

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SAN FRANCISCO INTERNATIONAL ARTS)
FESTIVAL, INC.)
1222 Sutter Street)
San Francisco, CA 94109-557)

Plaintiff,)

v.)

UNITED STATES COAST GUARD)
2703 Martin Luther King Jr Ave, SE)
Washington, DC 20593-7710)

Defendant.)

Case No: 23-cv-1374

COMPLAINT

I. INTRODUCTION

1. Plaintiff San Francisco International Arts Festival, Inc. (hereinafter “SFI AF”) brings this action seeking declaratory and injunctive relief to redress violations of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et. seq.*, by Defendant United States Coast Guard (hereinafter “USCG”) in failing to provide SFI AF with non-exempt records responsive to its November 8, 2021, FOIA request submitted to this federal agency, seeking e-mail communications with USCG customer service representative, Ricardo Ricoma, from April and May of 2020, wherein SFI AF was relieved of a decade-old debt it had with the USCG. SFI AF’s FOIA request referenced above also sought records referencing Coast Guard file numbers

CSNG3102958 (Sept. 2021) and 2407207CTO023 (April 2020), along with any other records for those particular case and file numbers, wherein the agency discussed or described the change in debt status with Plaintiff SFIAF, and also sought copies of communications between USCG and any other agencies as to the above referenced debt relief actions. Lastly, this FOIA request also sought communications between the USCG and Diversified Collection Services, Pioneer Credit Recovery and the CBE Group for the years of 2009 and 2014 regarding the above described debt status and associated debt relief actions involving the SFIAF and the USCG.

II. JURISDICTION

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) (FOIA citizen suit provision) and 28 U.S.C. § 1331 (federal question).

III. VENUE

3. Venue in this Court is proper pursuant to 5 U.S.C. § 552(a)(4)(B).

IV. PARTIES

4. Plaintiff, San Francisco International Arts, Inc., is a non-profit organization that, at all times relevant herein, has been headquartered in San Francisco, California.

5. Defendant United States Coast Guard is a federal agency of the United States, and a sub component division of the Department of Homeland Security (hereinafter “DHS”), and as such, is an agency subject to the FOIA, pursuant to 5 U.S.C. § 552(f).

V. LEGAL FRAMEWORK OF FOIA

6. FOIA requires, *inter alia*, that all federal agencies must promptly provide copies of all non-exempt agency records to those persons who make a request for records that reasonably describes the nature of the records sought, and which conform to agency regulations and

procedures in requesting such records. 5 U.S.C. § 552(a)(3)(A).

7. FOIA requires federal agencies to make a final determination on all FOIA requests that it receives within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such request, unless the agency expressly provides notice to the requester of “unusual circumstances” meriting additional time for responding to a FOIA request. 5 U.S.C. § 552(a)(6)(A)(I).

8. FOIA also requires federal agencies to make a final determination on FOIA administrative appeals that it receives within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal, unless the agency expressly provides notice to the requester of “unusual circumstances” meriting additional time for responding to a FOIA request. 5 U.S.C. § 552(a)(6)(A)(ii).

9. FOIA expressly provides that a person shall be deemed to have constructively exhausted their administrative remedies if the agency fails to comply with the applicable time limitations provided by 5 U.S.C. § 552(a)(6)(A)(I) - (ii). *See* 5 U.S.C. § 552(a)(6)C).

10. FOIA provides that any person who has not been provided the records requested pursuant to FOIA, after exhausting their administrative remedies, may seek legal redress from the Federal District Court to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.

11. Under FOIA, the federal agency has the burden to sustain its actions. 5 U.S.C. § 552(a)(4)(B).

12. Pursuant to FOIA, this Court may assess attorney fees and litigation costs against the United States if the Plaintiff prevails in this action. 5 U.S.C. § 552(a)(4)(E).

VI. FACTUAL ALLEGATIONS

13. On or about November 8, 2021, SFIAF sent a FOIA request to the USCG, seeking copies of the e-mail communications with USCG customer service representative, Ricardo Ricoma, in April and May of 2020, wherein SFIAF was relieved of a decade-old debt it had with the USCG. SFIAF's FOIA request also sought copies of all records as to that matter referencing Coast Guard file numbers CSNG3102958 (Sept. 2021) and 2407207CTO023 (April 2020), along with any associated records wherein the agency discussed or described the above referenced change in debt status of SFIAF, and copies of any communications between USCG and other federal agencies regarding the above referenced agency debt matter. Lastly, this FOIA request also sought copies of communications between the USCG and Diversified Collection Services, Pioneer Credit Recovery and the CBE Group that discussed or described the debt status issue regarding SFIAF and the USCG referenced above, for the years of 2009 and 2014.

