

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SUSAN B. LONG)
Transactional Records Access Clearinghouse)
488 Newhouse II)
Syracuse University)
Syracuse NY 13244-2100)
and)
)
DAVID BURNHAM)
Transactional Records Access Clearinghouse)
1718 Connecticut Avenue, NW)
Suite 200)
Washington DC 20009)
)
Plaintiffs,) Civil Action No.
)
v.)
)
DEPARTMENT OF JUSTICE)
950 Pennsylvania Avenue, NW)
Washington, DC 20530)
)
Defendant.)
_____)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, as amended, to compel the Department of Justice to release records from the computerized case management databases maintained by the Executive Office for United States Attorneys (“EOUSA”) and documentation concerning these databases. The records at issue chronicle activities of each United States Attorneys Office and they are used to produce statistical reports that the government uses to support budget requests and law enforcement policies. Plaintiffs have regularly requested the most recent data, but the Department of Justice has resisted and

delayed release of this data by asserting that it is revising its exemption claims and intends to withhold information that it previously acknowledged was subject to release under the FOIA.

2. The Department's failure to promptly release this data in accordance with the FOIA is also at issue in another pending action, *Long v. Department of Justice*, Civil Action No. 1:00CV00211 (PLF), in which the Department delayed release of data and documentation for over two years by making erroneous claims and repeatedly shifting its position on what portions of the database are exempt from disclosure under the FOIA. In July 2002, the Department filed in Civil Action No. 1:00CV00211 a revised list of fields in the EOUSA case management records that it claims are exempt from disclosure under specified FOIA exemptions, 5 U.S.C. § 552(b). However, the Department has refused to apply the position set forth in its July 2002 papers to the EOUSA case management data at issue in this suit. Instead, it has delayed releasing records on the ground that the EOUSA is revising its position, and it is withholding information that its papers in Civil Action No. 1:00CV00211 concede are not exempt under the FOIA. The Department's new claims are without merit and limit the ability of Plaintiffs and the public to evaluate whether the Department's claims concerning its activities are consistent with the database that it uses to manage those activities.

Jurisdiction

3. This Court has jurisdiction under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331, as this action arises under the FOIA.

Parties

4. Plaintiffs Susan B. Long and David Burnham are co-directors of the Transactional Records Access Clearinghouse ("TRAC") and the requesters of the withheld records. TRAC is a nonprofit organization affiliated with Syracuse University. Its mission is to compile and

disseminate comprehensive information about the functioning of federal law enforcement, staffing and spending. TRAC regularly collects detailed data on law enforcement from the federal government, analyzes and verifies that data, distributes it on the World Wide Web, and creates various information products that are made available to the public. Plaintiffs have requested the records at issue here as part of TRAC's efforts to inform the public about the law enforcement and civil litigation activities of federal agencies.

5. Defendant Department of Justice is an agency of the United States, and it has possession of and control over the records that Plaintiffs seek.

Statement of Facts

6. Each United States Attorneys Office maintains computerized record-keeping systems that track the investigations, civil and criminal cases, and debt collection matters within each office.

7. Each month the individual United States Attorneys Offices extract information on investigations, civil and criminal cases, and debt collection matters from their record-keeping systems and send the information to the EOUSA in Washington, DC. The EOUSA uses this information to compile centrally maintained case management databases known as the "Central System" databases.

8. The Department of Justice uses the EOUSA's Central System databases to respond to requests for statistical information from the Office of Management and Budget, Congress, and the public. The Department also uses the EOUSA's Central System databases to compile the *Attorney General's Annual Report*, *United States Attorneys Annual Statistical Reports*, management reports for use within the Department, and other reports that the

Department produces to formulate, justify, and explain the Department's law enforcement and other activities.

Prior Related Litigation

9. Beginning in 1989, Plaintiffs, on behalf of TRAC, submitted FOIA requests to the EOUSA for electronic copies of EOUSA's central case management data from fiscal year 1974 and later years. The EOUSA released some of the data requested, but redacted information pursuant to the FOIA.

10. In March 1998, Plaintiffs brought suit under the FOIA against the Department in the Northern District of New York regarding electronic case management records of the Western District of Kentucky and the District of Minnesota. *Long v. United States Department of Justice*, C.A. No. 98-cv-370.

11. The Northern District of New York directed the Department of Justice to produce an index that identified its exemption claims for this data and, on June 17, 1999, the Department produced a table that listed all of the fields in the case management database files at issue in that action, identified those fields that Department claimed were exempt from disclosure, and specified the exemption under 5 U.S.C. § 552(b) that the Department asserted was applicable. All of the substantive fields within the EOUSA's Central System databases have corresponding fields within the list of fields produced by the Department on June 17, 1999.

