AP-2022-130081, and then on November 3, was reassigned tracking number CBP-AP-2023-000105 as part of the transition to the Secure Release Portal.
50. On September 29, Ms. Siegal McIntyre received an email that there was a notification in the online FOIA portal. However, when she logged in, no corresponding FOIA request existed in the new Secure Release portal or the old FOIAonline portal.
51. On November 3, Ms. Siegal McIntyre received a notification in the old FOIA portal:

Ms. McIntyre, On October 12, 2022, CBP began using a new case processing system, SecureRelease, for its FOIA requests and appeals. For your convenience, we are administratively closing your FOIAonline case file and opening a new case file in SecureRelease. Your new tracking number is CBP-AP-2023-000105. Please reference it in any future communication with the agency. Despite the transfer, your request will retain its place in our queue and we will process it in the order it was initially received. We thank you for your patience as we complete our transition and we will issue a response to your appeal as soon as possible. Most Sincerely, CBP FOIA Appeals

52. Since then, CBP has not responded to Ms. Siegal McIntyre with documents or any other substantive response to this request. She is still unable to see any case file in SecureRelease and CBP has not responded to her emails requesting help.

E. Fifth Request, CBP-2022-033976 / CBP-AP-2022-051695

53. The Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP) provides Human Resources (HR) services to CBP and other DHS components through a web-based tool called the Human Resources Business Engine (HRBE). HRBE provides case management and HR business process capabilities to CBP and its DHS component customers.

54. Ms. Siegal McIntyre's FOIA request, submitted on January 18, 2022, sought all HRBE records of misconduct and allegations of misconduct perpetrated both by and against female Border Patrol agents which resulted in formal discipline between 2002 and the present.
55. CBP assigned this request tracking number CBP-2022-033976, and then changed the tracking number to CBP-HRM-2022-033976 on January 19, 2022.
56. On March 8, 2022, CBP switched the tracking number CBP-HRM-2022-033976 back to the tracking number CBP-2022-033976 and subsequently denied the request, stating that no records existed, and that the information is not tracked by gender.
57. That same day, March 8, 2022, Ms. Siegal McIntyre appealed the complete denial of records to the Disclosure Law and Judicial Actions Branch for the CBP.
58. That office assigned the appeal tracking number CBP-AP-2022-051695.
59. On May 17, 2022, CBP sent an e-mail to Ms. Siegal McIntyre indicating that CBP Human Resources Management was able to provide CBP FOIA Appeals Branch a spreadsheet with records related to Ms. Siegal McIntyre's request but requested narrow her request to shorten the timeframe of responding to her FOIA request. The response noted that each record would have to be reviewed to see if the name involved was a female name.
60. On May 23, 2022, Ms. Siegal McIntyre replied to the CBP FOIA Appeals Branch email that she would narrow the request to years 2019, 2020, and 2021, and requesting that the records be released as they are compiled.
61. On June 1, 2022, through the FOIA online portal, a response was sent: "Thank you. We will begin to review the chart records for 2019, 2020, and 2021. I appreciate your assistance."
62. That was the last communication from CBP regarding this request.

F. Sixth Request, CBP-2022-035153

63. On January 21, 2022, Ms. Siegal McIntyre submitted a FOIA request seeking all records between 2008 until the present related to deceased former Border Patrol trainee Julia Monsivais, who died by suicide in July 2009 after allegedly being written up for a series of infractions at the Border Patrol Training Academy (FLETC, or Federal Law Enforcement Training Center, in Artesia, NM). Ms. Siegal McIntyre attached the obituary of Ms. Monsivais to her request.
64. CBP assigned this request tracking number CBP-2022-035153.
65. On January 24, CBP denied Ms. Siegal McIntyre's request for a fee waiver.
66. Since then, CBP has not responded to Ms. Siegal McIntyre with documents or any other substantive response.

G. Seventh Request, CBP-2022-035527

67. On January 24, 2022, Ms. Siegal McIntyre submitted a FOIA request seeking all records related to the exit interviews of female Border Patrol agents in all sectors for the years 2000, 2005, 2012, 2018, and 2020 upon leaving their employment. She specified that their names should be redacted.
68. CBP assigned this request tracking number CBP-2022-035527.
69. On April 11, CBP denied Ms. Siegal McIntyre's request for a fee waiver.
70. Since then, CBP has not produced any documents or given any other substantive response.

H. Eighth Request, CBP-2022-036121

71. On January 25, 2022, Ms. Siegal McIntyre submitted a FOIA request seeking all records related to the exit interviews of female Border Patrol agents in the Rio Grande Valley sector upon leaving their employment from the year 2010 until the present.
72. CBP assigned this request tracking number CBP-2022-036121.
73. On January 26, 2022, CBP denied Ms. Siegal McIntyre's requests for a fee waiver.
74. Since then, CBP has not responded to Ms. Siegal McIntyre with documents or any other substantive response.

I. Ninth Request, CBP-2022-036129

75. On January 25, 2022, Ms. Siegal McIntyre submitted a FOIA request seeking all records related to the exit interviews of female Border Patrol agents in El Centro and San Diego sector upon leaving their employment from the year 2000 until the present.
76. CBP assigned this request tracking number CBP-2022-036129.
77. On January 26, 2022, CBP denied Ms. Siegal McIntyre's requests for a fee waiver.
78. Since then, CBP has not responded to Ms. Siegal McIntyre with documents or any other substantive response.

J. Tenth Request, CBP-2022-040364

79. On February 5, 2022, Ms. Siegal McIntyre submitted a FOIA request seeking all records related to the US Border Patrol's Critical Incident Teams (also known as Critical Incident

Investigative Teams) related to sexual harassment, sexual assault, rape, stalking, domestic violence, or sex-based discrimination between the years of 2018 and the present.

