

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DAREK J. KITLINSKI
PO Box 40146
Arlington, VA 22204-7416

Plaintiff,

v.

DRUG ENFORCEMENT ADMINISTRATION
700 Army Navy Drive
Arlington VA 22202-4207

Defendant.

)
)
Case: 1:24-cv-00608
Assigned To : Mehta, Amit P
Assign. Date : 3/4/2024
Description: Pro se. Gen. Civ. (I-Deck)

COMPLAINT

I. INTRODUCTION

1. Plaintiff Darek J. Kitlinski ("Plaintiff") brings this action seeking declaratory and injunctive relief to redress violations of the Freedom of Information Act ("FOIA"), 5 U.S. C. § 552, and the Privacy Act of 1974 ("PA"), 5 U.S.C. § 552(a) *as amended* by Defendant Drug Enforcement Administration ("Defendant" or "DEA") in failing to provide Plaintiff with all non-exempt records responsive to his December 27, 2023, FOIA / PA request ("Request") sent to this Federal Agency, seeking access to three former employee e-mail records based on a keyword search of "Kitlinski."

II. JURISDICTION

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) (FOIA citizen suit provision) and 28 U.S.C. § 1331 (Federal question).

III. VENUE

3. Venue in this Court is proper pursuant to 5 U.S.C. § 552(a)(4)(B), 5 U.S.C. § 552a(g)(5), and 28 U.S.C. § 1391(e).

IV. PARTIES

4. **Plaintiff, Darek J. Kitlinski** is an individual who has resided in Alexandria, Virginia, at all times relevant herein.

5. **Defendant, the Drug Enforcement Administration**, is a Federal Agency of the United States and subject to FOIA and PA, pursuant to 5 U.S.C. § 552(f).

V. LEGAL FRAMEWORK OF FOIA AND PRIVACY ACT

6. FOIA requires, *inter alia*, that all Federal Agencies promptly provide copies of all non-exempt Agency records to those who request records that reasonably describe the nature of the records sought and which conform with agency regulations and procedures in requesting such records. 5 U.S.C. § 552(a)(3)(A).

7. FOIA requires Federal Agencies to make a final determination on all FOIA requests that it receives within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such request unless the Agency expressly provides notice to the requester of "unusual circumstances" meriting

additional time for responding to a FOIA request. 5 U.S.C. § 552(a)(6)(A)(I).

8. FOIA also requires federal agencies to make a final determination on FOIA administrative appeals that it receives within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal unless the Agency expressly provides notice to the requester of "unusual circumstances" meriting additional time for responding to a FOIA request. 5 U.S.C. § 552(a)(6)(A)(ii).

9. FOIA expressly provides that a person shall be deemed to have constructively exhausted their administrative remedies if the Agency fails to comply with the applicable time limitations provided by 5 U.S.C. § 552(a)(6)(A)(I) - (ii). 5 U.S.C. § 552(a)(6)(C).

10. FOIA provides that any person who has not been provided the records requested pursuant to FOIA, after exhausting their administrative remedies, may seek legal redress from the Federal District Court to enjoin the Agency from withholding agency records and to order the production of any Agency records improperly withheld from the complainant. Under FOIA, the Federal Agency has the burden to sustain its actions. 5 U.S.C. § 552(a)(4)(B).

11. Pursuant to FOIA, this Court may assess attorney fees and litigation costs against the United States if the Plaintiff prevails in this action. 5 U.S.C. § 552(a)(4)(E).

12. The PA safeguards the public from the unwarranted collection, maintenance,

use, and dissemination of personal information contained in agency records. *Bartel v. F.A.A.*, 725 F.2d 1403, 1407 (D.C. Cir. 1984). It does so by allowing an individual to participate in ensuring that their records are accurate and properly used and by imposing responsibilities on Federal agencies to maintain their records accurately. *Id.*

13. The PA requires an agency, upon request by an individual, to allow the individual to gain access to his record or any information pertaining to him, to review the record, and have a copy of all or any portion thereof. 5 U.S.C. § 552a(d)(1).

14. Additionally, the PA allows the individual to request an amendment of any records pertaining to the individual. *Id.* § 552a(d)(2)(A). The rationale for disclosure is the greatest, and the limitations on withholding are the most minimal, where individuals seek their own records. *Greentree v. U.S. Customs Service*, 674 F.2d 74, 87 (D.C. Cir. 1982). Within ten (10) business days of a PA request to amend one's record, an Agency must acknowledge receipt of the request and make any correction of any portion thereof that the individual believes is not accurate, relevant, timely, or complete or inform the individual of its refusal to amend the record and the reason for the refusal. *Id.* § 552a(d)(2)(B).

15. Pursuant to the PA, an agency is required to collect information "to the

greatest extent practicable" from the individual when the information "may result in adverse determinations about an individual's rights, benefits, and privileges under Federal Programs." *Id.* § 552a(e)(2).

