

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

REASON FOUNDATION,
1747 Connecticut Ave., NW
Washington, DC 20009,
Plaintiff,

v.

FEDERAL BUREAU OF PRISONS,
320 First St., NW
Washington, DC 20534,

and

**DEPARTMENT OF JUSTICE, OFFICE OF
INFORMATION POLICY.**

Sixth Floor
441 G Street, NW
Washington, DC 20530-0001

Defendants.

Civil Action No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552, et seq., seeking production of records related to the deaths of multiple women in Bureau of Prisons Custody.

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. § 552(a)(4)(B) and 28 U.S.C. § 1391.

Parties

4. Plaintiff Reason Foundation is a nonprofit, nonpartisan research and education organization which conducts public policy research and publishes independent journalism as *Reason* magazine. *Reason* includes a monthly print and digital magazine, content published at reason.com, and videos distributed through YouTube and other platforms.
5. The Federal Bureau of Prisons (BOP) is an agency of the United States Department of Justice and an agency under 5 U.S.C. § 552(f)(1) and 5 U.S.C. § 701. Defendant BOP has possession, custody, and control of records sought by Plaintiff Reason Foundation.
6. The Department of Justice, Office of Information Policy (DOJ OIP) handles administrative appeals of BOP FOIA decisions and is an agency under 5 U.S.C. § 552(f)(1) and 5 U.S.C. § 701.

Factual Allegations

6. The BOP manages the nation's federal prison system. Of its approximately 160,000 prisoners, about 7% are women.
7. Federal Medical Center (FMC) Carswell is the only medical center for women in BOP custody. It serves women needing advanced medical care and has an adjacent minimum security level prison camp. It is in Fort Worth, Texas.
8. Federal Correctional Institution (FCI) Aliceville is a low security women's prison. It is in Aliceville, Alabama.
9. In medicine, a mortality review is a standard practice. It is the process by which medical and other disciplinary experts review the circumstances of an individual death to explore root causes and identify interventions to prevent future deaths.
10. The BOP conducts multi-level mortality reviews after every prisoner death.
11. C.J. Ciaramella is a reporter for *Reason*. He covers prisons, policing, politics, and free speech.
12. *Reason* focuses a significant portion of its coverage on the BOP. Some of its recent articles include:
 - Ciaramella, C.J, *New Data Show Prison Staff Are Rarely Held Accountable for Sexual Misconduct*, REASON, (Feb. 3. 2023),

<https://reason.com/2023/02/03/new-data-show-prison-staff-are-rarely-held-accountable-for-sexual-misconduct/>.

- Ciaramella, C.J, *Federal Inmates Suffering From Unconstitutional Medical Neglect Could Get Relief Under Rule Change*, REASON, (Jan. 23, 2023), <https://reason.com/2023/01/23/federal-inmates-suffering-from-unconstitutional-medical-neglect-could-get-relief-under-rule-change/>.
- Ciaramella, C.J, *Senate Investigation Finds Federal Prisons Fail to Prevent or Investigate Rapes*, REASON, (Dec. 13, 2022), <https://reason.com/2022/12/13/senate-investigation-finds-federal-prisons-fail-to-prevent-or-investigate-rapes/>.
- Ciaramella, C.J, *Dungeons & Dragons Is Apparently Banned in Federal Prisons*, REASON, (Nov. 2, 2022), <https://reason.com/2022/11/02/dungeons-dragons-is-apparently-banned-in-federal-prisons/>.
- Ciaramella, C.J, *Justice Department Inspector General Launches Investigation Into Inmate Death Following Judge's Contempt Order*, REASON, (Oct. 17, 2022), <https://reason.com/2022/10/17/justice-department-inspector-general-launches-investigation-into-inmate-death-following-judges-contempt-order/>.

12. In May 2020, as part of reporting duties, Mr. Ciaramella submitted a FOIA request for all mortality reviews conducted regarding inmate deaths at FMC Carswell and FCI Aliceville conducted between from January 1, 2005 and May 4, 2020.

