

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GERALD EUGENE MICHAEL,

Plaintiff,

vs.

U.S. DEPARTMENT OF JUSTICE,

Defendant.

Case: 1:17-cv-00197

Assigned To : Jackson, Amy Berman

Assign. Date : 1/31/2017

Description: FOIA/Privacy Act (I Deck)

COMPLAINT

THE PARTIES

1. Plaintiff, Gerald Eugene Michael, is a citizen of North Carolina, presently confined at FCI Butner Low, North Carolina.

2. Defendant Department of Justice ("DOJ") is an agency of the United States.

3. The Executive Office for United States Attorneys ("EOUSA") is a component of the DOJ. The EOUSA has possession, custody and control of the records Plaintiff seeks.

JURISDICTION AND VENUE

4. This action arises under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 and the Privacy Act of 1974 ("PA"), 5 U.S.C. § 552a.

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5. This Court has jurisdiction over the parties and subject matter pursuant to 5 U.S.C. § 552(a)(4)(B) and 5 U.S.C. § 552a(g)(1)(B).

6. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 5 U.S.C. § 552a(g)(5).

STATEMENT OF FACTS

7. Plaintiff was named in a six-count superseding indictment on drug offense and gun possession charges, on December 13, 2010. A jury subsequently convicted Plaintiff on five counts, and he was thereafter sentenced to an imprisonment term of 240 months, which he presently serves. Plaintiff was prosecuted in the United States District Court, Middle District of North Carolina.

8. Plaintiff has consistently maintained that the federal government intentionally withheld favorable material from the defense.

PLAINTIFF'S FOIA/PA REQUESTS

9. Plaintiff sent a FOIA/PA request to the EOUSA via first-class mail, requesting a copy of records pertaining to him. Plaintiff included a Certificate of Identity with his request.

10. In a letter sent to Plaintiff, the EOUSA acknowledged receipt of Plaintiff's FOIA/PA request described in the previous paragraph and assigned it a tracking number.

11. The EOUSA released-in-part and denied-in-part Plaintiff's FOIA/PA request.

12. Plaintiff sent a notice to the EOUSA, appealing the withholding of documents responsive to his FOIA/PA request.

13. The EOUSA affirmed the withholding of documents in the appeal.

14. Plaintiff also sent a FOIA/PA request to the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") via first-class mail, requesting a copy of records pertaining to him. Plaintiff included a Certification of Identity with his request.

15. In a letter sent to Plaintiff, the ATF acknowledged receipt of Plaintiff's FOIA/PA request described in the previous paragraph and assigned it a case number.

16. The ATF denied Plaintiff's FOIA/PA request.

17. Plaintiff sent a notice to the ATF, appealing the withholding of documents responsive to his FOIA/PA request.

18. The ATF affirmed the withholding of the documents in the appeal.

COUNT ONE:
VIOLATION OF FOIA/PA

19. This Court realleges and incorporates by reference all the preceding paragraphs.

20. Defendant has violated FOIA and PA by improperly withholding records responsive to Plaintiff's FOIA/PA requests.

21. Defendant is without an applicable exemption excusing its withholding of records responsive to Plaintiff's requests.

PRAYER FOR RELIEF

Plaintiff requests that this Court:

A. Declare Defendant's failure to comply with FOIA and PA to be unlawful;

B. Enjoin Defendant from continuing to withhold the records responsive to Plaintiff's FOIA/PA requests and otherwise order Defendant to produce the requested records without further delay;

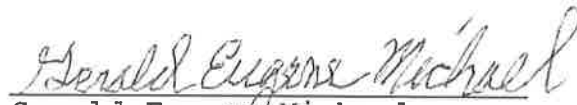
C. Grant Plaintiff an award for litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E)(i) and 5 U.S.C. § 552(g)(3)(B); and

D. Grant Plaintiff such other and further relief that the Court deems proper.

VERIFICATION

I, Gerald Eugene Michael, knowing the penalty of perjury, hereby swear that the foregoing is true and correct.

SWORN to on this 12th day of January, 2017, at Granville county, North Carolina.


Gerald Eugene Michael
Reg. No. 09404-056
FCI Butner Low
Post Office Box 999
Butner, NC 27509

Appearing Pro Se