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Attorneys for Plaintiff

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

LASSANA MAGASSA,
2917 South Willow Street Seattle, WA,
98108

Plaintiff,

vs.

**TRANSPORTATION SECURITY
ADMINISTRATION,**
6595 Springfield Center Dr.,
Springfield, VA, 22150

Defendant.

CASE NO.: 1:19-cv-1953

CIVIL ACTION

**PLAINTIFF’S COMPLAINT
SEEKING INJUNCTIVE,
DECLARATORY, AND
OTHER APPROPRIATE RELIEF**

**PLAINTIFF’S COMPLAINT SEEKING INJUNCTIVE, DECLARATORY,
AND OTHER APPROPRIATE RELIEF**

Pursuant to 5 U.S.C. § 552(a)(4)(B), Plaintiff Lassana Magassa, by and through undersigned counsel, files this Complaint Seeking Injunctive, Declaratory, and Other Appropriate Relief against the Defendant, the Transportation Security Administration (“TSA”), for the Agency’s violations of the Freedom of Information Act, and its requirements, by improperly withholding

responsive records from Plaintiff and for the Agency's inadequate search for responsive records, and in support thereof Plaintiff states the following:

I. JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction under the authority of 5 U.S.C. § 552(a)(4)(B). This Court also has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331.
2. The Court has jurisdiction to grant declaratory, injunctive, and other appropriate relief pursuant to 28 U.S.C. §§ 2201-2202.
3. Venue is appropriate in this Court under 28 U.S.C. § 1391 and 5 U.S.C. § 552(a)(4)(B).

II. PARTIES

4. Plaintiff Lassana Magassa is a U.S. citizen and resident of Seattle, Washington, who previously worked for Delta Air Lines, Inc. ("Delta").
5. Defendant Transportation Security Administration is an agency of the United States, and is responsible for security operations at nearly 450 airports throughout the United States and shared security for highways, railroads, ports, mass transit systems and pipelines. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

III. STATEMENT OF FACTS

1. Plaintiff hereby alleges and incorporates all numbered paragraphs above.
2. Plaintiff began experiencing extreme difficulties while traveling in October 2016, which occurred around the same time that his airport badge and security privileges were revoked by the TSA. Defendant's revocation of Plaintiff's airport badge and security privileges made performing his job duties impossible, and resulted in the constructive discharge of his employment from Delta.
3. Plaintiff is currently pursuing the only administrative avenue available to him to challenge the revocation of his airport badge and security privileges with the TSA. However, Defendant's

rules guiding the relevant administrative proceeding, known as the “Security Threat Assessment and Redress Process For Holders of Airport-Approved and/or Airport-Issued Personnel Identification Media,” do not allow for any discovery. The only information issued to those using this administrative appeal process are copies of releasable materials upon which the TSA’s Initial Determination of Security Threat was based, upon request of an applicant.

4. The only documents Plaintiff received after requesting the release of any and all documentation that the TSA relied upon in its determination that Plaintiff was no longer eligible to hold airport approved and/or airport-issued personnel identification media were heavily redacted. None of these materials contained *any* substantive information as to why Plaintiff’s badge and airport privileges were revoked. Accordingly, a Freedom of Information Act request to Defendant is the only mechanism through which Plaintiff may obtain access to records relevant to the revocation of his aviation worker’s credential at this time, as well as the other records he properly seeks for the Agency to release.

5. On May 1, 2017, Plaintiff submitted a Freedom of Information Act (“FOIA”) and Privacy Act (“PA”) request for information on himself to the TSA. In this request, Plaintiff sought all records listing his name (Lassana Magassa) or “otherwise listing, concerning, discussing, describing, or mentioning” him “from January 1999 to the date the request is being processed,” including but not limited to “all notes taken by TSA employees; all TSA incident reports, emails, or documentation; and all correspondence between the TSA and any other party.”

6. Upon a request from the Defendant for clarification of the records sought by Mr. Magassa, Plaintiff, by and through the undersigned counsel, submitted an updated FOIA/PA request on September 18, 2017. This clarification stated that “Mr. Magassa seeks any and all records produced by and/or reviewed by the TSA, about Lassana Magassa at TSA checkpoints.” The request also

stated that he seeks all records about Lassana Magassa shared with or received from the Federal Bureau of Investigation and U.S. Customs and Border Protection. The relevant timeframes for all requests were from January 1, 2016 to date.

7. On September 19, 2017, Defendant wrote Plaintiff and requested that Plaintiff “resubmit your [Plaintiff’s] request containing specific information regarding the records you are seeking. Is your client [Plaintiff] seeking records in relation to additional screening?”