80. On February 7, CBP assigned this request tracking number CBP-2022-040364 and denied the request for a fee waiver.
81. Since then, CBP has not responded to Ms. Siegal McIntyre with documents or any other substantive response.

K. Eleventh Request, CBP-OTD-2022-041172 / CBP-2022-041172

82. On February 8, 2022, Ms. Siegal McIntyre submitted a FOIA request seeking all records and communications related to former U.S. Border Patrol Agent Jennifer Budd between the years of 1995 and the present, including any records related to her training at the Border Patrol Academy and any records related to her held by the agency in the years following her resignation. Included with the request was a third-party release signed by Ms. Budd.
83. CBP assigned this request tracking number CBP-OTD-2022-041172 and then changed the tracking number to CBP-2022-041172 on February 16, 2022.
84. On February 25, 2022, Ms. Siegal McIntyre narrowed the scope of her request to only Ms. Budd's personnel files, EEO records, and performance reviews; complaints received about Ms. Budd; any e-mails referencing her that post-date her departure.
85. Since then, CBP has not responded to Ms. Siegal McIntyre with documents or any other substantive response.

L. Twelfth Request, CBP-2022-076633

86. On May 10, 2022, Ms. Siegal McIntyre submitted a FOIA request for records generated between 2018 and the present related to the conceptualization and implementation of the CBP Task Force for Women, which was formally created in 2020. It specifically included a request for CBP's Diversity and Inclusion Strategic Plans for FY 2018, 2019, 2020, 2021, and 2022.
87. CBP assigned tracking number CBP-2022-076633 on September 12, 2022.
88. CBP has provided no further communication or response.

M. Thirteenth Request, CBP-2022-076639 / CBP-HRM-2022-076639

89. On May 10, 2022, Ms. Siegal McIntyre submitted a FOIA request for documents showing the dates, locations, and speakers/presenters/affinity groups involved in the recruitment events described in CBP's August 6, 2021 Fiscal Year 2020 Report to Congress entitled "Recruitment and Retention of Women in Law Enforcement Positions."
90. CBP assigned tracking number CBP-2022-076639. The tracking number was later changed to CBP-HRM-2022-076639.
91. Ms. Siegal McIntyre's request for a fee waiver was denied on August 22, 2022
92. Then on October 19, 2022, FOIA request CBP-HRM-2022-076639 has had its Tracking Number changed to CBP-2022-076639
93. To date, she has received no substantive response.

N. Fourteenth Request, CBP-2022-033955 / CBP-AP-2022-130102 / CBP-AP-2022-124234

94. On January 18, 2022, Ms. Siegal McIntyre submitted a request asking for all records from the JIC (Joint Intake Center), Office of Professional Responsibility (OPR), Office of the Inspector General (OIG), and the Border Patrol Commissioner’s Situation Room between the year 2001 and the present about to Border Patrol agents, both on and off duty, committing “reportable acts” of off-duty contact with law enforcement. Reportable acts include charges like stalking, harassment, sexual assault, notice of restraining orders, or any kind of alleged domestic violence in which agents are victims or perpetrators. *See* DHS Policy Statement #045-06 (Jan. 10, 2017), https://www.dhs.gov/sites/default/files/publications/mgmt/law-enforcement/mgmt-dir_045-06-required-reporting-off-duty-with-law-by-dhs-law-enforcement.pdf.
95. CBP assigned the request tracking number CBP-2022-033955 on January 18, 2022, then changed it to CBP-IA-2022-033955. On August 27, 2022, CBP changed the tracking number back to CBP-2022-033955
96. On August 30, 2022, the CBP FOIA Division partially granted and partially denied Ms. Siegal McIntyre’s request, releasing a twenty-six-page spreadsheet of incidents lacking sector information entitled “CBP-2022-033955 Arrests_Redacted” and another five-page spreadsheet, also lacking sector data, entitled “CBP-2022-033955 Protection Orders, Police Contact_Redacted.”

97. On August 30, Ms Siegal McIntyre appealed this response arguing that an insufficient search has been conducted, that she had requested all the relevant records not a summary, and requesting at a minimum that sector data be release.

98. Her appeal was given tracking number CBP-AP-2022-124234.

99. On September 15, 2022, in response to an inquiry, Ms Siegal McIntyre clarified that she was seeking additional information. Since she had asked CBP to provide information from the JIC, OPR, OIG, and the Commissioner's Situation Room, she wanted to understand where each reportable act was reported.

100. CBP gave this another tracking number, CBP-AP-2022-130102

101. Since then, Ms. Siegal McIntyre has received no substantive response.

Claims

102. By refusing to provide relevant records or by simply ignoring statutory deadlines, CBP has wrongly withheld documents responsive to Ms. Siegal McIntyre's fourteen FOIA requests.

103. Ms. Siegal McIntyre has a statutory right to the records she seeks, and there is no basis for CBP to withhold them.

104. As a result, by failing to release the records specifically requested by Ms. Siegal McIntyre, CBP has violated FOIA.

Requested Relief

Ms. Siegal McIntyre therefore respectfully requests that this Court:

1. Declare that the records sought by Ms. Siegal McIntyre are subject to FOIA,
2. Declare that Ms. Siegal McIntyre is entitled to a fee waiver,
3. Order CBP to disclose the requested records,
4. Award costs and attorneys' fees under 5 U.S.C. § 552 (a)(4)(E), and
5. Grant any other relief that the Court considers just and proper.

Respectfully submitted,

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