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8 UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10 CIVIL DIVISION

11 **HENRY KOLTYS**  
12 P.O Box 50544  
13 Montecito, CA 93150

14 Plaintiff,

Case No.:

15 vs.

**COMPLAINT**

16 **ANDREW M. SAUL, COMMISSIONER**  
17 United States Social Security Administration  
18 6901 Security Boulevard  
19 Baltimore, MD 21244

20 And

21 **CHAD F. WOLF, ACTING SECRETARY**  
22 Department of Homeland Security  
23 2707 Martin Luther King Jr. Ave., S.E.  
24 Washington D.C. 20530-0001

25 **SERVE: William Barr, Attorney General**  
26 c/o his designated representative  
27 US Department of Justice  
28 950 Pennsylvania Avenue, N.W.  
Washington D.C. 20530-0001

And

David L. Anderson, US Attorney  
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1 For the Northern District of California  
2 US Attorneys' Office  
3 US Courthouse  
4 450 Golden Gate Avenue  
5 11<sup>th</sup> Floor  
6 San Francisco, CA 94102

7  
8 Defendants.

9 **COMPLAINT FOR INJUNCTIVE AND OTHER**  
10 **RELIEF FOR VIOLATION OF THE FREEDOM**  
11 **OF INFORMATION ACT AND THE PRIVACY ACT**

12 Plaintiff Henry Koltys (hereinafter "Plaintiff" ), by his undersigned counsel, hereby  
13 brings this action against Andrew M. Saul, as Commissioner, United States Social Security  
14 Administration ("SSA"), and Chad F. Wolf, as Acting Secretary, United States Department of  
15 Homeland Security (hereinafter "DHS"), Defendants, and for his causes of action asserts as  
16 follows:

17 **INTRODUCTION**

18 1. This is an action pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C.  
19 § 552, and the Privacy Act, 5 U.S.C. § 552a, to require the disclosure of agency records that SSA  
20 and DHS have improperly withheld from Plaintiff, and for other relief as stated.

21 2. Pursuant to FOIA and the Privacy Act, Plaintiff requested records pertaining to  
22 himself that are kept by SSA and DHS in the ordinary course of business in a system or records.  
23 The purpose of these requests is to allow Plaintiff to properly assess and respond to SSA's  
24 treatment of him in his employment relationship with that Agency, including an investigation  
25 into his alleged conduct at his place of employment at the SSA's Santa Barbara, California,  
26 Hearing Office.  
27



**JURISDICTION AND VENUE**

1  
2 9. This Honorable Court has jurisdiction over this Complaint pursuant to 5 U.S.C. §  
3 552(a)(4)(B), 5 U.S.C. § 552a(g)(1)(B) and (D) and 28 U.S.C. §§ 1331 and 1361.

4  
5 10. Venue lies in the United States District Court for the Northern District of  
6 California pursuant to 5 U.S.C. § 552(a)(4)(B), as the applicable Regional Office of SSA is  
7 located there. DHS also maintains an office in this District.

8  
9 **STATEMENT OF FACTS**

10 11. Plaintiff hereby incorporates herein all allegations contained in the preceding  
11 paragraphs, as if fully set forth herein.

12 12. Plaintiff is an Administrative Law Judge employed by SSA, Region 9, at its  
13 hearing office location in Santa Barbara, CA. He has been an Administrative Law Judge in  
14 Santa Barbara since August 23, 2015. He has previously held full-time positions in the United  
15 States government periodically since October 1979.

16  
17 13. The Santa Barbara hearing office in which Plaintiff works reports to the Regional  
18 Chief Administrative Law Judge in SSA’s San Francisco, California, office where at least one set  
19 of the documents being requested is kept electronically and/or on paper.

20 14. On or about January 9, 2020, Plaintiff was advised that he was under investigation  
21 for allegedly being in possession a weapon on the premises of the Santa Barbara hearing office  
22 on the previous day. Exhibit A. Due to this investigation, Plaintiff was sent to his home to  
23 perform his duties while the investigation was ongoing.

