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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

2020 JUL 10 PM 2: 50

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PIERRE HINES
 3129 Fort Lincoln Drive N.E.
 Washington, D.C. 20018
 (202) 556-3481,

 Plaintiff,

 v.

U.S. DEPARTMENT OF JUSTICE
 950 Pennsylvania Avenue, N.W.
 Washington, D.C. 20530-0001,

 Defendant.

Case: 1:20-cv-01901 (FOIA-I Deck)
Assigned To : Cooper, Christopher R.
Assign. Date : 7/10/2020
Description: FOIA/Privacy Act

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JUL 10 2020

Clerk, U.S. District and
Bankruptcy Courts

COMPLAINT

1. Plaintiff Pierre Hines, proceeding *pro se*, brings this lawsuit under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, seeking declaratory and injunctive relief ordering the Department of Justice (“DOJ”) to release agency records from the Federal Bureau of Prisons (“BOP”) that Plaintiff submitted a request for on November 29, 2018 (the “FOIA Request”).

2. Plaintiff seeks records related to BOP contracting with a company in Washington, D.C. to operate the largest residential re-entry center in the country—a type of facility commonly referred to as a halfway house.

3. For 589 days (and counting), BOP has not released a single record in response to the FOIA Request.

4. This lawsuit is not about whether formerly incarcerated returning citizens should have a re-entry center in D.C., or which Ward it should be in, or what company should operate the facility. Returning citizens should have a quality facility in the District, operated by a company that will

provide quality services. Instead, this lawsuit is about whether BOP may issue a contract without timely disclosing critical information to residents who will be impacted by BOP's decisions and whose tax dollars help fund BOP's operations.

5. FOIA was enacted "to pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny." *See Evans v. Fed. Bureau of Prisons*, 951 F.3d 578, 583 (D.C. Cir. 2020) (citations omitted). Plaintiff respectfully requests that this Court order the immediate disclosure of the requested records that Defendant has unlawfully withheld.

JURISDICTION AND VENUE

6. This Court has personal and subject matter jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(6)(E)(iii), 5 U.S.C. § 552(a)(4)(B), 5 U.S.C. §§ 701–06, 28 U.S.C. §§ 2201–02, and 28 U.S.C. § 1331.

7. Venue is appropriate under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391.

PARTIES

8. Plaintiff is a resident of the District Columbia who works as an attorney and volunteers as a community organizer.¹

9. Defendant DOJ is an "agency" of the U.S. government as defined in 5 U.S.C. § 552(f)(1) and 5 U.S.C. § 701(b). One of DOJ's components, BOP, has possession and control of the records sought in the FOIA Request.

FACTUAL BACKGROUND

A. Origin of the FOIA Request

10. In 2016, BOP issued a solicitation under Request for Proposals No. RFP-200-1270-ES (the "Solicitation"), seeking a government contractor in the D.C. metropolitan area to provide a residential

¹ The views expressed by Plaintiff in this lawsuit do not represent the views of Plaintiff's former or current employer or the D.C. Advisory Neighborhood Commission of which Plaintiff is a member.

re-entry center with up to 300 beds and home confinement services with up to 150 placements.

11. The Solicitation stated: “All offerors are advised that the Government reserves the right to disclose or make public any environmental documentation or other information provided in response to the solicitation. Such disclosures would typically occur in Environmental Impact Statements, Environmental Assessments, public hearings, comment periods, and other public forums.”

12. Hope Village, Inc. was the existing contractor and, until recently, operated a re-entry center in Ward 8. BOP found Hope Village’s proposal for the new contract to be unsatisfactory because it would not accept all returning citizens regardless of their offender classification.² Based on knowledge and belief, Hope Village would accept all returning citizens except those that BOP classified as violent sex offenders—in part because the re-entry center in Ward 8 was across the street from a school.

13. On November 1, 2018, BOP notified CORE DC, LLC (“Core”) it was awarded the new contract to operate a re-entry center and provide certain related services.

14. On November 9, 2018, The Washington Post published an article revealing the award of a contract to operate the re-entry center in Ward 5.³ Based on knowledge and belief, very few D.C. residents or government officials knew about this proposed new re-entry center prior to that article.

15. On November 28, 2018, Advisory Neighborhood Commission (ANC) 5C hosted a widely attended community meeting to discuss the new re-entry center. “The ANCs’ main job is to be their neighborhood’s official voice in advising the District government (and Federal agencies) on things that affect their neighborhoods.”⁴ No one from BOP or the contractor it hired provided any information at the meeting. Further, D.C. government officials lacked information to enable them to brief residents on the plans for the new re-entry center that BOP had approved without their knowledge.

² See Government Accountability Office decision in *Hope Village, Inc.*, B-414342.2 (Feb. 21, 2019) at 4, available at <https://www.gao.gov/assets/700/697092.pdf>.