12. On June 18, 1999, the Director of the Executive Office for the United States Attorneys, Donna Bucella, signed a letter stating that "[i]n response to future requests for case management system records, we intend to continue to release the fields agreed upon in the subject lawsuit [*Long v. Department of Justice*, C.A. No. 98-cv-370] as the appropriate ones under FOIA, absent unforeseen complications, errors or changes."

13. Just a few months later, the EOUSA repudiated the representations made in the June 18, 1999, Bucella letter and began withholding and delaying the release of EOUSA case management data based on new exemption claims that it subsequently conceded were unfounded or did not defend when challenged. On October 29, 1999, the EOUSA sent a letter to TRAC in which it announced that the agency would not provide current data from the electronic case management databases until after the end of the fiscal year because EOUSA claimed that such data is “exempt from disclosure pursuant to 5 U.S.C. § 552(b)(5).” This letter and subsequent correspondence from the EOUSA in December 1999 and January 2000 stated that EOUSA would produce fiscal year-end data for the years 1974 to the present for all criminal, civil and collections case file systems in accordance with the procedures agreed to in *Long v. Department of Justice*, C.A. No. 98-cv-370.

14. On February 7, 2000, Plaintiffs brought suit against the Department under the FOIA to challenge the Department’s claim that 5 U.S.C. § 552(b)(5) allowed EOUSA to withhold case management data until the end of the fiscal year. *Long v. Department of Justice*, Civil Action No. 1:00CV00211 (PLF).

15. On March 24, 2000, the Assistant Director of the FOIA/PA Division of the EOUSA sent a letter to TRAC stating that delivery of the year-end fiscal 1974 through 1997 EOUSA case management data and the year-end fiscal year 1999 EOUSA case management data would be delayed because the EOUSA was revising its position on the application of the FOIA to these records and intended to withhold additional information.

16. On April 11, 2000, Plaintiffs filed an amended complaint to reflect the new issues raised by the Department’s March 24, 2000, announcement that it planned assert additional exemptions and further delay release of the database records.

17. In May 2000, the EOUSA began to release EOUSA case management data from fiscal year 1974 and later years, but withheld data fields and entire records based on exemption claims that it did not assert in June 1999. The EOUSA withheld from the data that it released to Plaintiffs information and records that it subsequently conceded are not exempt from disclosure under the FOIA.

18. The Department filed in this Court declarations and briefs that contained inaccurate statements concerning the records and information that it was withholding from Plaintiffs. The Department was directed to file a summary judgment motion to justify its response to Plaintiffs' FOIA request, and responded by filing papers that had to be withdrawn or stricken three times because they contained material errors. The Department voluntarily withdrew the first version of its summary judgment motion after admitting that it contained errors. It withdrew the second version after Plaintiffs filed a motion to strike the papers for failure to comply with Federal Rule of Civil Procedure 11. This Court struck the third version of the motion after the Department acknowledged that the declarations and brief in this version also contained material errors.

19. The Department's errors and repeated changes in its position on release of the EOUSA case management data delayed release of the fiscal-year end case management data that the Department had promised to release in October 1999. In February 2002, the EOUSA was still releasing additional database records from fiscal years 1974-1997, 1999 and 2000, to correct errors in its earlier responses, and on June 28, 2002, the Department re-released database files from fiscal years 1974-1991, mid-year 1999 and mid-year 2000 in order to correct additional errors in its response to Plaintiffs' requests for these records.

20. On March 26, 2002, the EOUSA informed TRAC that it would not release case management data from October, November and December 2001 and January 2002 on March 26, 2002, as the EOUSA had previously promised. The EOUSA told TRAC that it was postponing the release of this data to allow the EOUSA “to ensure that our release of data does not in any way jeopardize the Department’s counter-terrorism efforts or threaten current national security interests.” This review delayed the release of the October, November and December 2001 and January 2002 data until April 2002.

Requests for May, June, July and August EOUSA Case Management Data

21. On June 4, 2002, pursuant to the FOIA, plaintiff Long sent a written request to the Assistant Director of the FOIA/PA Division of the EOUSA for six files of the EOUSA case management database containing data through May 2002. The FOIA/PA Division of the EOUSA sent a letter acknowledging receipt of this FOIA request and identifying the request as Request Number 02-1986.

22. On July 12, 2002, pursuant to the FOIA, plaintiff Long sent a written request to the Assistant Director of the FOIA/PA Division of the EOUSA for six files of the EOUSA case management database containing data through June 2002. The FOIA/PA Division of the EOUSA sent a letter acknowledging receipt of this FOIA request and identifying the request as Request Number 02-2065.

