

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF
FLORIDA**

CASE NO.: 18-cv-22862

AMERICA CV NETWORK, LLC

Plaintiff,

v.

U.S. DEPARTMENT OF THE TREASURY,
OFFICE OF FOREIGN ASSETS CONTROL

Defendant.

COMPLAINT

AMERICA CV NETWORK, LLC (“Plaintiff” and/or “AMERICA CV”), in the above styled cause, sue the U.S. DEPARTMENT OF THE TREASURY, OFFICE OF FOREIGN ASSETS CONTROL (hereinafter “Defendant” and/or “USDT OFAC”) under the Freedom of Information Act (FOIA), 5 U.S.C.A. § 552, and in support thereof state as follows:

NATURE OF THE ACTION

1. This is an action under the FOIA, 5 U.S.C.A. § 552, for injunctive and declaratory relief seeking the disclosure and release of agency records improperly withheld from Plaintiff by Defendant.
2. AMERICA CV sought records from Defendant, USDT OFAC pertaining to “any and all information relating to bank accounts related to Juan Arrondo or Peer Music and the restrictions placed on them by the Office of Foreign Assets control (OFAC). See Exhibit A.

3. AMERICA CV seeks declaratory relief establishing that Defendant, USDT OFAC has violated FOIA by failing to respond to Plaintiff's request within the statutorily prescribed time limit, failing to disclose the requested documents, and unlawfully withholding the requested information. Plaintiff also seeks injunctive relief directing the Defendant to promptly provide Plaintiff with all the responsive agency records that have been improperly withheld from Plaintiff.

PARTIES JURISDICTION AND VENUE

4. AMERICA CV is a Florida Limited Liability Company with its principal place of business
5. USDT OFAC is an administrative agency within the Executive Branch of the United States Government. USDT OFAC is also an agency within the meaning of 5 U.S.C.A. § 552(f).
6. This Court has both subject-matter jurisdiction over this action and personal jurisdiction over the parties pursuant to FOIA, 5 U.S.C.A. § 552(a)(4)(B) and 5 U.S.C.A. §§ 701 to 706.
7. This Court also has jurisdiction over this action under 28 U.S.C.A. § 1331.
8. Venue lies in this district under 5 U.S.C.A. § 552(a)(4)(B).
9. This Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C.A. §§ 2201 et seq.
10. This court has authority to award costs and attorneys' fees under 28 U.S.C.A. § 2414 and 5 U.S.C.A. § 552(a)(4)(E).
11. An agency's failure to comply with any timing requirements is deemed a constructive denial and satisfies the requester's requirement to exhaust administrative remedies. See 5 U.S.C.A. § 552(a)(6)(C)(i).

12. A FOIA requester who exhausts administrative remedies may petition the court for injunctive and declaratory relief from the agency's continued withholding of public records. See 5 U.S.C.A. § 552(a)(4)(B).

FACTUAL BACKGROUND

13. By letter dated February 1, 2017, AMERICA CV submitted a FOIA request (the "Request") to USDT seeking copies of or access to:

Any and all information relating to bank accounts related to Juan Arrondo or Peer Music and the restrictions placed on them by the Office of Foreign Assets Control (OFAC).

See Exhibit A.

14. On or about April 3, 2017, USDT OFAC acknowledged receipt of the Request. See Exhibit B.
15. In the acknowledgment, USDT stated that it had referred the request to the OFAC division for processing on February 22, 2017. Id.
16. USDT further stated that it was required pursuant to Treasury regulations to verify the identity of the individual listed in the Request (i.e. Juan Arrondo) before it may release certain information. Id.
17. AMERICA CV provided USDT OFAC with a death certificate of Juan Arrondo on May 10, 2017 in order to verify the identity as requested. See Exhibit C.
18. Although the identity requested was provided, USDT OFAC did not produce the FOIA Request.

