

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

-----X
TERMINAL CONSTRUCTION CORPORATION

Plaintiff

v.

**COMPLAINT FOR INJUNCTIVE
RELIEF**

UNITED STATES DEPARTMENT OF LABOR,
OCCUPATIONAL SAFETY AND HEALTH
ADMINISTRATION

Defendants
-----X

COMPLAINT

This is an action brought under the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*
Plaintiff Terminal Construction Corporation, for their Complaint against Defendants alleges as follows:

LOCAL CIVIL RULE 10.1 STATEMENT

The mailing addresses of the parties to this action are as follows:

Terminal Construction Corporation
c/o Haworth Barber & Gerstman LLC
505 Main Street, Suite 212
Hackensack, New Jersey 07601

United States Department of Labor
Freedom of Information Act/Privacy Act
Division of Management and Administrative Legal Services
200 Constitution Avenue, N.W., Suite N-2420
Washington, DC 20210

Occupational Safety and Health Administration
Parsippany Area Office
6 Upper Pond Rd., Second Floor
Parsippany, New Jersey 07054

PARTIES

1. Plaintiff Terminal Construction Corporation is a corporation whose principal place of business is located at 215 State Highway 17 South, Wood Ridge, New Jersey 07075.

2. Defendant United States Department of Labor is a federal agency of the United States Government within the meaning of 5 U.S.C. § 552(a).

3. Defendant Occupational Safety and Health Administration (OSHA) is an agency within the United States Department of Labor which falls within the meaning of 5 U.S.C. § 552(a).

JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter pursuant to 5 U.S.C. § 552(a)(4)(B) which provides exclusive jurisdiction over Freedom of Information Act requests (FOIA) to federal district courts.

5. Venue is proper in this Court 5 U.S.C. § 552(a)(4)(B) and by virtue of the fact that Plaintiff is a corporation whose principal place of business resides in the State of New Jersey.

FACTUAL ALLEGATIONS

6. On September 20, 2021, Kevin Freyer was involved in a workplace accident on a construction site for the new Frank J. Guarini Justice Complex in Jersey City, New Jersey.

7. Plaintiff Terminal Construction Company was the general contractor for the new Frank J. Guarini Justice Complex project.

8. As a result of the September 20, 2021 accident, Kevin Freyer filed a personal injury lawsuit against Terminal Construction Corporation and other defendants in the Superior

Court of New Jersey, Law Division, Hudson County styled as *Freyer v. Terminal Construction Corporation, et. al.* and bearing Docket No. HUD-L-3231-23.

9. The September 20, 2021 workplace accident involving Kevin Freyer was the subject of an OSHA investigation.

10. On November 21, 2022, counsel for Terminal Construction Corporation submitted a FOIA request to OSHA for the entire contents of the investigation file related to the September 20, 2021 workplace accident that occurred at the new Frank J. Guarini Justice Complex construction site. (See FOIA Request, attached hereto as **Exhibit A**).

11. Terminal Construction Corporation's FOIA request was received by OSHA and given an estimated delivery date of March 21, 2023.

12. On February 10, 2023, this office checked the OSHA web portal and discovered that the original estimated delivery date of March 21, 2023 was extended to May 21, 2023.

13. OSHA did not provide the requested file on May 21, 2023.

14. On May 22, 2023, this office contacted the OSHA-Parsippany Office inquiring about the status of Terminal Construction Corporation's FOIA request and was advised that the request has been assigned out but there was a backlog on responding to FOIA requests.

15. The estimated delivery date was extended once again to June 21, 2023.

16. OSHA did not provide the requested file on June 21, 2023.

17. On July 21, 2023, this office called the OSHA-Parsippany Office inquiring about the status of the FOIA request and was advised to submit a copy of our request via electronic mail and that an update on our request would be provided. (See Correspondence, attached hereto as **Exhibit B**)

18. An update was never provided to plaintiff and despite this office contacting the OSHA-Parsippany Office on August 24, 2023, September 20, 2023, and October 10, 2023 requesting for same, a response was never received. (See Letters, collectively attached hereto as **Exhibit C**)

19. On February 22, 2024, a subpoena duces tecum was served upon OSHA via certified mail return receipt. The subpoena was received on February 26, 2024. (See Executed Return Receipt, attached hereto as **Exhibit D**)

20. To date, no response has been provided by OSHA.

21. OSHA's refusal to produce the requested file has severely prejudiced Plaintiff in its defense of the State Court action and is in violation of the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Terminal Construction Corporation requests that this Court enter an Order:

i. Compelling Defendants to promptly disclose all records requested by Plaintiff, in their unredacted form, with the exception of any personal identifying information of OSHA investigators;

ii. Awarding Plaintiff the costs of this suit including but not limited to reasonable attorney fees pursuant to 5 U.S.C. § 552(a)(6)(C); and

iii. Awarding all such further relief which this Court deems just and proper.

CERTIFICATION OF NO OTHER ACTION

Pursuant to Local Rule 11.2 it is hereby stated that to the best of my knowledge the matter in controversy is not the subject of any other action pending in any Court or of a pending Arbitration Proceeding. Further, other than the parties set forth in this pleading, we know of no other parties that should be joined in the above action.

Dated: May 24, 2024

Respectfully submitted,

s/ Joseph D. Fanning
Joseph D. Fanning
HAWORTH BARBER & GERSTMAN, LLC
505 Main Street, Suite 212
Hackensack, New Jersey 07601
Telephone: (201) 831-1403
Facsimile: (201) 831-1401
Attorneys for Plaintiff
Terminal Construction Corporation

CERTIFICATE OF SERVICE

I, Joseph D, Fanning, hereby certify and affirm that a true and correct copy of the attached **Complaint for Injunctive Relief** will be served via Certified Regular Mail on the 28th day of May, 2024, upon all parties.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: May 24, 2024

s/ Joseph D. Fanning
Joseph D. Fanning
HAWORTH BARBER & GERSTMAN, LLC
505 Main Street, Suite 212
Hackensack, New Jersey 07601
Telephone: (201) 831-1403
Facsimile: (201) 831-1401
Attorneys for Plaintiff
Terminal Construction Corporation