

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

MARY SNYDER,

Office of the Federal Public Defender
for the Middle District of PA
100 Chestnut Street, Third Floor
Harrisburg, PA 17101,

Plaintiff,

v.

**UNITED STATES DEPARTMENT
OF JUSTICE,**

950 Pennsylvania Avenue, NW
Washington, DC 20530

and

FEDERAL BUREAU OF PRISONS,

320 First Street, NW
Washington, DC 20535,

Defendants.

Civil Action No.23-1756

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Plaintiff Mary Snyder brings this action against the Department of Justice (“DOJ”) and the Federal Bureau of Prisons (“BOP”) under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, the Privacy Act of 1974 (“Privacy Act”), 5 U.S.C. § 552a(g), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA and the Privacy Act to immediately release improperly withheld agency records. Plaintiff complains as follows:

PARTIES

1. Plaintiff Snyder is an adult individual and resident of Cumberland County, Pennsylvania. Plaintiff Snyder is employed as a Paralegal for the Federal Public Defender Office for the Middle District of Pennsylvania. Plaintiff's office is located in Harrisburg, Pennsylvania.

2. Defendant DOJ is an agency of the United States Government within the meaning of 5 U.S.C. §§ 551, 552(f), and 702, that has possession, custody, and/or control of the records that Plaintiff seeks. The DOJ headquarters are located at 950 Pennsylvania Avenue, NW, Washington, DC 20530.

3. Defendant BOP is an agency of the United States Government within the meaning of 5 U.S.C. §§ 551, 552(f), and 702, that has possession, custody, and/or control of the records that Plaintiff seeks. The BOP headquarters are located at 320 First Street, NW, Washington, DC 20535.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action and personal jurisdiction over the parties under 5 U.S.C. § 552(a)(4)(B) (FOIA), 5 U.S.C. § 552a(g)(1)(b) (Privacy Act), and 28 U.S.C. § 1331 (federal question). The Court has the authority to issue a declaratory judgment under 28 U.S.C. §§ 2201 and 2202.

5. Venue is proper in this judicial district under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e), which provide that the district court of the United States in the District of Columbia has jurisdiction to enjoin these federal agencies from withholding agency records and to order the production of any agency records improperly withheld from the Plaintiff.

STATEMENT OF THE FACTS

6. Plaintiff's employer, the Office of the Federal Public Defender for the Middle District of Pennsylvania, represents Mr. Alejandro Enrique Ramirez Umaña in habeas proceedings

pursuant to 28 U.S.C. § 2255 in the Western District of North Carolina. *See Umaña v. United States*, No. 3:16-cv-00057 (W.D. N.C.). Following counsel's ethical obligations in capital proceedings, Plaintiff requests institutional and medical records of their client, Mr. Umaña.

7. On May 5, 2022, Plaintiff Snyder submitted a FOIA request (attached hereto as Exhibit 1) to Defendant BOP seeking the entire central BOP file of Mr. Umaña from USP-Terre Haute "from January 1, 2010 to the present." Specifically, Plaintiff sought records including, but not limited to: "medical; dental; vision; laboratory reports; radiology reports; mental health; disciplinary; educational programs; psychological and psychiatric records; evaluations; any and all video and/or audio recordings; general records and any FOI exempt documents."

8. Plaintiff attached a valid Certification of Identity and Authorization to Release Information to Another Person (DOJ-361) signed by Mr. Umaña, authorizing the BOP to copy the requested records and send them to Plaintiff's Office.

9. On May 26, 2022, the DOJ/BOP responded that it had assigned FOIA Request No. 2022-04035 to the request. The DOJ/BOP informed Plaintiff that, while it was granting her request for expedited review, "[p]rocessing this request may take up to six months." (Exhibit 2.)

10. On February 21, 2023, Plaintiff called the phone number (913-551-1004) provided on the BOP's website for inquiries about FOIA requests to the North Central Region (within which USP-Terre Haute is located). A clerk informed Plaintiff that she would have an examiner look at the request and call Plaintiff back to provide a status update.

