

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

GLENN SULMASY,,

Plaintiff,

v.

THE DEPARTMENT OF HOMELAND
SECURITY and THE UNITED STATES
COAST GUARD,

Defendants.

Civil Action No.

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Plaintiff Glenn Sulmasy (“Plaintiff”), through undersigned counsel, brings this action against Defendants, the Department of Homeland Security (DHS) and the United States Coast Guard (USCG), collectively (“Defendants”), for violations of the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552(a). This action arises from Defendants’ failure to respond to three separate FOIA and Privacy Act requests submitted on behalf of Plaintiff on March 27, 2024. Plaintiff seeks declaratory and injunctive relief to compel the production of improperly withheld records related to the unauthorized disclosures of confidential information, privacy breaches, and investigative files concerning CAPT Glenn Sulmasy, USCG (Ret.). In support of these requests, Plaintiff states the following:

PARTIES

1. Plaintiff Glenn Sulmasy, is a private individual who has submitted multiple FOIA and Privacy Act requests through undersigned counsel, seeking records related to unauthorized disclosures, internal investigations, and privacy breaches pertaining to his personal information.

2. Defendant Department of Homeland Security (DHS) is an agency of the United States Government responsible for responding to FOIA and Privacy Act requests under 5 U.S.C. § 552 and 5 U.S.C. § 552(a).

3. Defendant United States Coast Guard (USCG) is a component of DHS, tasked with controlling, maintaining, and responding to records requests concerning its operations, personnel, and records, including those relevant to CAPT Glenn Sulmasy.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to:

a. 5 U.S.C. § 552(a)(4)(B), which grants the district courts jurisdiction to enjoin agencies from withholding records and order the production of improperly withheld records;

b. 5 U.S.C. § 552a(g)(1)(B), which provides individuals the right to seek judicial redress for violations of the Privacy Act concerning improper withholding or denial of access to records;

c. 28 U.S.C. § 1331, as this action arises under the laws of the United States; and

d. 28 U.S.C. §§ 2201-02, under the Declaratory Judgment Act, which allows this Court to issue declaratory relief regarding the rights and legal relations of parties.

5. Venue is proper in this District under 5 U.S.C. § 552(a)(4)(B) and 5 U.S.C. § 552(a)(g)(5) because Defendants are federal agencies headquartered within this jurisdiction, and the records in question are believed to be maintained by agencies subject to the jurisdiction of this Court.

FACTUAL BACKGROUND

6. On March 27, 2024, Plaintiff, through undersigned counsel, submitted three separate FOIA and Privacy Act requests to Defendants DHS and USCG via the SecureRelease.US platform. These requests sought access to records directly related to unauthorized disclosures, privacy breaches, and investigations concerning CAPT Sulmasy, spanning over a period of several years. The requests are as follows:

I. REQUEST NO. 1 FOIA ID: 2024-CGFO-01401

7. Request No. 1 was submitted pursuant to FOIA, seeking access to all records and Electronically Stored Information (ESI) concerning the unauthorized disclosure of confidential records related to CAPT Glenn Sulmasy, USCG (Ret.), to CNN or any third party, covering the period from January 1, 2010, to the present. *See*, SecureRelease Portal Request No. 2024-CGFO-01401, attached hereto as **Exhibit A**.

8. The scope of the request includes:

a. Emails, memos, reports, logs, investigation files, access records, and communications involving the unauthorized disclosure of confidential records to CNN, particularly in relation to the September 21, 2023 CNN report, which cited confidential records concerning CAPT Sulmasy. *Id.*

b. Internal investigations, administrative or criminal investigations, and any adverse actions taken against individuals involved in the unauthorized disclosure or leak of information. *Id.*

9. The request specified that all records should be retrieved and produced, including those containing metadata, timestamps, authorship, and any other relevant metadata for digital documents, ensuring that the request fully encompasses all responsive materials. *Id.*

II. REQUEST NO. 2 FOIA ID: 2024-CGFO-01400

10. Request No. 2 was submitted pursuant to FOIA, seeking all records and ESI regarding a privacy breach that occurred between September 22, 2023, and September 29, 2023, wherein sensitive, unredacted documents were improperly accessible to Coast Guard personnel with Common Access Cards (CAC). *See*, SecureRelease Portal Request No. 2024-CGFO-01400, attached hereto as **Exhibit B**.

11. This breach, as described by the U.S. Coast Guard's Office of Privacy Management (CG-6P), exposed personal information and investigative reports related to CAPT Sulmasy, among others. Plaintiff requested records including:

a. Internal memos, emails, reports, and logs documenting the initial discovery of the breach, the scope of the exposed information, and any corrective actions taken. *Id.*

b. Communications between USCG, DHS, and the Coast Guard Cyber Command, including any reports generated by the Coast Guard Investigative Service (CGIS) related to the investigation of the breach and efforts to mitigate its effects. *Id.*

12. This request sought a thorough investigation into the privacy breach and the recovery of all relevant documents, logs, and communications regarding the handling of the breach and subsequent internal discussions. *Id.*

III. REQUEST NO. 3 Privacy Act ID: 2024-CGPA-00009

13. Request No. 3 was submitted pursuant to both the Privacy Act and FOIA, requesting all records and ESI held by the USCG, Coast Guard Academy, and Coast Guard Investigative Service (CGIS) related to CAPT Glenn Sulmasy from the past three years. This request specifically targeted records related to Operation Fouled Anchor, a Coast Guard internal investigation, and any Privacy Act violations that occurred during the period of September 22-29,

2023, involving CAPT Sulmasy's unredacted sensitive records. *See*, SecureRelease Portal Request No. 2024-CGPA-00009, attached hereto as **Exhibit C**.