14. On or about November 8, 2021, SFIAF, received an email response from the USCG, confirming receipt of SFIAF's November 8, 2021 FOIA request to the USCG, and assigning the request a tracking number 2022-CGFO-0288.

15. On or about November 19, 2021, SFIAF attempted to telephone the USCG regarding their November 8, 2021 FOIA request, but was unable to reach any individual at the agency office to discuss this FOIA matter. SFIAF then sent an email to USCG's FOIA office, inquiring as to whether the USCG would expedite this FOIA request, and inquiring as to how long it would take to process Plaintiff's November 8, 2021, FOIA request.

16. On or about December 13, 2021, SFIAF checked the DHS FOIA website for an update on the status of the request, which indicated that the information sought would be

provided on or about December 13, 2021.

17. On or about December 20, 2021, SFIAF again sent an email to the USCG, once again requesting information as to when SFIAF could expect to receive responsive records and the estimated completion date for its November 8, 2021, FOIA request.

18. On or about December 21, 2021, SFIAF received an e-mail from the USCG FOIA office, indicating that to obtain the status of the FOIA request, he should contact a Ms. Stevenson of CG-8 regarding the completion date status for their November 8, 2021, FOIA request.

19. On or about December 21, 2021, SFIAF called the number provided by the USCG to contact Ms. Stevenson, but found that the listed phone number was attributable to a Captain Boss. In response, SFIAF e-mailed back to USCG, requesting an updated phone number for Ms. Stevenson to discuss the status of its November 8, 2021, FOIA request.

20. On or about December 21, 2021, SFIAF received an e-mail from DHS's helpdesk, indicating that SFIAF's request status was updated to "In Process" for its November 8, 2021, FOIA request.

21. On or about December 22, 2021, SFIAF received an e-mail from a USCG FOIA Analyst, providing an updated phone number for Ms. Stevenson in response to SFIAF's November 8, 2021, FOIA request.

22. On or about December 23, 2021, SFIAF left a voice message for Ms. Stevenson, inquiring as to the status of SFIAF's November 8, 2021, FOIA request.

23. On or about January 3, 2022, SFIAF sent an e-mail to Ms. Stevenson and the USCG, requesting information as to when SFIAF could expect to receive responsive records, and the estimated completion date for SFIAF's November 8, 2021, FOIA request.

24. On or about January 10, 2022, SFIAF sent an e-mail to Ms. Stevenson and the USCG, requesting information as to when SFIAF could expect to receive responsive records and the estimated completion date for SFIAF's November 8, 2021, FOIA request.

25. On or about January 20, 2022, SFIAF left another voice message for Ms. Stevenson at USCG's FOIA office, inquiring on the status of SFIAF's November 8, 2021, FOIA request.

26. On or about January 20, 2022, SFIAF sent another e-mail to the USCG's FOIA office, requesting information as to when SFIAF could expect to receive responsive records and the estimated completion date for their November 8, 2021, FOIA request.

27. On or about January 31, 2022, SFIAF sent another e-mail to the USCG FOIA office, requesting information as to when SFIAF could expect to receive responsive records and the estimated completion date for SFIAF's November 8, 2021, FOIA request.

28. On or about February 17, 2022, SFIAF sent another e-mail to the USCG requesting information as to when SFIAF could expect to receive responsive records, and the estimated completion date for SFIAF's November 8, 2021, FOIA request.

29. On or about March 21, 2022, SFIAF received an e-mail from the USCG FOIA office, acknowledging their November 8, 2021 FOIA request, indicating that their systems department would initiate the search, and that USCG would be providing an update for the timing of producing the responsive records and the completion date for SFIAF's November 8, 2021, FOIA request.

30. On or about April 4, 2022, SFIAF sent another e-mail to the USCG requesting information as to when SFIAF could expect to receive responsive records, and the estimated completion date for SFIAF's November 8, 2021, FOIA request.

31. On or about April 4, 2022, SFIAF received another e-mail from the USCG FOIA office, indicating that the agency could not provide a timeline as to when SFIAF could expect to receive responsive records or an estimated completion date for SFIAF's November 8, 2021, FOIA request.

32. On or about April 7, 2022, SFIAF sent another e-mail to the USCG FOIA office, requesting information as to when SFIAF could expect to receive responsive records, and requesting the estimated completion date for SFIAF's November 8, 2021, FOIA request.

33. On or about April 18, 2022, SFIAF sent another e-mail to the USCG FOIA office, requesting information as to when SFIAF could expect to receive responsive records and the estimated completion date for SFIAF's November 8, 2021, FOIA request.