³ See Justin Moyer, *New Halfway House for 300 Former Inmates Set to Open Next Year in D.C.*, THE WASHINGTON POST (Nov. 9, 2018).

16. On November 29, 2018—one day after Plaintiff was unable to receive any substantive information at the community meeting—Plaintiff submitted the FOIA Request at issue in this case.

A. Records Requested

17. In the FOIA Request, Plaintiff sought three categories of records from BOP. *See* Exhibit 1.

18. *First*, the FOIA Request sought “any record currently in the possession of Contracting Officer Stefanie Skroch indicating that when she awarded CORE DC the contract, it was registered as a government contractor in the System for Award Management (SAM.gov), as required by regulations FAR 52.204-7 and FAR 4.1102.”

- a. Federal Acquisition Regulation (“FAR”) 52.204-7(b)(1) requires a company “to be registered in SAM when submitting an offer.” And FAR 4.1102 states such companies must register “in order to comply with the annual representations and certifications requirements.”
- b. Based on knowledge and belief, BOP awarded a contract in response to the Solicitation to a company that is not registered in SAM.
- c. Among other things, SAM registration makes public a federal contractor’s corporate affiliations. And that information helps illuminate the experience and structure of the contractor, as well as who the organization has supported with political contributions.

19. *Second*, the FOIA Request sought a copy of the proposal Core submitted to BOP.

- a. Among other things, the Solicitation required companies competing for the contract to provide BOP with a “Local Area Concerns” document identifying facilities near the proposed re-entry center that may raise public concern, as well as a “Community Relations Plan” describing how the company would “interact[] with the local community in order to acquire and maintain public support.”

⁴ *See* <https://anc.dc.gov/page/about-ancs>.

b. BOP incorporated portions of Core’s proposal into the contract.

20. *Third*, the FOIA Request sought a copy of the contract issued by BOP.

- a. Out of approximately 154 re-entry centers that BOP oversees across the country, 85% have less than 100 beds.⁵ The center with the largest number of beds, outside of the D.C. re-center, has 174 beds. In other words, BOP’s Solicitation sought to house, in a single D.C. re-entry center, triple the number of beds in most centers and nearly double the amount of beds in any other facility in the country. Producing the contract can help illuminate how a new re-entry center will accommodate the number of men BOP expects to house at the facility.
- b. Based on knowledge and belief, returning citizens who reside at re-entry centers often rely on public transportation. Producing the contract can help indicate whether residents and their elected officials should plan for a significant increase in the use of public transportation (such as buses) in a particular area.
- c. And based on knowledge and belief, the contract will clarify offender classification levels of, and who is responsible for, the safety of returning citizens—as well as the surrounding community.

B. Media Interest in Re-entry Center

21. Pursuant to DOJ regulations that BOP is subject to, FOIA requests “shall” be processed using “expedited processing” procedures when any one of four criteria applies. *See* 28 C.F.R. § 16.5(e).

22. Under the fourth criteria, “plaintiffs need only demonstrate that the subject matter of their request involves ‘a matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence.’” *ACLU v. DOJ*, 321 F. Supp. 2d 24, 31 (D.D.C. 2004) (quoting 28 C.F.R. § 16.5(d)(1)(iv)).

23. The following list includes examples of the media interest in how BOP oversees services for returning citizens in the District, released between the time when BOP initially awarded a new contract and when Plaintiff initiated an administrative appeal concerning the FOIA Request:

- a. Justin Moyer, *New Halfway House for 300 Former Inmates Set to Open Next Year in D.C.*, THE WASHINGTON POST (Nov. 9, 2018) (quoting D.C. Deputy Mayor for Public Safety Kevin Donahue as stating “we would have welcomed the opportunity to participate in [BOP’s] planning process,” and quoting Ward 5 Councilmember Kenyan McDuffie as calling “the lack of community engagement from BOP . . . unacceptable”);
- b. Justin Moyer, *A D.C. Halfway House Can’t Accept Some Sex Offenders. A Competitor Is Trying To*, THE WASHINGTON POST (Nov. 23, 2018) (reporting that Congresswoman Eleanor Holmes Norton “opposed a new [BOP] requirement” affecting sex offenders and said “[i]n the District, we are not willing to accept the risk of housing sex offenders whose victims were children in residential neighborhoods where children congregate”);
- c. Justin Moyer, *D.C. Neighborhood Battles One Halfway House as Prosecutors Crack Down on Escapes From Another*, THE WASHINGTON POST (Nov. 30, 2018) (quoting Councilmember McDuffie as stating “I’m at my wits’ end with the Federal Bureau of Prisons”);
- d. Sam Ford, TV news segment titled *Northeast Washington Community Upset Over Planned Halfway House*, ABC7 (Dec. 14, 2018) (reporting that the news station contacted BOP and received no response);
- e. Justin Moyer, *Planned D.C. Halfway House Loses Lease After Resident Concerns About Housing Former Prisoners*, THE WASHINGTON POST (Dec. 21, 2018) (reporting that Deputy Mayor Donahue encouraged BOP to “work transparently and

⁵ See https://www.bop.gov/about/facilities/residential_reentry_management_centers.jsp.

