

IN THE UNITED STATES DISTRICT COURT
FOR THE DISIRICT OF COLUMBIA

| | | |
|-----------------------------------|---|-----------------------------|
| Puneet Mehta |) | |
| 4228 E Highlands Dr |) | |
| Paradise Valley, Arizona 85253 |) | |
| |) | C/A No. <u>1:23-cv-1457</u> |
| Plaintiff, |) | |
| |) | Freedom of Information Act |
| v. |) | |
| U.S. Customs & Border Protection, |) | |
| 90 K Street, NW, 9th Floor, |) | |
| Mail Stop 1181 |) | |
| Washington, DC 20229-1181 |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

COMPLAINT

1. Plaintiff, Puneet Mehta, seeks relief before this Court under the Freedom of Information Act (“FOIA”). 5 U.S.C. § 552.
2. On December 27, 2022 Mr. Mehta electronically submitted a FOIA request to United States and Customs and Border Protection (“CBP”), a component agency of the Department of Homeland Security (“DHS”).
3. Mr. Mehta received confirmation identification number, 526206, and the name of an assigned FOIA Officer.
4. CBP also marked the “Request Number” CBP-FO-2023-023551 in its “SecureRelease Portal.”
5. Defendant has violated FOIA by failing to produce the requested documents or providing an explanation why it has withheld responsive information.

6. Mr. Mehta seeks an order from this Court to enjoin CBP from withholding agency records and to compel the immediate production of agency records pertaining to the FOIA request.

PARTIES

7. Plaintiff Mr. Puneet Mehta is a citizen and national of India and lawful permanent resident of the United States. Mr. Mehta maintains a residence in Paradise Valley, Arizona.

8. Defendant Customs and Border Protection is a component of the Department of Homeland Security. CBP is primarily charged with keeping terrorists and their weapons out of the U.S. while facilitating lawful international travel and trade. CBP maintains a FOIA office in Washington, D.C.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over this action and personal jurisdiction over Defendant under FOIA, 5 U.S.C. §§ 552(a)(4)(B), 552(a)(6)(E)(iii).

10. The Court also has federal-question jurisdiction over this action pursuant to 28 U.S.C. § 1331.

11. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B) because the agency records at issue remain in control of the CBP, which has a FOIA office assigned to Mr. Mehta's request within the District of Columbia. The statute further authorizes filing a civil action in this Court.

STATUTORY FRAMEWORK

12. FOIA promotes open government by providing every person with a right to request and receive federal agency records. 5 U.S.C. § 552(a)(3)(A).

13. In furtherance of its purpose to encourage open government, FOIA imposes strict

deadlines on agencies to provide responsive documents. 5 U.S.C. § 552(a)(6)(A).

14. An agency must comply with a FOIA request by issuing a determination within 20 business days after receipt of the request. 5 U.S.C. § 552(a)(6)(A)(i).

15. The determination “must at least inform the requester of the scope of the documents that the agency will produce, as well as the scope of the documents that the agency plans to withhold under any FOIA exemptions.” *Citizens for Responsibility & Ethics in Wash. v. Fed. Election Comm’n*, 771 F.3d 180, 186 (D.C. Cir. 2013).

16. An agency may be entitled to one ten-day extension of time to respond to a request if it provides written notice to the requester explaining that “unusual circumstances” exist that warrant additional time. 5 U.S.C. § 552(a)(6)(B).

17. An agency shall make available a FOIA public liaison to aid the requestor in limiting the scope of the request so that it may be processed within the statutory time limit. 5 U.S.C. § 552(a)(6)(B)(ii).

18. An agency must immediately notify the requester of its determination whether to comply with a request, and the reasons for it, and of the right of such person to appeal an adverse determination. 5 U.S.C. § 552(a)(6)(B)(ii).

19. An agency’s failure to comply with FOIA’s timing requirements constitutes a constructive denial and satisfies the requester’s requirement to exhaust administrative remedies. 5 U.S.C. § 552(a)(6)(C)(i).

20. A Court may impose injunctive and declaratory relief for a violation of FOIA, including the failure to timely produce and respond a request for records. 5 U.S.C. § 552(a)(4)(B).

FACTUAL ALLEGATIONS

21. On December 27, 2022, Mr. Mehta submitted an electronic FOIA request to CBP (“the Request”).

22. The Request sought records relating to Mr. Mehta’s interactions with CBP officers at ports of entry.

23. CBP provided Mr. Mehta with a confirmation number, 526206, and notified him of the specific CBP FOIA officer assigned to the Request.

24. Mr. Mehta has received no further information from CBP’s FOIA office or the assigned officer.

25. The statutory deadline for a response to the Request passed on January 26, 2023, affording CBP the maximum 30 days.

26. CBP has not communicated with Mr. Mehta and failed to produce any responsive documents, objected to the Request, or provided any detailed information regarding specific circumstances preventing the disclosure of the records sought.

27. Defendant has constructively denied the Request by failing to provide any substantive responses within the statutory timeframe and Mr. Mehta has exhausted all available administrative remedies. 5 U.S.C. § 552(a)(6)(C)(i).

28. Mr. Mehta has a legal right to the requested records.

29. Defendant has improperly withheld those records, forcing Mr. Mehta to file suit to enforce his rights under FOIA.

FIRST CAUSE OF ACTION (Failure to Respond to Request Within Statutory Timeframe)

30. Plaintiff re-alleges and incorporate the foregoing paragraphs as if set forth here in full.

31. Defendant failed to respond to the Request within the statutorily mandated timeframe in violation of Mr. Mehta's rights under FOIA. 5 U.S.C. § 552(a)(6)(A)(i); 5 U.S.C. § 552(a)(6)(B).

32. Defendant's violation is capable of redress.

33. The Court should compel Defendant to produce the records pertaining to Mr. Mehta.

**SECOND CAUSE OF ACTION
(Failure to Produce Responsive Records)**

34. Plaintiff re-alleges and incorporates the foregoing paragraphs as if set forth here in full.

35. Defendant failed to make reasonable efforts to search for records responsive to the Request, in violation of Mr. Mehta's rights under FOIA. *See* 5 U.S.C. § 552(a)(3).

36. To date, Defendant has failed to disclose and produce any records responsive to the Request, in violation of Mr. Mehta's rights to those records under FOIA. *See* 5 U.S.C. § 552(a)(3)(A).

37. Defendant failed to disclose and produce records responsive to the Request without a legal basis for withholding such records. *See* 5 U.S.C. §§ 552(a)(3)(A) and (6)(A).

38. Mr. Mehta is entitled to attorneys' fees and costs under 5 U.S.C. § 552(a)(4)(E).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court:

- A. Expedite its consideration of this action pursuant to 28 U.S.C. § 1657;
- B. Find that Defendant's failure timely to respond or disclose records was unlawful;
- C. Order Defendant to search for and promptly disclose all records responsive to the Request;

D. Award the Plaintiff attorneys' fees and costs; and

E. Order any additional relief as the Court deems equitable and warranted.

May 22, 2023

Respectfully Submitted,

/s/Jesse M. Bless

JESSE M. BLESS (MA0020)

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