8. On October 13, 2017, Plaintiff responded to Defendant’s request for additional clarification as to the records sought by stating, in part, that

Mr. Magassa seeks disclosure of any and all records that were prepared, received, transmitted, collected and/or maintained by the TSA about Lassana Magassa from January 1, 2016 to date, including but not limited to:

- Records relating to additional screening of Lassana Magassa by TSA;
- Records relating to Lassana Magassa’s placement or potential placement on the Terrorist Watch List;
- Records relating to Lassana Magassa’s placement or potential placement on the Selectee List;
- Records relating to questioning of Lassana Magassa at TSA checkpoints; and
- Records concerning Lassana Magassa shared with or received from the Federal Bureau of Investigations and U.S. Customs and Border Patrol.

9. On October 18, 2017, the TSA sent another request for clarification, asking for the names of the airports in which Plaintiff was questioned.

10. On October 18, 2017, Plaintiff’s counsel responded to Defendant’s request for clarification by stating that Plaintiff seeks the records he recently clarified, as well as disclosure of records relating to TSA questioning from the following airports and within the provided relevant timeframes:

- Seattle-Tacoma International Airport (SEA) from January 2016 to present;
- Cincinnati/Northern Kentucky National Airport (CVG) from October 2016 to December 2016;
- Salt Lake City International Airport (SLC) from October 2016 to December 2016;
- Dane County Regional Airport (MSN) from July 2017 to August 2017; and

- John F. Kennedy International Airport (JFK) from August 2017 to September 2017.

11. On October 20, 2017, Defendant sent its FOIA/PA Request Acknowledgment, which certified that no additional information was needed from Plaintiff in order for the TSA to continue processing Plaintiff's request. The TSA further wrote that it would need more than the allotted 30-day period (including both the 20-day statutory period to process FOIA/PA requests and the 10-day period allowable for extensions) in order to process Mr. Magassa's request. At this time, perfected case number 2018-TSPA-00021 was assigned to Plaintiff's FOIA/PA request.

12. On January 25, 2018, Plaintiff's counsel sent the TSA a Request for Expedited Processing of Mr. Magassa's FOIA/PA matter. This request stated, in part, that

While TSA otherwise complied with 6 C.F.R. Part § 5.5(c) by stating that the requester has an opportunity to modify the request or agree to an alternative time period for processing, TSA failed to state the time period it expects its search to take, as required by the statute.

13. On May 8, 2018, several months after Plaintiff's Request for Expedited Processing, the TSA finally sent documents and a letter in response to Plaintiff's request. In its response, Defendant sent Plaintiff a small amount of heavily redacted materials, and cited FOIA exemptions 5 U.S.C. §§ 552 (b)(3) and (b)(6) as relevant to the documents the Defendant did not release to Plaintiff or the portions that were redacted on the 49 pages Defendant did release. Per the letter, at least 182 responsive documents were withheld from production in their entirety. The letter also stated that the TSA can neither confirm nor deny the existence of individuals named on any Federal Watch List under 49 U.S.C. § 114(r) and 49 CFR § 1520.15(a).

14. On July 6, 2018, Plaintiff submitted a timely written appeal of the TSA's over-redacted and inadequate response to Plaintiff's request under the Freedom of Information Act and the Privacy Act. This appeal stated that, along with wrongfully redacting information and citing exemptions which do not protect the redacted information from disclosure, the Agency also

withheld numerous documents in its possession in their entirety and did not properly address those documents and their corresponding exemptions in order to justify withholding them altogether. For instance, Defendant's response to Plaintiff's FOIA/PA request did not contain a *Vaughn* Index or similar documentation explaining in greater detail the justification for invocation of the (b)(3) and (b)(6) exemptions.

15. In support of Plaintiff's contention that the TSA's withholding of documents was a violation of the requirements of the Freedom of Information Act, Plaintiff's appeal noted that "the undersigned counsel previously received numerous TSA documents through other administrative avenues that were not provided in this response, including but not limited to the determination that Mr. Magassa does not meet the eligibility requirements to hold airport-approved and/or airport-issued media."

16. On September 5, 2018, Defendant responded to Plaintiff's Appeal of the TSA's final response to his FOIA/PA request, where the TSA's Acting Assistant Administrator for Civil Rights & Liberties affirmed the Agency's withholdings and redactions in response to Plaintiff's request, and the use of exemptions (b)(3) and (b)(6)

17. In response to Plaintiff's appeal as to the lack of production overall, the TSA stated that to the extent Plaintiff is

alleging TSA failed to produce records related to your client [Plaintiff's] revocation of his aviation worker's credential, TSA disagrees such records were within the scope of your original FOIA request, which was limited to "records pertaining to Mr. Magassa relating to TSA questioning" from certain airports.