13. The BOP assigned this request tracking number 2020-03749.
14. In March 2022, the BOP released 288 pages of records to Mr. Ciaramella in partial compliance with this request. The records were mortality reviews from FMC Carswell.
15. On most of the pages, there are multiple redactions that obscure the reviews' conclusions.
16. Information redacted includes the review committee's findings on the timeliness and appropriateness of diagnostic and treatment regimens; problems encountered during the medical emergency, such as transportation and communication; whether there was adequate documentation in the patient's medical files; and whether the patient received appropriate and adequate medical care per the BOP's policies. Also withheld were the committee's findings regarding the strengths and weaknesses of care delivered, and recommendations for improving future care under the BOP's policies.
17. These particular redactions were justified with a reference to FOIA Exemption 5.
18. Exemption 5 protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5).
19. In this case, the BOP relied on the deliberative process privilege.

20. The deliberative process privilege protects the disclosure of information that is both antecedent to adopting an agency policy and reflects the give-and-take of the consultative process. It does not protect factual information.
21. There were other redactions justified by reference to Exemptions 6 and 7(c), the FOIA personal privacy exemptions—Reason Foundation does not challenge those redactions.
22. Mr. Ciaramella filed a timely administrative appeal over the Exemption 5 redactions and the BOP’s failure to produce any records from FCI Aliceville.
23. The DOJ OIP assigned tracking number A-2022-01186 to the appeal.
24. During the pendency of the administrative appeal, in June 2022, the BOP informed Mr. Ciaramella that they had assigned tracking number 2022-04325 the part of his FOIA request for records from FCI Aliceville.
25. On December 1, 2022, the DOJ OIP denied Mr. Ciaramella’s appeal as to the Exemption 5 redactions.
26. The BOP has, so far, produced no records related to the FCI Aliceville portion of Mr. Ciaramella’s FOIA request.

Claims for Relief

**Count 1 (against both Defendants)
Declaratory and Injunctive Relief:
Violation of FOIA for Improper Redactions**

27. FOIA provides this Court with “jurisdiction to enjoin [Defendants] from withholding agency records and to order the production of any agency records improperly withheld.” 5 U.S.C. § 552(a)(4)(B).
28. By improperly redacting information and by upholding that decision on administrative appeal, Defendants have violated FOIA.
29. Reason Foundation has a statutory right to the records it seeks, and there is no lawful basis for the defendants to withhold the portions of those records redacted under Exemption 5.
30. The Defendants have thus violated FOIA.
31. Reason Foundation requests a declaratory judgment that Defendants have violated FOIA and that the Reason Foundation is entitled to immediately receive the Carswell mortality reviews referenced above.
32. Reason Foundation also requests that the Court issue an injunction directing the Defendants to produce the FMC Carswell mortality reviews without the Exemption 5 redactions and setting a deadline for compliance.

**Count 2 (against the BOP)
Declaratory and Injunctive Relief:
Violation of FOIA’s Timelines**

33. FOIA requires that within 20 working days of receiving a FOIA request, an agency must notify a requestor of the scope of the documents that the agency will produce

and the scope of the documents that the agency plans to withhold under any FOIA exemption. 5 U.S.C. § 552(a)(6)(A)(i).

34. Far more than 20 working days have elapsed since May 2020, when Mr. Ciaramella requested the mortality reviews from FCI Aliceville.
35. The Defendants have therefore violated FOIA.
36. Reason Foundation requests a declaratory judgment that Defendants have violated FOIA and that the Reason Foundation is entitled to immediately receive the FCI Aliceville mortality reviews referenced above.
37. Reason Foundation also requests that the Court issue an injunction directing the Defendants to produce the FCI Aliceville mortality reviews and setting a deadline for compliance.

Requested Relief

The Reason Foundation therefore respectfully requests that this Court:

1. Declare Defendants' failure to provide responsive records unlawful under FOIA;
2. Enter an injunction, pursuant to 5 U.S.C. § 552(a)(4)(B), directing Defendants to disclose the FMC Carswell records without the improper redactions;
3. Enter an injunction, pursuant to 5 U.S.C. § 552(a)(4)(B), directing Defendants to disclose the requested FCI Aliceville 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,

/s/ Deborah M. Golden
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