24  
25 15. The investigation was conducted by, among others, Brian Rudick, Workplace and  
26 Domestic Violence Program Office, under SSA’s “Violence in the Workplace” policies and  
27 program. This investigation ended in or about the end of February or the beginning of March  
28

1 2020. During that investigation, Plaintiff voluntarily provided documents and information to  
2 SSA for its investigation and the agency collected statements and other information about  
3 Plaintiff and the alleged incident from other sources. Upon information and belief, a report was  
4 issued regarding this investigation which included a “psychological evaluation” of the Plaintiff.  
5 Plaintiff has at all times denied the allegation for which he was investigated. Upon information  
6 and belief, no wrongdoing by Plaintiff was ever found by SSA.  
7

8 16. After the conclusion of the investigation, Plaintiff was advised on March 11, 2020  
9 that he was being returned to duty at the Hearing Office to work in person. On March 16, 2020,  
10 he returned with several restrictions on his movement and actions, as well as extra security  
11 “precautions,” including, but not limited to having to use the public entrance instead of the  
12 employee entrance, being denied the codes to doors in the office, being told not to wear his  
13 empty holster and not to have any contact with employees regarding his return, save for  
14 managers, and having to be “wanded” by a security guard each day. No written or verbal  
15 explanation for this treatment or continued heightened monitoring has ever been provided to  
16 Plaintiff by SSA.  
17

18 17. Despite no finding of wrongdoing by Plaintiff, he endured mistreatment every day  
19 after he was returned to work at the Hearing Office even after the onset of the coronavirus  
20 infection in California, until the COVID-19 pandemic shuttered the hearing office for all  
21 employees and Plaintiff returned to work at home on March 23, 2020. On March 21, 2020 (a  
22 Saturday), the SSA Commissioner sent a “Commissioner Broadcast” via email advising all but a  
23 few essential SSA employees to work from home. The hearing office is still closed due to the  
24 pandemic. Plaintiff is still working from home.  
25  
26  
27  
28

1 18. Having received neither a firm written conclusion to the investigation nor any  
2 explanation of his post-investigation treatment, on March 18, 2020, Plaintiff filed with SSA a  
3 request for his own records, pursuant to both FOIA and the Privacy Act. *See* Exhibit B.  
4

5 19. The request was as follows:

6 A. Please provide copies of all documents relating to any and all  
7 investigations or inquiries convened and/or conducted by personnel in  
8 the Santa Barbara Hearing Office, personnel in the Region 9 regional  
9 office, or by the Agency's Workplace and Domestic Violence Program  
10 Office, in Baltimore MD, including but not limited to, any and all  
11 records, notes of interviews, transcripts, statements, recommendations,  
12 reports, findings, conclusions and all other documents relating to the  
13 investigation described above concerning ALJ Henry Koltys.

14 B. Please also provide copies of any and all correspondence, including  
15 email, IM messages, text messages, memoranda or any other written  
16 or recorded medium, sent among the Office of the Chief ALJ, Region  
17 9 personnel, personnel within the Santa Barbara Hearing Office and/or  
18 with the Baltimore Headquarters that discuss or refer to allegations  
19 that ALJ Koltys possessed a firearm in the hearing office on or about  
20 January 8, 2020.

21 C. Please also provide copies of any and all correspondence,  
22 communications, emails or writings among the Office of the Chief  
23 ALJ, Region 9 Regional Chief ALJ, other personnel in region 9,  
24 personnel within the Santa Barbara Hearing Office, personnel with  
25 the Office of Hearing Operations and/or the Baltimore Headquarters  
26 that discuss or refer to ALJ Henry Koltys's return to the hearing office  
27 on March 16, 2020, and/or the directive that he submit to additional  
28 security screening upon his return.

D. Please also provide copies of any and all of the records, documents  
and materials described below:

- 1) copies of any all records, reports evaluations, assessments or other written materials prepared by Dr. Mark Brezinger, or Mark Rudick and/or others within DCBFM regarding ALJ Henry Koltys that are in the possession of personnel within the Santa Barbara Hearing Office, Region 9 regional office in San Francisco, Falls Church OHO Headquarters Office, the Agency's Workplace and Domestic Violence Program Office, or the Office of General Counsel in Baltimore, MD;

- 1 2) copies of any and all records, reports, evaluations, assessments, or other  
2 written materials prepared by personnel within the Office of Facilities  
and Logistics Management: and
- 3 3) copies of any and all records, reports, evaluations, assessments, or other  
4 written  
5 materials prepared by personnel within the Office of Security and  
6 Emergency Preparedness and/or the Agency's Workplace and Domestic  
7 Violence Program Office, DCBFM, Office of General Counsel, Regional  
8 Counsel or other SSA offices conducted during a workplace violence  
9 evaluation, review or assessment of him in Baltimore, MD or elsewhere.

10 20. Eighty-three (83) days later, on June 9, 2020, well beyond the statutory deadline  
11 within which to respond, SSA sent Plaintiff a letter requesting clarification of his FOIA/Privacy  
12 Act request. *See* Exhibit C. Plaintiff complied with the request on June 15, 2020. *See* Exhibit D.

