

By way of *Complaint*, under the *Freedom of Information Act*, 5 U.S.C. §§ 552 *et. seq.* (hereinafter “*FOIA*”), Plaintiff Dennis O. Williams (“Plaintiff”) alleges and complains against Defendant United States Department of Justice (“DOJ”) as follows:

PARTIES

1. Plaintiff is a citizen of the United States and a resident of Salt Lake County, Utah.

2. Plaintiff is also a retired FBIHQ (“Federal Bureau of Investigation Headquarters”) Supervisory Special Agent.

3. While employed by the Federal Bureau of Investigation (“FBI”) Plaintiff made numerous complaints to his superiors and to the United States Congress about systemic corruption involving high ranking officials within the FBI.

4. The United States Department of Justice is an “agency” of the Executive Branch of the United States of America within the meaning of 5 *U.S.C.* §§ 551(1) and 552(f)(1). As an agency of the Executive Branch, the United States Department of Justice is subject to *FOIA* and a proper party within the meaning of 5 *U.S.C.* §§ 702 and 703.

JURISDICTION AND VENUE

5. This Court’s jurisdiction over this matter arises under 5 *U.S.C.* § 552(a)(4)(B); the *First* and *Fifth Amendments* to the *United States Constitution*; the *Administrative Procedure Act*, 5 *U.S.C.* §§ 701 *et seq.*; 28 *U.S.C.* § 1331; and

the equitable powers inherent in the Courts of the United States of America.

6. Venue lies within this Court pursuant to 5 *U.S.C.* § 552(a)(4)(B) and 28 *U.S.C.* § 1391(e).

ALLEGATIONS WHISTLE BLOWER FOIA

7. On July 17, 2015, through his counsel, Plaintiff filed and/or served a *FOIA Request* with and/or upon the DOJ asking it to produce the following records:

- a. All documents/records that, directly or indirectly, relate to, report on or concern Mr. Williams having been designated a “*Whistle Blower*” by the Department of Justice’s Office of Professional Responsibility and what was done by the Department of Justice and/or the Office of Professional Responsibility to protect him throughout his career with the FBI, including legal opinions, correspondence or other communications to or from FBI personnel regarding this matter.
- b. The complete investigative file(s) of the Department of Justice’s Office of Professional Responsibility concerning Mr. Williams and/or his complaints about corruption within the FBI.

Hereinafter the “*Whistle Blower FOIA*”¹

8. By letter dated February 19, 2016, the DOJ, through its Office of

¹ A copy of that *Whistle Blower FOIA Request* is attached hereto as Exhibit 1, and formally incorporated herein by reference.

Professional Responsibility (“OPR”), responded to Plaintiff’s *Whistle Blower FOIA*.

9. In that response, the OPR advised Plaintiff that 2,255 pages of responsive documents had been found of which 724 pages were being released to Plaintiff, and 519 pages were being withheld in their entirety.

10. In that response, the DOJ/OPR also advised Plaintiff that the remaining pages of responsive documents were being sent to the FBI, the Office of the Inspector General and/or the Executive Office for United States Attorneys who would conduct their own review and respond directly to Plaintiff.²

11. On or about April 8, 2016, Plaintiff appealed the OPR’s response to the DOJ’s Office of Information Policy.

12. On September 29, 2016, the DOJ’s Office of Information Policy affirmed the OPR’s decision to withhold in their entirety the 519 of responsive documents.

13. The DOJ’s Office of Information Policy did so on the basis of the

² A copy of the DOJ/OPR’s February 19, 2016 response to the *Whistle Blower FOIA Request* is attached hereto as Exhibit 2, and formally incorporated herein by reference.

exemptions provided under 5 U.S.C. §§ 552(b)(5), (6) and (7)(C).³

14. With respect to the *Whistle Blower FOIA*, Plaintiff has exhausted his administrative remedies and, therefore, is authorized to bring this action pursuant to 5 U.S.C. § 552(a)(4)(B).

ALLEGATIONS PICKARD FOIA

15. At the time of the 9/11 attack upon the World Trade Center, Thomas Pickard was Acting director of the FBI.

16. Prior to that, Mr. Pickard was Deputy Director of the Federal Bureau of Investigation, which meant that he was second in-command of the FBI behind Director Louis Freeh.

17. Following the 9/11 attack, the DOJ's Office of Inspector General ("OIG") conducted an investigation entitled "*A Review of the FBI's Handling of Intelligence Information Related to the September 11 Attacks*," and issued a report ("*OIG Report*") containing the results/findings of that investigation.

³ A copy of the United States Department of Justice's Office of Information Policy's September 29, 2016 letter affirming the DOJ/OPR's decision on the *Whistle Blower FOIA Request* is attached hereto as Exhibit 3, and formally incorporated herein by reference.

18. The *OIG Report* was made public in 2006.⁴

19. A key subject of the Inspector General's investigation was a document that the FBI had prior to the 9/11 attack warning that supporters of Osama Bin Laden were taking or had taken flying lessons, etc. That document is now known as the July 10, 2001 "*Phoenix Memo*."⁵

20. In the *OIG Report*, the Inspector General concluded that:

Our review found significant deficiencies in the FBI's handling of intelligence information relating to the September 11 attacks. Shortly after the attacks, the FBI indicated that it did not have any information warning of the attacks. However information was soon discovered that had been in the possession of the FBI and the Intelligence Community before September 11 that related to the hijacking of airplanes by extremists or that involved the terrorists who committed the September 11 attacks.⁶

The "information" to which the Inspector General was referring included the *Phoenix Memo*.