14. The request also sought:

a. All records related to discussions about CAPT Sulmasy in relation to the Privacy Act violations mentioned above, including internal emails, investigation reports, and findings from CGIS. *Id.*

b. Search terms such as "Captain Sulmasy," "Commander Sulmasy," "Glenn Sulmasy," and "Sulmasy," with advanced search parameters (e.g., "Sulmasy" /s "Fouled Anchor", "Sulmasy" /s "Privacy Act violation") to ensure the retrieval of records where these terms are used in proximity, ensuring comprehensive coverage. *Id.*

15. This request was designed to capture all possible records related to CAPT Sulmasy's involvement in or association with Operation Fouled Anchor and the unauthorized disclosures referenced in the CNN report. *Id.*

IV. FAILURE TO RESPOND & IMPROPER WITHHOLDING

16. Despite the statutory obligation to respond to FOIA requests within 20 working days and to Privacy Act requests within a reasonable timeframe, Defendants have failed to provide any response or final determination regarding the requests submitted by Plaintiff on March 27, 2024.

17. Under FOIA, federal agencies are required to make agency records available to the public unless the records fall within one of the nine statutory exemptions. Defendants have not provided reasoning under these exemptions for withholding the requested records. 5 U.S.C. § 552(a)(6)(A)(i) mandates that an agency must respond to a FOIA request within 20 working days

of receipt. Failure to respond constitutes constructive exhaustion of administrative remedies under 5 U.S.C. § 552(a)(6)(C).

18. Similarly, under the Privacy Act, agencies are required to grant individuals access to records maintained about them, pursuant to 5 U.S.C. § 552(a)(d). When an agency fails to respond within a reasonable period, the requester is deemed to have constructively exhausted their administrative remedies.

19. Defendants' failure to provide a timely response or make a final determination constitutes improper withholding of records under both FOIA and the Privacy Act.

FIRST CLAIM FOR RELIEF
DECLARATORY JUDGMENT (28 U.S.C. §§ 2201-02)

20. Plaintiff incorporates the allegations in paragraphs 1-19 as though fully stated herein.

21. Pursuant to the Declaratory Judgment Act, Plaintiff seeks a declaration of his rights and legal status under both FOIA and the Privacy Act.

22. Plaintiff contends that he has a legal right to access the records requested through his FOIA and Privacy Act submissions and that Defendants have a legal duty to produce these records.

23. Defendants' failure to comply with the statutory deadlines under both FOIA and the Privacy Act has created an actual and justiciable controversy, warranting a declaratory judgment from this Court.

SECOND CLAIM FOR RELIEF
VIOLATION OF FOIA (5 U.S.C. § 552)

24. Plaintiff incorporates the allegations in paragraphs 1-23 as though fully stated herein.

25. Defendants are required under FOIA to respond to requests within 20 working days. Defendants have failed to issue a timely or substantive response to Plaintiff's FOIA Requests 2024-CGFO-01401 and 2024-CGFO-01400, thereby constructively exhausting Plaintiff's administrative remedies.

26. Defendants' failure to respond to these FOIA requests or to produce the requested records constitutes improper withholding under 5 U.S.C. § 552(a)(4)(B).

THIRD CLAIM FOR RELIEF
VIOLATION OF THE PRIVACY ACT (5 U.S.C. § 552(a))

27. Plaintiff incorporates the allegations in paragraphs 1-26 as though fully stated herein.

28. Defendants have failed to comply with their obligations under the Privacy Act to provide Plaintiff access to records concerning him in response to Request 2024-CGPA-00009.

29. Defendants' failure to respond within a reasonable time to Plaintiff's Privacy Act request and their improper withholding of records constitutes a violation of 5 U.S.C. § 552(a)(d) and entitles Plaintiff to relief under 5 U.S.C. § 552(a)(g)(1)(B).

PRAYER FOR RELIEF

30. **WHEREFORE**, Plaintiff respectfully requests that this Court:

a. Declare that Defendants have violated FOIA and the Privacy Act by failing to respond to Plaintiff's requests and improperly withholding agency records

b. Additionally declare that:

i. Plaintiff is entitled to the requested records under FOIA and the Privacy Act;

ii. Defendants' failure to respond to Plaintiff's requests violates FOIA and the Privacy Act; and

iii. Defendants must comply with their statutory duties under FOIA and the Privacy Act by providing the requested records.

c. Order Defendants to conduct a search for any and all records responsive to Plaintiff's FOIA and Privacy Act requests and provide those records to Plaintiff immediately;

d. Award Plaintiff his costs and reasonable attorney's fees pursuant to 5 U.S.C. § 552(a)(4)(E) and 5 U.S.C. § 552a(g)(3)(B); and

e. Grant such other relief as the Court deems just and proper.

Dated this 27th day of September 2024.

Respectfully submitted,

s/ Jason R. Wareham

JASON R. WAREHAM (D.C.D.C. Bar No. 1658988)

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of September 2024, I electronically filed the foregoing *Complaint* with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

Donald Pederson, USCG Judge Advocate General
donald.a.pedersen@uscg.mil

Jonathan E. Meyer, DHS General Counsel
ogc@hq.dhs.gov

s/ Rebecca H. Bradshaw

A handwritten signature in blue ink, appearing to read "Rebecca H. Bradshaw", is written over a horizontal line.