

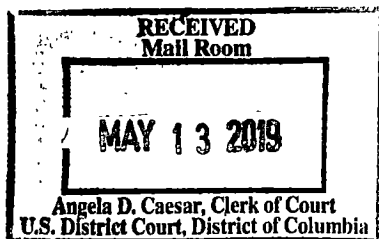
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

<p>MARK ISSAC SNARR, U.S. Penitentiary 4700 Bureau Road South Terre Haute, IN 47802</p> <p>Plaintiff,</p> <p>vs.</p> <p>FEDERAL BUREAU OF PRISONS 320 First St., NW Washington, DC 20534,</p> <p>Defendant.</p>	<p>COMPLAINT</p> <p>Case: 1:19-cv-01421 Assigned To : Unassigned Assign. Date : 5/14/2019 Description: FOIA/Privacy Act (I-DECK)</p>
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Complaint for Declaratory and Injunctive Relief

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 522, as amended, challenging the Federal Bureau of Prisons (“BOP”) for its failure to fulfill Mark Issac Snarr’s (“Snarr”) request for records related to federal prisoners David Paul Wengler and Danny Fortner.

2. Snarr seeks declaratory relief that the Bureau of Prisons is in violation of FOIA for failing to fulfill the FOIA request, and injunctive relief that the Bureau of Prisons immediately and fully comply with Snarr’s FOIA request.



Parties

3. Snarr is a U.S. citizen and a resident of Terra Haute, Indiana. Snarr has been convicted and sentenced to death in a criminal proceeding in the Eastern District of Texas, Case No. 1:09-cr-15. A motion for collateral relief pursuant to 28 U.S.C. § 2255 is currently pending in the same district, Case No. 1:13-cv-724. He currently resides in the United States Penitentiary at 4700 Bureau Road South, Terre Haute, IN 47802.

4. The Bureau of Prisons is an agency as the term is defined in 5 U.S.C. § 552(f)(1). The BOP's address is 320 First St., NW, Washington, DC 20534.

Jurisdiction and Venue

5. This Court has both subject matter jurisdiction under 5 U.S.C. § 522(a)(4)(B) and 28 U.S.C. § 1331.

6. Venue is proper in this district under 5 U.S.C. § 522(a)(4)(B) and 28 U.S.C. § 1391(e).

Statutory Framework

7. The Freedom of Information Act, 5 U.S.C. § 552, requires agencies of the federal government to release records to those who request them unless a specific statutory exemption applies.

8. An agency must respond to a party making a FOIA request with 20 working days, notifying the party of the agency's determination whether or not to fulfill the request and of the requester's right to appeal the agency's determination to the agency's head. 5 U.S.C. § 552(a)(6)(A)(i).

9. In “unusual circumstances,” an agency may delay its response to a FOIA request, but must provide notice and “the date on which a determination is expected to be dispatched.” 5 U.S.C. § 552(a)(6)(B)(i).

10. If an agency does not deny a request for records, “the records shall be made promptly available to such person making such request.” 5 U.S.C. § 552(a)(6)(C)(i).

11. This Court has jurisdiction, upon receipt of a complaint, “to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” 5 U.S.C. § 552(a)(4)(B).

Facts Underlying Plaintiff’s Claim for Relief

12. Snarr is currently represented in the collateral proceedings by the Office of the Federal Defender for the District of Utah.

13. As part of its representation of Snarr, the Utah Federal Defender sought information on other individuals connected to Snarr’s criminal prosecution. Among the means it used was FOIA requests submitted on Snarr’s behalf.

14. This complaint concerns two FOIA requests that Snarr sent to the Bureau of Prisons.

The Fortner Request

15. The first FOIA request involves Danny Fortner. It was sent to the Bureau of Prisons on July 5, 2016.

16. In the request, Snarr asked for a wide variety of records that the prison kept on Fortner. After Fortner was released from prison, he died in March 2013.

Consequently no waivers were needed (or could be received) from him.

17. On July 15, 2016, Snarr phoned the Bureau of Prison's FOIA office, asking about the status of the request. He was informed that there was no record of the request. It was promptly resubmitted via fax. According to the Bureau of Prison's FOIA tracking website, it was marked received on July 19, 2016.

18. On August 2, 2016, Snarr received a letter from BOP acknowledging the request. It was assigned request number 2016-06166 and was assigned to the "complex track."¹

19. In response to questioning about the status of the FOIA request, Snarr received a phone message on October 19, 2016, stating that Christy Treadway, a BOP employee, had received the records responsive to the request. However, Treadway explained that there were prior requests ahead in the queue, and that she could offer no estimate on when Snarr's FOIA request would be fulfilled.

