

**UNITED STATES DISTRICT COURT
For the Northern District of Illinois –
Eastern Division**

KL ASSOCIATES LIMITED, LLC)	
And LYNDA RUSSO)	
Plaintiffs,)	Case No:
)	
v.)	JUDGE:
UNITED STATES SMALL)	Magistrate
BUSINESS ADMINISTRATION)	
)	
)	
Defendants)	

**COMPLAINT FOR DECLARATORY, INJUNCTIVE RELIEF, AND EQUITABLE
RELIEF**

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the Privacy Act (“PA”), 5 U.S.C § 552a, seeking agency records wrongfully withheld by the Small Business Administration regarding the subject of said requested records. This complaint seeks statutory, declaratory, injunctive, and equitable relief to remedy Defendant’s violations of FOIA and/or the PA which include but are not limited to: (1) failure to process properly submitted FOIA requests and to produce responsive documents within the statutory deadlines mandated by Congress; (2) failure to conduct proper searches to locate documents responsive to properly submitted FOIA requests; (3) failure to acknowledge, process, and decide properly filed appeals; (4) misusing invocation of the statutory (b)(5) exemption to redact and withhold documents subject to disclosure to cover unfavorable facts and/or actions and (5) failure to segregate non-exempt material in records to which agencies have applied redactions.

2. Each Plaintiff has been irreparably harmed by Defendant's repeated and deliberate violations of the Acts and by the withholdings of the requested records and information without good cause or justification.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B). This Court has further jurisdiction to grant declaratory relief pursuant to 28 U.S.C. § 2201-2202.

4. Venue is proper under 5 U.S.C. § 552(a)(4)(B) because Plaintiff Aviation Services Inc. resides within this district.

PARTIES

5. Plaintiff KL Associates Limited, LLC (KL) is an Illinois corporation with a principal place of business in Chicago, IL.

6. Plaintiff Lynda Russo is the owner of KL and a resident of Chicago, IL.

7. Defendant SBA is an agency of the executive branch of the U.S. government within the meaning of 5 U.S.C. § 522(f)(1) from which Plaintiff sought information through the requests identified below.

8. Defendant has custody, possession, and control over the records and the systems of records sought by Plaintiffs under FOIA and/or PA, and has had such custody, possession, and control at the time the records were requested and up to the present.

REQUEST FOR RECORDS

SBA-2022-006799

9. On 22 June 2022 KL, through counsel, submitted the following request to SBA pursuant to the FOIA and the PA:

A. All records pertaining to requester's CARES Act COVID-19 Emergency EIDL application No. 3304045297 and Loan no. 8279037910. This request includes and covers all non-exempt loan underwriting records and data, all interagency and intra-agency communications, all communications between agency employees and employees and/or agents of SBA contractors, all meeting or other records of discussions, all communications with requester, all telephone call logs, and all final agency action pertaining to the above identified loan from 1 April 2020 to the date this request is processed;

B. All business rules, special operating procedures, internal policies, and/or training manuals in effect from 1 April 2020 until 16 May 2022 addressing, incorporating, and/or memorializing procedures and methods to assure timely funding of approved applications for loan increases where an applicant has executed and returned the executed amended loan authorization and agreement to the agency;

C. All business rules, special operating procedures, internal policies, and/or training manuals in effect from 1 October 2021 until 16 May 2022 regarding expediting or prioritizing the funding of approved CARES Act Emergency EIDL loans (initial and modified loans);

D. All business rules, special operating procedures, internal policies, and/or training manuals in effect from 1 April 2020 until 16 May 2022 addressing, incorporating, and/or memorializing procedures, rules, and practices regarding preparers of CARES Act emergency EIDL loan applications, including procedures to cross-reference and track preparers identified on submitted loan applications;

E. All records containing the term "Lynda Russo".

10. The request was accompanied by an executed consent affidavit by Plaintiff, Ms. Lynda Russo.

11. On 22 June 2022 counsel for Plaintiffs received confirmation of receipt of the request and the assignment of tracking number **SBA-2022-006799** to said request.

12. Counsel for the Plaintiffs did not receive a formal acknowledgment letter from Defendant.

13. On 5 July 2022 Defendant issued and served a response to the request in a letter signed by Mr. Mark Hoffpauir, Attorney, FOIA Department. On the same day Defendant produced limited records regarding COVID-19 Emergency EIDL loans submitted by Plaintiff.

14. The 5 July 2022 response, however, did not identify the nature and scope of search performed; did not identify the records withheld, and improperly invoked exemptions (b)(5) and (b)(6) without providing a reasonable notice of the nature of the information withheld and how said information was covered by the asserted exemptions.

15. Plaintiff, through counsel, submitted a timely written appeal to Chief, Freedom of Information/Privacy Acts Office U.S. Small Business Administration 409 Third St. SW, 8th floor Washington, DC 20416 by mailing a copy of the appeal via USPS. A copy of the written appeal is attached as Exhibit A and incorporated herein in full.