However, the TSA improperly ignored the full scope of Mr. Magassa's FOIA/PA request, which in its perfected form of October 18, 2017, referenced the records clarified on October 13, 2017.

The October 13, 2017 request specifically states as follows:

Mr. Magassa seeks disclosure of **any and all records that were prepared, received, transmitted, collected and/or maintained by the TSA about Lassana Magassa from January 1, 2016 to date, including but not limited to:**

- Records relating to additional screening of Lassana Magassa by TSA;
- Records relating to Lassana Magassa's placement or potential placement on the Terrorist Watch List;
- Records relating to Lassana Magassa's placement or potential placement on the Selectee List;
- Records relating to questioning of Lassana Magassa at TSA checkpoints; and
- Records concerning Lassana Magassa shared with or received from the Federal Bureau of Investigations and U.S. Customs and Border Patrol.

(emphasis added). The perfected October 18, 2017 clarification only added additional search criteria, but did not disregard the scope provided on October 13, 2017, as evidenced by the "Plaintiff seeks the records he recently clarified" language contained in the October 18, 2017 perfected FOIA/PA request.

18. As the revocation of Plaintiff's airport badge and security privileges was ordered by Defendant, records relating to the revocation of his aviation worker's credential were within the scope of Plaintiff's FOIA/PA request.

19. Based on the language provided by Defendant in its September 5, 2018 letter, the count of 182 documents withheld from production in their entirety would not include documents relating to the revocation of Plaintiff's aviation worker credential. As a result, Defendant's search for responsive records to Plaintiff's FOIA/PA request was inadequate.

20. Defendant's September 5, 2018 letter stated that this was "the final decision on your [Plaintiff's] appeal," and that Plaintiff "may seek judicial review."

21. Accordingly, Plaintiff seeks judicial review of the TSA's improper withholdings and heavy redactions in response to Plaintiff's FOIA/PA request; Defendant's inadequate search for responsive documents; and Defendant's failure to properly provide proof that the exemptions cited apply to the documents responsive to the request that were withheld or redacted. Plaintiff's request

is timely, and Plaintiff has exhausted the applicable administrative remedies with respect to his FOIA/PA request to Defendant TSA.

IV. COUNTS ONE AND TWO:

VIOLATIONS OF THE FREEDOM OF INFORMATION ACT, 5 U.S.C. § 552

A. Count One: Wrongful Withholding of Non-Exempt Records

22. Plaintiff hereby alleges and incorporates all numbered paragraphs above.

23. Defendant is an agency subject to FOIA and its requirements, under 5 U.S.C. § 552 (f).

24. Defendant has Agency records concerning Plaintiff that are either created or controlled by Defendant, or are under Defendant's control.

25. Accordingly, Defendant must release any and all responsive, non-exempt agency records in its possession to Plaintiff.

26. Under the FOIA, and in keeping with its spirit with its strong presumption in favor of disclosure, agencies must provide sufficient and lawful justification for all withholdings by reference to specific exemptions of FOIA, along with explanations as to the exemption's applicability to the requester's case.

27. Agencies are also required to provide all segregable portions of otherwise exempt material.

28. The burden is on the agency, and in this case, the TSA, to justify the withholding or redaction of any requested documents.

29. Defendant has stated that at least 182 responsive documents were withheld in their entirety, pursuant to exemption (b)(3).

30. Defendant also stated that in the 49 documents it did release to Plaintiff, the redacted portions of documents provided were pursuant to the applicability of (b)(3) and (b)(6) exemptions.

31. Defendant's responses rely solely on the general language of the cited FOIA exemptions and provide no particularized explanation to justify withholding, which is insufficient under the requirements of the Act.

32. With the exclusion of any detailed explanation for the exemptions invoked, it is impossible for Plaintiff to determine the legitimacy of Defendant's claims that withholding is authorized.

33. Furthermore, the D.C. Circuit requires an agency invoking the (b)(3) exemption to demonstrate its applicability by providing "the kind of detailed, scrupulous description [of the withheld information] that enables a District Court judge to perform a searching de novo review."¹ Providing no particularized explanations does not meet the required standard of proof for justification of withholding under this exemption.