19. On or about June 2017, AMERICA CV contacted USDT OFAC seeking an update on the status of its Request.
20. Elizabeth Moss, on behalf of USDT OFAC, acknowledged that the FOIA request was received but did not provide AMERICA CV with any other information.
21. On or about October 2017, AMERICA CV again contacted Ms. Moss regarding the status of the FOIA request and was informed by Ms. Moss that USDT OFAC was delayed in responding to FOIA requests and asked that she be contacted again in December 2017.
22. In December of 2017, AMERICA CV again reached out to Ms. Moss via electronic mail and telephone and was unable to locate or get in contact with Ms. Moss.
23. AMERICA CV made numerous attempts to follow-up with USDT OFAC since its first initial Request on February 1, 2017.
24. Consequently, by letter dated May 4, 2018, Plaintiff timely filed an administrative appeal of the Defendant's failure to respond to the Request.
25. Pursuant to FOIA, USDT OFAC was required to produce a response by June 11, 2018. See 5 U.S.C.A. § 552(a)(6)(A)(i).
26. On May 11, 2018, Plaintiff received a U.S. Postal Service Certified Mail Receipt with confirmation that Defendant had received the Request.
27. Having received no response to its Request, Plaintiff contacted USDT OFAC via telephone on June 12, 2018 and on June 13, 2018 but received no response.

28. Having heard nothing more from USDT OFAC, months after Plaintiff submitted its first initial request, and over a year since the passage of the statutory deadline, Plaintiff decided to file the instant lawsuit.

29. Plaintiff has fully exhausted its administrative remedies. Administrative remedies are deemed exhausted whenever an agency fails to comply with the applicable time limits, as stated by 5 U.S.C.A. § 552(a)(6)(C).

30. Plaintiff now turns to this Court to enforce the remedies and public access to agency records guaranteed by the FOIA.

STATUTORY FRAMEWORK

31. FOIA promotes open government by providing every person with a right to request and receive federal agency records. See 5 U.S.C.A. § 552(a)(3)(A), (f).

32. In furtherance of its purpose to encourage open government, FOIA imposes strict deadlines on agencies to provide responsive documents to FOIA requests. See 5 U.S.C.A. § 552(a)(6)(A).

33. An agency must comply with a FOIA request by issuing a determination within twenty (20) days after receipt of the request. See 5 U.S.C.A. § 552(a)(6)(A)(i) (emphasis added).

34. The determination must at least inform the requester of the scope of the documents that the agency will produce, as well as the scope of the documents that the agency plans to withhold under any FOIA exemptions. See Citizens for Responsibility & Ethics in Washington v. Fed. Election Comm'n, 711 F.3d 180, 185 (D.C. Cir. 2013).

35. An agency is entitled to one ten-day (10) extension of time to respond to a request if it provides written notice to the requester stating that “unusual circumstances” exist that warrant additional time. See 5 U.S.C.A. § 552(a)(6)(B).
36. An agency must immediately notify the requester of its determination and the reasons for it, and of the right of such person to appeal an adverse determination. See 5 U.S.C.A. § 552(a)(6)(A)(ii).
37. An agency has twenty (20) days to make a determination with respect to any appeal. See 5 U.S.C.A. § 552(a)(6)(A)(ii).

COUNT I
VIOLATION OF THE FREEDOM OF INFORMATION ACT

38. Plaintiff re-alleges and incorporates by reference the allegations set forth in Paragraphs 1 to 37 in the Complaint as if fully set forth here.
39. Plaintiff made a proper FOIA request for information regarding information relating to bank accounts related to Juan Arrondo or Peer Music and the restrictions placed upon them by OFAC.
40. Plaintiff has attempted to communicate with USDT OFAC, making inquiries as to the status of the request and working with the Agency to produce all necessary documents in order to facilitate the production of documents, to no avail.
41. USDT OFAC has repeatedly failed to adequately respond to requests for information about this FOIA request.
42. USDT OFAC’s failure to disclose the requested documents is a violation of FOIA, 5 U.S.C.A. § 552.

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43. USDT OFAC's wrongful withholding of the requested documents is a violation of FOIA, 5 U.S.C.A. § 552.

44. Plaintiff has fully exhausted its administrative remedies with regard to this request. Administrative remedies are deemed exhausted whenever an agency fails to comply with the applicable time limits, as stated by 5 U.S.C.A. § 552(a)(6)(C).

