

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOSEPH RUTIGLIANO,

Plaintiff,

Docket No. 17-6360

- against -

U.S. DEPARTMENT OF JUSTICE,

Defendant.

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COMPLAINT

Plaintiff, Joseph Rutigliano, brings this action against the Department of Justice to compel the production of a prosecution declination memorandum prepared by the U.S. Attorney for the Eastern District of New York (“USAO-EDNY ”), and, in accordance with the Freedom of Information Act., 5 U.S.C. §552 (“FOIA”).

JURISDICTION

- 1. This court has jurisdiction over this action pursuant to 5 U.S.C. §552 (a)(4)(B).
- 2. Venue is proper. The prosecution declination memorandum is located in the USAO EDNY (“the agency [where] records are situated.”).

PARTIES

3. Plaintiff, a retired conductor of the Long Island Railroad (“LIRR”) and former local union official, is a resident of Blue Point, Long Island. Plaintiff is currently serving a 96-month jail sentence in UPS Canaan, located in Waymart, PA. The sentence was imposed by the U.S. District Court for the Southern District of New York (Marrero, J.) based upon a jury verdict of guilty on all counts of an indictment which accused him of defrauding the U.S. Retirement Board (“RRB”)

into wrongfully paying more than \$82 million dollars in for “occupational disability” pensions to retired LIRR workers, including for himself. Twice plaintiff’s conviction has been affirmed by the U.S. Court of Appeals for the Second Circuit. The first affirmance on direct appeal is reported at 790 F.3d 329 (2015), 614 Fed. Appx. 542; the second affirmance of denial of a new trial is unreported (Dkt. No. 16-738; 5/26/17).

4. Defendant U.S. Department of Justice (“DOJ”) is an agency of the United States located at 950 Pennsylvania Avenue N.W., Washington, D.C. To administer FOIA requests, the DOJ has designated the Executive Office of the United States Attorneys (“EOUSA”), and promulgated a U.S. Attorney Manual (“USAM”) requiring the creation of prosecution declination memoranda stating the “reasons” for non-prosecution.

STATEMENT OF FACTS

5. On or about March 2011, the USAO-EDNY, declined to prosecute plaintiff and other LIRR annuitants in response to allegations published by the New York Times (“NYT”) in a front page story entitled “An Epidemic Amongst A Railroad’s Retirees.”¹ The article suggested that plaintiff and other LIRR retirees had defrauded the RRB into granting disability pensions to retirees who were not in fact disabled, as illustrated by a NYT video and photograph of plaintiff playing golf on a Long Island golf course. The declination was made after the USAO-EDNY conducted an investigation, including interviews of annuitants and RRB personnel with the assistance of the Office of the RRB Inspector General and the grand jury.

6. Following the USAO-EDNY declination, the U.S. Attorney for the Southern District of New York (“USAO-SDNY”) conducted its investigation and caused the SDNY grand jury to indict plaintiff and twenty (20) co-defendants based upon allegations that the defendants were not entitled to the pensions because they were not disabled. See: SDNY Dkt. No.96, 11-1091. All

¹ www.nytimes.com/2008/09/21/nyregion/21lirr.html?pagewanted=all

twenty-one defendants were convicted either by a jury trial or pleas of guilty.

7. Throughout the criminal prosecution of plaintiff, the USAO-SDNY persuaded the District Court and the Second Circuit that pension eligibility required “total job incapacity” as if confined to a wheelchair so as to secure plaintiffs’ conviction.

8. Plaintiff has reason to believe that the USAO-EDNY declined criminal prosecution of plaintiff and others because the RRB had determined the plaintiff and others were entitled to the pensions based upon a lenient eligibility standard which did not require fraudulent acts or total job incapacity. The RRB required only a medically established physical impairment that precluded the LIRR worker from performing “*one or more job tasks*” of his or her regular railroad occupation.” Emphasis supplied.

9. Post-trial RRB Inspector General Martin J. Dickman urged Congress “To Eliminate the Use of the One Job Aspect” for pension eligibility because the RRB approves, nationwide, 98% of the pension applications, and re-approved 94% of 530 LIRR pensions that the USAO-SDNY alleged were fraudulently obtained, including 114 pensions prepared with the assistance of the Plaintiff as a paid consultant.

10. The prosecution declination memorandum is a record required to be maintained by the Defendant: “Whenever a case is closed without prosecution, the United States Attorney's files should reflect the action taken and the reason for it.” USAM 9-2.001.

11. Plaintiff does not seek the production of exempt records such as privileged documents under 5 U.S.C. §552 (b) (5).

12. On or about and between June 15, 2017 and the filing of this Complaint the defendant DOJ has refused to recognize and deliberately ignored plaintiff’s FOIA requests as follows:

WHEREFORE, Plaintiff respectfully requests that the Court (1) order the Defendant to produce by a date certain the prosecution declination memoranda for Plaintiff's inspection;(2) enjoin the Defendant from continuing to withhold all non-exempt records responsive to Plaintiff's request; (3) grant Plaintiff an award of attorney fees and other litigation costs reasonably incurred pursuant to 5 U.S.C. §552 (a)(4)(E), and (4) grant Plaintiff such other relief as the Court deems just and proper.

Dated: November 1, 2017
Melville NY 11747

Respectfully submitted,

JOSEPH W. RYAN, JR. PC

By: 

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