34. On or about May 10, 2022, SFIAF sent another e-mail to the USCG FOIA office, requesting information as to when SFIAF could expect to receive responsive records, and the estimated completion date for SFIAF's November 8, 2021, FOIA request.

35. On or about May 25, 2022, SFIAF sent another e-mail to the USCG FOIA office, requesting information as to when SFIAF could expect to receive responsive records, and the estimated completion date for SFIAF's November 8, 2021, FOIA request.

36. On or about June 16, 2022, SFIAF sent another e-mail to the USCG FOIA office, requesting information as to when SFIAF could expect to receive responsive records, and the estimated completion date for SFIAF's November 8, 2021, FOIA request.

37. On or about August 9, 2022, SFIAF sent another e-mail to the USCG FOIA office, requesting information as to when SFIAF could expect to receive responsive records and the estimated completion date for SFIAF's November 8, 2021, FOIA request.

38. On or about August 9, 2022, SFIAF and the USCG FOIA office exchanged four additional e-mails regarding a change in agency personnel processing the SFIAF's November 8, 2021, FOIA request, wherein the USCG office indicated that they could not provide a timeline of when SFIAF would be likely to receive responsive records or an estimated completion date for SFIAF's November 8, 2021, record request.

39. On or about August 31, 2022, SFIAF received another e-mail from the USCG FOIA office, asking whether the records identified in their November 8, 2021, FOIA request were still being sought, and requesting confirmation of the status of SFIAF's continued interest in receiving the responsive records for their November 8, 2021, FOIA request.

40. On or about August 31, 2022, SFIAF sent an e-mail to the USCG confirming that they were still seeking the records sought by their November 8, 2021 FOIA request, and requesting information as to when SFIAF could expect to receive the responsive records sought, and as to the estimated completion date for their November 8, 2021, record request.

41. On or about September 1, 2022, SFIAF received an e-mail from the USCG FOIA office, indicating that the status of their FOIA request matter was now updated to 'In Process' for their November 8, 2021, FOIA request.

42. On or about September 16, 2022, SFIAF sent another e-mail to the USCG FOIA office, requesting information as to when SFIAF could expect to receive responsive records, and the estimated completion date for SFIAF's November 8, 2021, FOIA request.

43. On or about September 16, 2022, SFIAF received an e-mail from the USCG, indicating that SFIAF's request status was in the backlog of pending record requests, and that the wait times would be longer than normal for responding to its November 8, 2021, FOIA request.

44. On or about October 4, 2022, SFIAF sent another e-mail to the USCGFOIA office, requesting information as to when SFIAF could expect to receive responsive records, and the estimated completion date for SFIAF's November 8, 2021, FOIA request.

45. On or about October 6, 2022, SFIAF received an e-mail from the USCG, indicating that SFIAF's request was now with their Cyber division, and that the wait times would be longer than normal for the agency's response to SFIAF's November 8, 2021, FOIA request.

46. On or about November 1, 2022, SFIAF sent another e-mail to the USCG, requesting information as to when SFIAF could expect to receive responsive records, and the estimated completion date for their November 8, 2021, FOIA request.

47. On or about December 9, 2022, SFIAF sent another e-mail to the USCG FOIA office, requesting information as to when SFIAF could expect to receive responsive records and the estimated completion date for their November 8, 2021, FOIA request.

48. On or about December 9, 2022, SFIAF received an e-mail from the USCG, indicating that SFIAF's request was pending with the agency's Cyber division, and that the wait time would be longer than normal for SFIAF's November 8, 2021, FOIA request.

49. On or about January 27, 2023, SFIAF sent another e-mail to the USCG FOIA office, requesting information as to when SFIAF could expect to receive responsive records and the estimated completion date for SFIAF's November 8, 2021, FOIA request.

50. On or about February 10, 2023, SFIAF and the USCG exchanged several e-mails, wherein the agency noted that SFIAF's request status was still pending with Cyber division, and that wait times for processing this FOIA request would be longer than normal.

51. On or about February 13, 2023, SFIAF and the USCG exchanged two e-mails, wherein the agency indicated that SFIAF's requested information could not be found, and that they submitted a new ticket on August 30, 2022, for their November 8, 2021, FOIA request.

52. On or about March 6, 2023, SFIAF sent another e-mail to the USCG, requesting information as to when they could expect to receive responsive records, and the estimated completion date for processing SFIAF's November 8, 2021, FOIA request.

53. On or about March 6, 2023, SFIAF sent another e-mail to the USCG, requesting clarification on the status for SFIAF's November 8, 2021, FOIA request, and asking for information as to when SFIAF could expect to receive responsive records, and the estimated completion date for this FOIA request.

