

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Scott W. Johnson,

Civil File No. _____

Plaintiff,

vs.

COMPLAINT

U.S. Department of Homeland Security,
DHS Office for Civil Rights and Civil
Liberties, U.S. Customs and Border
Protection,

Defendants.

Plaintiff Scott W. Johnson brings this action against United States Department of Homeland Security (“DHS”), its sub-agencies, the Office for Civil Rights and Civil Liberties (“CRCL”), and the United States Customs and Border Protection (“CBP”) (collectively, “Defendants”) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552. As grounds therefor, Plaintiff alleges as follows:

INTRODUCTION

1. This FOIA action seeks disclosure of certain records and information concerning a publicly reported “tour” of the Minneapolis-St. Paul International Airport (“MSP Airport”) given by CRCL on February 18, 2016. Mr. Johnson seeks declaratory, injunctive, and other appropriate relief with respect to defendants unlawful withholding of records and information in violation of FOIA.
2. A free and vibrant press is a core, bedrock principle of our republic, set forth in the First Amendment to the United States Constitution and literally hundreds of years’ worth of jurisprudence. One of the foundational responsibilities of the press to

question, investigate, and report on the actions of the United States Government, its citizens, and its residents.

3. In April 2015, the United States Attorney for Minnesota charged six Minnesota residents with plotting to join the Islamic State in Iraq and Levant (“ISIL” or “ISIS”). Additional Minnesota residents were subsequently named as defendants in the case. The filing of the case in April 2015 made headlines in newspapers across the United States. In September 2015, a House Homeland Security Committee task force on combating terrorism and foreign fighter travel identified Minnesota as the leading contributor of foreign fighters for ISIS.

4. On June 3, 2016, after six of their co-conspirators had already pleaded guilty, three Minnesota residents, including Mohamad Abdihamid Farah, were convicted for plotting to join ISIS and commit murder abroad.

5. Leading up to the May 2016 trial of Mr. Farah and others, the *Minneapolis Star Tribune* reported that a member Mr. Farah’s defense team was invited to participate in and then disinvited from a February 18, 2016 tour of the MSP Airport.

6. Plaintiff is a Minnesota attorney and writer for the online news site *Power Line*. He covered the case against Farah and others for *Power Line* and the *Weekly Standard*, a magazine based in Washington, D.C. After reading the Star Tribune article reporting the disinvite of a member of Mr. Farah’s defense team, Johnson sought to obtain — first informally, then through FOIA — records related to the February 18, 2016 “tour” of the MSP Airport. Johnson sought the records for reportorial purposes concerning a matter of public interest.

7. CRCL responded to the FOIA request by producing only nine (9) heavily redacted pages.

8. CRCL's failure to turn over the requested records and subsequently, to respond to a FOIA officer's request for more information during Plaintiff's administrative appeal, has resulted in insufficient responses and significant delay to Plaintiff's news story.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331. This Court has jurisdiction to grant declaratory and further necessary or proper relief pursuant to 28 U.S.C. §§ 2201-2202 and Federal Rules of Civil Procedure 57 and 65.

10. Venue in this district is proper pursuant to 5 U.S.C. § 552(a)(4)(B).

PARTIES

11. Plaintiff Scott Johnson is a Minnesota resident, an attorney, and a journalist. For 25 years Mr. Johnson has written on public policy issues including income inequality, income taxes, campaign finance reform, affirmative action, welfare reform, and race in the criminal justice system. Plaintiff's articles have appeared in magazines including *National Review* and the *Weekly Standard* as well as newspapers including the *New York Times*, the *New York Post*, the *Minneapolis Star Tribune*, and the *St. Paul Pioneer Press*.

12. Defendant DHS is a department of the Executive Branch of the United States Government and is an agency within the meaning of 5 U.S.C. § 552(f). DHS is

responsible for enforcing federal immigration laws, preventing terrorism and enhancing security, and managing domestic borders. DHS has possession and control over the records Plaintiff seeks.

13. Defendant CRCL is a component and sub-agency of DHS. CRCL is an “agency” within the meaning of 5 U.S.C. § 552(f) and is responsible for facilitating and investigating civil rights issues involving DHS. CRCL has possession and control over the records Plaintiff seeks.

14. Defendant CBP is a component and sub-agency of DHS is an agency within the meaning of 5 U.S.C. § 552(f). CBP has possession and control over records Plaintiff seeks.

STATEMENT OF FACTS

15. CRCL, along with DHS and CBP organized, coordinated, and conducted a tour of the MSP Airport for local imams and Muslim community leaders. The tour occurred on February 18, 2016.

16. On March 29, 2016, the *Star Tribune* reported that a member of Mr. Farah’s defense team had been invited to attend the MSP Airport tour, only to be subsequently disinvited.