23. On August 6, 2002, pursuant to the FOIA, plaintiff Long sent a written request to the Assistant Director of the FOIA/PA Division of the EOUSA for six files of the EOUSA case management database containing data through July 2002. The FOIA/PA Division of the EOUSA sent a form letter acknowledging receipt of this FOIA request and identifying the request as Request Number 02-2893.

24. On September 9, 2002, pursuant to the FOIA, plaintiff Long sent a written request to the Assistant Director of the FOIA/PA Division of the EOUSA for six files of the EOUSA case management database containing data through August 2002. The FOIA/PA Division of the EOUSA sent a form letter acknowledging receipt of this FOIA request and identifying the request as Request Number 02-2896.

25. Plaintiff Long's FOIA requests for the May, June, July and August EOUSA case management data requested that the EOUSA make available six specific files known as the civil flagged master, civil delete history file, criminal charge file, criminal flagged master, criminal immediate declination file, and criminal delete history file.

26. Plaintiff Long's FOIA requests for the May, June, July and August case management files also requested that TRAC be granted a waiver of fees under 5 U.S.C. § 552(a)(4)(A)(iii). All four FOIA requests referenced detailed information concerning TRAC's qualifications for a fee waiver that TRAC had furnished to the EOUSA FOIA Unit in April and May of 2000.

27. Plaintiff Long's FOIA requests for the May, June, July and August case management files also requested that the EOUSA provide records concerning any revisions in the central system codes contained in the criminal flagged master, civil flagged master, criminal charge and criminal immediate declination files.

EOUSA's Decision To Delay Release and Withhold Additional Data

28. On April 30, 2002, this Court entered an Order in *Long v. Department of Justice*, Civil Action No. 1:00CV00211 (PLF), striking the Department's third summary judgment motion and directing that the agency file a new summary judgment motion that is accurate and has a proper factual basis. During May and June 2002, the Department represented that, in

response to this Order, the Department was taking all possible steps to ensure the completeness of the agency's release and the accuracy of its motion. The Department requested that the deadline for submitting a corrected, fourth version of its motion for summary judgment be extended from May 17, 2002, to June 28, 2002, so that it could implement the necessary procedures. This Court granted those extensions.

29. On June 28, 2002, the Department submitted a revised motion for summary judgment, but during July it discovered that this fourth version also contained material errors. On July 31, 2002, the Department again submitted revised papers in *Long v. Department of Justice*, 1:00CV00211 (PLF), that included a corrected list of fields in the EOUSA case management data that it claims are exempt from disclosure under the FOIA.

30. In late 2001 and early 2002, TRAC used the information in the "program category" field and other information in the EOUSA case management data to prepare reports on the activities of the FBI and prosecutions by the Department of Justice. These reports were examined by, among others, members of the United States Senate Judiciary Committee. On June 14, 2002, the Chairman of the Committee on the Judiciary and Ranking Member of the Judiciary Subcommittee on Crime and Drugs wrote a letter to the Attorney General and the Director of the FBI that stated that the information made available by TRAC "raises troubling questions about whether the FBI and Department of Justice are devoting sufficient resources to counter-terrorism efforts," and requested that the Attorney General and the Director of the FBI provide answers to questions about the information by August 30, 2002.

31. In August 2002, the EOUSA began to delay release of case management information that was responsive to pending TRAC FOIA requests. Between August 6, 2002 and September 13, 2002, the EOUSA repeatedly informed TRAC that the agency would be delivering

the May 2002 EOUSA case management data within a few days, but consistently failed to deliver the promised data. Then, on September 17, 2002, TRAC received a letter from the Assistant Director of the EOUSA FOIA and Privacy Staff stating that "there will be a delay in our production of the May case management tapes, and tapes for subsequent months" in response to TRAC's FOIA requests. The letter stated that the recently appointed Director of the EOUSA "has requested that we conduct a thorough inquiry as to whether the release of information within the Central System could compromise national security or jeopardize the Department's anti-terrorism efforts, particularly in light of the recent addition of new coding categories to the Central System." The letter further stated that "[w]e estimate that we will be able to provide the requested data by mid-October 2002."

32. On September 25, 2002, TRAC received a letter from the Assistant Director of the EOUSA FOIA and Privacy Staff stating that the EOUSA will conduct the review discussed in her September 17 letter "expeditiously" and "[w]e expect to notify you of our progress by mid-October." The letter also stated that the EOUSA was "unaware" of any prior communication stating that the EOUSA had completed a review of whether releasing Central System data could compromise national security or jeopardize anti-terrorism efforts.

