

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

MR. SAMIR HUSSAIN
11835 S.W. Ridgecrest Drive, Apt. #20
Beaverton, Oregon 97008,

Plaintiff,

vs.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY
Washington, D.C. 20528,

Defendant.

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Case:
Assigned To:
Assign. Date:
Description:

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

PRELIMINARY STATEMENT

1. This is an action under the Freedom of Information Act, as amended, 5 U.S.C. § 552 (“FOIA”), for declaratory, injunctive, and other appropriate relief, seeking, principally, the immediate production of agency records requested by plaintiff Mr. Samir Hussain (“Mr. Hussain”) from defendant United States Department of Homeland Security (“DHS”) regarding Mr. Hussain’s July 24, 2003 arrest and subsequent, wrongful, nine-month detention.

2. DHS has violated FOIA by: (i) improperly withholding and redacting responsive records, including failing to produce reasonably segregable portions of withheld responsive records; (ii) conducting an inadequate search for requested records; and (iii) failing to respond to Mr. Hussain’s appeal of DHS’ response to Mr. Hussain’s request for records within the time period mandated by FOIA.

3. Mr. Hussain seeks: (i) a declaration that the records sought are subject to disclosure under FOIA; (ii) affirmative injunctive relief requiring DHS to immediately produce all responsive records that have been unlawfully withheld or redacted, and to conduct an adequate search for requested records; and (iii) an award of reasonable attorneys' fees and other litigation costs.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

5. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

6. Declaratory relief is authorized by 28 U.S.C. §§ 2201-2202 and Rule 57 of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 57.

PARTIES

7. Plaintiff Mr. Hussain, born on August 31, 1969, is a native and citizen of Iraq and was granted asylum in the United States on February 15, 2005. Mr. Hussain's application for permanent residency within the United States is pending.

8. Defendant DHS is a department of the Executive Branch of the United States Government. DHS is an agency within the meaning of 5 U.S.C. § 552(f)(1).

FACTUAL ALLEGATIONS

9. On July 24, 2003, border patrol agents in Fort Lauderdale, Florida removed Mr. Hussain from a Greyhound bus en route from Florida to California. Mr. Hussain was

subsequently detained in a cell at a border patrol station and taken to Krome Detention Center in Miami, Florida, even though he produced documents that showed he had legally applied for asylum within the United States.

10. While at Krome Detention Center, Mr. Hussain was: forced to wear an orange uniform, usually given to felons, instead of the blue uniform that is usually given to asylum seekers; labeled a terrorist; and, blamed for the 9/11 terrorist attacks.

11. DHS provided the Joint Terrorism Task Force (“JTTF”) with information pertaining to Mr. Hussain’s arrest and detention.

12. JTTF subsequently interviewed Mr. Hussain.

13. Mr. Hussain remained at Krome Detention Center for almost nine months until March 1, 2004, when he was released under an order of supervision.

14. On September 15, 2005, Leon Fresco, an attorney with Holland & Knight LLP, *pro bono* counsel for Mr. Hussain, sent, via regular mail, first class postage pre-paid, a FOIA request on Mr. Hussain’s behalf to the U.S. Citizenship and Immigration Services of DHS (the “FOIA Request”). The FOIA Request sought all records possessed by DHS regarding Mr. Hussain’s July 24, 2003 arrest and subsequent detention, including, but not limited to: (i) Mr. Hussain’s “apprehension record;” (ii) any border patrol disposition; and (iii) Mr. Hussain’s I-213 Record of Deportable Alien. A copy of the FOIA Request is attached as Exhibit A.

15. On March 6, 2007, almost 18 months after the date of the FOIA Request, DHS mailed its response to the FOIA Request (the “DHS FOIA Response”). The DHS FOIA Response cover letter is attached as Exhibit B.

16. Mr. Fresco received the DHS FOIA Response on March 15, 2007.

17. The DHS FOIA Response withheld 56 pages of critical information pertaining to Mr. Hussain's arrest and detention, including Mr. Hussain's apprehension record, any border patrol dispositions, and other information possessed by DHS regarding Mr. Hussain's July 24, 2003 arrest and subsequent detention. As grounds, DHS asserted that the pages withheld were exempt from disclosure under 5 U.S.C. §§ 552(b)(2), (b)(5), (b)(6), (b)(7)(C), and (b)(7)(E).

