

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JASON WELSH, )
34 Forbes, One Roxas Triangle )
Makati, Philippines 1226 )
Plaintiff, )

v. )

ANTONY J. BLINKEN, )
Secretary, )
U.S. Department of State, )
2201 C Street, NW )
Washington, DC 20520 )
Defendant. )

Case No.: \_\_\_\_\_

Date: May 8, 2023

COMPLAINT

Plaintiff, Jason Welsh ("Plaintiff"), by and through under-signed counsel, hereby alleges as follows:

NATURE OF THE CASE

- 1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended, challenging the failure of the Department of State ("Agency" or "Defendant") to fulfill the requests by Plaintiff for records relating to FOIA Request #FP-2022-00188, duly submitted on August 28, 2022.
2. This case seeks declaratory relief that the Defendant is in violation of FOIA for failing to respond to Plaintiff's request for records in a timely manner, and injunctive relief that the Defendant immediately and fully comply with Plaintiff's request under FOIA.
3. This case further seeks the Plaintiff be awarded compensatory relief for the damages suffered due to the Defendant's violation, as well as reasonable attorneys' fees and legal costs incurred in pursuing this litigation, pursuant to 5 U.S.C. § 552(a)(4)(E)(i).

PARTIES

4. Plaintiff, Jason Welsh, is a United States citizen who resides at 34 Forbes, One Roxas Triangle, Makati, Philippines 1226. Plaintiff is a current employee of the Agency.
5. Defendant, Department of State, is an agency within the meaning of 5 U.S.C. § 552(f). The Defendant has possession and control of the requested records and is responsible for fulfilling Plaintiff's FOIA request.

JURISDICTION AND VENUE

6. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction pursuant to 28 U.S.C. § 1331.
7. Venue is proper pursuant to 5 U.S.C. § 552(a)(4)(B).

STATUTORY FRAMEWORK

8. FOIA, 5 U.S.C. § 552, requires agencies of the federal government to release requested records to the public unless one or more specific statutory exemptions apply.
9. An agency must respond to a party making a FOIA request within 20 working days, notifying that party of at least the agency's determination whether or not to fulfill the request and the requester's right to appeal the agency's determination to the agency head. 5 U.S.C. § 552(a)(6)(A)(i).
10. FOIA, 5 U.S.C. § 552(a)(6)(B), permits a 10-day extension of time to respond in certain "unusual circumstances."
11. In "unusual circumstances," an agency may delay its response to a FOIA request or appeal but must provide written notice and "the date on which a determination is expected to be dispatched." 5 U.S.C. § 552(a)(6)(B)(i).

FACTS UNDERLYING PLAINTIFF'S CLAIM FOR RELIEF

12. On August 28, 2022, Plaintiff made the following FOIA request to the Department of

State:

All Department of State records in 2021 and 2022 pertaining to the tour extension request(s) of Jason Welsh, including but not limited to, email correspondence involving (to/from/cc/bcc) the Bureau of Consular Affairs' Overseas Citizens Services (OCS), post management at the U.S. Embassy in Manila, the Human Resource Office at the U.S. Embassy in Manila, AND/OR Department of State contractors, including but not limited to, The Tolliver Group, Inc. (TTGI), Kenjya-Trusant Group, LLC and Contracting Resources Group, Inc.

13. On August 31, 2022, the Agency responded to Plaintiff's request by requesting verification of identity in the form of a completed and signed DS-4240 (Certification of Identity).

14. On September 1, 2022, Plaintiff returned a completed DS-4240 form.

15. On October 21, 2022, approximately 38 working days after the initial submission, the Department of State denied Plaintiff's request on the grounds that he did not file a verification of his identity.

16. On information and belief, circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding.

17. The Defendant's total failure to respond to Plaintiff's FOIA requests has caused Plaintiff pain and suffering, as it unjustifiably thwarts Plaintiff's ability to oppose unjust and retaliatory employment actions the Agency has taken against him, damaging his career, reputation, and earning ability.

PLAINTIFF'S CLAIMS FOR RELIEF

COUNT 1

Failure to Produce Records Under FOIA  
(5 U.S.C. § 552)

18. Plaintiff repeats and realleges every allegation in the Complaint.
19. Plaintiff properly asked for records within the Defendant's control on August 28, 2022.
20. Defendant has also not produced any records to Plaintiff in response to his FOIA requests.
21. Defendant violated FOIA's mandate to release agency records to the public by failing to release the records Plaintiff specifically requested. 5 U.S.C. § 552(a)(3)(A), 552(a)(4)(B).
22. Accordingly, Plaintiff is entitled to injunctive and declaratory relief with respect to the release and disclosure of the records requested in Plaintiff's August 28, 2022 FOIA request.
23. WHEREFORE, Plaintiff respectfully requests this Court:
  - a. Declare that the Defendant violated FOIA by failing to lawfully satisfy Plaintiff's August 28, 2022 FOIA request;
  - b. Order the Defendant to process and release immediately all records responsive to Plaintiff's August 28, 2022 FOIA request at no cost to Plaintiff;
  - c. Retain jurisdiction of this action to ensure the processing of Plaintiff's FOIA request and that no agency records are wrongfully withheld;
  - d. Award Plaintiff his reasonable attorney's fees and litigation costs in this action pursuant to 5 U.S.C. § 552(a)(4)(E);
  - e. Award Plaintiff compensatory relief for damages Plaintiff has suffered due to Defendant's violation; and

f. Award any additional relief the Court deems just.

Dated: May 8, 2023

Respectfully submitted,

*/s/Ari Micha Wilkenfeld*

Ari Micha Wilkenfeld

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