13 21. On July 7, 2020, SSA responded to the FOIA/Privacy Act request by  
14 unreasonably, willfully and intentionally demanding exorbitant fees and costs in the estimated  
15 amount of \$3,245.00, despite the fact it knew the precise location of the requested documents.  
*See* Exhibit E.

16 22. Rather than pay these excessive fees and costs, and in good faith, on July 20,  
17 2020, Plaintiff narrowed his request substantially and timely resubmitted it via email. *See*  
18 Exhibit F.

19 23. The narrowed request was as follows:

20 A. To avoid costly fees, Judge Koltys is narrowing his request to two items at this  
21 time.

- 22 1. The psychological evaluation done by Dr. Brenzinger on behalf of the Workplace  
23 and Domestic Violence Program Office or any other requesting entity; and
- 24 2. Any report, evaluation or other documents compiled by that Committee or others  
25 working with the Committee to resolve the investigation into Judge Koltys that  
26 resulted in his return to the workplace, with certain security restrictions, and any  
27 orders or directives by the Committee to return Judge Koltys to work associated  
28 with that report.

1  
2 24. On September 25, 2020, some sixty-seven (67) days after the narrowed request  
3 was submitted and again well outside the statutory deadline within which to respond, SSA sent  
4 the Plaintiff another response. *See* Exhibit G.

5 25. Despite the substantial reduction in the number of documents requested, the SSA  
6 did not reduce the fees demanded, but rather almost doubled them, to an estimated amount of  
7 \$6,048.00. *See* Exhibit G.

8  
9 26. On September 28, 2020, Plaintiff responded to this SSA decision. *See* Exhibit H.

10 27. On October 6, 2020, Plaintiff filed an appeal of the SSA decision. *See* Exhibit I.

11 28. Plaintiff now brings this action because more than twenty (20) days have elapsed  
12 since the filing of the appeal and SSA has taken no action on it. Plaintiff has therefore exhausted  
13 his administrative remedies with regard to SSA.  
14

15 27. SSA continues to wrongfully, willfully and intentionally claim that Plaintiff must  
16 pay excessive fees for it to access and produce the requested records documents which pertain to  
17 Plaintiff himself and to which he is entitled under FOIA and the Privacy Act.

18 28. Pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(III), the fees chargeable to Plaintiff “shall be  
19 limited to reasonable standard charges for document search and duplication.” The charges  
20 sought to be imposed by SSA are neither “reasonable” nor “standard.”  
21

22 29. Moreover, those charges include “review time.” Such charges are permissible only  
23 when records are requested for commercial use. *See*, 5 U.S.C. § 552(a)(4)(A)(ii)(II). As  
24 Plaintiff’s request is not for commercial use, SSA’s effort to impose review charges constitutes a  
25 violation of FOIA.  
26

27 30. SSA is not authorized to impose fees or charges pursuant to 42 U.S.C. § 1306(c)  
28 because Plaintiff’s requests are directly related to the administration of programs under the  
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1 Social Security Act including, *inter alia*, the operations of the hearing office, the conduct of  
2 hearings by Administrative Law Judges, and the operation of the Workplace and Domestic  
3 Violence Program Office which manages the Workplace Violence programs and policies.

4  
5 31. Assuming, *arguendo*, that SSA is authorized by statute to impose any fees or costs in  
6 connection with Plaintiff's request, SSA should be held to have forfeited its right to any such  
7 fees or costs due to the untimely nature of both of its responses, its willful and intentional  
8 behavior with respect to these fees and its failure to respond in any manner to Plaintiff's appeal  
9 of October 6, 2020.

10  
11 32. On June 16, 2020, Plaintiff filed FOIA and Privacy Act requests with DHS. *See*  
12 Exhibit J.

13 33. These requests sought the following records from Defendant DHS:

14 A. In accordance with this statute, I hereby make a request for any and all  
15 documents related to an allegation that Administrative Law Judge Henry Koltys had a  
16 firearm in the Social Security Administration's Santa Barbara Hearing Office on or about  
17 January 8, 2020. This request specifically seeks copies of any of the following documents  
and materials:

18 1) Copies of all documents, reports, statements, photos, or other tangible materials  
19 collected or assembled by employees of Contractor Paragon Systems that relate to the  
20 allegation that ALJ Henry Koltys had a firearm in the Santa Barbara Hearing Office on  
January 8, 2020.

21 2) Copies of all investigative files, incident reports, employee complaints, witness  
22 summaries, or investigation findings and/or narratives prepared by an employee of  
23 Contractor Paragon Systems concerning the allegation ALJ Henry Koltys had a firearm in  
24 the Santa Barbara Hearing Office on January 8, 2020 that was submitted to Inspector  
Manueal Andrade and/or any employee of The Federal Protective Service and/or  
Department of Homeland Security.

