

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

STEPHEN AGUIAR,  
Plaintiff

v.

EXECUTIVE OFFICE OF  
UNITED STATES ATTORNEYS,  
Defendant

Case: 1:18-cv-02823  
Assigned To : Unassigned  
Assign. Date : 11/30/2018  
Description: FOIA (I-DECK)

COMPLAINT

Jury Trial Demanded

I. Introduction

This is a civil action brought by Plaintiff Stephen Aguiar against Defendant Executive Office of United States Attorneys ("EOUSA") under the Freedom of Information Act ("FOIA") and the Privacy Act ("PA"). Plaintiff alleges that EOUSA has violated the FOIA by failing to provide agency records that he requested under the FOIA. Plaintiff also alleges that EOUSA violated the PA by creating and maintaining in its system of records inaccurate agency records about Plaintiff. Plaintiff further alleges that EOUSA has violated the PA by denying Plaintiff's request to either correct or remove from its system of records the inaccurate agency records being maintained by EOUSA in its system of records about Plaintiff. Last, Plaintiff alleges that Defendant's FOIA and PA violations have caused Plaintiff to suffer adverse determinations and damages that include Court costs and filing fees in this and related civil actions caused by Plaintiff's pursuit to uncover such violations related to such records. Plaintiff seeks injunctive, declaratory, and statutory relief.



## II. Jurisdiction and Venue

This Court has subject matter jurisdiction under 5 U.S.C. §§ 552; 552a; and 38 U.S.C. § 1331. Venue is proper under 5 U.S.C. §§ 552(A)(4)(B); 552a(g); and 28 U.S.C. § 1391.

## III. Parties

STEPHEN AGUIAR: at all relevant times, is a federal prisoner, proceeding pro se, and is located at: FCC Petersburg Medium, P.O. Box 1000, Petersburg, VA 23804.

EXECUTIVE OFFICE OF UNITED STATES ATTORNEYS: at all relevant times, was an agency responsible for enforcing drug laws of the United States and maintaining agency records related to that enforcement and is located at: 175 N Street, NE, Suite 5.400, 3CON Building, Washington, DC 20530.

## IV. Statement of Facts

1. In 2009, prosecutors in the Burlington, Vermont U.S. Attorneys Office began investigating Mr. Aguiar for drug trafficking using an investigative method that included wiretapping his cellular ("cell") phones under 18 U.S.C. §§ 2510 et seq. See In re Tahair, No. 2:09-mc-34 (D. Vt. 2009).

2. On July 2, 2009, the U.S. Department of Justice ("DOJ") authorized an application to a federal judge to wiretap a target cell phone belonging to Mr. Aguiar with a 802-238-9396 call number. After the Burlington, Vermont U.S. District Court had closed for business, government officials presented a wiretap application for the 802-238-9396 target cell phone to U.S.

District Court Judge William K. Sessions III and Judge Sessions signed the wiretap application. Judge Sessions also signed an order approving wiretap interceptions over the 802-238-9396 target cell phone.

3. On Monday, July 6, 2009, a U.S. Attorneys Office official gave the Burlington, Vermont U.S. District Court clerk the original July 2, 2009 wiretap application and order for the 802-238-9396 target cell phone signed by Judge Sessions to be filed with the Court under seal. Upon receipt of the wiretap application and order, the clerk date and time stamped the original July 2, 2009 wiretap application "FILED" on July 6, 2009 at "12:01 p.m." See In re Tahair, No. 2:09-mc-34, ECF 17 at 1. The clerk also initialed the application. Id. Next, the Court clerk date and time stamped the original July 2, 2009 wiretap order signed by Judge Sessions "FILED" on July 6, 2009 at "12:02 p.m." See In re Tahair, No. 2:09-mc-34, ECF 18 at 1. The clerk also initialed the wiretap order.

4. On July 30, 2009 Mr. Aguiar was arrested and charged in Vermont U.S. District Court for conspiracy related to drug trafficking. United States v. Aguiar, No. 2:09-cr-90 (D. Vt. 2011).

5. In early-2010, Mr. Aguiar's trial attorney filed a motion with the Court requesting an evidentiary hearing because the July 2, 2009 wiretap warrant for the 802-238-9396 target cell phone provided by the U.S. Attorneys Office was missing a complete DOJ wiretap authorization memorandum. See, e.g., In re Tahair, No. 2:09-mc-34, ECF 17-1.

