

UNITED STATES DISTRICT AND BANKRUPTCY COURTS  
FOR THE DISTRICT OF COLUMBIA

ANTONIO U. AKEL,  
Plaintiff,

U.S.P. BIG SANDY

P.O. Box 2068

INEZ, Ky 41024

REG # 06899-017

VS,

Case: 1:20-cv-01651

Assigned To : Unassigned

Assign. Date : 7/1/2020

Description: FOIA/Privacy Act (I-DECK)

CIVIL ACTION NO.

UNITED STATES DEPARTMENT OF JUSTICE (O.P.R)  
Defendant,  
950 PENNSYLVANIA AVENUE, N.W., SUITE 3266  
WASHINGTON, D.C. 20530

PRO SE

COMPLAINT AND MOTION FOR SUMMARY JUDGMENT

I. FACTS OF THE CASE

(1). On December 10, 2018 I, ANTONIO U. AKEL, submitted a (FOIA) request to the OFFICE OF PROFESSIONAL RESPONSIBILITY (OPR) pursuant to and on "ALL FOURS" with the AUGUST 3, 2018 decision in GREGORY BARTKO v. UNITED STATES DEPARTMENT OF JUSTICE, ETAL, 898 F.3d 51 (D.C. CIR.).

(2). In accord with BARTKO supra my request explicitly sought:

- i. Any and all records created by and/or received by the (OPR) in regard to [A.U.S.A.] THOMAS P. SWAIM NC. BAR. NO. 10064, which relate to or concern violations or alleged violations by AUSA SWAIM of Section 9.500 et seq. of the United States Attorneys Manual adopted by the Department of Justice; or the "Ogden Memorandum" or any ethical duties imposed upon AUSA SWAIM in his capacity as a government prosecutor as set forth in the NORTH CAROLINA CODE OF PROFESSIONAL CONDUCT.



ii. Any and all records in regards to complaints or allegations made against A.U.S.A SwAIM with regards to prosecutorial misconduct before any grand jury, during any criminal trial or investigation prior to trial, which involved the withholding and concealing exculpatory evidence and/or the presentation of false or misleading evidence during trial.

iii. Any and all records maintained by OPR concerning AUSA SwAIM's Supervision as an employee of the Department of Justice, which reflect allegations of attorney misconduct involving violations of any Standard imposed by law, applicable rules, professional conduct or Department of Justice policy. J.A. 209-210

(3) In response, the OPR categorically refused to even confirm or deny the existence of relevant records - a type of answer to a FOIA request known as a "GLOMAR" response, on JANUARY 14, 2020. See EXHIBIT #1 ATTACHED (The denial of request No. F19-00031)

(4) I timely appealed to the (O.I.P) on FEBRUARY 25, 2020 and explicitly stated:

THE OPR'S REFUSAL TO PRODUCE THESE RECORDS AND ITS LEGAL PREMISE FOR DOING SO, NOT ONLY CONTRADICTS, BUT, IS ALSO "SQUARELY FORECLOSED BY BARTKO v. U.S. DOJ, et al, 898 F.3d 51 (D.C. Cir 2018)".

(5) ON MAY 21, 2020 the O.I.P affirmed OPR's actions in denying my request and merely regurgitated the "GLOMAR" response therein. See EXHIBIT #2 ATTACHED (O.I.P. affirmance in appeal No. A-2020-00310 upon request No. F19-00031)

(6) Of Concern, is that the O.I.P. alleged that the "decision was made only after a full review of this matter. Your appeal was assigned to an attorney with this office who thoroughly reviewed and analyzed your appeal etc.", however its affirmance makes no mention of BARTKO supra for which squarely foreclosed the O.P.R's denial as I explicitly cited to within my appeal, and, instead relied upon case law for which pre-dates BARTKO, and, for which BARTKO establishes is misguided legal premises because "OPR DOES NOT SPECIALIZE IN LAW ENFORCEMENT" and therefore "ITS ATTEMPT TO SHIELD ITS RECORDS UNDER EXEMPTION 7(C) MERITS NO DEFERENCE", and "BECAUSE EXEMPTION 6 REQUIRES AN EVEN STRONGER DEMONSTRATION OF A PRIVACY INTEREST THAN EXEMPTION 7(C), AN AGENCY'S INABILITY TO JUSTIFY WITHHOLDING THE LATER OFFEN PRECLUDES IT FROM SATISFYING EXEMPTION 6'S HEIGHTENED REQUIREMENTS".



- (7) In addition the O.I.P is well aware that in order for the OPR to even attempt to properly justify its invocation of EXEMPTION 7(c) it was required to supply the Requester with an Affidavit for which offers an explanation that is "full and specific enough to afford the FOIA requester a meaningful opportunity to contest, and the district court an adequate foundation to review, the soundness of the withholding," JEFFERSON v. DEPT. OF JUSTICE, 284 F.3d 172, 176 (D.C. Cir 2002), and in this case, unlike in BARTKO, the OPR did not even attempt to submit an affidavit.
- (8) Based upon the aforementioned, the OPR's JAN 14, 2020 denial and the OIP's affirmance of that denial on MAY 21, 2020, can be seen by a Jurist of Reason as nothing more than an arbitrary attempt by the D.O.J to cause the plaintiff further delay, expense and anxiety.

## II. THIS COMPLAINT CAN AND SHOULD BE RESOLVED BY WAY OF SUMMARY JUDGMENT IN ACCORD FED R. CIV. P. 56(a) AND THEREFORE A TRIAL BY JURY IS NOT REQUESTED

- (1) FOIA cases typically and appropriately are decided on motions for Summary Judgment. See Defenders of Wildlife v. Border Patrol, 633 F. Supp. 2d 83, 87 (D.D.C. 2009).
- (2) Summary judgment may be granted if "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a)
- (3) Here the movant clearly meets the standard for Summary Judgment, where he submitted his FOIA request on "all fours" with GREGORY BARTKO v. DEPT. OF JUSTICE, et al, 898 F.3d 51 (D.C. Cir 2018), and yet, the OPR and OIP has attempted to deny the request upon the same exact legal premise for which the court in BARTKO has deemed to be clear error and thus "squarely foreclosed" for use in this case.

## III. REQUESTED REMEDY

- (1) Consistent with statutory mandate, this Honorable Court is respectfully requested to exercise its jurisdiction and order the production of the records improperly withheld by the OPR. See 5 U.S.C § 552(a)(4)(B)
- (2) In addition because it is clear that both the OPR and OIP deliberately disregarded BARTKO, thus causing the plaintiff to file a suit that would not have been necessary otherwise, the plaintiff requests that the U.S. DOJ cover the cost of this litigation

i.e. (\$400.00 Filing Fee) upfront or to replace the funds taken from the plaintiff's inmate account, to recover the costs of the filing fee pursuant to 5 U.S.C. 552(a)(4)(E)(i)

## CONCLUSION

Wherefore, the plaintiff prays this Honorable Court issue judgment in his favor.

Respectfully Submitted

JUNE 29, 2020



ANTONIO U. AKEL #06899-017

U.S.P. BEG SANDY

P.O. BOX 2068

Inez, Ky 41224

## DECLARATION

I, ANTONIO U. AKEL, hereby declare under the penalty of perjury pursuant to 28 U.S.C. 1746 that the foregoing complaint is true and correct.

JUNE 29, 2020

by: 

ANTONIO U. AKEL #06899-017

U.S.P. BEG SANDY

P.O. BOX 2068

Inez, Ky 41224