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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

KRISTI L. HILTON,

Plaintiff,

vs.

DEPARTMENT OF THE NAVY;
NAVAL EDUCATION AND
TRAINING COMMAND; and
DEFENSE OFFICE OF HEARINGS
AND APPEALS,

Defendants.

Civil Action No. 14-00505

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF;
SUMMONS IN A CIVIL ACTION

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

COMES NOW Plaintiff, KRISTI L. HILTON, and for cause of action
against defendants alleges and avers as follows:

NATURE OF THE ACTION

1. This is an action under the Privacy Act of 1974 ("Privacy Act"), 5 U.S.C. §552a *et seq.*, and the Freedom of Information Act (FOIA), 5 U.S.C. §552 *et seq.* to compel compliance with its provisions including production of records requested from the Department of the Navy and the Navy Education and Training Command ("NETC").

JURISDICTION AND VENUE

2. This court has jurisdiction over this action pursuant to 5 U.S.C. §552a(g)(1), 5 U.S.C. §552(a)(4)(B) and 28 U.S.C. §1391. Venue lies in the District of Hawaii pursuant to 5 U.S.C. §552a(g)(5) and 5 U.S.C. §552(a)(4)(B) , as the as the district in which plaintiff resides.

PARTIES

3. Plaintiff KRISTI L. HILTON resides in Honolulu, Hawaii and is a civilian employee of the DEPARTMENT OF THE NAVY, NAVY EDUCATION AND TRAINING COMMAND. Plaintiff works at Naval Station Pearl Harbor as an Education Services Specialist in the Navy College Operations Division. Plaintiff's position requires her to have access to classified defense information and it is a condition of her eligibility for employment in this position that she maintain a security clearance.

4. Defendant DEPARTMENT OF THE NAVY is an agency which maintains a system of records containing information pertinent to plaintiff. Defendant NAVAL EDUCATION AND TRAINING COMMAND is a Navy major command, headquartered at Pensacola, Florida. NETC's mission is to "transform civilians into highly skilled, combat-ready warfighters, and enable their career-long growth and development." NETC maintains a system of records containing information pertinent to plaintiff including, but not limited to, Command Personnel Security Records. Defendant DEFENSE OFFICE OF

HEARINGS AND APPEALS (DOHA) is a component of the Defense Legal Services Agency, which, in turn, is a field operating agency of the Department of Defense. Based in Washington, D.C., and with offices in Woodland Hills, California, DOHA conducts personal appearances and issues decisions in security clearance cases for DoD civilian employees and military personnel.

FACTUAL BACKGROUND

5. On January 10, 2014, plaintiff was a civil service employee in the grade of GS-9. As such, she held a SECRET security clearance.

6. On or about that date, plaintiff received *Notice of Intent to Revoke Eligibility for Security Clearance and Assignment to a Sensitive Position* issued by the Navy Division of the Department of Defense Consolidated Adjudications Facility. The notice had appended thereto a *Statement of Reasons*. (Hereafter the document is referred to as the “LOI/SOR”) The LOI/SOR, in pertinent part, read as follows:

18 Dec 13. Command personnel security records of this date reflect your behavior has come into question based on numerous reports from co-workers, supervisors, and outside organizations. Additionally, it is alleged that you have advised your co-workers that you have stopped taking your medication because “you don’t need them.”

The notice went on to provide instructions for appealing the action stating, "If you choose not respond or fail to provide a timely response, our preliminary decision will IMMEDIATELY become final, based upon review of the available information. In addition, you would automatically forfeit your rights to an appeal." The notice also contained instructions for obtaining a copy of the records on which the LOI/SOR was based. It stated, in pertinent part, “For a copy of your command personnel security records, contact your command security manager or SSO for guidance.”

7. In order to defend herself against these false and malicious allegations,

plaintiff attempted to obtain the “command personnel security records” referred to in the LOI/SOR. On the advice of her command security manager, on February 12, 2014, plaintiff submitted a written FOIA request for these records and specifically for the alleged reports from “coworkers, supervisors and outside agencies.” This request was directed to the NETC FOIA Coordinator. On February 26, the NETC Force Judge Advocate responded, providing no records and, directing plaintiff to the Defense Manpower Data Center (DMDC).

8. On March 24, plaintiff received a response from DMDC, transmitting certain documents, virtually all of which were non-responsive to her request. There was one page, however, which was a printout from the Joint Personnel Adjudication System (JPAS). It indicated that on December 18, 2013 an incident report was generated in JPAS, stating in pertinent part, “It has come to our attention that the behavior of the subject member is in question based upon numerous reports from co-workers, supervisors, and outside organizations. Therefore, in accordance with SECNAV-M 5510.30, and as directed by conditions of conditional eligibility, command has forwarded document for assessment (sent under separate correspondence to Mr. Michael Mcgehee.” Plaintiff is informed, and upon that information believes, that Mr. Mcgehee is an adjudicator with the Navy’s Consolidated Adjudications Facility. Plaintiff believes that this document caused the Consolidated Adjudications Facility to issue the LOI/SOR.

