

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

MIKE ECKEL)
Senior Correspondent)
Radio Free Europe/Radio Liberty)
1201 Connecticut Avenue, NW)
Suite 400)
Washington, D.C. 20036)

Plaintiff,)

v.)

OFFICE OF THE CHIEF MEDICAL)
EXAMINER)
401 E Street, SW)
Washington, D.C. 20024)

Defendant.)

2017 CA 005038 B

Civil Action No. 17-_____

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

INTRODUCTION

1. This is an action under the D.C. Freedom of Information Act, D.C. Code § 2-531 *et seq.* ("D.C. FOIA"), to compel the production of (1) all autopsy records, including the toxicology report but excluding autopsy photographs, prepared following the death of Mikhail Lesin in connection with the police investigation bearing Incident Report No. 15-176-498; (2) all correspondence, electronic or otherwise, generated by the Office of the Chief Medical Examiner ("OCME") between November 5, 2015 and the present date that references the case of Mr. Lesin; (3) any and all correspondence between the OCME and the Federal Bureau of Investigation during the same time period on this same subject; and (4) any and all correspondence between the OCME and the U.S. Department of State during the same time period on this same subject (collectively, the "Records"). Defendant OCME has improperly

withheld the Records from Plaintiff Mike Eckel, a reporter for RFE/RL, Inc., which does business as Radio Free Europe/Radio Liberty ("RFE/RL").

JURISDICTION

2. This Court has both subject matter jurisdiction and personal jurisdiction over the parties pursuant to D.C. Code § 2-537 and 1 DCMR § 412.

PARTIES

3. Plaintiff Mike Eckel is a senior correspondent for RFE/RL, a nonprofit international media company funded by the U.S. government that serves as an important source of news in twenty-three countries that lack a free press. RFE/RL delivers news in twenty-six languages to an estimated weekly audience of 26.9 million people. RFE/RL offers a truthful alternative to the propaganda and disinformation spread by the Russian government across the former Soviet Union.

4. Defendant OCME investigates a variety of human deaths occurring within the District of Columbia and makes determinations of death in cases within the scope of its statutory authority, D.C. Code § 5-1405. It is a public body within the meaning of D.C. FOIA.

FACTS

Background

5. On November 5, 2015, Mikhail Lesin, a Russian citizen, was found dead inside a room at the Dupont Circle Hotel in Washington, D.C.

6. Mr. Lesin was an influential figure during now-President Vladimir Putin's ("Putin") rise to power in Russia. During Putin's first term, Mr. Lesin's efforts were critical in wresting control of Russian television networks from their owners. Later, in Putin's second term, Mr. Lesin served as a senior presidential adviser and launched the 24-hour news network Russia

Today, now called RT. And in Putin's third term, he continued to bring *Russian media outlets* within the financial and political control of the state.

7. In late 2014, Mr. Lesin left his position as the head of Gazprom Media, a subsidiary of Russian natural gas giant Gazprom. The circumstances that led to his departure are unclear, but the timing coincides with a possible feud Mr. Lesin had with Yuri Kovalchuk—the main shareholder of Bank Rossiya, which is closely tied to Putin—and with scrutiny of Mr. Lesin's multimillion-dollar real estate purchases in Los Angeles, which were well beyond the financial means of a government minister. After leaving Gazprom Media, Mr. Lesin traveled regularly to the United States.

8. It was during one such trip—to attend a fundraiser in Washington, D.C.—that Mr. Lesin died. A security guard reported that Mr. Lesin appeared drunk in his hotel room the night of November 4, 2015, and attempted to move Mr. Lesin into his bed. The morning of November 5, a cleaner found him dead.

9. The U.S. Attorney for the District of Columbia and the Metropolitan Police Department announced on October 28, 2016, that Mr. Lesin's body showed signs of blunt force injury on his head, neck, torso, arms, and legs. The cause of death was eventually determined to be a fall, with acute ethanol intoxication contributing to the accident. This determination of death is implausible, to say the least, given the extent, location, and severity of Mr. Lesin's injuries.

