

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RUSSELL MOKHIBER,)	
Route 1, Box 1525)	
Berkeley Springs, WV 25411,)	
)	
Plaintiff,)	
)	Civil Action No.
v.)	
)	
U.S. DEPARTMENT OF THE TREASURY)		
1500 Pennsylvania Avenue, N.W.)	
Washington, D.C. 20220,)	
)	
Defendant.)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This action is brought under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, as amended, to compel the Department of the Treasury to produce records of enforcement actions settled by the Department's Office of Foreign Assets Control since May 17, 1998.

JURISDICTION

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

PARTIES

3. Plaintiff Russell Mokhiber is a reporter for Corporate Crime Reporter, a weekly legal publication, and is the requester of the withheld records.

4. Defendant U.S. Department of the Treasury is an agency of the United States, and it has possession of and control over the records that Plaintiff seeks.

FACTS

5. The Office of Foreign Assets Control (“OFAC”) within the U.S. Department of the Treasury administers and enforces economic and trade sanctions against targeted foreign countries, terrorism sponsoring organizations and international narcotics traffickers. OFAC is the Office within the U.S. Department of the Treasury with possession and control over the records that Plaintiff seeks, and is the Office responsible for processing Plaintiff’s FOIA requests.

6. By letter dated May 17, 2000, Plaintiff requested, pursuant to FOIA, “records of all enforcement actions settled by the OFAC since May 17, 1998” Specifically, Plaintiff requested “records revealing the following information with respect to such enforcement actions: the date of settlement, the amount of the settlement, the identity of the entity with which the enforcement action was settled, the amount of any penalty imposed, and the nature of the alleged violation.”

7. By letter dated June 14, 2000, Defendant acknowledged receipt of Plaintiff’s FOIA request. In its June 14 letter, Defendant stated that it was experiencing a substantial backlog of FOIA requests, that it could not meet the normal time limits, and that Plaintiff’s request “will be answered as soon as possible.”

8. FOIA provides that an agency “shall make the records promptly available” upon receiving such a request, 5 U.S.C. § 552(a)(3)(A), and sets forth specified time limits for the agency to respond. 5 U.S.C. § 552(a)(6)(A). FOIA provides that the agency shall “determine within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt” of a request for records “whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, . . .”

9. More than 20 working days have passed since the Department received Plaintiff’s FOIA request, and Plaintiff has not received a determination regarding that request.

10. FOIA requires that if an agency cannot process a request within the 20 days provided in 5 U.S.C.

§ 552(a)(6)(A)(i), the agency shall notify the person making the request. *Id.* § 552(a)(6)(B)(ii). The 20-day time limit may be extended by written notice to the requester “setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched.” *Id.* § 552(a)(6)(B)(i).

11. Plaintiff has not received from the Department the written notice required by 5 U.S.C. § 552(a)(6)(B) with respect to its May 17 FOIA request. Plaintiff has not received any notice of the date on which the Department expects to dispatch a determination of its May 17 request.

COUNT ONE — WRONGFUL WITHHOLDING OF RECORDS

12. Plaintiff has a statutory right to release of the records requested from the Department in its May 17, 2000 letter, and there is no legal basis for the Department's failure to make those records available promptly.

COUNT TWO — PATTERN OR PRACTICE OF UNTIMELY RESPONSES TO FOIA REQUESTS

13. Defendant has a pattern or practice of not responding to FOIA requests for OFAC records within the statutory deadlines.

14. Defendant has a pattern or practice of failing to comply with FOIA's time limits for notifying requesters of its determinations concerning requests, 5 U.S.C. § 552(a)(6)(A), and failing to provide the notice prescribed by the statute if the agency cannot provide a determination within the statutory time limits. 5 U.S.C. § 552(a)(6)(B).

15. The Department has failed to devote sufficient staff and resources to processing FOIA requests for records of the OFAC and, as a result, has failed to process requests for OFAC records in a timely manner. The disclosure officer responsible for responding to FOIA requests for OFAC records left that

position in early 2000 or late 1999, and the Department did not replace the disclosure officer for more than a year.

16. By failing to provide staff and resources to process FOIA requests for records of the OFAC, Defendant has breached its obligation under FOIA to make the requested records promptly available to Plaintiff without legal excuse or justification.

17. Plaintiff has been injured by Defendant's pattern or practice of failing to comply with FOIA's statutory deadlines and notice requirements.

COUNT THREE — CHALLENGE TO DATE OF REQUEST CUTOFF

18. The Department of the Treasury has adopted a time-of-request cut-off policy that provides that the Department considers the records that are to be responsive to a FOIA request to be limited to those records in existence on or before the date of receipt of the request by the appropriate bureau official. 31 C.F.R. § 1.5(a)(2), 65 Fed. Reg. 40,503 (2000).

19. The Department of the Treasury's time-of-request cut-off policy is inconsistent with its duty to take reasonable steps to search for requested documents, and imposes an improper and unreasonable limitation on the records made available to plaintiff and other requesters.

20. Plaintiff has a statutory right to release of records in the possession of the Department that are responsive to his FOIA requests, and there is no legal basis for the Department of the Treasury's policy of limiting its response to those records that were in existence prior to the date of the request.

CLAIM FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

- (A) Declare the Defendant's withholding of the requested records unlawful;
- (B) Order Defendant to make the requested records available to Plaintiff without further

delay;

(C) Declare the Defendant's pattern or practice of not responding to FOIA requests within the statutory deadlines unlawful;

(D) Order Defendant to comply with the statutory deadlines making determinations on FOIA requests and comply with the statutory requirements for providing notice of the unusual circumstances and how much additional time the agency requires to make a determination.

(E) Declare that the Department of the Treasury's time-of-request cut-off policy is unlawful;

(F) Award Plaintiff its costs and reasonable attorneys' fees pursuant to 5 U.S.C. § 552(a)(4)(e); and

(G) Grant such other relief as this Court may deem just and proper.

Dated: September 18, 2001

Respectfully submitted,

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