6. Prosecutors' June 2010 response submitted under oath

told the Court and the defense that an evidentiary hearing was not necessary.

7. To support the government's position, prosecutors stated that the July 2, 2009 wiretap application for the 802-238-9396 target cell phone was presented and signed by Judge Sessions on July 2, 2009 after the Court had closed for business and, because Friday, July 3, 2009 was a federal holiday, could not be filed with the Court until Monday, July 6, 2009.

8. Prosecutors' factual proffer stated that: on Monday, July 6, 2009, a U.S. Attorneys Office official gave the original July 2, 2009 wiretap application and order for the 802-238-9396 target cell phone signed by Judge Sessions to the Court clerk to be filed with the Court. Upon receipt of the July 2, 2009 wiretap application, the clerk first stamped the original wiretap application. The Court clerk then made a complete copy of the original July 2, 2009 wiretap application after it had been stamped and gave the copy to the U.S. Attorneys Office's representative for the U.S. Attorneys Office's records.

9. The Vermont U.S. District Court decided that an evidentiary hearing was not necessary because the U.S. Attorneys Office's copy of the July 2, 2009 wiretap application maintained in the U.S. Attorneys Office's system of records contained a complete DOJ authorization memorandum.

10. In 2016, Mr. Aguiar filed a FOIA/PA request to EOUSA requesting records and communications of prosecutors and other government officials related to the wiretapping of two target cell phones during his criminal investigation.

11. In May 2016, EOUSA acknowledged its receipt of Mr. Aguiar's FOIA/PA request. See Request No. 2016-2356. Without providing Mr. Aguiar any records related to his request, EOUSA demanded that \$1,220. must be paid in advance before his FOIA/PA request could be processed. Mr. Aguiar appealed and was given a case number by the Office of Information Policy ("OIP"). See No. DOJ-AP-4032.

12. On September 26, 2016, the OIP denied Mr. Aguiar's appeal to Request No. 2016-2356 seeking a waiver and stated that he was, however, entitled to 100 free pages of duplication and two free hours of search time. The OIP suggested that Mr. Aguiar contact the Office of Government Information Services, National Archives and Records Administration ("OGIS") to assist his efforts in obtaining the agency records related to his request.

13. In October 2016, Mr. Aguiar did contact the OGIS and requested help with his FOIA request no. 2016-2365. The OGIS gave Mr. Aguiar case no. 2017-304. The OGIS later told Mr. Aguiar that it had contacted the EOUSA staff and informed Mr. Aguiar that the EOUSA would follow up with Mr. Aguiar about his request and contact him directly. The EOUSA, however, did not contact Mr. Aguiar about FOIA/PA request no. 2016-2356.

14. In early-March 2017, Mr. Aguiar filed with the EOUSA another FOIA/PA request, see Request No. 2017-809-VT, which he modified weeks later as requested by the EOUSA and was given a new number. See Request No. 2017-1146. Despite telling Mr. Aguiar that his FOIA/PA request would be timely processed, the EOUSA failed in this regard.

15. In mid-March 2017, Mr. Aguiar filed with the EOUSA an additional FOIA/PA request. See Request No. 2017-2249-VT. The EOUSA told Mr. Aguiar that it would process his FOIA/PA request in a timely manner.

16. In late-March 2017, Mr. Aguiar filed with the EOUSA an additional FOIA/PA request related to agency records surrounding the July 2, 2009 wiretap warrant for the 802-238-9396 target cell phone and alleged July 6, 2009 filing events and agency records being maintained by the EOUSA. See Request No. 2017-2378. Upon its receipt of Mr. Aguiar's FOIA/PA request, the EOUSA told Mr. Aguiar that his FOIA/PA request would be timely processed.

17. By July 2018, the EOUSA had not processed a single FOIA/PA request filed with the EOUSA by Mr. Aguiar. On July 16, 2018, Mr. Aguiar sent a letter to the EOUSA urging the EOUSA to respond to his multiple FOIA/PA requests to avoid wasting this Court's time and resources and each party's expense in resorting to such litigation. Mr. Aguiar did not receive a response.

