

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DAVID EARL WATTLETON,

Plaintiff,

-vs-

UNITED STATES DEPARTMENT OF JUSTICE,

Defendant.

Case: 1:19-cv-01402

Assigned To : Unassigned

Assign. Date : 5/14/2019

Description: FOIA/Privacy Act (I-DECK)

COMPLAINT

COMES NOW, the plaintiff, David Earl Wattleton, as pro se, hereby brings this action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, to enjoin defendants, the United States Department of Justice, from improperly withholding records requested by plaintiff pursuant to FOIA.

The FOIA, 5 U.S.C. § 552, requires agencies of the federal government to release information to the public upon request, unless one of nine specific statutory exemptions applies. 5 U.S.C. § 552(b).

After receiving a FOIA request, an agency has 20 working days to respond. 5 U.S.C. § 552(a)(b)(A).

JURISDICTION AND VENUE

This action arises under FOIA, 5 U.S.C. § 552, and the Privacy Act of 1974 (PA), 5 U.S.C. § 552a.

This court has jurisdiction over the parties and subject matter pursuant to 5 U.S.C. § 552(a)(4)(B) and 5 U.S.C. § 552(a)(1)(B).

PARTIES

Plaintiff, David Earl Wattleton, is a citizen residing at FMC Rochester, PMB 4000, Rochester, Minnesota, 55903.

Defendant, the United States Department of Justice, is an agency of the United States of America, subject to the FOIA pursuant to 5 U.S.C. § 552(f). The United States Department of Justice has possession, custody, or control of the records plaintiff seeks.

CLAIM FOR RELIEF

On or about February, 2019, plaintiff made a written request pursuant to the Act on U.S. DOJ. A true and correct copy of the request is attached to this complaint by reference in it as Exhibit A.

On February 21, 2019, the Assistant Director of the Executive Office for the United States Attorneys responded to plaintiff's request but denied it. The denial was purportedly based on the provisions of 5 U.S.C. § 552(b)(6) and (b)(7)(C), on the asserted grounds that the requested information pertains to a third party. The responding letter further advised that the denial was final, leaving judicial review by writing to the Director, Office of Information Policy (OIP) as the plaintiff's only recourse. A true and correct copy of the "letter" is attached to this complaint by reference in it as Exhibit B.

On or about March, 2019, the plaintiff made a written appeal to the OIP director, and requested fee waiver. A true and correct copy of the administrative appeal is attached to this complaint by reference in it as Exhibit C.

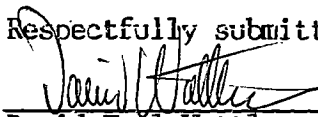
As of the date of this motion, no response has been received by plaintiff regarding the appeal.

PRAYER

The plaintiff prays that this Court enter an order:

Directing the defendants to release to the plaintiff the names of all individuals and/or entities of all PACER system and/or LIONS system users who, within the last 20 years, accessed a United States District Court or United States Attorney for the Northern District of Georgia affiliated with case number 1:99-cr-306-TWT, or to retrieve information based on the name David Earl Wattleton. That the plaintiff be awarded costs and attorney fees, and for all other relief that may be just and proper.

Respectfully submitted this 7 day of May, 2019.



David Earl Wattleton, Pro Se
Reg. No. 50260-C19
FMC Rochester
PMB 4000
Rochester, Minnesota, 55903

David Earl Wattleton
Reg. No. 50260-019
FMC Rochester
PMB 4000
Rochester, Minnesota, 55903

Fee Waiver

On or about January, 2019, I made a written request pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, on the United States Department of Justice for the names of all individuals and/or entities of all Public Access to Court Electronic Records ("PACER"), or LIONS system users who, within the time period of May 27, 1999 through March 2019, accessed a United States District Court or the United States Attorney for the Northern District of Georgia affiliated with case number 1:99-cr-306-TWT, or to retrieve information based on the name David Earl Wattleton. A true and correct copy of the request is attached to this Administrative Appeal and incorporated by reference in it as Exhibit A.

On February 21, 2019, Kevin Krebs, Assistant Director, acting in his official capacity denied the request claiming the information was exempt from disclosure under section (b)(6) and (b)(7)(C) of FOIA, 5 U.S.C. § 552, on the grounds that records pertaining to a third party generally cannot be released absent express authorization and consent of the third party, proof that the subject of my request is deceased, or a clear demonstration that the public interest in disclosure outweighs the personal privacy interest and that significant public benefit would result from the disclosure of the requested records. A true and correct copy of the denial is attached to this Administrative Appeal and incorporated by reference in it as Exhibit B.

I believe that the information sought in my request is not exempt from disclosure under FOIA, and is not exempt on the grounds cited by Mr. Krebs, because the government has "waived" its Exemption 7(c) protection once the government discloses my detailed case information with "no strings attached," and once the third parties advertise themselves to the public, via their websites, as being capable of removing from the Internet websites and search engines my detailed case information, they do so without any expectation that the nature and origin of the computerized subscription list of PACER will be kept confidential.

