

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**Babar Javed Butt
Plaintiff**

1209 Sunflower Lane
Alvarado, Texas 76009

v.

**U.S. Department of Justice
Executive office for the United States Attorneys
Office of Information Policy**

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Case: 1:19-cv-00504
Assigned To : Unassigned
Assign. Date : 2/25/2019
Description: FOIA/Privacy Act (I-DECK)

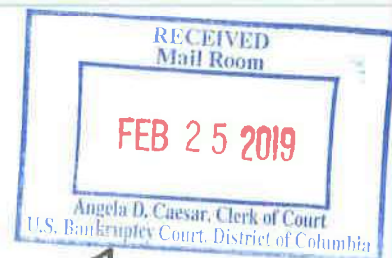
Serve:
Civil process clerk
Office of the United States Attorney
for the District of Columbia
555 Fourth Street, NW

Attorney General of the United States
950 Pennsylvania Ave, NW
Washington, DC 20530-0001

US Department of Justice
950 Pennsylvania Ave, NW
Washington, DC 20530-0001

EOUSA & OIP
950 Pennsylvania Ave, NW
Washington, DC 20530-0001

**COMPLAINT FOR DECLARATION
AND INJUNCTIVE RELIEF**



COMPLAINT

1. Plaintiff Babar Javed Butt brings this action against the above named Defendants collectively referred to as “**Defendants**” in this complaint under the Freedom of Information Act 5. U.S.C § 552 (“FOIA”) and the Privacy Act (“Privacy Act”) 5. U.S.C § 552a seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA and the Privacy Act.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 5. U.S.C § 552 (a)(4)(B) and 28. U.S.C § 1331.

3. Venue is proper in this District pursuant to 28. U.S.C § 1391(e) and 5. U.S.C § 552 (a)(4)(B).

TIME FOR DEFENDANT TO RESPOND

4. Pursuant to FOIA, **Defendants** have thirty (30) days to respond to the instant Complaint 5. U.S.C § 552 (a)(4)(C).

PLAINTIFF OBJECTS TO ANY CONTINUANCE

5. Plaintiff is currently in immigration proceedings at risk of deportation and because **Defendants** have been given adequate time to respond Plaintiff objects to any unwarranted continuance.

PARTIES

6. Plaintiff, proceeding Pro Se, is an immigration detainee at Prairieland Detention center in Alvarado, Texas currently in removal proceedings.

7. Defendant *Department of Justice* (“DOJ”) is an agency of the United States Government headquartered at 950 Pennsylvania Avenue NW, Washington, DC 20530. Defendant **Executive office for the United States Attorneys** (“EOUSA”) and **Office of Information Policy** (“OIP”) are components of the DOJ.

STATEMENT OF FACTS

8. On July 30th 2018, Plaintiff submitted a FOIA request to Defendant EOUSA. Please see attached Exhibit 1. By a letter dated September 18th 2018, Defendant EOUSA acknowledged the receipt and assigned a reference number. Please see attached Exhibit 2.

9. By a letter dated November 15th 2018 Defendant EOUSA declined Plaintiff's request by stating "A search for records located in the United States Attorney's office(s) for the Southern District of Texas has revealed no responsive records regarding the above subject(s)". Please see attached Exhibit 3. *This denial befuddles Plaintiff because Plaintiff was prosecuted criminally in the Southern District of Texas and all the items Plaintiff requested in his FOIA relates to Plaintiff's closed criminal case.*

10. On or about December 13th 2018 Plaintiff appealed against the decision of the EOUSA. Please see attached Exhibit 4. Plaintiff also sent a copy of that notice to the Office of Government Information Services ("OGIS") for any possible mediation to avoid any litigation.

11. By a letter dated February 1st 2019 OGIS acknowledged the receipt of Plaintiff's request and assigned it a case number. Please see attached Exhibit 5.