20. Some months later, the BOP was again asked about the status of the FOIA request. On February 22, 2017, Snarr received a message stating that the request was in the final stages of "processing" and would soon move to the "review" state. There was no estimate on when the FOIA request would be fulfilled.

21. On May 11, 2017, Snarr again inquired about the FOIA request for records concerning Fortner. Christy Treadway called back and explained that the request had been sent to her supervisor for final review and approval.

¹ Under Department of Justice regulations, a Department of Justice component (such as the BOP) may distinguish "between simple and more complex [FOIA] requests based on the estimated amount of work or time needed to process the request." 28 C.F.R. § 16.5(b).

22. On September 11, 2017, in response to another inquiry, Snarr was informed that nothing had changed from since May and that the BOP could not offer any estimate on when the FOIA request would be fulfilled.

23. On May 14, 2018, in response to another inquiry, Snarr received an email stating that the request was still waiting final review. Again, the BOP could not offer any estimate on when the FOIA request would be fulfilled.

24. As of the time of this filing, no records have been received from BOP in response on this FOIA request.

25. As of the time of this filing, there has been no indication that the BOP was denying this request in whole or in part.

The Wengler Request

26. The second FOIA request, a request for records concerning David Paul Wengler, followed a similar course.

27. Snarr made his FOIA request for Wengler's records on July 5, 2016. This request included waivers from Wengler.

28. On July 15, 2016, the BOP confirmed that it had received the FOIA request and that it was assigned the tracking number 2016-05776.

29. On February 22, 2017, the BOP informed Snarr that it had not begun processing the request and could not offer any estimate on when it would be completed.

30. On May 11, 2017, the BOP informed Snarr that it still had not begun processing and again offered no estimate on when it would be completed.

31. On September 12, 2017, the BOP informed Snarr that it had completed processing the records, but now those records had to be reviewed. No estimate was offered on when the FOIA request would be fulfilled.

32. On May 10, 2018, the BOP informed Snarr that the records at issue in the FOIA request will still awaiting review. No estimate was offered on when the FOIA request would be fulfilled.

33. As of the time of this filing, no records have been received from BOP in response on this FOIA request.

34. As of the time of this filing, there has been no indication that the BOP was denying this request in whole or in part.

Plaintiff's Claims for Relief

CLAIM ONE: Failure to Produce Record Under FOIA – Fortner Request

35. Plaintiff Snarr re-alleges and incorporates by reference all preceding paragraphs.

36. Plaintiff, through his July 5, 2016 FOIA request, properly asked for records within the BOP's control regarding Danny Fortner.

37. The Defendant BOP has neither produced the records to Snarr in response to his FOIA request nor has it made any explicit and justified claims of statutory exemption.

38. Plaintiff has exhausted the applicable administrative remedies with respect to defendant BOP's wrongful withholding of the records regarding Fortner.

39. The BOP has violated FOIA's mandate to release agency records to the public by failing to release the records Plaintiff specifically requested. 5 U.S.C. § 552(a)(3)(A).

CLAIM TWO: Failure to Produce Record Under FOIA – Wengler Request

40. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 33.

41. Plaintiff, through his July 5, 2016 FOIA request, properly asked for records within the BOP's control regarding David Paul Wengler.

42. The Defendant BOP has neither produced the records to Snarr in response to his FOIA request nor has it made any explicit and justified claims of statutory exemption.

43. Plaintiff has exhausted the applicable administrative remedies with respect to defendant BOP's wrongful withholding of the records regarding Wengler records.

44. The BOP has violated FOIA's mandate to release agency records to the public by failing to release the records Plaintiff specifically requested. 5 U.S.C.

§ 552(a)(3)(A).

Prayer for Relief

Wherefore, Plaintiff respectfully requests that this Court:

- (1) Declare that the Bureau of Prisons violated the Freedom of Information Act by failing to lawfully satisfy Snarr's FOIA requests for records concerning Danny Fortner and David Paul Wengler.
- (2) Order the BOP to process and release immediately all records responsive to plaintiff's FOIA requests at no cost to plaintiff;
- (3) Retain jurisdiction of this action to ensure the fulfillment of plaintiff's FOIA requests and that no agency records are unlawfully withheld;
- (4) Award plaintiff appropriate litigation costs incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (5) Grant such other and further relief as the Court may deem just and proper.

RESPECTFULLY SUBMITTED this May 7, 2019.


/s/ Nathan Phelps

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