21. According to the Inspector General:

We focused on the FBI's handling of the Phoenix EC (*i.e.*, *Phoenix*

⁴ <http://oig.justice.gov/special/s0606/final.pdf>

⁵ A copy of the *Phoenix Memo* is attached hereto as Exhibit 4, and formally incorporated herein by reference.

⁶ *OIG Report*, pp. 376 and 377.

Memo), the Moussaoui case, and the Hazmi and Mihdhar matter.⁷ Our review found that the FBI had failed to fully evaluate, investigate, exploit, and disseminate information related to the Phoenix EC, the Moussaoui case and the Hazmi and Mihdhar matter. For example, the FBI did not handle the Phoenix EC appropriately or give it the attention it deserved. The FBI did little with the Phoenix EC before the September 11 attacks because of the FBI's inadequate analytical program, insufficient supervision of analysts in the program, the focus on operational priorities at the expense of strategic analysis, the failure to adequately share intelligence information, and the lack of adequate tools to facilitate information sharing within and outside the FBI.⁸

* * *

In evaluating the FBI's actions in the three matters examined in this report, we cannot say whether the FBI would have prevented the attacks had they handled these matters differently. Such a judgment would be speculative and beyond the scope of our inquiry. But while we cannot say what would have happened had the FBI handled the information differently or if the FBI had pursued these investigations more aggressively, the way the FBI handled these matters was a significant failure that hindered the FBI's chances of being able to detect and prevent the September 11 attacks."

That failure is properly laid at the feet of Louis Freeh and Thomas Pickard.

22. On February 21, 2017, Plaintiff personally filed and/or served a *FOIA Request* with and/or upon the DOJ's Criminal Division asking it to produce the

⁷ *Id* at. pp. 376-377.

⁸ *Id* at. pp. 377-78.

following records: “All records pertaining to any referral to the DOJ Criminal Division for possible prosecution of Thomas Pickard. And I request any and all records that pertain to recommendations and his suitability to become an FBI Assistant Director or acting FBI Director.”

Hereinafter the “*Pickard FOIA Request* .”⁹

23. The *Pickard FOIA Request* was prompted by the fact that Mr. Pickard had obstructed justice, including obstructing a congressional investigation into Plaintiff’s allegations of corruption at the highest level within the FBI.

24. By letter dated February 27, 2017, the DOJ’s Criminal Division responded to the *Pickard FOIA Request*.

25. In that response, United States Department of Justice’s Criminal Division advised Plaintiff that, on the basis of 5 U.S.C. §§ 552(b)(6), (7)(C) and 552(c), it was denying Plaintiff’s *Pickard FOIA Request* and would neither confirm nor deny the existence of any such records.¹⁰

26. On or about March 14, 2017, Plaintiff appealed the Criminal

⁹ A copy of that *Pickard FOIA* is attached hereto as Exhibit 5, and formally incorporated herein by reference.

¹⁰ A copy of the United States Department of Justice’s February 27, 2017 response is attached hereto as Exhibit 6, and formally incorporated herein by reference.

Division's response to the DOJ's Office of Information Policy.

27. On April 27, 2017, the DOJ's Office of Information Policy affirmed the Criminal Division's decision to deny Plaintiff's *Pickard FOIA Request* in its entirety.

28. The DOJ's Office of Information Policy did so on the basis of the exemptions provided under 5 U.S.C. §§ 552(b)(6) and (7)(C).¹¹

29. With respect to the *Pickard FOIA*, Plaintiff has exhausted his administrative remedies and, therefore, is authorized to bring this action pursuant to 5 U.S.C. § 552(a)(4)(B).

CAUSE OF ACTION
(Refusal to Produce Documents)

30. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 29 above.

31. Plaintiff has a statutory right to the 519 pages records and/or documents that are responsive to his *Whistle Blower FOIA Request* that are being withheld from him in their entirety.

¹¹ A copy of the United States Department of Justice's Office of Information Policy's April 27, 2017 letter affirming the Criminal Division's decision on the *Pickard FOIA* is attached hereto as Exhibit 7, and formally incorporated herein by reference.

32. Plaintiff also has a statutory right to the records and/or documents that are responsive to his *Pickard FOIA Request* that are being withheld from him in their entirety.

33. The DOJ has possession and control of these documents and records.

34. Pursuant to *FOIA*, the DOJ has a statutory duty to produce these documents and records to Plaintiff but has breached and continues to breach that duty.

35. The DOJ has no legal basis to withhold these documents and records requested by Plaintiff but it has unlawfully denied and continues to unlawfully deny Plaintiff access to both the *Whistle Blower FOIA Request* documents and records and the *Pickard FOIA Request* documents and records.

36. As a direct and proximate result of such denial, Plaintiff has suffered and continues to suffer grave and irreparable injury.

37. Plaintiff is entitled to seek judicial review pursuant to 5 *U.S.C.* § 552(a)(4)(B). Plaintiff is also clearly entitled to judicial relief in this Court as set forth in the prayer to this *Complaint*.

PRAYER

Wherefore, Plaintiff respectfully requests this Court for judgment against

the United States Department of Justice as follows:

1. For an expedited proceeding;
2. For an *Order* permanently enjoining the United States Department of Justice from withholding either the *Whistle Blower FOIA Request* documents and records and/or the *Pickard FOIA Request* documents and records.
3. For an *Order* awarding Plaintiff his costs, disbursements and reasonable attorney's fees pursuant to 5 *U.S.C.* § 552(a)(4)(E); and
4. For an *Order* awarding Plaintiff such other and further relief as may be equitable, just and proper under the circumstances.

DATED this 27th day of June, 2017.

/s/ jesse c. trentadue
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