

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

GEORGE LARDNER, )  
5604 32nd Street NW )  
Washington, DC 20015, )  
Plaintiff, ) No.  
)  
v. )  
)  
U.S. 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 decisions of the Department of Justice (“DOJ”) to withhold information requested in four FOIA requests relating to the work of the Office of the Pardon Attorney (“OPA”) and pardon applicant Chibueze Okorie.

**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 is writing a book on the history and use of the presidential pardon power and writes occasional articles on the subject for the New York Times and the Washington Post.

4. Defendant DOJ is an agency of the United States government. OPA, the Office of the Inspector General (“OIG”), and the Office of the Deputy Attorney General are components of DOJ and have 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 is in charge of investigating clemency requests and prepares DOJ's recommendation to the President for the final disposition of each application.

6. OIG conducts investigations and reviews of DOJ programs and personnel.

7. DOJ's Office of Information Policy ("OIP") encourages agency compliance with FOIA and provides guidance to agencies on questions relating to FOIA. OIP is also responsible for adjudicating all administrative appeals from denials of FOIA requests by any DOJ component and for handling initial requests for records of the Office of the Deputy Attorney General.

### **Request to OPA for Okorie Pardon File (Request No. 2008-078)**

8. In December 2007, OIG issued a report of an investigation regarding then-Pardon Attorney Roger Adams. In part, OIG investigated allegations that Adams had made a racist remark about a Nigerian pardon applicant.

9. By letter dated March 5, 2008, Mr. Lardner requested under FOIA the clemency file of the Nigerian applicant whose case was referenced in OIG's report.

10. By letter dated April 2, 2008, OPA responded to the March 5, 2008 FOIA request and denied the request in full, citing FOIA exemptions 6, 7(a), and 7(c). *See* 5 U.S.C. §§ 552(b)(6), (7)(a), (7)(c). OPA assigned tracking number 2008-038 to Mr. Lardner's request.

11. By letter dated April 7, 2008, Mr. Lardner appealed to OIP the denial of FOIA request number 2008-038.

12. By letters dated April 28, 2008, Mr. Lardner informed OPA and OIP that he had identified the individual whose pardon application he was seeking as Chibueze Okorie. The letters

to OPA and OIP also explained why disclosure of the records did not implicate privacy concerns and was in the public interest.

13. By letters dated July 26, 2008, to OPA and OIP, Mr. Lardner submitted a “certificate of identity” signed by Mr. Okorie, waiving any privacy interests that Mr. Okorie might have in the records requested by Mr. Lardner and authorizing disclosure of the records to Mr. Lardner.

14. On August 28, 2008, Mr. Okorie’s pardon application was denied by the President.

15. By letter dated September 15, 2008, OPA informed Mr. Lardner that it had construed his July 26, 2008, submission of the certificate of identity as a new FOIA request and had assigned that request tracking number 2008-077.

16. By letter dated September 16, 2008, OPA provided Mr. Lardner with an “initial response” to request 2008-077, consisting of 848 pages of unredacted documents.

17. By letter dated September 17, 2008, OPA informed Mr. Lardner that request 2008-077 had been redesignated request number 2008-078.

18. By letter dated September 26, 2008, OPA provided a “further response” to request number 2008-078, consisting of 83 pages of records, some of which were redacted pursuant to FOIA exemptions 5, 6, and 7(c). *See* 5 U.S.C. §§ 552(b)(5), (6), 7(c). The letter also stated that OPA was withholding in full 28 pages of records pursuant to those same three exemptions; that OPA had referred 73 pages of records that originated with the FBI to that agency; and that OPA had referred “a one page document that originated with the Office of Public Affairs and 18 pages of records that includes communication with and within the Office of the Deputy Attorney General, as well as the Letter of Advice sent to the Office of White House Counsel” to OIP for its review.

19. By letter dated September 29, 2008, OPA released to Mr. Lardner an additional document from the Okorie clemency file.

20. By letter dated October 1, 2008, Mr. Lardner appealed the September 26, 2008, partial denial of request number 2008-078. He appealed both the redactions in the released records and the withholding of 28 pages of records.

21. By letter dated October 6, 2008, OPA released an additional document from the Okorie clemency file.

22. By letter dated February 16, 2009, to OIP and OPA, Mr. Lardner attempted to appeal the constructive denial of the 19 pages of documents referred by OPA to OIP, noting that nearly five months had gone by without any decision as to those documents from either component.

23. By letter received March 9, 2009, OIP stated that Mr. Lardner's attempt to appeal the constructive denial of the 19 pages of documents was improper because no decision had yet been rendered.

24. Under FOIA, DOJ had twenty working days to respond to Mr. Lardner's FOIA request. DOJ has failed to respond to Mr. Lardner's FOIA request with respect to the documents forwarded to OIP, and more than twenty working days have passed. Mr. Lardner has exhausted all administrative remedies with respect to the forwarded documents. *See* 5 U.S.C. § 552(a)(6)(C).

25. By letter dated March 25, 2009, OIP denied in full Mr. Lardner's appeal of the partial denial of request number 2008-078, citing FOIA exemptions 5, 6, and 7(c). *See* 5 U.S.C. § 552(b)(5), (b)(6), (b)(7)(c).

26. Mr. Lardner has exhausted all administrative remedies with respect to the records OPA withheld in whole or in part. *See* 5 U.S.C. § 552(a)(6)(A)(ii).

**Request to OPA for Non-Clemency-File Okorie Records (Request No. 2009-009)**

27. By letter dated October 4, 2008 to OPA, Mr. Lardner requested under FOIA all records pertaining in whole or in part to Chibueze Okorie that were not in his clemency file.