10. Mr. Lesin plays a central role in a news story of acute and growing public interest: the mysterious deaths of dozens of people around the world with ties to the Russian government. See, e.g., Jeffrey E. Stern, *The Poison Flower*, Atlantic, Jan./Feb. 2017, at 74; Heidi Blake et al., *Poison in the System*, BuzzFeed News (June 12, 2017), <https://www.buzzfeed.com/heidiblake/poison-in-the-system>; Jane Croft, *Inquest Opens into Case*

of Whistleblower Alexander Perepilichny, *Financial Times* (June 11, 2017), <https://www.ft.com/content/5e0573be-4d43-11e7-a3f4-c742b9791d43>; Dexter Filkins, *Are Russian Operatives Attacking Putin Critics in the U.S.?*, *New Yorker* (June 19, 2017), <http://www.newyorker.com/news/news-desk/are-russian-operatives-attacking-putin-critics-in-the-us>; Andrew Higgins, *Lawyer for Family of Sergei Magnitsky, Dead Russian Whistle-Blower, Is Seriously Injured*, *N.Y. Times* (Mar. 21, 2017), <https://www.nytimes.com/2017/03/21/world/europe/russia-sergei-magnitsky-william-browder.html>; Carl Schreck, *Kremlin Critic Hospitalized with Similar Symptoms to 2015 Poison Scare*, *Radio Free Eur./Radio Liberty* (Feb. 2, 2017), <https://www.rferl.org/a/kremlin-critic-russia-kara-murza-hospitalized/28274832.html>. And now, with evidence of Russian interference in the 2016 presidential election, there is extraordinary public interest in cases of Kremlin skullduggery conducted in other countries. The Records would be probative not only of whether a foreign national was assassinated on U.S. soil, but also of whether government agencies adequately investigated Mr. Lesin's death, and whether they released honest and accurate information pertaining thereto.

11. Additionally, Mr. Eckel's reporting, including conversations with people having direct and indirect knowledge of the circumstances surrounding Mr. Lesin's final days and hours, casts doubt on the conclusions announced by the U.S. Attorney's Office et al.

Plaintiff's FOIA Request to the OCME

12. On January 10, 2017, Mr. Eckel requested the Records through the FOIAXpress system. Mr. Eckel filed his request in furtherance of his work for RFE/RL.

The OCME's Denial of Plaintiff's Request

13. By email dated January 30, 2017, the OCME denied Mr. Eckel's request, presumably relying on D.C. Code § 2-534(a)(2), (a)(6)(A).¹
14. Pursuant to D.C. Code § 2-537, Mr. Eckel appealed this denial to the Executive Office of the Mayor ("EOM") on February 7, 2017 via FOIAXpress.
15. The OCME, when contacted by the EOM, did not interpret Mr. Eckel's appeal as challenging its withholding of its correspondence and did not brief the issue.
16. In a letter to Mr. Eckel dated February 24, 2017, the Mayor's Office of Legal Counsel denied Mr. Eckel's appeal on behalf of the EOM. The denial considered only the autopsy records pertaining to Mr. Lesin.
17. Mr. Eckel has exhausted the available administrative remedies with respect to his request for the autopsy records. While his appeal was not interpreted as challenging the OCME's withholding of its correspondence, he is nevertheless permitted under 1 DCMR § 412 to appeal the OCME's original denial to this Court. As such, the request for all of the Records—that is, both all autopsy records (including the toxicology report but excluding photographs) and all relevant correspondence—is properly before this Court.
18. The OCME has wrongfully withheld the Records from Mr. Eckel.

REQUESTED RELIEF

WHEREFORE, Plaintiff requests that this Court:

- A. declare that Defendant's failure to disclose the requested Records is unlawful;

¹ NB: The denial actually cites "D.C. Official Code § 5-534(2) and (6)(A)." Section 5-534 does not exist.

- B. order Defendant to disclose the requested Records in their entirety and make copies available to Plaintiff;
- C. award Plaintiff its costs and reasonable attorney fees pursuant to D.C. Code § 2-537(c); and
- D. grant such other relief as the Court may deem just and proper.

Dated: July 19, 2017

Respectfully submitted,



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