

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JONATHAN SCANDLING)
200 Public Square, Suite 3000)
Cleveland, Ohio 44114)

Plaintiff,)

v.)

UNITED STATES DEPARTMENT)
OF LABOR)
200 Constitution Ave., NW)
Washington, DC 20210)

Defendant.)

CASE NO.

COMPLAINT

As to Defendant also Serve:)
Justin Herdman)
United States Attorney for)
Northern District of Ohio)
801 W. Superior Ave., Suite 400)
Cleveland, Ohio 44113)

Attorney General of the United States)
U.S. Department of Justice)
10th & Constitution Ave., NW)
Washington, D.C. 22314)

INTRODUCTION

Plaintiff Jonathan Scandling files this complaint for injunctive relief and damages against the United States Department of Labor (the “DOL”) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (the “FOIA”). Mr. Scandling submitted a FOIA request on December 18, 2019, seeking records in the DOL’s control (the “Request” or the “FOIA Request”).

As of the date of this filing, the DOL has not provided any of the records requested in Mr. Scandling’s FOIA request. The DOL has not claimed that the records do not exist, that the DOL

does not have control of them, or that Mr. Scandling is not entitled to them. The DOL also has not claimed that any exemption allows such withholding. Mr. Scandling brings this action to compel the DOL to disclose the records to which Mr. Scandling is entitled.

PARTIES

1. Mr. Scandling is an individual who resides in Rocky River, Ohio.
2. The DOL is an agency of the United States government within the meaning of 5 U.S.C. § 552(f)(1) with its headquarters at 200 Constitution Ave NW, Washington, DC 20210. The DOL has possession and control over the records that Mr. Scandling seeks under FOIA. The DOL may be served by service of process upon the U.S. Department of Labor, Office of the Solicitor of Labor, at 200 Constitution Avenue, N.W., Room S-2002, Washington, DC 20210.

JURISDICTION AND VENUE

3. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
4. Venue is proper in the Northern District of Ohio under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

STATUTORY FRAMEWORK

5. FOIA requires federal governmental agencies to release requested agency records to the public unless one or more specific statutory exemptions apply. 5 U.S.C. § 552(a)(3)(A).
6. Records are agency records subject to FOIA if the agency created or obtained them and the agency controlled them at the time the FOIA request was made.
7. An agency has 20 business days after receipt of a FOIA request in which to determine whether to comply with the request. 5 U.S.C. § 552(a)(6)(A)(i). The agency must then immediately notify the requester of its determination, the reasons for such determination, and the right of

the requester to appeal an adverse determination to the agency's head. U.S.C. § 552(a)(6)(A)(i).

8. If the agency fails to respond within the statutory deadline, the requester "shall be deemed to have exhausted his administrative remedies." 5 U.S.C. § 552(a)(6)(C)(i).
9. This Court has jurisdiction upon receipt of a complaint to review, de novo, the agency's failure to respond and to order the production of any agency records improperly withheld from the requester. 5 U.S.C. § 552(a)(4)(B).

FACTUAL BACKGROUND

10. On December 18, 2019, Mr. Scandling filed a FOIA request that sought documents that the DOL's Wage and Hour Division ("WH") has used or relied upon for purposes of providing training to WH investigators regarding the Fair Labor Standards Act ("FLSA"). The FOIA Request included any and all documents that were given or shown to WH investigators in preparation for, during, or otherwise in connection with any FLSA training course or training presentation from January 1, 2016 to the present, such as Basic Training 1 or Basic Training 2. *See Exhibit 1*, FOIA Request.
11. The DOL acknowledged receipt of the Request on December 19, 2019 and assigned the request a specific tracking number. *See Exhibit 2*, Initial FOIA Acknowledgment.
12. The 20-day deadline for responding to the Request was January 21, 2020.
13. The DOL did not respond to the Request by the January 21, 2020 deadline.
14. Prior to the January 21, 2020 deadline, the DOL did not ask Mr. Scandling for additional time to respond to the FOIA request.

15. On January 28, 2020, Mr. Scandling contacted the DOL inquiring as to the status of his FOIA request. *See Exhibit 3*, January 28, 2020 Inquiry.
16. On February 10, 2020, the DOL's Wage and Hour Division acknowledged receipt of Mr. Scandling's FOIA request. **Exhibit 4**, February Acknowledgment.
17. In the February Acknowledgment, the DOL acknowledged it did not complete Mr. Scandling's request within the statutory time frame. *Id.*
18. In the February Acknowledgment, the DOL did not ask for an extension and did not detail any exceptional circumstance rationalizing its delay. Rather, the DOL claimed it "receives a large volume of requests and [had] acquired a processing backlog," and asked Mr. Scandling for a release to protect his and his client's privacy. *Id.*
19. Mr. Scandling responded via email to the DOL's February Acknowledgement on the very same day, rejecting the necessity of a release as he was not seeking any confidential information. **Exhibit 5**. Mr. Scandling did, however, reiterate his initial request and invite the DOL to contact him should they believe a release was necessary. *Id.*
20. The DOL did not respond to Mr. Scandling and did not provide him with any requested records.
21. Exhibits 1 through 5 represent all correspondence between Mr. Scandling and the DOL regarding Mr. Scandling's FOIA Request.

DOL'S FAILURE TO RESPOND

22. As of the date of this Complaint, the DOL has not disclosed any of the records requested by Mr. Scandling in the FOIA Request.
23. As of the date of this Complaint, the DOL has not communicated to Mr. Scandling any exceptional circumstances that prohibit its ability to disclose the requested records.
24. DOL has not shown that it is exercising due diligence in processing the FOIA Request.

25. The DOL did not request any extension of time with respect to FOIA's statutory deadlines.

COUNT I – VIOLATION OF FOIA

26. Mr. Scandling incorporates by reference the allegations contained in the above paragraphs.

27. The DOL is subject to the FOIA.

21. In the FOIA Request, Mr. Scandling properly requested records within the DOL's control in accordance with the FOIA.

22. Under the FOIA, Mr. Scandling is entitled to the records requested in the FOIA Request.

23. Upon information and belief, the DOL did not conduct an adequate search for records requested in the FOIA Request.

24. The DOL has failed to comply with the statutory deadlines imposed by the FOIA.

25. The DOL has improperly withheld the records requested in the FOIA Request, in violation of FOIA.

26. Because the DOL has failed to comply with the FOIA time limits, Mr. Scandling exhausted his administrative remedies with regard to the wrongfully withheld records requested in the FOIA Request.

PRAYER FOR RELIEF

FOR ALL OF THESE REASONS, Mr. Scandling prays that the Court:

- a. Order the DOL to conduct a reasonable search for all documents and records responsive to the FOIA Request;
- b. Enjoin the DOL from withholding, and order the DOL to produce to Mr. Scandling, the documents and records that the FOIA Request seeks, in accordance with 5 U.S.C. § 552(a)(4)(B);

- c. Assess against the DOL the reasonable attorneys' fees and other litigation costs that Mr. Scandling has reasonably incurred and will continue to incur in prosecuting this action, in accordance with 5 U.S.C. § 552(a)(4)(E); and
- d. Award Mr. Scandling such other relief as this Court considers just and proper.

Respectfully Submitted,

/s/ T. Merritt Bumpass, Jr.

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