16. To date, neither the Plaintiff nor their counsel have received an acknowledgment of the appeal Defendants received on 26 September 2022 at 12:13PM.

17. Plaintiff and their counsel have yet to receive a response to the timely appeal.

SBA-2022-006800

18. On 22 June 2022 Plaintiff Russo, through counsel, submitted request to SBA pursuant to the FOIA and the PA seeking the following:

*This FOIA request is made on behalf of Lynda Russo by her attorney and seeks:
1. All business rules, special operating procedures, internal policies, training manuals or other records addressing, incorporating, and/or memorializing procedures and methods to fund or complete funding of CARES Act COVID-19 Emergency EIDL loans on or after 16 May 2022; 2. All statistics, including name, address, date of approval, date of funding, and amount funded, reflecting loans (initial and loan modifications, or increases) based on application made under the authority of the CARES Act or identified as COVID-19 loans that were funded on or AFTER 16 May 2022; 3. records memorializing which approved loans to be funded between 1 April 2022 and 16 May 2022; 4. all records showing applications where the loan modification authorization and agreements were executed and returned to SBA that were held in suspense or not moved to funding between 1 April 2022 and 16 May 2022.*

19. On 22 June 2022 counsel for Plaintiffs received confirmation of receipt of the request and the assignment of tracking number ***SBA-2022-006800*** to said request.

20. As of 1 June 2023, 343 days have elapsed since Plaintiff submitted her

request. This is 245 business days past the FOIA deadline.

21. Defendant has failed to produce responsive records or explain why they are being withheld.

22. Plaintiff has constructively exhausted all applicable administrative remedies under 5

U.S.C. § 552(a)(6)(C)(i).

22 June 2022 request – no tracking number

23. On 22 June 2022 Plaintiff Russo, through counsel, submitted a request to SBA pursuant to the FOIA and the PA seeking the following:

Lynda Russo, a small business owner and the authorized and disclosed loan preparer on behalf of multiple eligible entities for which she submitted bona fide COVID-19 requests for Emergency EIDL loans seek the following records:

- 1. Any and all final contracts or contract modifications between SBA and RER Solutions, Inc., Rocket Loans, Inc., Rapid Finance, or any of their subsidiaries or parent companies (including, but not limited, to: Rock Central, Rock Holdings, Rock Ventures LLC, Quicken Loans LLC, or Rocket Mortgage), as well as the solicitations or requests for proposals relevant to processing and managing the COVID-19 Economic Injury Disaster Loan (EIDL) program including, but not limited, to the Indefinite Delivery/Indefinite Quantity (IDIQ) Contract (PIID: 73351019D0001) awarded to RER Solutions. Modifications, amendments, solicitations, or requests for proposals relevant to the contract(s) are also specifically requested.*
- 2. All performance report(s), audit(s), or evaluation(s) conducted by SBA or an outside contractor of the processing of the COVID-19 Emergency EIDL program by RER Solutions, Inc., Rocket Loans, Rapid Finance, or any of their subsidiaries or parent companies .*
- 3. All business rules, special operating procedures, manuals, training materials, guidance documents, or communications sent by SBA or an outside contractor regarding the processing of COVID-19 EIDL loans, classifying or categorizing loan applications (including, but not limited, to approving and denying loan applications), and defining and implementing fraud prevention protocols.*
- 4. Statistical data, including name, address, amount, and date of funding, on CARES Act funds transferred to EIDL applicants where the original bank account listed on loan applications differed from the account receiving the funds from 1 August 2020 to 16 May 2022;*

5. *Statistical data, including name, address, amount, and date of funding, regarding CARES Act funds transferred to EIDL applicants using the same IP address on multiple applications from 1 August 2020 to 16 May 2022;*

6. *Statistical data, including name, address, amount, and date of funding, regarding CARES Act funds transferred to EIDL applicants identifying the same business address on their applications for the period from 1 August 2020 to 16 May 2022;*

7. *All business rules, special operating procedures, manuals, training materials, guidance documents, or communications memorializing the methods used to prevent that bona fide applicants are not disqualified for obtaining funds.*

Please search for responsive records regardless of format, medium, or physical characteristics. The requester seeks records of any kind, including paper records, electronic records, computer data, audiotapes, videotapes, photographs, data, and graphical material. The request includes without limitation all correspondence, letters, emails, text messages, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. The request also includes any attachments to emails and other records, and anyone who was cc'ed or bcc'ed on any emails.

Please search all relevant records or systems containing records of agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials or contractors, such as personal email accounts or text messages, or other unofficial systems or stored outside of official files of the SBA.

