

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JEREMY BORDEN,
c/o Public Citizen
1600 20th Street NW
Washington, DC 20009,

Plaintiff,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY,
2707 Martin Luther King Jr. Avenue SE
Washington, DC 20528-0525,

Defendant.

Civil Action 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 U.S. Department of Homeland Security (DHS) to produce records responsive to seven FOIA requests to which DHS has failed to respond for more than one year.

JURISDICTION AND VENUE

2. This Court has jurisdiction under 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B). Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

PARTIES

3. Plaintiff Jeremy Borden is an investigative researcher and journalist and the submitter of the FOIA requests at issue in this case.

4. Defendant DHS is an agency of the United States and has possession of and control over the records that plaintiff seeks.

FACTUAL BACKGROUND

5. In March 2015, DHS announced in a press release that five separate investigations led by DHS's U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) division had resulted in the return to Iraq of ancient antiquities and Saddam Hussein-era objects. The DHS press release noted that one of the most significant items returned to Iraq was the Head of Assyrian King Sargon II, a limestone fragmentary head of Lamassu, the winged bull, from the Palace of Sargon II, which DHS had recovered in the course of an effort it denominated "Operation Lost Treasure." The press release also noted that a DHS investigation dubbed "The Mummy's Curse" resulted in the return of 37 Iraqi bronze objects, 21 clay reliefs, and 18 pieces of Iraqi glass to Iraq. *See ICE, Ancient Antiquities and Saddam Hussein-era Objects Returned to Iraq*, ICE Newsroom (Mar. 16, 2015), <https://www.ice.gov/news/releases/ancient-antiquities-and-saddam-hussein-era-objects-returned-iraq>.

6. In May 2018, DHS, through ICE, announced that it had returned 3,800 ancient artifacts, including cuneiform tablets, cylinder seals, and clay bullae, to the Republic of Iraq. ICE stated that the artifacts had been smuggled into the United States in violation of federal law and shipped to Hobby Lobby Stores, Inc., a nationwide arts-and-crafts retailer. *See ICE, Ice Returns Thousands of Ancient Artifacts Seized from Hobby Lobby to Iraq*, ICE Newsroom (May 2, 2018), <https://www.ice.gov/news/releases/ice-returns-thousands-ancient-artifacts-seized-hobby-lobby-iraq>.

7. On February 27, 2020, plaintiff submitted eight FOIA requests to DHS related to these and other DHS press releases concerning the return of artifacts to Iraq. Seven of those requests are at issue here.

8. One FOIA request sought “all reports retained by the department authored or involving Eckart Frahm, a Yale antiquities expert who has assisted in an expert capacity with DHS antiquities investigations.”

9. By email dated March 26, 2020, from the ICE FOIA Office, DHS acknowledged receipt of plaintiff’s FOIA request and stated that the request had been assigned tracking number 2020-ICFO-29572. In addition, pursuant to 5 U.S.C. § 552(a)(6)(B), DHS invoked the 10-day extension to respond.

10. By email sent on May 8, 2020, plaintiff requested an update on the status of the request. By email sent on May 11, 2020, ICE replied that it was in the processing queue, but failed to state what number in the queue or to provide an estimated date of completion.

11. A second FOIA request sought the FOIA logs for Homeland Security Investigations (DHS-HSI), Homeland Security Investigations’ Cultural Property, Art and Antiquities Program (DHS – Antiquities program), and ICE, from January 1, 2008, to the present. By email dated April 9, 2020, from the ICE FOIA Office, DHS acknowledged receipt of plaintiff’s FOIA request and stated that the request had been assigned tracking number 2020-ICFO-32467. In addition, pursuant to 5 U.S.C. § 552(a)(6)(B), DHS invoked the 10-day extension to respond.

12. By email sent on May 8, 2020, plaintiff requested an update on the status of the request. DHS did not respond to the email.

13. A third FOIA request sought: all records “relating to the seizure and return of artifacts shipped to Hobby Lobby, Inc., stores and announced by the Department of Homeland Security in July 2017 and May 2018,” including but not limited to “investigative notes and case files, communications concerning the artifacts, inter-departmental memos, and email communication about the cases,” and specified a timeframe of January 1, 2015, to the present.

14. By email dated March 26, 2020, from the ICE FOIA Office, DHS acknowledged receipt of plaintiff's FOIA request and stated that the request had been assigned tracking number 2020-ICFO-29881. In addition, pursuant to 5 U.S.C. § 552(a)(6)(B), DHS invoked the 10-day extension to respond.

15. By email sent on May 8, 2020, plaintiff requested an update on the status of the request. DHS did not respond to the email.