16. The PA authorizes agencies to exempt certain filing systems from the foregoing requirements; however, the Agency must show that the information is properly subject to an identified PA exemption. *Id.* 5 U.S.C. § 552a(j)-(k).

17. To withhold documents from a requester's twin FOIA/PA request, an agency must demonstrate that the records fall within some exceptions under each act. *Martin v. Office of Special Counsel, MSPB*, 819 F.2d 1181, 1184 (D.C. Cir. 1987). If a FOIA exemption 7 covers the documents, but a PA exemption does not, the documents must be released under the PA; if a PA exemption but not a FOIA exemption applies, the documents must be released under FOIA. *Id.*

VI. FACTUAL ALLEGATIONS

18. On January 5, 2023, DEA Chief FOIA Officer Kelleigh Miller provided testimony for a separate FOIA action before the US District Court Southern District of Texas, Houston Division, *AIMS Institute, PLLC, et al., v. Merrick Garland, et al.* 4:22-CV-02396. ECF No. 28-2 (See Exhibit A) Ms. Miller testified that within the DEA Agency Organizational structure, the DEA FOIA office falls within the DEA Chief Counsel's Office. Ms. Miller testified that DEA Deputy Chief Counsel Sandra Stevens is her second-line supervisor and DEA Chief Counsel Hallie Hoffman is her third-line supervisor.

19. Ms. Miller testified that the DEA Office of Information Systems provides responsive materials for FOIA requests of e-mail records. Ms. Miller testified that Information Technology (IT) experts or professionals from the DEA Office of Information Systems, rather than individual record custodians, provide the most accurate and comprehensive results.

20. Ms. Miller testified that the DEA has two Standard Operating Procedures for employee e-mail searches. The first is that the DEA does "not to rely upon the owner of the e-mails to do their own search,"¹ and the second is that the FOIA office provides notice to the supervisor of the employee(s) whose e-mails will be searched by the DEA Office of Information Systems.

21. In this Court's Memorandum Opinion and Order issued on September 29, 2023, *Byrnes v. United States Department of Justice, 19-cv-0761 ECF No. 58*, the Court was not satisfied with the DEA's obligation to provide Mr. Byrnes access to DEA OPR investigation records involving Darek Kitlinski, the Plaintiff of this FOIA action. Specifically, the Court ordered the DEA to perform a renewed assessment of whether a *Glomar* response was appropriate for Darek Kitlinski.

¹ In the case of *Kevin Byrnes v. United States Department of Justice, 19-cv-0761*, a review revealed that the DEA contravened its own guidelines. Specifically, Deputy Chief Counsel Sandra Stevens along with other attorneys from the DEA Chief Counsel's office improperly conducted searches of their own emails. Adding to the concern, the DEA opted for a method that was both less accurate and less comprehensive to identify responsive emails in the Byrnes lawsuit. For emails from attorneys who had already left the agency, the DEA chose not to utilize the expertise of IT professionals from the Office of Information Systems to search a centralized electronic email repository. Instead, under the direction of Deputy Chief Counsel Stevens, the DEA's FOIA Officer instructed attorneys from the Chief Counsel's office to search through internal litigation case management files for the responsive emails.

22. In a declaration² dated November 24, 2023, Mr. Devorg G. Margaryan, a Program Analyst for the DEA's FOIA department, stated that the DEA carried out a partial automated search targeting documents from select former Chief Counsel Attorneys but not all. Specifically, Mr. Margaryan noted that while the DEA could retrieve e-mail communications linked to Ms. Letitia Pinkney and Ms. Marie Miller³ using its case management software, it did not perform an automated search of their direct e-mail addresses. (See Exhibit B) Mr. Margaryan, supervised by DEA Chief Counsel Sandra Stevens, failed to clarify the Agency's deviation from its own policies and standard operating procedures in this search. As inferred from Mr. Margaryan's affidavit, the search's inadequacy and seemingly intentional oversight suggest a deliberate attempt to hide relevant e-mails. Additionally, Mr. Margaryan asserted that the DEA discovered no evidence to suggest that it had ever publicly or officially acknowledged any investigations concerning Plaintiff, thereby arguing there was no necessity to search the Office of Professional Responsibility (OPR) records.

23. On December 27, 2023, the Plaintiff submitted a FOIA/PA request to DEA for e-mail communications sent or received by Ms. Letitia Pinkney from July 2011 to December 2014, Ms. Tamara Kassabian from July 2011 to December

² The declaration made by Gevorg Margaryan on November 24, 2023, has not been filed in the court's records and is not publicly accessible on Pacer.gov.

³ From July 2011 to December 2014, Ms. Letitia Pinkney represented the DEA in litigation under USERRA and Bivens, initiated by a plaintiff who was represented by Mr. Byrnes. Ms. Tamara Kassabian represented the Agency from July 2011 to November 2015. Ms. Stevens began representing the Agency in November 2015. Ms. Marie Miller took over this role from 2017 until October 2019.

