

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ADVOCATES FOR HIGHWAY AND
AUTO SAFETY
750 First St., NE, Suite 901
Washington, DC 20002

Plaintiff,

v.

FEDERAL MOTOR CARRIER SAFETY
ADMINISTRATION
400 7th St., SW
Washington, DC 20590

Defendant.

C. A. No. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This action is brought under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, to compel the production of records relating to the Federal Motor Carrier Safety Administration's (FMCSA) activities to develop and implement a program to evaluate Mexico-domiciled motor carriers that FMCSA would allow to operate beyond the current U.S. municipalities and commercial zones on the U.S.-Mexico border.

JURISDICTION

2. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

PARTIES

3. Plaintiff Advocates for Highway and Auto Safety is a non-profit alliance of consumer, health and safety groups and insurance companies and agents working together to make America's roads safer.

4. Defendant FMCSA is an agency of the federal government of the United States and has possession of and control over the records Plaintiff seeks.

FACTS

5. By letter to Defendant dated October 17, 2006, and signed by Gerald A. Donaldson, Senior Research Director, Plaintiff requested from Defendant 1) records relating to FMCSA activities to develop, evaluate, consider, or implement any program intended to evaluate any Mexico-domiciled motor carriers that would be permitted to operate beyond the current U.S. municipalities and commercial zones on the U.S.-Mexico border; 2) records that discuss, evaluate, consider or refer to how such a program complies with the funding restriction of Section 350(a) of the Fiscal Year 2002 U.S. Department of Transportation and Related Agencies Appropriations Act, Pub. L. 107-87 (Dec. 18, 2001); and 3) records that discuss, evaluate, consider or refer to the specific policy considerations, decisions, and actions by the FMCSA and the U.S. Department of Transportation for how any such program complies with each specific requirement set forth in Sections 350(a) and (b) of the Fiscal Year 2002 U.S. Department of Transportation and Related Agencies Appropriations Act. In its request, Plaintiff asked that all fees associated with the request be waived pursuant to 5 U.S.C. § 552(a)(4)(A).

6. By letter dated October 27, 2006, and signed by Tiffanie C. Coleman, Freedom of Information Act Officer, Defendant acknowledged receipt of Plaintiff's request and assigned it FOIA Control No. 2007-0083.

7. By letter dated December 20, 2006, and again signed by Ms. Coleman, Defendant informed Plaintiff that its response would be delayed and that it would contact Plaintiff "as soon as possible concerning the approximate number of documents that will need to be examined and the date by which we expect to complete our review." The letter also informed Plaintiff that Defendant would "address your request for the waiver of fees in subsequent correspondence."

8. Under 5 U.S.C. § 552(a)(6)(A)(i), Defendant had 20 working days to respond to Plaintiff's October 17, 2006 FOIA request. More than 20 working days have passed and Plaintiff has not received a determination from Defendant concerning that request, nor has Defendant produced any materials in response to Plaintiff's request.

9. Plaintiff is therefore deemed to have exhausted its administrative remedies under FOIA. *See* 5 U.S.C. § 552(a)(6)(C)(i).

10. Plaintiff has a statutory right to the records it seeks, and there is no legal basis for Defendant's failure to disclose them to Plaintiff.

CLAIMS FOR RELIEF

WHEREFORE, Plaintiff requests that this Court:

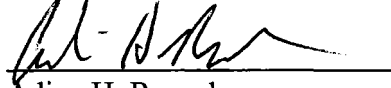
- A) Declare that Defendant's failure to disclose the records requested by Plaintiff is unlawful;
- B) Order Defendant to make the requested records available to Plaintiff without charge;

C) Award Plaintiff its costs and reasonable attorneys' fees pursuant to 5 U.S.C.

§ 552(a)(4)(E); and

D) Grant such other and further relief as this Court may deem just and proper.

Respectfully submitted,



Adina H. Rosenbaum

(DC Bar No. 490928)

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March 13, 2007

Attorney for Plaintiff