

UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

DocuFreedom Inc.,)
)
Plaintiff,)
v.)
U.S. Department of Justice,)
)
and Karen McFadden,)
)
Defendants.)

Case No.: ____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

I. INTRODUCTION

This is an action under the Freedom of Information act, 5 U.S.C. § 552, (“FOIA”), for injunctive and other appropriate relief seeking disclosure and release of agency records improperly withheld from Plaintiff by Defendant.

Plaintiff DocuFreedom has sought to obtain documents held in the Department of Justice library in Washington D.C. and which appear to be subject to public disclosure under the FOIA. In addition to standard holdings of books about the law and other documents available to the public elsewhere, the Department of Justice library appears to hold numerous printed and electronic resources which are not confidential, not subject to any exemption under the FOIA, and which are not currently publicly accessible. Since July 2017 Plaintiff has sent a series of FOIA requests to the agency’s public FOIA e-mail inbox and followed up with a number of telephone calls, unanswered by the agency, left voice messages, and sent a paper copy of these same requests to the agency’s posted FOIA address. Yet Defendants have never acknowledged receipt of these requests or indicated any intention to process or respond to them. Accordingly, Plaintiff seeks the Court’s assistance.

II. PARTIES

1. Plaintiff, DocuFreedom Inc., is a Kansas not-for-profit corporation.

2. The Department of Justice is a federal executive department of the U.S. government, responsible for the enforcement of the law and administration of justice in the United States. The Department of Justice is the agency in possession of the documents requested by plaintiff and is the agency responsible for responding to the FOIA requests at issue here.

3. Karen McFadden is listed on the agency's website as the sole FOIA contact for the DOJ's Justice Management Division ("JMD"). Upon information and belief, she is responsible for acknowledging receipt of FOIA requests sent to the JMD and determining how the JMD will respond to them. Karen McFadden is sued in her official capacity as the primary individual responsible for processing and responding to the FOIA requests at issue in this case.

III. JURISDICTION

4. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) (FOIA), 5 U.S.C. § 551 *et seq.*, 5 U.S.C. § 555(b), §702, § 704, and § 706 (Administrative Procedures Act), and 28 U.S.C. § 1331 (federal question) as this action arises under the Freedom of Information Act. 5 U.S.C. § 552 *et seq.*

5. The aid of the Court is invoked under 28 U.S.C. § 2201 and 2202, authorizing a declaratory judgment.

IV. VENUE

6. Venue is proper in the United States District Court for the District of Kansas, because (1) the Plaintiff, DocuFreedom, is a Kansas non-profit corporation which is located in Overland Park, Kansas; (2) the FOIA requests that are the subject of this suit were made from the State of

Kansas via e-mail and First Class mail; and (3) Plaintiff's attempts to follow up with the agency were done via telephone, e-mail, and First Class mail from the State of Kansas.

V. REMEDY SOUGHT

7. Plaintiff seeks to have the Defendants comply with the FOIA by issuing a formal acknowledgment of its receipt of Plaintiff's FOIA requests, by timely processing the FOIA requests, and by producing the responsive, non-exempt documents requested.

VI. STATEMENT OF THE FACTS

8. The DOJ is divided into several discrete sub-sections or "Divisions" which administer certain records and documents in the possession of the DOJ.

9. The JMD is a division of the DOJ which is the principal organizational unit responsible for management and administrative support in the DOJ. Its key areas of responsibility include, *inter alia*, information resources and management.

10. The JMD is responsible for managing the DOJ library, which is located in Washington D.C.

11. On May 19, 2017 the JMD released the library catalog for the Department of Justice Library pursuant to a FOIA request ("the Catalog").

12. The Catalog was released as a 6,562-page PDF document listing all of the library's holdings, sorted by the name of the author. The PDF document was released as a "locked" PDF making it impossible to be searched by keyword.

13. The Catalog lists a number of documents, electronic resources, pamphlets, articles, books, and other items which are not currently available to the public (because the library itself is not publicly accessible), which are not publicly accessible in any other library's catalog, and which are of exceptional public interest.

14. A number of the resources listed in the Catalog which are not available to the public are electronic documents that involve agency policies and administrative staff manuals and instructions to the agency's staff that affect the agency's interactions with the public.

15. While the DOJ library is not available to the public, many of the documents in its holdings are subject to release under the FOIA if requested.