54. On or about March 7, 2023, SFIAF received an e-mail from USCG's FOIA Team, requesting that SFIAF provide additional information to assist CYBER in finding responsive records related to its November 8, 2021, FOIA request.

55. On or about March 7, 2023, SFIAF sent another e-mail to the USCG confirming the specific information related to responsive records for its FOIA request, and requesting information as to when SFIAF could expect to receive responsive records, and the estimated completion date for their November 8, 2021, record request.

56. On or about March 13, SFIAF received an e-mail from the USCG, indicating that SFIAF's request status was updated to 'On Hold – Need Info/Clarification' status for their November 8, 2021, FOIA request.

57. On or about March 15, 2023, SFIAF sent another e-mail to the USCG, inquiring as to what additional information related to its request was still needed, and once again requesting

information as to when SFIAF could expect to receive responsive records, and the estimated completion date for their November 8, 2021, FOIA request.

58. On or about March 16, 2023, SFIAF received an e-mail from the USCG's FOIA Analyst, regarding the agency staff that would be processing their November 8, 2021, FOIA request.

59. On or about March 16, 2023, SFIAF sent another e-mail to the USCG, inquiring as to what additional information (if any) related to its request was needed, and once again requesting information as to when SFIAF could expect to receive responsive records, and the estimated completion date for their November 8, 2021, FOIA request.

60. On or about March 31, 2023, SFIAF sent another e-mail to the USCG, requesting information as to when SFIAF could expect to receive responsive records, and requesting the estimated completion date for their November 8, 2021, FOIA request.

61. On or about April 3, 2023, SFIAF received another e-mail from a USCG's FOIA Analyst, describing the agency staff who would be processing their November 8, 2021, FOIA request referenced above.

62. On or about April 3, 2023, SFIAF received another e-mail from the USCG indicating that their November 8, 2021, FOIA request was still being processed by their CYBER office, and explaining that the listed record request statuses in the system are essentially "frozen" from the date the data an office transfer began, and that while SFIAF's request might appear to be on hold, the record request was still being processed. However, the agency's follow-up communication did not provide an estimated date by which SFIAF could expect to receive copies of any responsive records, and to date, Plaintiff SFIAF has still not received any records from the

USCG responsive to their November 8, 2021, FOIA request referenced in paragraph 13 above.

VII. CLAIMS FOR RELIEF

63. SFIAF realleges, as if fully set forth herein, paragraphs 1-62 previously set forth herein.

64. Defendant USCG has violated FOIA by failing to provide SFIAF with all non-exempt responsive records for its November 8, 2021, FOIA request.

65. By failing to provide SFIAF with all non-exempt responsive record to its November 8, 2021, FOIA request as described in paragraph 13 above, Defendant USCG has denied SFIAF's right to this information as provided by the Freedom of Information Act.

66. Defendant USCG has violated FOIA by failing to perform an adequate search reasonably calculated to locate all responsive records to SFIAF's November 8, 2021, FOIA request.

67. By failing to perform an adequate search reasonably calculated to locate all responsive records to SFIAF's November 8, 2021, FOIA request, Defendant USCG has denied SFIAF's right to this information as provided by law under the Freedom of Information Act.

68. Unless enjoined by this Court, Defendant USCG will continue to violate SFIAF's legal rights to be provided with copies of the records which it has requested in its FOIA request described in paragraph 13 above.

69. SFIAF is directly and adversely affected and aggrieved by Defendant USCG's failure to provide responsive records to its FOIA request described above.

70. SFIAF has been required to expend costs and to obtain the services of a law firm, consisting of attorneys, law clerks, and legal assistants, to prosecute this action.

71. SFIAF is entitled to reasonable costs of litigation, including attorney fees pursuant to FOIA 5 U.S.C. § 552(a)(4)(E).

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter Judgment for SFIAF, providing the following relief:

1. Declare Defendant USCG has violated FOIA by failing to provide SFIAF with all non-exempt records responsive to its November 8, 2021, FOIA request.
2. Declare Defendant USCG has violated FOIA by failing to complete an adequate search for records responsive to SFIAF's November 8, 2021, FOIA request.
3. Direct by injunction that Defendant USCG perform an adequate search for records responsive to its November 8, 2021, FOIA request and provide SFIAF with all non-exempt responsive records to SFIAF's November 8, 2021, FOIA request.
4. Grant SFIAF's costs of litigation, including reasonable attorney fees, as provided by FOIA, 5 U.S.C. § 552(a)(4)(E); and,
5. Provide such other relief as the Court deems just and proper.

Respectfully submitted this 15th day of May, 2023.

/s/ Daniel J. Stotter
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