

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:23-CV-69-MOC-WCM**

DAVID M. THOMPSON,

Plaintiff, pro se,

vs.

U.S. JUSTICE DEPARTMENT,

Defendant.

ORDER

THIS MATTER comes before the Court on the Joint Motion to Dismiss of Defendant U.S. Department of Justice and *pro se* Plaintiff David Thompson (collectively the “Parties”), pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, for an order declaring certain stipulated facts and dismissing the action with prejudice. Doc. 29. As set forth below, the Joint Motion to Dismiss will be **GRANTED**. The Court makes the following findings:

1. On March 15, 2023, Plaintiff filed this action, alleging that (1) the U.S. Department of Justice (“Department”) violated the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), by withholding and redacting information when responding to numerous FOIA requests Plaintiff had submitted for records connected to his former employment with the Department’s component, the Environmental and Natural Resources Division (“ENRD”); and (2) the Department’s actions in

responding to the requests constituted a “pattern” and/or “practice” of untimeliness in violation of FOIA.

2. The parties jointly moved the Court for a stay of the litigation until October 31, reporting to the Court their promising discussions to resolve the case through settlement, Doc. 26, which the Court denied in part and granted in part, Doc. 27, resetting Defendant’s answer deadline through and including October 6, 2023.

3. The parties have reached an agreement as memorialized in the Settlement Agreement, attached to the Joint Motion to Dismiss as Exhibit 1, and make the Joint Motion to Dismiss pursuant to its terms.

4. These terms include an agreement that the Court declare the facts set forth below in Paragraphs 5 through 8 of this Order.

5. On three occasions, the U.S. Department of Justice (“Department”) did not substantively respond to Plaintiff’s FOIA administrative appeals within 20 working days.

6. The Department received an administrative appeal from Plaintiff (“Thompson”) on November 18, 2019, Appeal No. DOJ-AP-2020-001053, and responded on February 8, 2022.

7. The Department received another FOIA administrative appeal from Thompson on April 27, 2020, Appeal No. A-2020-00918, and responded on June 27, 2022.

8. The Department received a third FOIA administrative appeal from Thompson on December 11, 2020, Appeal No. A-2021-00612, and responded on August 4, 2021.

9. Consistent with other terms in the Settlement Agreement, the Parties stipulate to and seek the dismissal of this action with prejudice pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, each party to bear, except as may be otherwise set forth in the Settlement Agreement, its own costs, fees, and expenses.

10. Within ten days of the entry of the dismissal with prejudice contemplated in the Settlement Agreement and the Joint Motion to Dismiss, ENRD has agreed pursuant to the Settlement Agreement to release in full the documents referred to in Part 3 of ENRD FOIA No. 2019-5077 (and paragraph 8 of the Complaint). ENRD previously released these documents (11 pages in total), except that ENRD applied redactions to four of the pages. The previously redacted information will be released to Plaintiff as a discretionary release, as Defendant maintains its original determination was proper.

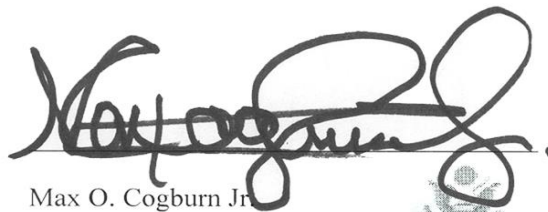
11. As the Department's Office of Information Policy ("OIP") has now

received from Plaintiff information sufficient to identify the particular adverse FOIA determination that was the subject of Plaintiff's September 2, 2022 letter to OIP referenced in Paragraphs 5 and 10 of the Settlement Agreement (and Paragraph 10 of the Complaint), OIP has agreed to open Plaintiff's administrative appeal of ENRD's August 25, 2022 response to ENRD FOIA No. 2020-05246 within five (5) days of the entry of dismissal, pursuant to and consistent with the terms of the Settlement Agreement.

IT IS, THEREFORE, ORDERED that the Joint Motion to Dismiss, Doc. 29, is **GRANTED**, that the facts set forth above in Paragraphs 5 through 8 of this Order are declared, and that the above-captioned action is dismissed with prejudice, each Party to bear, except as may be otherwise set forth in the Settlement Agreement, its own costs, fees, and expenses.

SO ORDERED.

Signed: November 20, 2023

A handwritten signature in black ink, appearing to read "Max O. Cogburn Jr.", written over a horizontal line. The signature is stylized and cursive.

Max O. Cogburn Jr.
United States District Judge