18. In September 2018, Mr. Aguiar received from the EOUSA an ambiguous response to FOIA/PA request no. 2017-2378, see ¶ 16, indicating that all records found in the U.S. Attorneys Office's files related to that request were provided to Mr. Aguiar. Mr. Aguiar did not agree because the agency records received by Mr. Aguiar did not comport with the representations made by U.S. Attorneys Office officials. See ¶¶ 3; 7-8. Mr. Aguiar also saw that the agency records being maintained about him by EOUSA surrounding the July 2, 2009 wiretap and July 6, 2009 filing events were inaccurate.

19. On September 25, 2018, Mr. Aguiar appealed to the OIP FOIA/PA request no. 2017-2378 since the EOUSA did not adequately search for and provide to Mr. Aguiar the agency records related to his request. Notwithstanding that the OIP received Mr. Aguiar's appeal on October 2, 2018, see Appeal No. DOJ-AP-2019-125, the OIP has not responded to or resolved Mr. Aguiar's appeal related to his FOIA request within the required statutory period under the FOIA.

20. On September 27, 2018, Mr. Aguiar also filed a notice of inaccurate records to the EOUSA under 5 U.S.C. §§ 552a(d)(2)-(d)(5) informing the EOUSA that it is currently maintaining inaccurate records about him related to FOIA/PA request no. 2017-2378. Mr. Aguiar asked the EOUSA to either correct the inaccurate agency records being maintained about him in its system of records or remove such inaccurate agency records from its system of records. Specifically, the EOUSA's copy of the original July 2, 2009 wiretap warrant -- after it had been stamped by the Court clerk on July 6, 2009 -- being maintained in the EOUSA's system of records is not consistent with the original stamped July 2, 2009 wiretap warrant received and stamped by the Court. The EOUSA did not respond.

V. Claims for Relief

A. FOIA: 5 U.S.C. §§ 552 et seq.

1. FOIA/PA Request No. 2016-2356

COUNT ONE: Defendant EOUSA, knowingly, willfully, and intentionally violated the FOIA by failing to adequately search for agency records requested by Plaintiff and provide Plaintiff with such records as required by the FOIA.

2. FOIA/PA Request No. 2017-1146

COUNT TWO: Defendant EOUSA, knowingly, willfully, and intentionally violated the FOIA by failing to adequately search for agency records requested by Plaintiff and provide Plaintiff with such records as required by the FOIA.

3. FOIA/PA Request No. 2017-2249

COUNT THREE: Defendant EOUSA, knowingly, willfully, and intentionally violated the FOIA by failing to adequately search for agency records requested by Plaintiff and provide Plaintiff with such records as required by the FOIA.

4. FOIA/PA Request No. 2017-2378

COUNT FOUR: Defendant EOUSA, knowingly, willfully, and intentionally violated the FOIA by failing to adequately search for agency records requested by Plaintiff and provide Plaintiff with such records as required by the FOIA.

B. PA: 5 U.S.C. §§ 552a et seq.

1. FOIA/PA Request No. 2017-2378

COUNT FIVE: Defendant EOUSA, knowingly, willfully, and intentionally violated the PA by maintaining inaccurate agency records about Plaintiff and by refusing to correct such records after being notified in writing causing adverse consequences.

VI. Prayer for Relief

Plaintiff prays that the Court grant the following relief:

A. Declare Defendant's failure to comply with the FOIA and PA to be unlawful;

B. Declare Defendant's withholding of agency records to be



unlawful, whether Defendant changes its position and voluntarily agrees to produce the records Plaintiff requested;

C. Issue an injunction ordering Defendant to produce the records Plaintiff requested;

D. Enjoin Defendant from continuing to withhold the records responsive to Plaintiff's FOIA/PA requests and otherwise order Defendant to produce the requested records without further delay;

E. Issue an ordering that Defendant either correct or destroy any agency records that the Court determines to be inaccurate about Plaintiff and being maintained by the Defendant in its system of records.

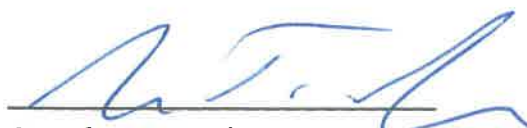
F. Award Plaintiff statutory damages;

G. Award Plaintiff reasonable costs and litigation expenses.

H. Grant any other relief that the Court deems just and equitable.

Respectfully submitted,

Dated: November 27, 2018



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