11. On February 28, 2023, having received no follow-up phone call from the BOP, Plaintiff again called the North Central Region FOIA contact number and left a message for Ericka regarding the status of the request.

12. On April 12, 2023, still receiving no follow-up phone call from the BOP, Plaintiff called the North Central Region FOIA contact number and spoke with Paul. Paul indicated that the BOP was still gathering records, and there was no way to estimate how much longer it would take. Plaintiff told Paul she would call back in a month to check on the status.

13. On June 9, 2023, Plaintiff called the North Central Region FOIA contact number for an update on the status of this FOIA request. There was no answer. Plaintiff left a message. As of the date of this filing, Plaintiff has not received a return phone call from the BOP.

14. A check on the status of the request on the BOP website indicates a status of “Document Search.” (*See* Ex. 3.)

15. FOIA requires agencies of the federal government to “promptly” release records to the public upon request unless a specific statutory exemption applies or disclosure is prohibited by law. 5 U.S.C. § 552(a)(3)(A). An agency must determine within twenty (20) working days after receipt of a request for records whether to comply with the request and immediately notify the requester of its determination and the reasons therefor. 5 U.S.C. § 552(a)(6)(A)(i). If there are “unusual circumstances,” an agency may extend the time limit by no more than ten (10) working days. 5 U.S.C. § 552(a)(6)(B)(i)-(iii).

16. Further, a requester may seek expedited processing of a request where there is a “compelling need.” 5 U.S.C. § 552(a)(6)(E). An agency must process “as soon as practicable” any request for records to which it has granted expedited processing. 5 U.S.C. § 552(a)(6)(E)(iii). Here, the agency initially indicated that processing this expedited request may take up to six months. After that time had elapsed, the agency indicated there was no way to estimate how much longer it would take.

17. A requester is deemed to have exhausted its administrative remedies if the agency fails to comply with FOIA's applicable time limit provisions. 5 U.S.C. § 552(a)(6)(C)(i). In this case, the BOP has failed to comply with FOIA's time limit provisions in responding to the request. Thus, Plaintiff is deemed to have exhausted all applicable administrative remedies with respect to this FOIA request. *See id.*

CAUSES OF ACTION

Count I

Violation of FOIA (5 U.S.C. § 552) for Wrongful Withholding of Agency Records

18. Plaintiff repeats, realleges, and incorporates by reference all preceding paragraphs.

19. This Court has jurisdiction, upon receipt of a complaint, "to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(B).

20. Defendants are agencies subject to and within the meaning of FOIA, 5 U.S.C. § 552(f) and 5 U.S.C. § 551.

21. Defendants have possession of the documents and records that Plaintiff seeks.

22. Plaintiff properly requested records within the possession, custody, and control of Defendants. 5 U.S.C. § 522(a)(3).

23. Plaintiff is entitled by law to access the records requested under FOIA unless Defendants make an explicit and justified statutory exemption claim.

24. Defendants have failed to timely respond to Plaintiff's records request, violating FOIA. 5 U.S.C. § 552(a)(6)(A).

25. Defendants have failed to make responsive records available to Plaintiff in violation of FOIA. 5 U.S.C. § 552(a)(3)(A).

26. Defendants are wrongfully withholding non-exempt agency records requested by Plaintiff by failing to produce records responsive to the FOIA request and have no legal basis for their actions in withholding the right of access to the requested records.

27. Plaintiff has or is deemed to have exhausted all applicable administrative remedies as provided in FOIA. 5 U.S.C. § 552(a)(6)(C)(i) (providing for constructive exhaustion when an agency fails to comply with applicable time limits).

28. Therefore, Defendants have violated FOIA's mandate to release agency records to the public by failing to release the records as Plaintiff specifically requested, 5 U.S.C. § 552(a)(3), and Plaintiff is entitled to declaratory and injunctive relief requiring Defendants to promptly produce all non-exempt records responsive to the FOIA request referenced herein and to justify the withholding of any responsive records withheld under claim of exemption.