25 3) Copies of any and all reports of investigation, conclusions, or findings prepared by  
26 employees of Contractor Paragon Systems that relate to the allegation that ALJ Henry  
Koltys had a firearm in the Santa Barbara Hearing Office on January 8, 2020.

27 4) Copies of all investigative files, incident reports, employee complaints, witness  
28 summaries, or investigation findings and/or narratives concerning the allegation ALJ

1 Henry Koltys had a firearm in the Santa Barbara Hearing Office on January 8, 2020,  
2 which are in the possession of Inspector Manuel Andrade and/or any employee of The  
3 Federal Protective Service and/or Department of Homeland Security.

4 5) Copies of any and all reports of investigation, conclusions, or findings that relate to the  
5 allegation that ALJ Henry Koltys had a firearm in the Santa Barbara Hearing Office on  
6 January 8, 2020, which are in the possession of Inspector Manuel Andrade and/or any  
7 employee of The Federal Protective Service and/or Department of Homeland Security.

8 6) Copies of any and all threat assessments, threat evaluations, psychological or mental  
9 health reports that concern ALJ Henry Koltys, which are in the possession of Inspector  
10 Manuel Andrade and/or any employee of The Federal Protective Service and/or  
11 Department of Homeland Security.

12 34. Since June 16, 2020, 146 days have elapsed without any response from DHS.

13 Plaintiff now brings this action as more than twenty (20) days have elapsed since the filing of the  
14 requests and DHS has taken no action on them. Plaintiff has therefore exhausted his  
15 administrative remedies with respect to DHS.

16 35. This action is timely, as it is brought within the six (6) year statute of limitations as  
17 set forth in 28 U.S.C. § 2401(a); 5 U.S.C. § 552; and 5 U.S.C. § 552a.

18 **CLAIMS FOR RELIEF**

19 **COUNT I: FREEDOM OF INFORMATION ACT: Defendant SSA**

20 36. Plaintiff incorporates herein all allegations set forth in the preceding paragraphs, as if  
21 fully set forth herein.

22 37. SSA's failure to release responsive records without excessive costs or fees violates  
23 Plaintiff's right to those records under FOIA, 5 U.S.C. §552(a)(3)(A).

24 **COUNT II: PRIVACY ACT: Defendant SSA**

25 38. Plaintiff incorporates herein all allegations set forth in the preceding paragraphs, as if  
26 fully set forth herein.

1 39. SSA's failure to release responsive records without excessive costs or fees violates  
2 Plaintiff's right to obtain records pertaining to himself under the Privacy Act, 5 U.S.C. § 552a.

3 **COUNT III: FREEDOM OF INFORMATION ACT: Defendant DHS**

4 40. Plaintiff incorporates herein all allegations contained in the preceding paragraphs, as  
5 if fully set forth herein.  
6

7 41. DHS's failure to release responsive records or respond to Plaintiff's request violates  
8 Plaintiff's right to those records under FOIA, 5 U.S.C. §552(a)(3)(A).

9 **COUNT IV: PRIVACY ACT: Defendant DHS**

10 42. Plaintiff incorporates all allegations contained in the preceding paragraphs, as if fully  
11 set forth herein.  
12

13 43. DHS's failure to release responsive records respond to Plaintiff's request violates  
14 Plaintiff's right to records pertaining to himself under the Privacy Act, 5 U.S.C. § 552a.

15 **PRAYER FOR RELIEF**

16 **WHEREFORE**, Plaintiff respectfully prays that this Honorable Court:

- 17
- 18 a. Order both Defendants to disclose and release the requested records in  
19 their entirety and to make copies available to Plaintiff;
  - 20 b. Enjoin Defendants from charging Plaintiff any search, review, or  
21 duplication fees for the processing of the Requests;
  - 22 c. Award Plaintiff damages for the Defendant SSA's willful and intentional  
23 imposition of excessive fees and costs in order to deprive Plaintiff of his own  
24 records, in an amount determined to be just and proper by this Court;
- 25  
26  
27  
28

1 d. Award Plaintiff costs and reasonable attorneys' fees in this action as  
2 provided by 5 U.S.C. § 552(a)(1)-(2) and/or 5 U.S.C. § 552a(g)(3)(B) and 5  
3 U.S.C. § 552a(g)(4)(B); and

4 e. Award such other and further relief as this Honorable Court deems just  
5 and proper.  
6

7 Dated this 9<sup>th</sup> day of December, 2020

Respectfully submitted,

8 Tully Rinckey PLLC

9 By: /s/ Steven L. Herrick

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