16. A fourth FOIA request sought the investigative case file "relating to Operation Hidden Idol, which was referenced in a March 2016 news release," and specified a timeframe of January 1, 2012, through the present.

17. By email dated March 26, 2020, from the ICE FOIA Office, DHS acknowledged receipt of plaintiff's FOIA request and stated that the request had been assigned tracking number 2020-ICFO-29888. In addition, pursuant to 5 U.S.C. § 552(a)(6)(B), DHS invoked the 10-day extension to respond.

18. By email sent on May 8, 2020, plaintiff requested an update on the status of the request. DHS did not respond to his email.

19. A fifth FOIA request sought the investigative case file "relating to Operation Lost Treasure, in which DHS returned Saddam Hussein-era artifacts to Iraq in 2015. This operation returned the Head of Assyrian King Sargon II, a limestone fragmentary head of Lamassu, the winged bull, from the Palace of Sargon II, according to the DHS news release." The request specified a timeframe of January 1, 2008, through the present.

20. By email dated March 26, 2020, from the ICE FOIA Office, DHS acknowledged receipt of plaintiff's FOIA request and stated that the request had been assigned tracking number

2020-ICFO-29891. In addition, pursuant to 5 U.S.C. § 552(a)(6)(B), DHS invoked the 10-day extension to respond.

21. By email sent on May 8, 2020, plaintiff requested an update on the status of the request. By email received on May 11, 2020, DHS responded that it had “queried the appropriate component of DHS for responsive records,” but it did not provide an estimated date of completion.

22. A sixth FOIA request sought the investigative case file “relating to Operation Mummy’s Curse, in which DHS identified more than 7,000 illegally smuggled artifacts in July 2015,” and specified a timeframe of January 1, 2015, through the present.

23. By email dated March 26, 2020, from the ICE FOIA Office, DHS acknowledged receipt of plaintiff’s FOIA request and stated that the request had been assigned tracking number 2020-ICFO-29895. In addition, pursuant to 5 U.S.C. § 552(a)(6)(B), DHS invoked the 10-day extension to respond.

24. On April 13, 2020, Britney L. Walker from the DHS Office of Public Affairs emailed plaintiff to ask him to call her about this request. On that telephone call, Ms. Walker told plaintiff that DHS planned to release the documents shortly and asked if he wanted to set up interviews. On April 17, 2020, plaintiff emailed Ms. Walker to ask her about the status of the release. She replied that she was not privy to the agency’s FOIA process but that “I do believe they are on the final stages of the clearance process.”

25. By email sent on May 8, 2020, plaintiff requested an update on the status of the request. DHS did not respond to his email.

26. On May 29, 2020, plaintiff emailed both ICE’s FOIA office and Ms. Walker to ask when the responsive documents would be released. He received no response.

27. A seventh FOIA request sought the investigative case file or any records “relating to the Statue of Entemena, which [was] stolen in 2003 and returned to Iraq in 2006, according to news reports,” and specified a timeframe of January 1, 2012, through the present.

28. By email dated March 26, 2020, from the ICE FOIA Office, DHS acknowledged receipt of plaintiff’s FOIA request and stated that the request had been assigned tracking number 2020-ICFO-29908. In addition, pursuant to 5 U.S.C. § 552(a)(6)(B), DHS invoked the 10-day extension to respond.

29. By email sent on May 8, 2020, plaintiff requested an update on the status of the request. By email received on May 11, 2020, DHS responded that the request was in the processing queue, but the agency did not state where the request was in its queue and did not provide an estimated date of completion.

30. By email sent on July 16, 2020, plaintiff requested dates of completion for all of the requests at issue.

31. By email received on July 20, 2020, DHS stated that the requests were in the queue and that it was “unable to provide an estimated time frame for these requests.”

32. On February 11, 2021, plaintiff again emailed DHS to request an estimated date of completion of the requests.

33. Plaintiff received no response.

34. More than 20 working days have passed since plaintiff submitted his FOIA requests, and DHS has neither made final determinations nor produced any records in response to the requests.

CAUSE OF ACTION

35. Plaintiff has exhausted all administrative remedies with respect to his FOIA requests for records.

36. Plaintiff has a statutory right under FOIA, 5 U.S.C. § 552(a)(3)(A), to the records he requested, and there is no legal basis for DHS's failure to disclose them.

PRAYER FOR RELIEF

WHEREFORE, plaintiff requests that this Court:

- (1) Declare that DHS's withholding of the requested records is unlawful;
- (2) Order DHS to make the requested records available to plaintiff at no cost and without delay;
- (3) Award plaintiff his costs and reasonable attorneys' fees pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (4) Grant such other and further relief as this Court may deem just and proper.

Dated: March 1, 2021

Respectfully submitted,

/s/ Allison M. Zieve
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