COUNT II
VIOLATION OF THE FREEDOM OF INFORMATION ACT BY PATTERN,
PRACTICE OR POLICY OF FAILING TO TIMELY RESPOND TO FOIA REQUESTS

45. Plaintiff re-alleges and incorporates by reference the allegations set forth in Paragraphs 1 to 37 in the Complaint as if fully set forth here.

46. Plaintiff has a statutory right to have USDT OFAC process its FOIA request in a manner that complies with FOIA. Plaintiff's rights in this regard are, have been, and will continue to be violated by USDT OFAC's pattern, practice, or policy of routinely and unlawfully failing to timely respond to FOIA requests.

47. This pattern, practice, or policy is exemplified by USDT OFAC's persistent failure to timely respond to Plaintiff's current and past requests, as detailed in this Complaint.

48. In each of these instances, USDT OFAC failed to respond to Plaintiff's FOIA request or appeal within the twenty-day (20) deadline; failed to provide any meaningful status updates to Plaintiff, despite regular inquiries by Plaintiff; and delayed significantly in providing a final response.

49. USDT OFAC's pattern, practice, or policy of unreasonable delay is ongoing and shows no signs of improvement.

50. Plaintiff is aware of no evidence that USDT OFAC is making any effort to improve its response time to Plaintiff's FOIA request or appeal.

51. Unless enjoined and made subject to a declaration of Plaintiff's legal rights by this Court, Defendant will continue to violate the rights of Plaintiff and others by maintaining its illegal pattern, practice, or policy of unlawfully delaying responses to FOIA requests.

COUNT III
BAD FAITH FAILURE TO COMPLY WITH FOIA

52. Plaintiff re-alleges and incorporates by reference the allegations set forth in Paragraphs 1 to 37 in the Complaint as if fully set forth here.

53. Defendant's practice and policy to orally inform Plaintiff that it was behind on FOIA requests and required additional time to produce its request, is arbitrary, capricious, and contrary to law.

54. Plaintiff was never informed of any decisions regarding its FOIA request and was orally advised to continue to follow-up.

55. Plaintiff exhausted all applicable administrative remedies with respect to its FOIA request.

56. Defendant has wrongfully withheld requested records from Plaintiff.

CONCLUSION

WHEREFORE, Plaintiff respectfully requests this Court:

- a. Declare as unlawful USDT OFAC's failure to respond to Plaintiff's FOIA request regarding "any and all information relating to bank accounts related to Juan Arrondo or Peer Music and the restrictions placed on them by the Office of Foreign Assets Control (OFAC)."
- b. Declare as unlawful USDT OFAC's failure to disclose records that Plaintiff has requested pursuant to this request.
- c. Order USDT OFAC to produce all non-exempt records requested by Plaintiff pursuant to request No. 2017-02-235 as soon as practicable, by a date certain;
- d. Exercise close supervision over USDT OFAC as it processes Plaintiff's request No. 2017-02-235 or, in the alternative, appoint a special master to do so;
- e. Issue an order finding that Defendant's actions were in bad faith, arbitrary, capricious, and contrary to law;
- f. Issue appropriate injunctive relief to prohibit USDT OFAC from continuing its pattern or practice of failing to timely respond to Plaintiff's FOIA requests;
- g. Provide for expeditious proceedings in this action;
- h. Award to Plaintiff all costs and reasonable attorneys' fees as provided in 5 U.S.C.A. § 552(a)(4)(E).
- i. Grant other and further relief as the Court may deem just and proper.

Dated: 16th of July 2018.

Respectfully submitted,

DORTA & ORTEGA, P.A.

/s/ Omar Ortega

Omar Ortega, Esq.

Florida Bar No. 0095117

3860 SW 8th Street, PH

Coral Gables, FL 33134

Phone: (305) 461-5454

Fax: (305) 461-5226

Email: oortega@dortaandortega.com

Email: ereyes@dortaandortega.com

Email: dgomez@dortaandortega.com

Counsel for Plaintiff, America CV

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