17. On April 3, 2016, Plaintiff submitted a FOIA request to Defendant CRCL seeking records related to the February 18, 2016 MSP Airport tour. The request sought in pertinent part:

“[i]nformation and documents regarding the tour given to local imams and Muslim community leaders at MSP Airport on February 18, 2016 including invitees, participants, tour guides,

areas toured, and the nature of any security checks conducted before extending the invitations.”

A copy of this request is attached hereto as Exhibit 1.

18. In processing the request, DHS assigned Plaintiff’s FOIA request number 2016-CRFO-00069.

19. On May 11, 2016, CRCL issued its “final response” to Plaintiff’s FOIA request. DHS acknowledged the request, stating:

“[a] search of CRCL for records responsive to your request produced 9 pages that are responsive to your request. After review of those documents, I have determined that 0 pages will be released in their entirety. Portions of 9 pages will be withheld pursuant to exemptions of the FOIA as described below.

A copy of CRCL’s May 11, 2016 letter is attached hereto as Exhibit 2.

20. Eight of the nine pages were heavily redacted, or poor quality, and some provided no information beyond the format of the document. The CRCL’s production as received by Plaintiff is attached hereto as Exhibit 3.

21. Plaintiff timely filed an administrative appeal of CRCL’s limited and redacted response to his FOIA request. A copy of Plaintiff’s May 16, 2016 appeal letter is attached hereto as Exhibit 4.

22. Plaintiff’s administrative FOIA appeal was reviewed by the United States Coast Guard Office of Administrative Law Judge (“Coast Guard OALJ”) in October 2016, pursuant to a “memorandum of agreement” between DHS General Counsel’s Office and the Coast Guard OALJ.

23. The Coast Guard OALJ’s letter acknowledged Plaintiff’s appeal, stating:

After a thorough review of your appeal and all applicable documents I am remanding CRCL's determination for further explanation and clarification. Based upon the record, I am unable to determine whether the Agency properly applied the FOIA Exemptions at issue. Upon receiving clarifying information, I will issue a final determination letter.

A copy of the Coast Guard OALJ's October 28, 2016 letter is attached hereto as Exhibit 5.

24. CRCL did not clarify or otherwise respond to the Coast Guard OALJ remand or the concerns it raised regarding the asserted FOIA exemptions and redactions.

25. On January 17, 2017, the Coast Guard OALJ, on its own, provided a further response to Plaintiff's FOIA appeal, finding:

“[t]o date I have not received a response from the Agency. As such, more than sixty (60) days has passed since I remanded this FOIA request back to the Agency. Because a reasonable amount of time has passed without further response, the Agency's action must be viewed as final. Therefore you now have the right to appeal CRCL's determination and action concerning your FOIA request to the United States District Court.”

A copy of this letter is attached hereto as Exhibit 6.

26. To date, neither DHS, nor CRCL, nor CBP has responded to the Coast Guard OALJ's remand.

27. Defendants' collective failure to provide any response to the Coast Guard OALJ's remand supports the inference as a matter of law that the FOIA exemptions applied to Plaintiff's request were improper or unreasonably applied.

COUNT I
(Violation of FOIA, 5 U.S.C. § 552)

28. Plaintiff repeats, alleges, and incorporates the allegations in paragraphs 1-27 as fully set forth herein.

29. Defendants are obligated under 5 U.S.C. § 552(a)(3) to conduct a reasonable search for and to produce records responsive to Plaintiff's FOIA request. Plaintiff has a legal right to obtain such records, and no legal basis exists for DHS, CRCL, and CBP's failure to release the unredacted records.

30. DHS, CRCL, and CBP's failure to conduct a reasonable search for and failure to release the substantive contents of records responsive to Plaintiff's request, violate 5 U.S.C. §§ 552(a)(3)(A), and (a)(6)(A), as well as the regulations promulgated thereunder.

31. Plaintiff is being irreparably harmed by reason of Defendants' unlawful withholding of records and information responsive to Plaintiff's FOIA request, and Plaintiff will continue to be irreparably harmed unless Defendants are compelled to conform their conduct to the requirements of the law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Court:

A. Order Defendants and any of Defendants' departments, components, other organizational structures, agents, or other persons acting by, through, for, or on behalf of Defendants to conduct a reasonable search for, disclose the substantive content of records responsive to Plaintiff's FOIA request, and demonstrate that it employed search methods

reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA request;

B. Order Defendants to produce, by a date certain, any and all records responsive to Plaintiff's FOIA request and a *Vaughn* index of any responsive records withheld or redacted under claim of exemptions;

C. Enjoin Defendants and any of Defendants' departments, components, other organizational structures, agents, or other persons acting by, through, for, or on behalf of Defendants from withholding any and all records responsive to Plaintiff's FOIA request and order them to promptly produce the same;

D. Award Plaintiff his reasonable attorneys' fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E) and 28 U.S.C. § 2412; and

E. Grant all other such relief to Plaintiff as the Court deems just and equitable.

Dated: May 15, 2017

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