34. In addition, though the U.S. Supreme Court recognizes that Congress gave "broad authority" to agencies to "protect all sources of intelligence information from disclosure", it is not carte blanche authority for an agency to redact information."²

35. Defendant has not stated that nonexempt material is so inextricably intertwined that disclosure of it would leave only essentially meaningless words and phrases in either of its responses to justify the withholding of 182 responsive documents entirely.

36. Additionally, Defendant's heavy redactions within the limited amount of documents it provided wrongfully rely upon exemption (b)(6) (personnel records) as justifying the redactions. However, employment with the government is public information, and these employees have no legitimate privacy right to the deletion (or redaction) of their names. In that respect, unless the

¹ *Church of Scientology, Inc. v. Turner*, 662 F.2d 784, 786 (D.C. Cir. 1980).

² *Central Intelligence Agency v. Sims*, 471 U.S. 159, 169 (1985).

TSA makes a showing that disclosure of an employee's identity would endanger his or her safety, the TSA must not redact the names of TSA personnel. Defendant has not met this burden.

37. Since the TSA had nearly a year to supply a proper response to Mr. Magassa's initiation of this FOIA/PA matter, and since the TSA still did not provide documentation explaining in greater detail the justification for invocation of the (b)(3) and (b)(6) exemptions, the TSA has accordingly failed to meet its burden to justify the withholding and redacting of the requested information.

38. Similarly, Defendant has not met its burden to show that all reasonably segregable, nonexempt materials were disclosed.

39. Accordingly, Defendant is unlawfully withholding and redacting records requested by Plaintiff under the FOIA.

40. Plaintiff is being irreparably harmed by reason of Defendant's unlawful withholding and redacting of records responsive to Plaintiff's FOIA request and will continue to be irreparably harmed unless Defendant is compelled to confirm its conduct to the requirements of the law.

41. Among the harm Plaintiff is experiencing as a result of Defendant's unlawful withholding of responsive records is the inability to prepare a meaningful defense as to the reasons supporting the revocation of his security badge and airport privileges, which are unknown to him. As stated above, the revocation of Plaintiff's security badge and airport privileges resulted in the constructive discharge of his employment with Delta.

42. Another harm Plaintiff is experiencing as a result of Defendant's unlawful withholding of responsive records is the inability to learn why he is experiencing severe difficulties exercising his fundamental right to travel.

43. Therefore, by improperly withholding and redacting the records Plaintiff specifically requested without providing detailed explanations as to the documents withheld or redacted, Defendant violated the FOIA.

B. Count Two: Failure to Conduct an Adequate Search Under FOIA

44. Plaintiff hereby alleges and incorporates all numbered paragraphs above.

45. Defendant failed to conduct a reasonably calculated and good faith search to uncover all responsive Agency records, as the FOIA requires.

46. As a result of Defendant's inadequate search, which is apparent by the TSA's assertion that the TSA disagrees that records relating to Plaintiff's aviation worker's credential were within the scope of his request, Plaintiff has not received many of the records he requested under the FOIA.

47. Plaintiff is aware there are other documents within the scope of his request for Agency documents concerning him, as Plaintiff's counsel previously received TSA documents through other administrative avenues, including but not limited to the determination that Mr. Magassa does not meet the eligibility requirements to hold airport approved and/or airport-issued media.

48. Therefore, by failing to adequately search for the records Plaintiff specifically requested, defendant violated the FOIA's mandate to conduct a search that is reasonably calculated to produce responsive records, pursuant to 5 U.S.C. § 552(a)(3)(D).

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment of liability against Defendant, and respectfully requests that this Court grant the following relief:

- 1) Order Defendant to conduct a search for any and all records responsive to Plaintiff's FOIA/PA request, including but not limited to records relating to the revocation of his aviation worker's credential and Plaintiff's difficulties traveling;
- 2) Order Defendant to demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA/PA request;
- 3) Order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA request;
- 4) Order Defendant to produce, by a date certain, a *Vaughn* index of any responsive records withheld under claim of exemption, pursuant to *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973);
- 5) Enjoin Defendant from continuing to withhold any and all properly proved non-exempt records;
- 6) Issue a declaration that Plaintiff is entitled to disclosure of the requested records;
- 7) Maintain jurisdiction over this action until Defendant is in compliance with FOIA, the Administrative Procedure Act, and every order of this Court;
- 8) Grant Plaintiff an award of reasonable attorney's fees and other litigation costs, as provided for in 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 2412; and
- 9) Grant Plaintiff any additional relief this Court deems just, proper, and equitable.

Respectfully submitted this 28th day of June, 2019.

/s/ Christina A. Jump

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