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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

PETERSON WAMPOLD ROSATO
FELDMAN LUNA,

Plaintiff,

v.

UNITED STATES COAST GUARD,

Defendant.

NO.

COMPLAINT FOR INJUNCTIVE
RELIEF

The Plaintiff, Peterson Wampold Rosato Feldman Luna, claims and alleges:

I. PARTIES

1.1 Plaintiff Peterson Wampold Rosato Feldman Luna (“PWRFL”) is a Washington professional service corporation with its principal place of business in Seattle, King County, Washington. Plaintiff is a law firm that represents clients on a variety of matters, including personal injury cases.

1.2 Defendant United States Coast Guard (“USCG”) is an agency of the executive branch of the U.S. government and is an agency within the meaning of 5 U.S.C. § 552(f)(1).

II. JURISDICTION AND VENUE

2.1 This Court has subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B) and (a)(6)(E)(iii). This Court also has

1 jurisdiction pursuant to 28 U.S.C. § 1331 and 5 U.S.C. §§ 701-706.

2 2.2 Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B).

3 **III. FACTS**

4 3.1 Plaintiff represents Michael Powers in connection with an incident that occurred on
5 May 2, 2019.

6 3.2 On or about June 20, 2019, Plaintiff submitted a Freedom of Information Act
7 request to the USCG via the FOIA Officer located in Washington, DC a copy of the following:

- 8
- 9 • All communications (911 call recordings, CAD documents, etc.) made on May 2,
10 2019 related to a call about a marine rescue for a capsized boat near the Deception
11 Pass Bridge that early morning. This is to include any communications to, from,
12 and between 911 caller David Shell and any other individuals, parties, and/or
13 agencies.
 - 14 • All other communications related in any way to this incident, which involved a man
15 named Mike Powers and his deceased shipmate, who drowned after their ship
16 capsized on May 2, 2019.
 - 17 • All documents, reports, statements, text messages, emails, interviews, videos, and
18 any other materials related to any investigation (either internal or external) of the
19 boat referenced in the above paragraph and/or the eventual rescue of Michael
20 Powers.
 - 21 • All documents, reports, statements, text messages, emails, interviews, videos, and
22 any other materials related to any investigation (either internal or external) into why
23 the rescue was aborted.
 - 24 • Records related to any subsequent action, discipline, report, or assessment
25 performed after the failure by any agency to perform a rescue after receiving a
26 report of a capsized boat on May 2nd, 2019 near the Deception Pass Bridge.

27 3.4 On or about August 2, 2019 the USCG sent an acknowledgement email to Plaintiff,
28 indicating that the processors in their office would respond to Plaintiff's request "as expeditiously
29 as possible".

30 3.5 Plaintiff has received some of the responsive documents, but has yet to receive all

1 of the materials responsive to this FOIA request, despite approximately 33 different written
2 correspondence from June 6, 2019 to present. *See* Exhibit A.

3 3.6 In a letter received June 25, 2020, Rear Admiral A.J. Vogt told Plaintiff that the
4 Coast Guard had located “86 pages of records” responsive to Plaintiff’s request (including the
5 never produced “executive summary” for this incident), but that those records were being directed
6 to the “FOIA Officer for Commandment” “for processing and direct response to [Plaintiff].” *See*
7 Exhibit A. Despite repeated requests to the FOIA Officer, those records have still not been
8 produced.
9

10 3.7 On September 4, 2020, after sending yet another letter and a draft copy of this
11 complaint to the Coast Guard in an effort to secure these records, Plaintiff had a telephone call and
12 email exchange with Lt. Ashley Dufresne of the United States Coast Guard. Lt. Dufresne stated
13 that Plaintiff would be receiving the requested information “within 3 weeks,” a representation that
14 caused Plaintiff to delay the filing of this lawsuit in the hope that the Coast Guard would finally
15 comply with its obligations
16

17 3.8 After receiving nothing from the Coast Guard generally nor from Lt. Dufresne
18 specifically, Plaintiff inquired as to the status of the promised response on September 22, 2020.
19 The following day, Plaintiff received an email from Lt. Dufresne, indicating that “I am working
20 with our legal department to get an official response to you regarding the FOIA request as the
21 items you requested are still in the process of routing through the chain of command. To be
22 transparent I recently reported into my position when I spoke to you and getting up to speed on the
23 routing process.” The interminable delays by the Coast Guard in producing documents that are
24 responsive to the FOIA request and in the Coast Guard’s possession are in violation of federal
25 statutes and render meaningless the very premise of FOIA, which mandates governmental
26

1 transparency and efficiency with respect to securing records.

2 3.9 Plaintiff has a need for the records requested in order to pursue a claim for injuries
3 on behalf of its client before all applicable statutes of limitations expire.

4 3.10 Plaintiff has exhausted its administrative remedies because Defendant effectively
5 refuses to provide the responsive documents.

6 3.11 Defendant continues to wrongfully withhold the requested records from Plaintiff.
7

8 **IV. CAUSES OF ACTIONS**

9 4.1 The failure of Defendant to promptly make available the records sought by the
10 Request violates FOIA, 5 U.S.C. § 552(a)(3)(A), (a)(6)(A), and Defendant's corresponding
11 regulations.

12 4.2 The failure of Defendants to process Plaintiff's request expeditiously and as soon
13 as practicable violates FOIA, 5 U.S.C. § 552(a)(6)(E), and Defendant's corresponding regulations.
14

15 **V. PRAYER FOR RELIEF**

16 WHEREFORE, the Plaintiff demand damages as follows:

- 17 1. Order Defendant to immediately process and release any responsive records;
- 18 2. Enjoin Defendant from charging Plaintiff search, review, or duplication fees for the
19 processing of the Request;
- 20 3. Award Plaintiff its costs and reasonable attorneys' fees incurred in that action; and
- 21 4. Any other relief as the Court deems just and equitable.
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23 DATED this 29th day of September, 2020.
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**PETERSON | WAMPOLD
ROSATO | FELDMAN | LUNA**

/s/ Michael S. Wampold

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