33. On October 16, 2002, TRAC received a letter from the Assistant Director of the EOUSA FOIA and Privacy Staff stating that the EOUSA still had not concluded its review of the its Central System case management files and was not prepared to release the criminal flagged master, criminal immediate declination file, and criminal delete history files.

34. On October 17, 2002, TRAC received from the EOUSA three tapes with data from the civil flagged master, civil delete history file and criminal charge file for May 2002, June 2002 and July 2002.

35. On October 29, 2002, Plaintiffs received a letter from the Assistant Director of the FOIA/PA Division of the EOUSA, stating that the EOUSA had made a “final agency decision” to “redact information from the ‘program category’ field from the records of ongoing investigations in the Criminal Flagged Master, Criminal Immediate Declination, and Criminal Delete History file.” The letter further stated that “[w]e estimate that we will be able to provide you with the requested records by December 2, 2002.”

36. On November 1, 2002, TRAC received from the EOUSA copies of the Central System criminal immediate declination files for the months of May 2002, June 2002, and July 2002.

37. On November 20, 2002, TRAC received from the EOUSA copies of the Central System civil flagged master, civil delete history file, criminal charge and criminal immediate declination files for the month of August 2002.

38. On December 3, 2002, TRAC received from the EOUSA copies of the Central System criminal flagged master files for the months of May 2002, June 2002, July 2002, and August 2002. TRAC also received from the EOUSA copies of eight Central System case management files for the month of September 2002.

39. On December 11, 2002, TRAC received from the EOUSA copies of the Central System criminal delete history files for the months of May 2002, June 2002, July 2002, and August 2002.

40. The EOUSA withheld from the May-September 2002 files delivered to TRAC between October 17 and December 11 the information in fields for which the Department has asserted exemptions in *Long v. Department of Justice*, Civil Action No. 1:00CV00211 (PLF).

41. The EOUSA also withheld from the criminal delete history and criminal flagged master files delivered to TRAC information in “program category” field of selected records. The EOUSA has not disclosed the criteria that it used to select the records in which this information has been withheld. The EOUSA withheld this information even though its summary judgment motion papers in *Long v. Department of Justice*, Civil Action No. 1:00CV00211 (PLF), do not identify any exemption that authorizes withholding information in the program category field.

42. The EOUSA has disclosed the information in the program category field of EOUSA case management files created from fiscal year 1974 through April 2002. Because some matters that appear in these pre-April 2002 files also appear in the May-August 2002 files, some of the program category information that the EOUSA redacted from the May-August 2002 files is information that the EOUSA has already disclosed.

43. The “program category” information in the EOUSA case management database files identifies the program category (for example, domestic terrorism, immigration, civil rights, organized crime, bank robbery) associated with each record in the database files. By selectively withholding the “program category” information in the case management files created after April 2002, the Department limits the ability of the public, including Plaintiffs, “to keep current tabs on whether the Department’s public rhetoric is matched by its allocation of law enforcement resources.” Letter of Patrick J. Leahy and Charles E. Grassley to the Hon. John Ashcroft, November 27, 2002.

44. On November 1, 2002, Plaintiffs submitted an administrative appeal from the October 29, 2002, “final agency decision” in which the EOUSA announced that it would withhold “program category” information from the May, June, July and August 2002 case management records requested by TRAC.

45. More than 20 days working days have passed since Plaintiffs submitted their appeal of the EOUSA's "final agency decision" concerning TRAC's request for May, June, July and August 2002 case management records and the Department of Justice has not notified Plaintiffs of a determination in that appeal.

CLAIM FOR RELIEF

Wrongful Withholding of Nonexempt Case Management Data

46. In releasing records data in response to TRAC's requests for EOUSA case management files from the May, June, July and August 2002, the EOUSA has redacted fields from the database records that are not subject to any valid claim of exemption under the FOIA. The information that has been improperly redacted includes entries in the "program category" and "lead charge" fields that the EOUSA has withheld to prevent public scrutiny of agency law enforcement activities.

47. Plaintiffs have a statutory right to prompt release of all non-exempt information in the EOUSA case management data from May, June, July and August 2002 that Plaintiffs have requested under the FOIA. The EOUSA has violated that right by withholding non-exempt information.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court:

(1) Declare that defendant's failure to disclose the non-exempt fields and portions of fields from the May-August 2002 EOUSA case management records requested by Plaintiffs is unlawful under the FOIA;

(2) Order defendant to make available the non-exempt fields and portions of fields from the May, June, July and 2002 EOUSA case management files requested by Plaintiffs without further delay;

(3) Award Plaintiffs their costs and reasonable attorneys' fees in this action; and

(4) Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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