

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ERIC J. KATZ
520 Lystra Preserve Dr
Chapel Hill, NC 27517

Plaintiff,

v.

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

Defendant.

)
)
Case: 1:25-cv-00209
Assigned To : Mehta, Amit P.
Assign. Date : 1/24/2025
Description: FOIA/Privacy Act (I-DECK)

COMPLAINT

I. INTRODUCTION

1. Plaintiff Eric J. Katz ("Plaintiff") brings this action seeking declaratory and injunctive relief to address 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. The violations arise from the failure of the Defendant, the Drug Enforcement Administration ("Defendant" or "DEA"), to provide Plaintiff with all non-exempt records responsive to his November 7, 2024, FOIA/PA request ("Request"). The Request, submitted to this Federal Agency, sought access to records about the Plaintiff retained by the DEA's Office of Professional Responsibility (OPR) and Board of Professional Conduct.

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2. The Plaintiff is a former DEA employee who retired from the Agency in 2020. Any investigative or oversight activities involving the Plaintiff by the DEA's OPR or the Board of Professional Conduct ceased upon his retirement and are, therefore, administrative rather than ongoing law enforcement matters. As the requested records were generated in an internal administrative context concerning professional conduct, they do not fall under exemptions applicable to active law enforcement investigations or activities.

II. JURISDICTION

3. 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

4. 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

5. **Plaintiff, Eric J. Katz** is an individual who has resided in Chapel Hill, NC, at all times relevant herein.

6. **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

7. 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).

8. 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).
9. 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).
10. 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).
11. 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).

12. 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).

13. 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.*

14. 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).

15. 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).

16. 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).

17. 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).

18. 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

19. **FOIA Request Submission:** On November 7, 2024, the Plaintiff emailed the Agency's FOIA office a FOIA/PA request accompanied by a completed Certification of Identity (CID) form. The request sought access to records in the

custody of the DEA Office of Professional Responsibility (OPR) and the Board of Professional Conduct that contain the keyword "Katz." The specified timeframe for the search was January 1, 2017, to the present. (See **Exhibit A** (EXHIBIT A)).

20. Acknowledgment and Certification of Identity Duplicate Submission: On November 12, 2024, the DEA acknowledged receipt of the Plaintiff's FOIA/PA request, assigned it tracking number P25-00083-P, and requested the Plaintiff to submit a completed CID form. Despite the CID being included in the original submission, the Plaintiff resubmitted the completed form on the same date as requested. (See **Exhibit B** (EXHIBIT B)).

21. Complexity Determination: On December 6, 2024, the Defendant notified the Plaintiff via email that the FOIA/PA request had been classified as "complex," citing the need for additional processing time due to "unusual circumstances" and the potential scope of the search. This classification was made despite the straightforward nature of the request. (See **Exhibit C** (EXHIBIT C)).

22. Constructive Exhaustion of Administrative Remedies: As of January 24, 2025, Plaintiff has received no further response from OPR regarding the request.

VII. CLAIMS FOR RELIEF

23. Plaintiff realleges, as if fully set forth herein, paragraphs 1-22 previously set forth herein.

24. Defendant violated FOIA and PA by failing to provide Plaintiff with all non-exempt responsive records for his November 7, 2024, FOIA/PA request and by failing to complete an adequate search reasonably calculated to locate all responsive records to this FOIA/PA request.
25. By failing to provide Plaintiff with all non-exempt responsive records to his November 7, 2024, FOIA/PA request as described in paragraphs 1 and 19 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.
26. Defendant has violated FOIA and PA by failing to perform an adequate search reasonably calculated to locate all responsive records to Plaintiff's November 7, 2024, FOIA/PA request at issue.
27. By failing to perform an adequate search reasonably calculated to locate all responsive records to Plaintiff's November 7, 2024, FOIA/PA request, Defendant has denied Plaintiff's right to this information, as provided by law under FOIA and PA.
28. 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 paragraphs 1 and 19.
29. Plaintiff is directly and adversely affected and aggrieved by Defendant's failure to provide responsive records to his FOIA/PA request described above.

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

31. 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:

32. Declare Defendant has violated FOIA and PA by failing to provide Plaintiff with all non-exempt records responsive to his November 7, 2024, FOIA/PA request.

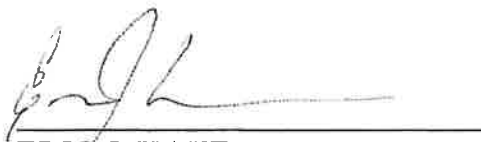
33. Declare Defendant has violated FOIA and PA by failing to complete an adequate search for records responsive to Plaintiff's November 7, 2024, FOIA/PA request.

34. Direct by injunction that Defendant perform an adequate search for records responsive to his November 7, 2024, FOIA/PA request and provide Plaintiff with all non-exempt responsive records to Plaintiff's November 7, 2024, 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 24th day of January 2025.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Eric J. Katz', is written over a horizontal line.

ERIC J. KATZ

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Chapel Hill, NC 27517

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