

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

-FILED-

JAN 05 2018

At _____ M
ROBERT N. TRGOVICH, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

BRYANT LOVE)
Plaintiff)

vs.) No. 2 18 CV 11

FEDERAL BUREAU OF INVESTIGATION) COMPLAINT
Defendant)

COMPLAINT FOR INJUNCTIVE RELIEF

Nature Of Action

1. This is an action under the Freedom of Information Act, 5 U.S.C. 552 and the Administrative Procedure Act, 5 U.S.C. 701 et seq., for injunctive and other appropriate relief, and seeking the expedited processing and release of agency records requested by plaintiff from defendant Federal Bureau of Investigation.

Jurisdiction and Venue

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. 552(a)(4)(B), (6)(E)(iii).

3. This Court also has jurisdiction over this action pursuant to 28 U.S.C. 1331 and 5 U.S.C. 701 et seq.

4. Venue lies in this district under 5 U.S.C. 552(a)(4)(B).

Parties

5. Plaintiff is a citizen of the United States of America, in the Northern District of Indiana.

a. Plaintiff submitted Freedom of Information/Privacy Acts (FOIAPA) request to the Federal Bureau of Investigation.

b. Plaintiff asserts that he is entitled to the information sought in accordance with 28 C.F.R. 16.5(e)(1)(iii)

6. Defendant Department of Justice is a Department of the Executive Branch of the United States Government. The DOJ is an agency within the meaning of 5 U.S.C. 552(f).

7. Defendant Federal Bureau of Investigation is a component of the Department of Justice. The FBI is an agency within the meaning of U.S.C. 552(f).

8. Defendant Jeff Sessions is Attorney General of the United States and heads the Department of Justice. This defendant is responsible for both DOJ and FBI compliance with the laws of the United States and regulations promulgated under such laws, including the laws and regulations at issue in this case.

Defendant FBI's File #281D-IP-7468688

9. Between November 2016 and January 2017 defendant FBI compiled a investigative file (281D-IP-7468688) concerning the Plaintiff. This investigative file is made available to the Plaintiff under the Freedom of Information Act as well as DOJ standards.

Plaintiff's FOIA Request and Request for Expedited Processing

10. By means of correspondence via U.S. Postal Service to Defendant FBI Record/Information Dissemination Section dated October 6, 2017, Plaintiff requested under the FOIA "the release of all FBI records concerning the investigative file known as File 281D-IP-7468688."

a. Plaintiff's request was in conformance with the requirements for these type of requests, as those requirements are set forth in defendant DOJ's regulations.

b. Plaintiff stated that his FOIA request meets the criteria for expedited processing under defendant DOJ's regulations, 28 CFR 16.5(e)(1).

c. By means of the U.S. Postal Service the Defendant FBI acknowledged the receipt of plaintiff's FOIA request on October 20, 2017, by the Record/Information Dissemination Section (see exhibit A).

d. By means of correspondence via U.S. Postal Service the Defendant FBI notified Plaintiff, that he did not meet the standards for expedited processing therefore his request was denied dated October 24, 2017 (see exhibit B).

e. The Plaintiff was notified of his right to a administrative appeal regarding said decision mentioned above (see exhibit B).

f. By means of correspondence via U.S. Postal Service dated November 13, 2017 the Plaintiff submitted to the Defendant, U.S. Department of Justice's Office of Information Policy his administrative appeal for the denial of his FOIA request and his expedited processing request.

g. On November 27, 2017 via U.S. Postal Service Plaintiff received correspondence from the Defendant DOJ's Office of Information Policy and it upheld the FBI denial of the Plaintiff's FOIA request and expedited processing on the grounds mentioned below (see exhibit C):

1. Under the third standard enumerated in the DOJ regulations. Under this standard, you must show that the request involves "[t]he loss of substantial due process rights." 28 C.F.R. 16.5(e)(1)(iii)(2017).

2. The correspondence then goes on to say that request held for expedited treatment for due process reasons generally should not be granted unless a requester shows that he is

"facing grave punishment" in a pending criminal proceeding and that "there is a reason to believe that the information produced will aid in the individual's defense." *Aguilera v. FBI*, 941 F. Supp. 144, 150 (D.D.C. 1996). "Based on the information provided, I have determined that you do not meet this test because you have not demonstrated that the information sought will aid in any criminal defense, or that you are facing grave punishment. Your criminal case concluded several years ago, and you are seeking post-conviction relief from your sentence, so you are not facing grave punishment. Without such a showing, expedited treatment pursuant to the third standard is not warranted (see exhibit C).

h. On December 4, 2017, the Plaintiff was allowed to call Mr. Sean O'Neill in the Administrative Appeals Unit of the DOJ's Office of Information Policy through his counselor at Metropolitan Correctional Center in Chicago, IL.

i. Plaintiff spoke to Mr. Sean O'Neill from the DOJ's Office of Information Policy and informed Mr. Sean O'Neill that his office was basing its denial on the wrong information they had obtained. The Plaintiff then went on to explain to Mr. Sean O'Neill that in fact he was in U.S. Marshals Custody because he had a new indictment under a new Cause No. (2:17 - CR-002), and that the Plaintiff was in fact facing grave punishment (Armed Career Criminal Act) under this new criminal proceeding and that Plaintiff believed FBI file no. 281D-IP-7468688 contains information that could aid in the Plaintiff's defense. Mr. Sean O'Neill of the DOJ's Office of Information

Policy told the Plaintiff to submitted material documents pertaining to the new criminal matter so he had the proper information to base his determination on.

j. The Plaintiff submitted material documents (new indictment and armed career criminal act) to Mr. O'Neill via U.S. Postal Service on December 6, 2017 (see exhibit D-~~F~~)

k. On December 26, 2017, the Plaintiff received correspondence via U.S. Postal Service from Mr. Sean O'Neill of the DOJ's Office of Information Policy stating that he will be sticking with his earlier determination and stated no reason as to his decision after receiving supporting documentation (see exhibit ~~K~~^G).

Plaintiff's Entitlement to Expedited Processing

12. Plaintiff has exhausted the applicable administrative remedies.

13. Plaintiff is entitled to expedited processing of his FOIA request under the standards contained in defendant DOJ's regulations.

14. Defendants have wrongfully withheld the requested records from plaintiff.

CLAIMS FOR RELIEF

First Claim: Violation of the FOIA-Failure to Grant Request

for Expedited Processing

15. Plaintiff repeats and realleges paragraphs 1-14

16. Defendants' failure to grant plaintiff's request for expedited processing violates the FOIA, 5 U.S.C. 552

(a)(6)(E)(i), and 28 C.F.R. 16.5(e)(1)(iii).

Second Claim: Violation of APA-Failure to Grant Request for Expedited Processing

17. Plaintiff repeats and realleges paragraphs 1-14

18. Defendants' failure to grant plaintiff's request for expedited processing is arbitrary, capricious, an abuse of discretion, not in accordance with law and without observance of procedure required by law, all in violation of the APA.

PRAYER

Plaintiff requests that this Court:

A. Order defendants immediately to process the requested records in their entirety;

B. Order defendants, on completion of the expedited processing, to disclose the requested records in their entirety and make copies available to plaintiff;

C. Provide for expeditious proceedings in this action;

D. Award plaintiff its costs and reasonable fees incurred in this action; and

E. Grant plaintiff all other relief that is just and proper.

Dated: January 3, 2018

Plaintiff, pro-se

A handwritten signature in cursive script that reads "Bryant Love".

Bryant Love

M.C.C

71 W. Van Buren St.

Chicago, IL 60605