If the agency has adopted the National Archives and Records Administration Capstone program or similar policies for archiving and searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching individual custodian files, requester requests that an archived search also be performed. For example, a custodian may have deleted a responsive email from his or her email folder, but your agency's archiving tools may capture that email under Capstone or a similar program/process. At the same time, custodian searches are still necessary and requested as the agency may not have had direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts of employees and contractors.

*If it is your position that any portion of the requested records is exempt from disclosure, the requester requests that you provide an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973) with your response. If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records as required by 5 U.S.C. § 552(b).*

21. The FOIA/PA request was submitted via email to FOIA@sba.gov 22 June 2022 at 5:40:20 PM Pacific Daylight Time. A copy of the email is attached to this complaint as Exhibit B. Attached to the email were an executed consent and affidavit by Plaintiff Russo and the detailed FOIA request stated in paragraph 20.

22. Neither Plaintiff nor her counsel has received a confirmation of receipt of the request nor the assignment tracking number to said request.

23. As of 1 June May 2023, 343 days have elapsed since Plaintiff submitted her request. This is 245 business days past the FOIA deadline.

24. Defendant has failed to produce responsive records or explain why they are being withheld.

25. Plaintiff has constructively exhausted all applicable administrative remedies under 5 U.S.C. § 552(a)(6)(C)(i).

CAUSES OF ACTION

Count I

Violation of the FOIA: Failure to Comply with Statutory Deadlines

26. Plaintiffs incorporate by reference paragraphs 1 to 25 above.

27. Defendant SBA failed to acknowledge, process, and make a required determination regarding Plaintiffs' properly submitted FOIA appeal and FOIA requests and to produce responsive records well past the deadlines promulgated by Congress, as more fully explained above. Thus, Defendant has violated the statutory deadlines under 5 U.S.C. §§ 552(a)(6)(E)(ii)(I), (a)(6)(A)(ii) and the procedures established by 5 U.S.C. 552(a)(6)(B)(i)-(iii).

28. Plaintiffs has constructively exhausted all applicable administrative remedies under 5 U.S.C. § 552(a)(6)(C)(i).

Count II

Violation of the FOIA: Unlawful Withholding of Agency Records

29. Plaintiff incorporates by reference paragraphs 1 to 22 above.

30. No legal basis exists for Defendant's failures to promptly docket, process, respond to Plaintiffs' properly submitted FOIA requests and appeals and produce responsive agency records in accordance with the timing and other requirements of the Act.

31. As of the date of this Complaint, Defendant has wrongfully withheld records requested by Plaintiffs in their FOIA requests described in paragraphs 9, 18, and 23 above and has failed to demonstrate that such records are lawfully exempt from production. *See* 5 U.S.C. §552(a)(6)(C). Nor has Defendant notified Plaintiffs of the scope and nature of any responsive records each Defendant intends to produce or withhold and the reasons for any withholdings.

32. By failing to timely acknowledge, process, and respond to Plaintiffs' appeal and FOIA requests within the statutorily prescribed time limits, Defendant has violated its mandatory duties under the FOIA, including but not limited to their duties to process properly submitted requests and appeals for records, to conduct a reasonable search for responsive records, and to produce all responsive, reasonably segregable, non-exempt information. Therefore, Defendant is unlawfully withholding records requested by Plaintiffs pursuant to 5 U.S.C. §552.

33. Plaintiffs are being irreparably harmed by reason of Defendants' unlawful practices of processing and withholding records responsive to Plaintiffs' FOIA requests and their failure to comply with their respective obligations under FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to conform its conduct to the requirements of the law.

34. Plaintiff has exhausted all applicable administrative remedies under 5 U.S.C. § 552(a)(6)(C)(i).

35. Plaintiff is entitled to declaratory and injunctive relief with respect to the release and disclosure of the requested records.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs requests that judgment be entered in their favor and against Defendant, and that the Court:

- A. Order Defendant to conduct a prompt, reasonable search for records responsive to each of Plaintiffs' requests;
- B. Permanently enjoin and restrain Defendant and any of Defendant's agents from withholding the agency records at issue in this case;
- C. Declare that the requested records by Plaintiffs are not exempt from disclosure under FOIA, and order Defendant or component of Defendant with custody of the records to disclose the requested records in their entirety and make copies available to the Plaintiffs;
- D. Order Defendant to produce all responsive records;
- E. Award Plaintiff reasonable attorneys' fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E); and,
- F. Award all other relief to Plaintiff that the Court deems just, equitable, and proper.

Respectfully submitted,

s/ Nicolette Glazer Esq.

Nicolette Glazer Esq.
LAW OFFICES OF LARRY R GLAZER
2121 Avenue of the Stars #800
Century City, CA 90067
T: 310-407-5353
F: 310-407-5354
nicolette@glazerandglazer.com
ATTORNEY FOR PLAINTIFF