

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KENNETH WHITE)
White and Associates)
21550 Oxnard Street, Ste. 300)
Woodland Hills, CA 91367)
)
Plaintiff)
v.)
)
U.S. CUSTOMS AND)
BORDER PROTECTION)
1300 Pennsylvania Avenue, NW)
Washington, D.C. 20229)
)
Defendant)

Civ. No. _____

COMPLAINT FOR DECLARATORY

AND INJUNCTIVE RELIEF

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This is an action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.*, seeking to compel Defendant U.S. Customs and Border Protection (CBP) to immediately produce all documents in the agency’s possession responsive to a FOIA Request.

2. This FOIA Request concerns training materials, guidance, and memoranda used by CBP adjudicators. The Request has been pending with Defendant for more than 2 years.

3. Over this time period, Plaintiff has diligently followed up with Defendant on the Requests. But despite its statutory obligation to do so, Defendant has failed to produce any records or make a substantive reply in response to the FOIA Request. Accordingly, Plaintiff is entitled to a judgment declaring that Defendant has violated FOIA and ordering Defendant to

conduct a reasonable search for records responsive to the FOIA Request and to promptly provide such records to Plaintiff in accordance with FOIA.

JURISDICTION AND VENUE

4. This Court has subject-matter jurisdiction under 5 U.S.C. § 552 *et seq.* (FOIA statute) and 28 U.S.C. § 1331 (federal question). This Court has jurisdiction to grant declaratory, injunctive, and further necessary or proper relief pursuant to 28 U.S.C. §§ 2201-2202 (Declaratory Judgment Act).

5. Venue is proper in this District under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e) because this is a civil action in the District of Columbia, a venue that is specified in the FOIA statute.

6. Defendant has acknowledged receipt of the FOIA Request and assigned a case number to the Request. **Exhibits 1-3.** To date, Defendant has not made a determination on Plaintiff's FOIA Request pursuant to 5 U.S.C. § 552(a)(6)(A). Defendant's failure to make a determination within the statutory time period constitutes a constructive denial of the FOIA Request. Thus, Plaintiff is deemed to have exhausted administrative remedies. 5 U.S.C. § 552(a)(6)(C)(i).

PARTIES

7. Plaintiff Kenneth White is a citizen of the United States and an immigration attorney with his principal place of business, White and Associates, at 21550 Oxnard Street, Ste. 300, Woodland Hills, CA 91367.

8. Defendant U.S. Customs and Border Protection is a component agency of the Department of Homeland Security and is an agency within the meaning of 5 U.S.C. § 552(f)(1). CBP is responsible for enforcing federal laws governing border control, customs,

trade, and immigration. It is charged with securing the border and facilitating lawful travel and trade. CBP has in its possession, custody, and control documents related to this FOIA request.

FACTUAL ALLEGATIONS

9. The text of the Request is as follows:

This request concerns the Admissibility Review Office within CBP. With the exception of the Immigration and Nationality Act, Volumes 8 and 22 of the Code of Federal Regulations, Volume 9 of the Department of State's Foreign Affairs Manual, and the USCIS Policy Manual, please provide any and all materials (e.g., manuals, guidelines, powerpoints, cables, flowcharts, tables, summaries, overviews, memoranda, handbooks, study documents, reports, records) used by the Admissibility Review Office in 1) training ARO staff and 2) adjudicating nonimmigrant waiver applications submitted pursuant to Section 212(d)(3)(A) of the Immigration and Nationality Act. Please provide all materials from Jan. 1, 2015 to date of fulfillment of this request.

STATEMENT OF RELEVANT LAW

10. 5 U.S.C. § 552(a)(3)(A) provides that:

Except with respect to records made available under paragraphs (1) and (2) of this subsection, and except as provided in subparagraph (E), each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

11. 5 U.S.C. § 552(a)(6)(A) provides that

Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall –

- (i) determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of (I) such determination and the reasons therefor...

12. 5 U.S.C. § 552(a)(6)(B) provides in relevant part:

- (i) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting for the unusual circumstances for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in

an extension for more than ten working days, except as provided in clause (ii) of this subparagraph

13. 5 U.S.C. § 552(a)(4)(B) provides in relevant part that

On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant...

FIRST CAUSE OF ACTION

Violation of Freedom of Information Act for Failure to Respond within the Time Required

14. Plaintiff repeats, alleges and incorporates the allegations above, as if fully set forth herein.

15. Within 20 business days after receiving the FOIA Request and an additional 10 business day extension for unusual circumstances, CBP was required under 5 U.S.C. § 552(a)(6)(A)(i) to determine whether to comply with the request and to notify Plaintiff of its determination and the reasons therefore and of its right to appeal any adverse determination.

16. Plaintiff has received no communications from CBP that contain the notification required by 5 U.S.C. § 552(a)(6)(A)(i).

17. Defendant's failure to respond within the statutory time limit violates 5 U.S.C. § 552(a)(6)(A), as well as the regulations promulgated thereunder.

SECOND CAUSE OF ACTION

Violation of Freedom of Information Act for Failure to Conduct a Reasonable Search and to Disclose Responsive Records

18. Plaintiff repeats, alleges and incorporates the allegations above, as if fully set forth herein.

19. Defendant was obligated under 5 U.S.C. § 552(a)(3) to conduct a reasonable search for records responsive to the FOIA Requests and to promptly produce them to Plaintiff.

20. Upon information and belief, CBP has not conducted a reasonable search for records responsive to the FOIA Requests.

21. CBP has not produced any records responsive to the FOIA Requests.

22. Plaintiff has a legal right to obtain the records requested in the FOIA Requests, and no legal basis exists for Defendant's failure to search for and disclose them.

23. Defendant's failure to conduct a reasonable search for and to produce records responsive to Plaintiff's request violates 5 U.S.C. § 552(a)(3), as well as the regulations promulgated thereunder.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Kenneth White requests that judgment be entered in his favor and against Defendant, and that the Court:

- a) Declare that Defendant's failure to respond to the FOIA Request within the statutory time limit, failure to search for responsive records, and failure to disclose such responsive records violate FOIA;
- b) Order Defendant and any of Defendant's departments, components, other organizational structures, agents, or other persons acting by, for, or on behalf of Defendant to conduct a prompt, reasonable search for records responsive to Plaintiff's FOIA Request;
- c) Enjoin Defendant and any of Defendant's departments, components, other organizational structures, agents, or other persons acting by, through, for, or on behalf of Defendant from withholding records responsive to Plaintiff's FOIA Request and order Defendant to promptly produce the same;

- d) Award costs and reasonable attorney fees under 5 U.S.C. § 552(a)(4)(E); and
- e) Grant all other such relief as the Court deems just and equitable.

Respectfully submitted this 8th day of November, 2023,

/s/Kenneth White

Kenneth White

White & Associates

21550 Oxnard Street, Ste. 300

Woodland Hills, CA 91367

(t) 818-730-3540

(f) 509-694-9786

e-mail: white@bridgewest.com

DC Bar Number: 432681

Attorney for Plaintiff