

or Office of General Counsel at U.S. Postal Inspection Service, Office of Counsel - FOIA/PA Unit, 475 L'ENFANT Plaza SW, Room 3301, Washington, D.C. 20260-2011.

Incorporation

3) All paragraphs are hereby incorporated into each and every other paragraph of this petition, to give defendant notice and to provide plaintiff the broadest range of relief.

Factual Basis

4) This is an appeal from a final decision, copy attached as exhibit 1, of the U.S. Postal Service regarding denial under FOIA.

5) On or about December 5, 2016, Ali requested (1) arrest warrants, search warrants and detainers regarding Criminal Case # 4:10-CR-687-1, US District Court Southern District of Texas; (2) all data reports, investigative reports, scientific lab reports, and all exculpatory records and reports relating to Case # 4:10-CR-687-1, U.S. District Court, Southern District of Texas; and (3) all communication between Houston Secret Service and the U.S. Postal Inspection Service regarding Hassan Ali Pejouhesh, and all records in the Secret Service Office in Houston, Texas, regarding Case # 4:10-CR-687-1, United States District Court, Southern District of Texas.

6) The FOIA request was sent to several federal agencies.

7) In a letter dated December 29, 2016, the U.S. Postal Inspection Service responded to Ali's request with twenty-three pages of material.

~~8) United States Postal Service (hereinafter "USPS") asserted exception under FOIA Exception 6 and 7.~~

9) As a result of the asserted exceptions (6 & 7), the USPS withheld information "deemed to be personal;" presumptuously personal other than Ali.

10) As a result of the asserted exceptions (6 & 7), the USPS withheld information (or redacted) related "to techniques and procedures for law enforcement investigations or procedures." Presumptively "non-public," "classified," or otherwise investigative techniques not currently disclosed in the public domain or used in Ali's trial.

11) Seven pages, responsive to the requests, were withheld because they originated in other agencies and the request was forwarded to the non-disclosed "receiving agency." See Exhibit 1.

12) U.S. Postal Inspection Service responded on or about April 11, 2017, to Ali's requests--noting that it had destroyed "hardcopy documents" and other "evidence" when Ali's appeals were exhausted.

13) Ali's appeals are still pending before the U.S. Supreme Court.

14) U.S. Postal Inspection Service relies upon Sliney v. Bureau of Prisons, No. 04-1812, 2005 WL 839540, at *5 (D.D.C. April 11, 2005).

15) The gravamen of that reliance by U.S.P.I.S. is that "FOIA does not contain a document retention requirement" and holding that records were properly destroyed are not subject to FOIA. (See Exhibit 1, p.2 ¶1.)

16) The U.S.P.I.S. advises "Please await a response directly from the U.S. Postal Inspection Service. (See Exhibit 1, p.3 ¶1.)

17) U.S.P.I.S. that an additional 14 pages are to be delivered in the future. (See Exhibit 1, p.3 ¶2.)

18) The Office of General Counsel, in response to the appeal of the U.S.P.I.S. decision noted "as to the remainder of your appeal [F.O.I.A.], the U.S. Postal Inspection Service informed you that records that might have been responsive to your request were destroyed, pursuant to the U.S. Postal Inspection Service record retentive and disposition policy." (See Exhibit 1, p.3 ¶2.)

19) The U.S.P.I.S. retention policy is designed and, in fact, precludes disclosure under the Freedom of Information Act 5 U.S.C. §552.

20) The U.S.P.I.S. policy for destruction of records, by definition and in practice, is designed and, in fact, thwarts disclosure under the Freedom of Information Act 5 U.S.C. §552.

Cause of Action

21) Ali brings this petition seeking appeal of a final determination of an administration agency (see page 3, Exhibit 1) ("This is a final decision of the Postal Service regarding your right to access to records requested pursuant to the FOIA and the Privacy Act"). But see also (p.3, Exhibit 1) ("Please await a response directly from the U.S. Postal Inspection Service").

22) Ali brings this cause of action seeking a declaratory judgment. Ali seeks declaration that:

A) The U.S.P.I.S. retention policy as designed, in fact, precludes disclosure under the Freedom of Information Act 5 U.S.C. §552.

B) The U.S.P.I.S. retention policy as implemented, in fact, precludes disclosure under the Freedom of Information Act 5 U.S.C. §552.

C) The U.S.P.I.S. definition of "destruction of records" is arbitrary and capricious as implemented.

For example, U.S.P.I.S. defines "destruction of records" as "hardcopy records" are destroyed when the record is "scanned" "into electronic form or by otherwise destroying those records."

This definition is adverse to the purpose and intent

of the Act itself, and is designed by policy of implementation to thwart the intent and practice of the Act itself.

