

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MICHAEL G. HOROWITZ, Ph.D.
2020 Pennsylvania Avenue N.W.
Box 180
Washington, DC 20006

Plaintiff,

v.

Civil Action No. 1:00CV00848/TFH

PEACE CORPS
1111 20th Street, N.W.
Washington, DC 20526

Defendant.

SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act, 5 U.S.C. Section 552, as amended, ("FOIA") and the Privacy Act, 5 U.S.C. Section 552a, as amended, to order the production of agency records in the possession and control of the Peace Corps, specifically the Administrative Separation Report relating to the Plaintiff written by the Country Director of the Tonga Post in the Kingdom of Tonga in March, 1999.

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. Sections 552(a)(4)(B) and 552a(g)(1).

3. Plaintiff Michael G. Horowitz, Ph.D., was, until 1999, a Peace Corps volunteer in the Kingdom of Tonga, serving as Associate Dean/Social Science at *'Atenisi Institute/University Division* and marketing communications volunteer at the Commerce Ministry's *Tonga Visitors Bureau*. Within just over two years at *'Atenisi Institute*, Plaintiff advanced from sociology instructor to sociology/international studies professor to sociology department chair to Associate Dean/Social Science.

4. Defendant Peace Corps is an agency of the United States as defined in 5 U.S.C. §§ 552(e) and 551(1), and has possession and control over the records that Plaintiff seeks.

5. By letter dated June 18, 1999, Plaintiff through his United States attorney, requested a copy of the Administrative Separation Report ("ASR"). A copy of the initial request letter and Plaintiff's authorization for disclosure to his counsel are attached as Attachment A to this complaint.

6. On March 15, 1999 the Country Director of the Tongan post where Plaintiff was serving as a volunteer had informed Plaintiff's attorney that Plaintiff would be dismissed imminently as a result of an allegation of sexual behavior reportedly made against him twelve months after the alleged behavior had reportedly occurred.

7. The document Plaintiff seeks, the ASR, was written by the Tongan Country Director at some point either prior to or shortly after that meeting on March 15, 1999. The document was displayed to Plaintiff and excerpts read to him on the afternoon of March 16, 1999 at a meeting between Plaintiff and the Country Director. It was represented to Plaintiff at that time that the ASR contained information about these allegations of sexual behavior reportedly made against Plaintiff based on activities that had occurred more than twelve months before. The fact of the allegations was being used to justify his removal as Peace Corps volunteer. The Country Director, pursuant to Peace Corps policy, informed Plaintiff that a decision to administratively separate him from further service had been made and that the ASR would be formally filed with Peace Corps headquarters within eighteen hours unless Plaintiff chose to resign his position. The Country Director further warned that, once filed, the ASR would be accessible to all U.S. government agencies and programs.

8. Despite the fact that Plaintiff believed the allegations in the ASR to be unfounded, he nevertheless decided to resign his post to protect his pending application with the United Nations Volunteers program. After his resignation, the Country Director refused to give Plaintiff or his Tongan attorney a copy of the allegations and Plaintiff, therefore, was obliged to retain an attorney in the United States to make a formal written request for the document.

9. Defendant responded to Plaintiff's formal written request by letter dated August 17, 1999. Defendant's letter cites 5 U.S.C. § 552(b)(5) as justification for the withholding of the ASR in its entirety. A copy of Defendant's response letter is attached as Attachment B to this complaint.

10. By letter dated August 23, 1999, Plaintiff requested an extension of time in which to file his administrative appeal of Defendant's denial of access to the ASR. A copy of Plaintiff's letter requesting this extension of time is attached as Attachment C.

11. By email message dated October 15, 1999, Plaintiff's request for an extension of time in which to file his administrative appeal was denied and Plaintiff was warned he would shortly receive a letter requiring him to file his appeal within fifteen days of the receipt of that letter. However, Plaintiff never received the letter. A copy of the email from Defendant agency so advising Plaintiff is attached as Attachment D.

12. By letter dated November 15, 1999, Plaintiff appealed the denial of access to the ASR. A copy of that appeal letter is attached as Attachment E to this complaint.

13. On March 15, 2000, the EEO office of the Peace Corps offered Plaintiff the opportunity to lodge an EEO complaint regarding his allegation that his resignation was obtained in a discriminatory manner. Plaintiff filed such a complaint on March 30, 2000. Plaintiff has been advised by the attorney representing him in the EEO matter, that the ASR may well prove to be crucial evidence for the support of those claims.

14. By letter dated April 19, 2000, more than the statutorily provided twenty business days after Plaintiff's appeal was filed, the Peace Corps denied his appeal. In that letter the agency cited Exemptions 5 and 6 of the FOIA, 5 U.S.C. § 552(b)(5) and (6) as justification for withholding the ASR. A copy of the agency's denial of Plaintiff's administrative appeal is attached as Exhibit F.

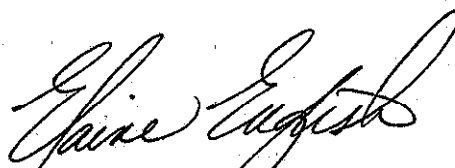
15. The ASR to which Plaintiff seeks access is a record pertaining to him that is contained in a system of records maintained by the Defendant.

16. Plaintiff has a statutory right to the record he seeks under both the Freedom of Information Act, 5 U.S.C. § 552(a)(3)(A) and the Privacy Act, 5 U.S.C. § 552a(d)(1), and there is no legal basis for Defendant's refusal to disclose it.

WHEREFORE, Plaintiff prays that this Court:

- (A) Declare that Defendant's refusal to disclose the record requested by Plaintiff is unlawful and improper;
- (B) Order Defendant to make the requested record promptly available to Plaintiff;
- (C) Award Plaintiff his costs and reasonable attorneys' fees in this action; and
- (D) Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,



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May 11, 2000