12. On February 14th 2018 Defendant OGIS informed Plaintiff that the DOJ does not have any "record of an appeal" under Plaintiff's name. Plaintiff asserts that he mailed a copy of the Notice of Appeal by USPS priority mail (Tracking # 9505513019528347173653) and the package was delivered to the OIP on December 26th 2018¹. Please see attached proof of delivery as Exhibit 6.

13. As of the date of this Complaint, Defendant EOUSA and OIP have failed to: (i) produce even a single record or demonstrate that the requested records are lawfully exempt from production; (ii) notify Plaintiff of the scope of any responsive records Defendants intends to produce or withhold and the reasons for any withholdings; (iii) expedite the processing of Plaintiff's FOIA request; and (iv) inform Plaintiff on the status of his appeal or provide with any adequately specific, adverse determination if any.

¹ It appears the package was delayed due to logistical issues faced by USPS during the Christmas season.

COUNT 1

VIOLATION OF FOIA 5. U.S.C § 552 AND 5. U.S.C § 552a

14. Plaintiff realleges paragraphs 1 through 13 as if fully stated herein.

15. Plaintiff is being irreparably harmed because of **Defendants** violations of FOIA and PA and will continue to be irreparably harmed unless **Defendants** are compelled to comply with FOIA & PA.

16. Plaintiff alleges that Defendant EOUSA knowingly and willingly in bad faith refused to conduct a legally adequate search responsive to Plaintiff's FOIA request, refused to produce all responsive agency records in their possession, purposely failed to produce a legally adequate *Vaughn* index and failed to provide a detailed affidavit setting forth the search terms, the data bases searched and the type of search performed as requested in Plaintiff's FOIA request.

17. Plaintiff contends that the OIP failed to (i) acknowledge the receipt of Plaintiff's appeal and (ii) address the issues raised by Plaintiff in his appeal within a reasonable timeframe causing Plaintiff irreparable harm.

16. To trigger FOIA's administrative exhaustion requirement, **Defendants** were required to determine whether to comply with Plaintiff's request and to act on his appeal within twenty (20) working days of receiving the request. At a minimum, **Defendants** were required to (i) in a meaningful way address Plaintiff's FOIA request (ii) gather and review the requested documents; (iii) determine and communicate to Plaintiff the scope of any responsive records **Defendants** intended to produce or withhold and the reasons for any withholdings; and (iv) inform Plaintiff on the status of his appeal and provide with adequately specific, adverse determination if any.

17. Because **Defendants** failed to (i) determine whether to comply with Plaintiff's request within the time required by FOIA (ii) produce the requested documents and (iii) further failed to acknowledge and act on Plaintiff's appeal, Plaintiff is deemed to have exhausted his administrative appeal remedies. 5. U.S.C. 552(a)(6)(C)(i).

RELIEF

Wherefore, Plaintiff respectfully requests that the court: (1) order **Defendants** to conduct search for any and all records responsive to Plaintiff's request and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to the request (2) order **Defendants** to produce, by a date certain, any and all non-exempt records to Plaintiff's request and a *Vaughn* index of any responsive records withheld under claim of exemption; (3) enjoin **Defendants** from continuing to withhold any and all non-exempt records responsive to the request (4) order **Defendants** to describe with particularity and support with substantial evidence the reason for withholding each document (5) direct the **Defendants** to expedite and waive any costs associated with production of records (6) ensure that **Defendants** don't take any actions to moot Plaintiff's complaint in bad faith (7) grant Plaintiff any litigation costs, the cost of filing this suit and award attorney fees if an attorney is retained by Plaintiff in the future and (8) grant Plaintiff such other relief as the Court deems just and proper.

Respectfully Submitted



Babar Butt
A# 208 299 802
1209 Sunflower Lane
Alvarado, Texas
02/19/2019

Certificate of Interested Parties

I certify that to the best of my knowledge the following are interested parties in this case

U.S. Department of Justice
Executive office for the United States Attorneys
Office of Information Policy



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A# 208 299 802
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