D) When U.S.P.I.S. destroys hardcopy records "by otherwise destroying those records" as opposed to "scanning the records into electronic form;" Due Process requires at least notice to persons such as Ali, to allow them to request the records before destruction.

Alternatively,

When U.S.P.I.S. destroys hardcopy records "by otherwise destroying those records" as opposed to "scanning the records into electronic form," Due Process requires a reasonable period of time (perhaps 1 year) to allow persons such as Ali to obtain copies under the Act.

Specifically, under current U.S.P.I.S. policy, in formation and in implementation, the U.S.P.I.S. withholds records for a variety of privileges under the Act 5 U.S.C. §552(a), and Title 39 U.S.P.S. 50B CHAPTER D Part 265, until the Appeal is concluded; and then purposely destroys the records precluding discovery after the Act's privileges have been removed.

In Exhibit 1, p.1 ¶3, U.S.P.I.S. asserts that it relied upon exemption 6 and 7 for withholding documents.

Six provides for exclusion of "(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

Seven provides for exclusion of "records or information

of "records or information compiled for law enforcement purposes, but only to the extent that production of such law enforcement records or information..." The further clarified exceptions, (A)-(F), would only be applicable during the pendency of Ali's criminal proceedings. Ali underwent three trials. (The first two did not result in conviction.) And the purported purposes of Subsections (A)-(F) are inapplicable.

However, Subsections (A)-(F) would not be applicable post Ali's trial and appellate proceedings. The U.S.P.I.S. summarily (by its own admission) destroys documents as soon as exemptions (6) and (7) are no longer applicable, effectively--by design or application--excluding from production documents Ali is entitled to by law.

E) Ali seeks a declaration that when documents "originated with other federal agencies" and a F.O.I.A. request is forwarded to "those agencies for a response," Due Process requires that persons such as Ali receive notice of:

- (1) The Agency from which the records originated,
- (2) The number of records originated in each Agency,
- (3) A File Number (Tracking Number) to enable persons such as Ali to communicate effectively with the agency to which the record request was forwarded.

23) Relevant statutory and Rule authority includes 5 U.S.C. §552; 552(a); 552(a)(4)(F)(i); 552(a)(7)(A)(B); Title 39 USPS

Subchapter D part 265.14(iv) among other grounds. Among other grounds the statutory authority and regulatory authority provides:

(C) (1) Whenever a request is made which involves access
to records described in subsection (b)(7)(A) and--

(A) the investigation or proceeding involves
a possible violation of criminal law; and

(B) there is reason to believe that (i) the
subject of the investigation or proceeding
is not aware of its pendency [Ali is aware],
and (ii) disclosure of the existence of
the records could reasonably be expected
to interfere with enforcement proceedings,
the agency may, during only such time as
that circumstance continues, treat the records
as not subject to the requirements of this
section. (emphasis added)

(f) (2) "record" and any other term used in this section
in reference to information includes--

(A) any information that would be an agency
subject to the requirements of this section
when maintained by an agency in any format,

including an electronic format; ...

Damages

24) The U.S.P.I.S. actions have interfered with Ali's post-trial accumulation of documents to deal with appeal and post-conviction relief such as habeas corpus, statutory damages, due process relief, and other equitable relief. 5 U.S.C. §552(a)(4)(E).

Jury Demand

25) Ali demands a jury for all factual determinations of disputes between the parties.

Injunctive & Delcaratory Relief

26) Ali seeks Injunctive and declaratory relief under 5 U.S.C. §552, and the delcaratory relief Act as requested herein.

Prayer

FOR THESE REASONS, Ali requests service on the United States Postal Service and declaratory and injunctive relief as requested herein, along with any such auxillary, legal or equitable relief to which he may show himself entitled, including costs, attorney

fees (where applicable), and relief including order directing the production of documents.

Respectfully submitted,



Hassan Ali Pejouhesh
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CERTIFICATE OF SERVICE

I hereby attest and certify that a true and correct copy of the attached legal document has been served upon the below named party, by depositing same in the United States mail located at an institutional facility of the Federal Bureau of Prisons. I asseverate under the penalty of perjury that the foregoing is true and correct except as to those matter upon which I rely upon information and belief, and as to those matters I do believe them to be true and correct, pursuant to 28 U.S.C. §1746. I further declare and certify that first-class postage has been prepaid and the attached legal document is therefore timely filed, pursuant to the "mailbox" rule that is codified at Rule 25(a)(2)(C) & 26(a)(4)(C) of the Federal Rules of Appellate Procedure.

DATED:

~~08~~ AUG 2017

NAMED PARTY:

MR. HARVEY ELLIS EISENBERG

OFFICE OF THE UNITED STATES ATTORNEY

36 S. CHARLES ST. FOURTH FLOOR

~~7037 0150 0000 0000 0000~~

MR. AHMED GHAPPOUR ESQ.

CIVIL RIGHTS CLINIC

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