18. DHS failed to provide reasonably segregable portions of the 56 pages of withheld responsive records, as required by 5 U.S.C. § 552(b).

19. DHS redacted responsive records on the grounds that the information redacted was exempt from disclosure under 5 U.S.C. §§ 552(b)(2), b(5), (b)(7)(C), and (b)(7)(E).

20. While DHS produced Mr. Hussain's Record of Deportable Alien (pp. 437-438 of the DHS FOIA Response), attached as Exhibit C, DHS failed to release Mr. Hussain's sworn statements and notes and communications by and between DHS, JTTF, or other federal agencies resulting from interviews with Mr. Hussain or otherwise relating to the July 24, 2003 arrest and subsequent detention of Mr. Hussain (the "Related Arrest Records").

21. On May 14, 2007, Mr. Fresco, on behalf of Mr. Hussain, appealed the DHS FOIA Response (the "Appeal"). The Appeal is attached as Exhibit D.

22. The Appeal sought, among other things: (i) DHS' reconsideration of all redactions to the responsive documents and the release of all reasonably segregable portions of the 56 pages of withheld responsive records; and (ii) an adequate search by DHS reasonably calculated to produce documents missing from the DHS FOIA Response, including the Related Arrest Records.

23. On May 16, 2007, DHS received the Appeal.

24. To date, DHS has failed to respond to the Appeal.

25. Under 5 U.S.C. § 552(a)(6)(A), DHS had 20 days from its receipt of the Appeal to make a determination with respect to the Appeal.

26. More than 20 days have passed since DHS' receipt of the Appeal.

27. Mr. Hussain is therefore deemed to have exhausted his administrative remedies under FOIA. *See* 5 U.S.C. § 552(a)(6)(C)(i).

COUNTS FOR RELIEF

Count One

Failure to Provide Responsive Records

28. Mr. Hussain realleges and incorporates paragraphs 1-27.

29. On September 15, 2005, Mr. Hussain properly submitted a request to DHS for records that are public records subject to FOIA.

30. DHS failed to provide reasonably segregable portions of the 56 pages of withheld responsive records, as required by 5 U.S.C. § 552(b) and despite the near certainty that some portions of the 56 pages of responsive records are reasonably segregable.

31. DHS improperly relied on exemptions under 5 U.S.C. §§ 552(b)(2), (b)(5), (b)(6), (b)(7)(C), and (b)(7)(E) in withholding and redacting responsive records.

32. Accordingly, DHS' withholding and redaction of responsive documents is improper and violates FOIA.

Count Two

Failure to Conduct an Adequate Search for Responsive Records

33. Mr. Hussain realleges and incorporates paragraphs 1-32.

34. DHS conducted an inadequate search for responsive records in violation of 5 U.S.C. § 552(a)(3).

35. Upon information and belief, DHS possesses Mr. Hussain's sworn statements.

36. Based on Mr. Hussain's Record of Deportable Alien, attached as Exhibit C, DHS possesses the Related Arrest Records.

37. DHS did not include the Related Arrest Records with the DHS FOIA Response, despite the near certainty that such Related Arrest Records are in the possession of DHS.

38. Accordingly, DHS' failure to adequately search for and produce the Related Arrest Records is improper and violates FOIA.

WHEREFORE, Mr. Hussain respectfully requests that this Court:

A. Declare that DHS' failure to provide reasonably segregable portions of the 56 pages of withheld responsive records is unlawful under FOIA.

B. Declare that DHS' withholding and redaction of responsive records is unlawful under FOIA.

C. Declare that DHS' failure to conduct an adequate search for requested records is unlawful under FOIA.

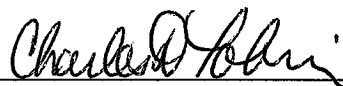
D. Declare that DHS' failure to respond to the Appeal within the statutory time period is unlawful under FOIA.

E. Enter an affirmative injunction that directs DHS to search for and make all requested records available to Mr. Hussain, unredacted, and without any further delay.

39. Award Mr. Hussain reasonable attorneys' fees and other litigation costs.

40. Grant Mr. Hussain any further relief this Court deems just and proper.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Charles D. Tobin", is positioned above a horizontal line.

By Charles D. Tobin (Bar No. 15919)
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Exhibit A

FOIA Request

Exhibit B

DHS FOIA Response Cover Letter

Exhibit C

Samir Hussain's Record of Deportable Alien

Exhibit D

Appeal