

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

GEORGE LARDNER, )  
5604 32nd Street NW )  
Washington, DC 20015, ) Case No.  
Plaintiff, )  
)  
v. )  
)  
DEPARTMENT OF JUSTICE, )  
950 Pennsylvania Avenue NW )  
Washington, DC 20530, )  
Defendant. )

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

1. This action is brought under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), to challenge the decision of the Department of Justice (“DOJ”) to withhold information about the work of the Office of the Pardon Attorney (“OPA”).

**JURISDICTION**

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

**PARTIES**

3. Plaintiff George Lardner has requested the records at issue. Mr. Lardner has a contract to author a book on the history and use of the presidential pardon power.

4. Defendant DOJ is an agency of the United States. OPA is a component of DOJ and has possession of and control over the records that Plaintiff seeks.

**FACTUAL BACKGROUND**

5. OPA receives and reviews petitions seeking all forms of executive clemency, except for petitions relating to military offenses. OPA investigates clemency requests and prepares a report and recommendation for the President.

## **Request for Names of Unsuccessful Clemency Applicants**

6. By letter dated April 10, 2008, Mr. Lardner requested under FOIA the identities of pardon applicants and commutation applicants whose applications were denied since President George W. Bush took office. The letter explained that, in a prior FOIA case, *Lardner v. Department of Justice*, 2005 WL 758267 (D.D.C. Mar. 31, 2005), OPA had been ordered to release the names of unsuccessful pardon applicants, as the court had concluded that disclosure would shed light on the exercise of the pardon power and that, “indeed, a claim could be made that it is essential to an understanding of the circumstances in which the executive chooses to grant or deny a pardon and the factors that bear on that decision.”

7. By letter dated May 22, 2008, OPA denied the April 10, 2008 FOIA request, citing FOIA’s personal privacy exemptions (6 and 7(C)) and *Judicial Watch v. Department of Justice*, 365, F.3d 1108, 1124-26 (D.C. Cir. 2004). The letter further stated that under OPA’s “established policy, we must have each applicant’s prior written consent or proof of death before releasing these documents to a third party.”

8. By letter to DOJ’s Office of Information and Privacy dated June 9, 2008, Mr. Lardner appealed the denial of his April 10, 2008 FOIA request. His appeal letter noted that the cited portion of *Judicial Watch* did not address disclosure of the names of clemency applicants, but rather the disclosure of sensitive information contained in clemency files, and that his request did not seek any such information. The letter also pointed out that OPA routinely confirms whether a particular person has been granted or denied clemency or has a petition pending. Finally, he again pointed to the 2005 decision in *Lardner v. Department of Justice*.

9. By letter dated June 26, 2008, DOJ acknowledged receipt of the appeal letter. DOJ has not substantively responded to the appeal.

### **Request for OPA Annual Reports**

10. By letter dated February 11, 2008, Mr. Lardner requested under FOIA copies of the annual reports of OPA from 1996 forward, and any quarterly status reports of OPA from 1996 forward.

11. By letter dated April 18, 2008, OPA responded to the February 11, 2008 FOIA request. OPA released the requested annual and quarterly reports, but redacted certain information from the quarterly status reports, citing FOIA exemptions 5, 6, and 7(C).

12. By letter dated June 7, 2008, Mr. Lardner appealed the redactions that constitute a partial denial of his request. The appeal letter noted that the redacted material appears to be factual information stating some of the reasons why OPA missed its numerical goals for processing petitions. He noted that, to the extent that privacy concerns are implicated, OPA could redact the name of the individual involved, rather than the entire sentence explaining why OPA failed to meet its goal. His appeal letter also discussed the strong public interest in release of information about OPA's progress in processing clemency applications.

13. By letter dated June 20, 2008, DOJ acknowledged receipt of the appeal letter. DOJ has not substantively responded to the appeal.

### **FIRST CAUSE OF ACTION**

14. Plaintiff has a statutory right under FOIA to the records it seeks relating to the names of unsuccessful pardon and commutation applicants and to the withheld portions of OPA's quarterly status reports. No legal basis exists for Defendant's refusal to disclose them to Plaintiff.