Count II

Violation of FOIA (5 U.S.C. § 552) for Failure to Conduct a Reasonable Search

29. Plaintiff repeats, realleges, and incorporates by reference all preceding paragraphs.

30. Defendants are agencies subject to and within the meaning of FOIA, 5 U.S.C. § 552(f) and 5 U.S.C. § 551.

31. Plaintiff's request for records properly seeks records within the possession, custody, and/or control of Defendants. 5 U.S.C. § 552(a)(3).

32. Defendants have failed to conduct a search reasonably calculated to identify all records responsive to Plaintiff's request for records, in violation of its obligations under FOIA. 5 U.S.C. § 552(a)(3).

33. Plaintiff has or is deemed to have exhausted all applicable administrative remedies as provided in FOIA. 5 U.S.C. § 552(a)(6)(C)(i) (providing for constructive exhaustion when an agency fails to comply with applicable time limits).

34. Therefore, Defendants have violated FOIA's mandate to release agency records to the public by failing to release the records as Plaintiff specifically requested, 5 U.S.C. § 552(a)(3), and Plaintiff is entitled to declaratory and injunctive relief requiring Defendants to promptly produce all non-exempt records responsive to the FOIA request referenced herein and to justify the withholding of any responsive records withheld under claim of exemption.

COUNT III

Violation of the Privacy Act (5 U.S.C. § 552a) for Wrongful Withholding of Agency Records

35. Plaintiff repeats, realleges, and incorporates by reference all preceding paragraphs.

36. Defendants are agencies subject to the Privacy Act. 5 U.S.C. § 552a(a).

37. Defendants have possession of the documents and records that Plaintiff seeks.

38. Plaintiff properly asked for records within Defendants' control. 5 U.S.C. § 552a(b)(2) & (d).

39. Plaintiff is entitled by law to access the records requested. *See* 5 U.S.C. § 552a(b)(2).

40. Defendants have failed to make the responsive records available to Plaintiff, violating the Privacy Act. 5 U.S.C. § 552a(d).

41. Defendants are wrongfully withholding these records from Plaintiff and have no legal basis for their actions in withholding the right of access to the requested records. *See* 5 U.S.C. § 552a(d).

42. Plaintiff has or is deemed to have exhausted all applicable administrative remedies as provided in the Privacy Act.

COUNT IV

Violation of the Privacy Act of 1974 (5 U.S.C. § 552a) for Failure to Conduct a Reasonable Search

43. Plaintiff repeats, realleges, and incorporates by reference all preceding paragraphs.

44. Defendants are agencies subject to the Privacy Act. 5 U.S.C. § 552a(a).

45. Defendants have possession of the documents and records that Plaintiff seeks.

46. Plaintiff properly asked for records within Defendants' control. 5 U.S.C. § 552a(b)(2) & (d).

47. Plaintiff is entitled by law to access the records requested. *See* 5 U.S.C. § 552a(b)(2).

48. Defendants have failed to conduct a search reasonably calculated to identify all records responsive to Plaintiff's request for records, in violation of the Privacy Act. 5 U.S.C. § 552a(d).

49. Defendants are wrongfully failing to search for records responsive to Plaintiff's request and have no legal basis for their actions in doing so and in withholding the right of access to the requested records. *See* 5 U.S.C. § 552a(d).

50. Plaintiff has or is deemed to have exhausted all applicable administrative remedies as provided in the Privacy Act.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court:

- a. Declare unlawful Defendants' failure to comply with FOIA and the Privacy Act of 1974;

- b. Declare that Plaintiff is entitled to disclosure of the requested records;
- c. Order Defendants to immediately process the request and disclose, in their entirety, unredacted versions of all records responsive to Plaintiff's request that are not specifically exempt from disclosure under FOIA, including any non-identical copies of any such records;
- d. Enjoin Defendants from charging Plaintiff search, review, or duplication fees for the processing of the request;
- e. Enjoin Defendants from continuing to withhold any and all non-exempt records responsive to Plaintiff's request;
- f. Retain jurisdiction of this action to ensure that no agency records are wrongfully withheld; and
- g. Grant such other relief as the Court may deem just and proper.

Respectfully submitted,

/S/ KELLY D. MILLER
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