28. By letter dated December 1, 2008 to Mr. Lardner, OPA responded to the request, numbered 2009-009, by providing 59 pages of records with redactions pursuant to exemption 5. *See* 5 U.S.C. § 552(b)(5). The letter also stated that OPA had referred to OIG a record previously referred to OPA by OIG in response to an earlier request from Mr. Lardner to OIG. The letter stated that the referred record, although on OPA's letterhead, was not the property of OPA. Attached to this letter was a copy of a communication from OPA referring the document to OIG, and noting that it contained an OPA employee's complaint to OIG on a matter that OIG had later investigated.

29. By letter dated January 9, 2009 to OIP, Mr. Lardner appealed the partial denial of his request and challenged the adequacy of OPA's search.

30. By email dated January 22, 2009, Pardon Attorney Ronald Rodgers informed Mr. Lardner that OIP had shared the January 9, 2009, appeal letter with him, and Mr. Rodgers asked Mr. Lardner for the opportunity to conduct a further search for documents responsive to his request.

31. By letter dated February 3, 2009, OIP denied Mr. Lardner's appeal of request 2009-009.

32. By email dated February 5, 2009, Mr. Rodgers stated to Mr. Lardner that the record on OPA letterhead forwarded to OIG was not an OPA record and that, therefore, Mr. Lardner would have to request that record from OIG.

33. By email dated March 10, 2009, Mr. Rodgers acknowledged to Mr. Lardner that there might be "private communications" between OPA staff or between OPA staff and outsiders on the subject of OIG's investigation of the complaint regarding the handling of Okorie's pardon

application. He stated that no search for such records was required because the records were “never created or used to conduct the true business of this office.”

34. Mr. Lardner has exhausted all administrative remedies with respect to the document referred from OPA to OIG and with respect to OPA’s failure adequately to search for responsive records. *See* 5 U.S.C. § 552(a)(6)(A)(ii).

**Request to OIG (Request No. 09-OIG035)**

35. By letter dated March 18, 2009, to OIG, Mr. Lardner requested under FOIA the three-page letter that OPA had refused to disclose in response to request number 2009-009 and had stated that Mr. Lardner should request from OIG. Mr. Lardner attached a copy of the communication (referred to in paragraph 28, above) from OPA indicating that OPA considered the document to be an OIG document.

36. By letter dated March 18, 2009, OIG denied Mr. Lardner’s request, numbered 09-OIG035, citing an earlier letter from OIG to Mr. Lardner. That letter, dated November 13, 2008, was in response to an earlier request from Mr. Lardner that OIG had referred to OPA.

37. By letter received March 23, 2009, Mr. Lardner appealed OIG’s denial of his request.

38. Under FOIA, DOJ had twenty working days to respond to Mr. Lardner’s FOIA appeal. DOJ has failed to respond to the appeal and more than twenty working days have passed. Mr. Lardner has exhausted all administrative remedies with respect to the three-page document referred from OIG to OPA. *See* 5 U.S.C. § 552(a)(6)(C).

**Request to OIP for Deputy Attorney General’s Okorie-Related Documents**  
**(Request No. DAG/09/R0111)**

39. By letter dated October 4, 2008, to OIP, Mr. Lardner requested all records pertaining to

Chibueze Okorie in whole or in part that are in the possession of the Office of the Deputy Attorney General and dated from January 1, 2007, through the date of the processing of his request.

38. By letter dated November 20, 2008, OIP informed Mr. Lardner that it would need ten additional days to process the request because of necessary consultations. *See* 5 U.S.C. § 552(a)(6)(B)(i). OIP assigned Mr. Lardner's request number DAG/09-R0111.

40. Under FOIA, DOJ had thirty working days to respond to Mr. Lardner's FOIA request. DOJ has failed to respond to his request and more than thirty working days have passed. Mr. Lardner has exhausted all administrative remedies with respect to his request for the Deputy Attorney General's records pertaining to Chibueze Okorie. *See* 5 U.S.C. § 552(a)(6)(C).

#### **FIRST CAUSE OF ACTION**

41. Plaintiff has a statutory right under FOIA to the records he seeks from OPA's file on Chibueze Okorie (Request No. 2008-078), including records withheld in whole or in part and the 19 pages of records referred from OPA to OIP, as to which he has received no substantive response. No legal basis exists for Defendant's refusal to disclose the records to Plaintiff.

#### **SECOND CAUSE OF ACTION**

42. Plaintiff has a statutory right under FOIA to the three-page document that OPA forwarded to OIG and OIG forwarded to OPA (Requests No. 2009-009 and No. 09-OIG035). No legal basis exists for Defendant's refusal to disclose the records to Plaintiff.

#### **THIRD CAUSE OF ACTION**

43. Plaintiff has a statutory right under FOIA to a more adequate search for records pertaining in whole or in part to Chibueze Okorie not contained in his clemency file, and to the release of any non-exempt records identified in that more adequate search (Request No. 2009-

009). No legal basis exists for Defendant's refusal adequately to search for the records Plaintiff seeks.

#### FOURTH CAUSE OF ACTION

44. Plaintiff has a statutory right under FOIA to the records pertaining to Chibueze Okorie in possession of the Deputy Attorney General (Request No. DAG/09-R0111). No legal basis exists for Defendant's refusal to disclose the records to Plaintiff.

#### CLAIM FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

- (A) Declare that Defendant's withholding of the requested records is unlawful under FOIA;
- (B) Order Defendant to make the requested material available to Plaintiff;
- (C) Award Plaintiff his costs and reasonable attorney fees pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (D) Grant all other appropriate relief.

Dated: April 29, 2009

Respectfully submitted,



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