- collaboratively with District residents and returning citizens advocates in identifying suitable locations for a new halfway house”);
- f. Justin Moyer, *Hope Village Halfway House in D.C. Might Get Its Federal Contract Back*, THE WASHINGTON POST (Feb. 28, 2019) (reporting that the Government Accountability Office “recommended that the Bureau of Prisons reopen the bidding process or revise it”);
 - g. Peter Jamison, *‘It’s Going To Be a Crisis’: D.C. May Be Left Without a Halfway House for Men Returning From Federal Prison*, THE WASHINGTON POST (Aug. 6, 2019) (quoting a letter from At-Large Councilmember Robert White to BOP as “saying the loss of a halfway house for men in the District would ‘severely harm our residents’”);
 - h. *Press Release: Councilmember Vincent C. Gray’s Statement Opposing the Proposed Location of CORE DC’s Halfway House*, THE DC LINE (Jan. 27, 2020) (reporting a letter from Ward 7 Councilmember Vincent Gray to BOP stating his “unequivocal opposition” to the location proposed for a re-entry center in Ward 7);
 - i. Tom Jackman, *Hope Village Halfway House Will Release Some Residents to Home Confinement Because of Coronavirus Concerns*, THE WASHINGTON POST (April 7, 2020) (reporting on a lawsuit filed by returning citizens against BOP and other defendants in connection with re-entry services in the District);
 - j. Justin Moyer, *Longtime D.C. Halfway House Won’t Renew Federal Contract*, THE WASHINGTON POST (April 11, 2020) (reporting that a BOP spokesperson stated it “continues to explore options” after it failed to renew a re-entry center contract, and reporting that Congresswoman Norton sent letters to BOP stressing “[i]t is imperative that this situation be resolved”);
 - k. Jenny Gathright, *Home Detention, Other Halfway Houses, Or Prison Ahead For D.C.*

- Halfway House Residents*, NPR (Apr. 15, 2020) (reporting that an attorney for BOP described plans to release returning citizens to home confinement amid the pandemic);
- l. Scott McFarland, TV news segment titled *Hope Village Halfway House Closing*, NBC Washington (April 27, 2020) (reporting on the lack of clarity regarding where BOP would house returning citizens during the pandemic);
 - m. Justin Moyer, *D.C. 's Hope Village Halfway House Sees Exodus After Coronavirus Lawsuit*, THE WASHINGTON POST (April 28, 2020) (quoting a returning citizen at a D.C. re-entry center as stating “[y]ou can’t really practice social distancing while you’re in BOP custody”);
 - n. Justin Moyer, *New Halfway House For Up to 300 Men Coming to Northeast Washington*, THE WASHINGTON POST (June 5, 2020) (quoting a letter from Councilmember Gray to BOP stating that “the long-lasting, deleterious effects of placing a Residential Reentry Center at this location cannot be overstated”); and
 - o. Justin Moyer, *Halfway House For 300 Men Will Open in Northeast After Departure of Hope Village*, THE WASHINGTON POST (June 8, 2020) (quoting Councilmember Gray as stating “[t]his federal government, led by Donald Trump, has no interest in the well-being of the District or Ward 7 residents”).

24. The common threads across these eleven articles from The Washington Post, articles from other media, and segments from TV news stations illustrate questions about public confidence in BOP.

C. Sequence of Events Leading to Administrative Appeal

25. On November 29, 2018, Plaintiff submitted the FOIA Request to BOP, seeking expedited processing under the media-interest criteria in DOJ’s FOIA regulations. *See* Exhibit 1.

26. On December 3, 2018, BOP’s initial response to the FOIA Request stated it “meets the requirement to be processed on an expedited basis . . . and may take up to six months.” *See* Exhibit 2.

27. More than six months passed, and several events occurred between December 2018 and June 2020. *First*, Core was unable to lease the property in Ward 5 where it intended to locate the re-entry center. *Second*, Hope Village successfully challenged at the Government Accountability Office the contract awarded by BOP to Core. *Third*, Core challenged at the U.S. Court of Federal Claims the BOP's decision to not award it the contract. *Fourth*, Hope Village decided to no longer pursue a contract with BOP. *Fifth*, BOP re-awarded Core the contract to operate a re-entry center in Ward 7. During this entire sequence of events, BOP did not release a single document in response to the FOIA Request it had approved for expedited processing.