I am concerned about abuses of my detailed case information, medical records including Chief Psychologist BMR entries, and biometric identifiers are being used by users of the PACER and LIONS system to create false psychological profile to precisely target individuals like myself, mental patients, that will enable their clients to recognize potential criminals, or criminals who will commit crimes in the future or dictate how law enforcement will patrol certain areas of the communities. I am especially concerned about abuses of my personal case information by users of PACER and LIONS system who have a symbiotic relationship or partnership with law enforcement. I believe that I am the target of a significant number of users of PACER or LIONS systems because of my status as a psychiatric patient and without the disclosure I have no way to check to determine whether the law enforcement community encourages users to select my detailed case information or make it available for downloading and are being more that a passive conduit.

28 CFR § 16.11(k)(2)(i)

whether the information regarding the subscription list of users of the PACER or LIONS system clearly "concern[s] an identifiable operation[] or activity[] of the federal government, with a connection that is direct and clear, not remote or attenuated."

1) I am not a commercial requester and my request is not rooted in a purpose that furthers [lit] commercial, trade, or profit interest," and propose that all search fees and duplication be waived. Thus, the fifth and sixth factor of the regulation are met.

28 CFR § 16.11(k)(2)(ii)

whether the information regarding the subscription list of the PACER or LIONS system is "meaningfully informative about government operations or activities in order to be 'likely to contribute' to an increased public understanding of those operations or activities."

1) the information I am requesting may be scattered in courthouses across the United States but the PACER program provides centralized billing, registration and technical support service thus the process would not pose a significant logistical or financial obstacle. Furthermore, the information will be disseminated to federal inmates, their families and others interested in the activities and operations of the government and thus, will increase the information regarding the subject matter of my FOIA request.

28 CFR § 16.11(k)(2)(iii)

whether the information regarding the subscription list of the users of the PACER or LIONS system will "contribute to an understanding of the subject by the public likely to result from disclosure."

1) I intend to disseminate such information to the public through communications with members of Congress and state legislators. It is my belief that with elected officials on behalf of inmates, prisoners and mental patients, and those who believe that their case information, medical records and biometric information should not be made available to users of the PACER or LIONS system who have a symbiotic relationship or partnership with law enforcement and such information would assist me in determining whether the government encourages users to select certain case information over others.

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ADMINISTRATIVE APPEAL No. EOUSAs 2019 001813

Fee Waiver

28 CFR § 16.11(k)(2)(iv)

whether disclosure of the requested information will enhance the public understanding to a significant extent, when compared to the level of public understanding prior to disclosure.

1) It is my belief that any information that exposes government activity that is contrary to the rule of law will contribute significantly to the public's understanding of the operations and activities of the government i.e., disseminating detailed case information, medical records and biometric identifiers to users of the PACER or LIONS system who have a symbiotic relationship or partnership with law enforcement.

Respectfully submitted this day of _____, 2019.

David Earl Wattleton, Applicant
Reg. No. 50260-019
FMC Rochester
PMB 4000
Rochester, Minnesota, 55903

David Earl Wattleton
Reg. No. 50260-019
FMC Rochester
PMB 4000
Rochester, Minnesota, 55903

FOIA's DISCLOSURE
Section 552 of the Freedom of Information Act
5 U.S.C. § 552
Washington, D.C. 20540
Dear Sirs and Madam,
This is a Freedom of Information Act and Privacy Act request from the United States Department of Justice for the names of all individuals and/or entities of all Public Access to Court Electronic Records ("PACER") and/or LIONS system users who, within the last 19 years, accessed a United States District Court or United States Attorney for the Northern District of Georgia affiliated with case number 1:99-cr-306-TWT, or to retrieve information based on the name David Earl Wattleton.

Respectfully,

U.S. Department of Justice
500 ...
Washington, D.C. 20540
Date: 5/14/19
Subject: FOIA Request
Re: 2019-001813
Dear Mr. Wattleton,
The records requested by you are exempt from disclosure under section 552 of the Freedom of Information Act, 5 U.S.C. § 552, and section 552a of the Privacy Act, 5 U.S.C. § 552a, because they are exempt from disclosure under section 552(b)(6) and 552(b)(7)(C) of the Freedom of Information Act, 5 U.S.C. § 552, and section 552a(a)(5)(ii) of the Privacy Act, 5 U.S.C. § 552a. These records are exempt from disclosure because they contain information that is exempt from disclosure under section 552(b)(6) and 552(b)(7)(C) of the Freedom of Information Act, 5 U.S.C. § 552, and section 552a(a)(5)(ii) of the Privacy Act, 5 U.S.C. § 552a. These records are exempt from disclosure because they contain information that is exempt from disclosure under section 552(b)(6) and 552(b)(7)(C) of the Freedom of Information Act, 5 U.S.C. § 552, and section 552a(a)(5)(ii) of the Privacy Act, 5 U.S.C. § 552a.

This is a final action on the above described request. If you are not satisfied with the response to this request, you may file a petition for review with the United States District Court for the Northern District of Georgia, Southern District of Georgia, or the United States District Court for the Southern District of Georgia, within 60 days of the date of this letter. You may also file a petition for review with the United States District Court for the Northern District of Georgia, Southern District of Georgia, or the United States District Court for the Southern District of Georgia, within 60 days of the date of this letter. You may also file a petition for review with the United States District Court for the Northern District of Georgia, Southern District of Georgia, or the United States District Court for the Southern District of Georgia, within 60 days of the date of this letter.

Sincerely,
Kevin Krebs
Assistant Director