2015, and Ms. Marie Miller from January 2017 to October 2019 containing the keyword "kitlinski.", maintained by the DEA Office of Information Systems. The Plaintiff also included a DOJ Form-361 Certification of Identity for himself. (See Exhibit C)

24. On January 4, 2024, Defendant e-mailed Plaintiff acknowledging receipt of the request, which was assigned case number DEA FOIA/PA Case Number 24-00171-P. Defendant considered the request to fall under "unusual circumstances" outlined in 5 U.S.C. § 552(a)(6)(A)(I). (See Exhibit D)

25. On January 4, 2024, Plaintiff submitted an administrative appeal to the DOJ Office of Information Policy (OIP) contesting the "unusual circumstances" designation by the DEA FOIA Office. (See Exhibit E)

26. On January 4, 2024, OIP e-mailed the Plaintiff and acknowledged receipt of the appeal, which assigned it case number A-2024-00556. (See Exhibit F).

27. On January 5, 2024, Plaintiff e-mailed the DEA FOIA Office, Mr. Margaryan, Ms. Stevens, and DC District Assistant US Attorney Kenneth Adebonojo information contradicting Mr. Margaryan's declaration. Plaintiff provided the five specific OPR Investigation Case Numbers involving the Plaintiff that the Agency officially made public in exhibits released in litigation before the Eastern District of Virginia, Merit Systems Protection Board, and the 4th Circuit Court of Appeals. Given the provided information, Plaintiff requested the Agency reassess its Glamor response in the Byrnes' litigation. The Plaintiff

also provided notice of the OIP appeal. (Exhibit G)

28. On February 12, 2024, Plaintiff e-mailed Defendant DOJ Form-361

Certification of Identities/ Release of Information completed by Mrs. Lisa

Kitlinski (Plaintiff's wife) and Mr. Byrnes. (See Exhibit H)

29. On February 13, 2024, Defendant e-mailed Plaintiff acknowledging receipt

of the Certification of Identities/Release of Information (See Exhibit I)

30. As of the filing date of this action, Plaintiff received no other response or correspondence from OIP.

31. As of the filing date of this action, Plaintiff has not received copies of the records he requested from his December 27, 2023, FOIA/PA request.

VII. CLAIMS FOR RELIEF

32. Plaintiff realleges, as if fully set forth herein, paragraphs 1-31 previously set forth herein.

33. Defendant violated FOIA and PA by failing to provide Plaintiff with all non-exempt responsive records for his December 27, 2023, FOIA/PA request and by failing to complete an adequate search reasonably calculated to locate all responsive records to this FOIA/PA request.

34. By failing to provide Plaintiff with all non-exempt responsive records to his December 27, 2023, FOIA/PA request as described in paragraph 23 by failing to perform an adequate search for responsive records, Defendant has denied Plaintiff's right to this information as provided by the law under FOIA and PA.

35. Defendant has violated FOIA and PA by failing to perform an adequate search reasonably calculated to locate all responsive records to Plaintiff's December 27, 2023, FOIA/PA request at issue.

36. By failing to perform an adequate search reasonably calculated to locate all responsive records to Plaintiff's December 27, 2023, FOIA/PA request, Defendant has denied Plaintiff's right to this information, as provided by law under FOIA and PA.

37. Unless enjoined by this Court, Defendant will continue to violate Plaintiff's legal rights to be provided with copies of the records he requested in his FOIA/PA request described in paragraph 23.

38. Plaintiff is directly and adversely affected and aggrieved by Defendant's failure to provide responsive records to his FOIA/PA request described above.

39. The Plaintiff has been required to expend costs, such as court filing fees, to prosecute this action.

40. If Plaintiff retains legal counsel to assist in this litigation, Plaintiff is entitled to reasonable costs of litigation, including attorney fees pursuant to FOIA 5 U.S.C. § 552(a)(4)(E).

VIII. REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter Judgment for Plaintiff providing the following relief:

41. Declare Defendant has violated FOIA and PA by failing to provide Plaintiff

with all non-exempt records responsive to his December 27, 2023, FOIA/PA request.

42. Declare Defendant has violated FOIA and PA by failing to complete an adequate search for records responsive to Plaintiff's December 27, 2023, FOIA/PA request.

43. Direct by injunction that Defendant perform an adequate search for records responsive to his December 27, 2023, FOIA/PA request and provide Plaintiff with all non-exempt responsive records to Plaintiff's December 27, 2023, FOIA/PA request.

37. Grant Plaintiff's costs of litigation as provided by FOIA, 5 U.S.C. § 552(a)(4)(E), and provide such other relief as the Court deems just and proper.

DATED: This 4th day of March 2024.

Respectfully submitted,



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