28. On June 8, 2020—subsequent to BOP filing a report under seal in the Court of Federal Claims—Core voluntarily dismissed its legal action against the government. *See CORE DC, LLC v. United States*, No. 1:19-cv-01212 (Fed. Cl. 2019).

29. The same day, on June 8, 2020—more than 500 days after Plaintiff submitted the FOIA Request—BOP finally issued a determination letter. *See Exhibit 3.* The letter stated that “approximately 247 pages of records were withheld in full . . . under [FOIA] exemption (b)(4)” because BOP “considers the records . . . to be confidential commercial or financial information.” To support BOP's decision to withhold records, the determination letter cited the Supreme Court's decision in *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356 (2019).

30. On June 10, 2020, more than twenty business days prior to filing this lawsuit, Plaintiff submitted an administrative appeal to the DOJ OIP. *See Exhibit 4.*

- a. Plaintiff's administrative appeal explained that *Argus Leader* held that to qualify as “confidential” (1) the commercial information must customarily be treated as private, and (2) must be “provided to the government under an assurance of privacy.” Because the Solicitation disclaimed such assurance, Plaintiff's administrative appeal explained to BOP that *Argus Leader* does not authorize the blanket withholding of all records.

- b. Plaintiff's administrative appeal also explained that BOP's determination letter mistakenly asserted that records were already available online. Normally a federal agency would make a solicitation and all amendments available online, and certain solicitation materials would be incorporated into the contract. However, in this instance, BOP amended the Solicitation without making all amendments publicly available.
- i. The Government Accountability Office's February 21, 2019 decision stated BOP amended the Solicitation fourteen times at that point. *See* Fn.2, *supra*.
 - ii. Core's August 20, 2019 complaint against the government in the Court of Federal Claims stated that BOP amended the Solicitation sixteen times and that only four amendments were posted online at that point. *See* ¶ 28, *supra*.
 - iii. The way BOP shaped (and re-shaped) the Solicitation is a crucial component of public debate about the re-entry center. Despite the numerous Solicitation amendments since its release in 2016, to this day BOP still has not made all amendments publicly available.
- c. In addition, the FOIA guidance on Defendant DOJ's own website states "... general policy considerations strongly favor the disclosure of awarded contracts to permit the public to evaluate the wisdom and efficiency of federal programs and expenditures" *See* <https://www.justice.gov/oip/blog/foia-update-foia-counselor-questions-answers-11>. Despite this guidance from DOJ, that same agency refuses to comply with the FOIA Request's demand to disclose the contract.

31. On June 11, 2020, the DOJ OIP acknowledged receipt of Plaintiff's administrative appeal. *See* Exhibit 5.

32. On June 29, 2020, Plaintiff received an email notice from an unidentified person, stating DOJ had denied the request to expedite Appeal No. A-2020-01178 pursuant to the media-interest criteria in 28 C.F.R. § 16.5(e)(1)(iv). *See* Exhibit 6. DOJ denied the request to expedite the administrative appeal under that criteria even though the agency had previously informed Plaintiff the FOIA Request satisfied the criteria.

33. Plaintiff exhausted his administrative remedies.

CAUSES OF ACTION

A. Count One – Failure to Use Expedited Processing

34. Plaintiff incorporates by reference and re-alleges Paragraphs 1–33.

35. Defendant’s failure to use expedited processing violates the FOIA, 5 U.S.C. § 552(a)(6)(E), and Defendant’s regulations promulgated thereunder, 28 C.F.R. § 16.5(e)(1)(iv).

B. Count Two – Failure to Produce the Requested Records

36. Plaintiff incorporates by reference and re-alleges Paragraphs 1–35.

37. Defendant’s failure to produce the records requested by Plaintiff violates the FOIA, 5 U.S.C. § 552(a).

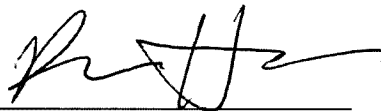
REQUESTED RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- a. EXPEDITE this proceeding pursuant to 28 U.S.C. § 1657;
- b. ORDER Defendant to expediate processing of the FOIA Request;
- c. ENJOIN Defendant from unlawfully withholding non-exempt requested records;
- d. SET a deadline for Defendant to produce all non-exempt requested records;
- e. AWARD Plaintiff costs and reasonable attorney fees; and
- f. GRANT such other relief as the Court deems just and proper.

Dated: July 10, 2020.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Pierre Hines', written over a horizontal line.

Pierre Hines

*Pro se**

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**Plaintiff Pierre Hines is an attorney licensed in D.C. (Bar No. 1034987) and has an application pending to be admitted to the Bar of this Court.*