

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION**

GOLD CROSS EMS, INC.)
)
Plaintiff,)
)
v.)
)
U.S. DEPARTMENT OF VETERANS)
AFFAIRS)
)
Defendant.)
_____)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is a lawsuit under the Freedom of Information Act, 5 U.S.C. § 552, as amended, to compel the production of records concerning the Special Needs Transportation contracts with rates the US Department of Veterans Affairs (“DVA”) has with South Star EMS, a/k/a South Star Ambulance Service for the Augusta, Georgia Area, and Capital City Ambulance Service for the Augusta, Georgia area. This Complaint seeks the disclosure and release of agency records improperly withheld from plaintiff by defendant Department of Veterans Affairs (“DVA”).

2. Plaintiff requested the information from the DVA on multiple occasions prior to retaining undersigned counsel. The information was again requested by formal Freedom of Information Act requests submitted by undersigned counsel on July 21, 2017 and August 1, 2017, as shown on the requests attached hereto as Exhibit “A.” To date, the DVA has not produced the records.

3. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the defendant pursuant to 5 U.S.C. § 552(a)(4)(B). This court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

4. Pursuant to 38 C.F.R. § 14.514 and F. R. Civ. P. 4(i), Plaintiff is serving this complaint upon the General Counsel of the DVA, James M. Byrne; the Secretary of the DVA, David J. Shulkin; and the United States Attorney for the Southern District of Georgia, Bobby L. Christine.

5. Plaintiff Gold Cross EMS (“Gold Cross”) is a Georgia corporation providing Emergency and non-Emergency ground transport in Richmond County along with other surrounding areas.

6. DVA is an agency of the United States, and has possession of and control over the records that Plaintiff seeks.

7. By letter dated July 31, 2017, Plaintiff requested a copy of the Special Needs Transportation contract with rates the U.S. DVA has with South Star EMS (“FOIA Request 1”). By letter dated August 1, 2017, Plaintiff requested a copy of the Special Needs Transportation contract with rates the U.S. DVA has with Capital City Ambulance (“FOIA Request 2”).

8. By letter dated August 9, 2017, DVA acknowledged receipt of FOIA Request 2 having received FOIA Request 2 on August 2, 2017 and assigning the request tracking number 17-11183-F. The letter provided notice that all further questions should be directed to Ms. Shawana Burch the FOIA Officer at the Charlie Norwood VA Medical Center in Augusta, Georgia.

9. Plaintiff never received any acknowledgement of DVA receiving receipt regarding FOIA Request 1.

10. On August 11, 2017, Plaintiff contacted Ms. Burch for an approximation on when FOIA Request 2 and received a response from the FOIA Officer listing September 5, 2017 as the anticipated closure date.

11. By letter dated September 7, 2017, Defendant informed Plaintiff of the need for additional time pursuant to 5 U.S.C. § 522(a)(6)(B)(i), i.e. an additional ten (10) days. Replacing the anticipated closure date with September 21, 2017. Defendant has failed and refused to provide any further response.

12. To date, defendant DVA has not provided the records requested by plaintiff in FOIA Request 1, notwithstanding the FOIA's requirement of an agency response within twenty (20) working days.

13. To date, defendant DVA has not provided the records requested by plaintiff in FOIA Request 2.

14. Plaintiff has exhausted the applicable administrative remedies with respect to FOIA Request 1 and FOIA Request 2 pursuant to 5 U.S.C. § 552(a)(6)(C).

15. Defendant's failure to timely respond to FOIA Request 1 and FOIA Request 2 violates the FOIA, 5 U.S.C. § 552(a)(6)(A).

16. Defendant should be compelled to provide responses to Plaintiff's FOIA requests.

17. Defendant should be compelled to pay Plaintiff's costs and reasonable attorneys' fees incurred in this action as provided by 5 U.S.C. § 552(a)(4)(e).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court:

- a. Order Defendant to immediately process and release all records responsive to the Requests;
- b. Provide for expeditious proceedings in this action;
- c. Award Plaintiff its costs and reasonable attorneys' fees incurred in this action as provided by 5 U.S.C. § 552(a)(4)(E); and
- d. Grant such other relief as the Court may deem just and proper.

Respectfully submitted, this 4th day of December, 2017.

/s/ Christopher A. Cosp _____

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