9. Plaintiff submitted a timely response to the LOI/SOR, however she did so without having the benefit of the “command security records” and/or the Mcgehee correspondence (which plaintiff believes are one and the same).

10. On October 15, plaintiff received a *Notice of Personal Appearance* directing her to appear before the Hon. Wilford H. Ross, of the Defense Office Of Hearings and Appeals (DOHA) for an administrative hearing regarding her security clearance on November 19 at 1:00 p.m. at the Prince Kuhio Federal

Building in Honolulu. Thereafter, she retained undersigned counsel to represent her at this hearing.

11. On October 29, plaintiff's attorney wrote to the Force Judge Advocate at NETC who had originally responded to plaintiff's request for records. After explaining the history set forth above, and clarifying that plaintiff's records request fell under both the Privacy Act, and the FOIA, the letter demanded release of the document generated by NETC and sent to Mr. McGehee. NETC was informed that if the requested document(s) were not released by November 7, this lawsuit would follow.

12. As of this date, NETC has failed or refused to respond to plaintiff's continued request for the information in the Command Security Records which resulted in the issuance of the LOI/SOR.

13. Plaintiff has requested that DOHA continue the pending personal appearance until such time as she obtains these records. As of this date, DOHA has not responded to her request. Unless enjoined and restrained by this court, plaintiff faces the real and imminent probability of having to defend herself at an administrative hearing without knowing the substance of the allegations against her.

FIRST CLAIM FOR RELIEF (Privacy Act)

14. Plaintiff repeats and realleges all of the allegations in the foregoing paragraphs.

15. Plaintiff has a legal right under the Privacy Act to obtain the information she seeks and there is no legal basis for the DEPARTMENT OF THE NAVY and/or its major command NETC to withhold the information.

16. An actual and justiciable controversy exists because the DEPARTMENT OF THE NAVY and/or its major command NETC has failed to disclose the records sought in plaintiff's Privacy Act request, although they have a statutory

obligation to do so.

17. As a result, plaintiff is entitled to a declaration that the DEPARTMENT OF THE NAVY and/or its major command NETC are obligated to provide her with the records sought in her Privacy Act request.

SECOND CLAIM FOR RELIEF (FOIA)

18. Plaintiff repeats and realleges all of the allegations in the foregoing paragraphs.

19. Plaintiff has a legal right under the FOIA to obtain the information she seeks and there is no legal basis for the DEPARTMENT OF THE NAVY and/or its major command NETC to withhold the information.

20. An actual and justiciable controversy exists because the DEPARTMENT OF THE NAVY and/or its major command NETC have failed to disclose the records sought in plaintiff's FOIA request, although they have a statutory obligation to do so.

THIRD CLAIM FOR RELIEF

21. Plaintiff repeats and realleges all of the allegations in the foregoing paragraphs.

24. Plaintiff is entitled to an injunction compelling the DEPARTMENT OF THE NAVY and/or its major command NETC to provide her with copies of the records sought in her Privacy Act and/or FOIA requests.

PRAYER FOR RELIEF

WHEREFORE Plaintiff prays that the Court award her the following relief:

(1) Declare that defendants, DEPARTMENT OF THE NAVY and/or its major command NETC violated plaintiff's rights under the Privacy Act and/or the FOIA;

(2) Order defendants DEPARTMENT OF THE NAVY and/or its major command NETC, to immediately disclose the requested documents in their

entireties to plaintiff and her undersigned counsel;

(3) Order defendant DOHA to stay the pending appeal of the revocation of plaintiff's security clearance and, specifically, the personal appearance presently scheduled for November 19, 2014, until the requested documents have been provided;

(4) Award plaintiff, pursuant to 5 U.S.C. §552a(g)(4)(A), \$1,000 or her actual damages, the exact amount of which is to be determined at trial;

(5) Award plaintiff her reasonable costs and attorney's fees as provided in 5 U.S.C. §552a(g)(3)(B), 552(a)(4)(E) and/or 28 U.S.C. §2412;

(6) Expedite this action in every way, pursuant to 28 U.S.C. §1657(a); and

(7) Grant such other and further relief as the Court may deem just and proper.

DATED: Honolulu, Hawaii, November 7, 2014.

//s// Thomas D. Farrell
THOMAS D. FARRELL
Attorney for Plaintiff