The FOIA Requests

16. Recognizing that so many federal government resources listed in the Catalog appear to be of substantial public importance and are not elsewhere accessible to the general public, Plaintiff began making requests under the FOIA for certain items listed in the Catalog so that they could be shared publicly.

17. For each item listed in the Catalog, Plaintiff began by searching for any other publicly-accessible source of that item by searching the WorldCat database and other internet resources for other publicly-accessible copies of each document in other locations or libraries. Plaintiff then began to make a list of the resources in the Catalog that are found in no other publicly-accessible library in the United States.

18. JMD lists an e-mail address for submitting FOIA requests on its website at <https://www.justice.gov/jmd/jmd-foia>. The e-mail address listed on its website is JMDFOIA@usdoj.gov.

19. JMD lists a phone number on its website to contact its FOIA unit, which is 202-514-3101.

20. On July 21, 2017 Plaintiff submitted a series of FOIA requests to the JMD at its public FOIA e-mail address, JMDFOIA@usdoj.gov.

21. These requests included the following:

| Document | Catalog Page | Exhibit |
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| A copy of the complete Catalog for the Department of Justice Library in Spreadsheet format,” (because the catalog had previously been produced as a .pdf and had been locked to make it impossible to search). | N/A | A |
| “Speed”y reference: a guide to federal and state statutes used in the prosecution of methamphetamine and precursor chemicals crimes in the southwest region. | 1 | B |
| [Allotment advice and forms 133] | 2 | C |
| [Arts, youth, and drug abuse eymposium: focus on alternatives, C.W. Post] | 2 | D |
| “[Electronics] surveillance manual: procedures and case law forms / prepared by Electronic Surveillance Unit, Office of Enforcement Operations, Rev. Oct. 1997 | 2 | E |
| [Harrison Narcotic Law correspondence] electronic resource | 2 | F |
| [Juvenile delinquency] [electronic resource] | 2 | G |
| [Juvenile drug use: selected papers / from the New York University Research Center for Human Relations.] | 2 | G |
| [Legal memoranda and legal guidelines] / Bureau of Drug Abuse Control; Bureau of of ¹ Narcotics and Dangerous Drugs | 2 | G |
| [Prevention planning project]. | 3 | H |
| [Trial advocacy course] / Attorney General's Advocacy Institute. | 3 | H |
| [Trial advocacy notebook] / Attorney General's Advocacy Institute. | 3 | H |
| 21st century FOIA and Privacy Act, government records sourcebook. | 9 | I |
| Access granted [DVD] : administrative law research / Melanie Michaelson, Adriana Younskevicius. | 12 | J |
| Access granted [DVD] : electronic resources available through the virtual library / Jan Oberla. | 12 | J |

¹ As listed in the Catalog.

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| Access granted [DVD] : introduction to the DOJ libraries / Dessy ... [et al.]. | 12 | J |
| Access granted [videorecording] : virtual library e-resources update / Janet Oberla, instructor; Adrienne Green, producer. | 13 | K |
| ACE : affirmative civil enforcement manual | 14 | L |
| Administrative law [electronic resource] / compiled and updated by the Dept. of Justice Library Staff. | 18 | M |
| Advertising and promotion to the lay public by "non-narcotic" products which publicize the "narcotic" properties of and make derogatory reflections upon codeine. | 22 | N |
| AID papers on crop substitution. | 26 | O |
| All about KSAOs [electronic resource] : knowledges, skills, abilities, and other characteristics. | 29 | P |
| Analysis of special agent investigative document paperwork / prepared by Management Analysis Division, Office of Administration and Management. | 43 | Q |
| Analysis of the convention relative to the treatment of prisoners of war. | 43 | R |
| Appellate advocacy training module [DVD]. | 55 | R |
| Application of Common Article 3 of the Geneva Conventions to the treatment of detainees in the Department of Defense [Internet]. | 55 | R |
| Application of the Federal Acquisition Regulations to procurement from Federal Prison Industries. / U.S Department of Justice, Office of Legal Counsel. | 56 | R |
| Asian organized crime [electronic resource]. | 60 | R |
| Assault and battery exception. | 60 | R |

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| Aviation litigation : maps and charting | 68 | R |
| Basic computer crimes and electronic evidence seminar / Office of Legal Education, Executive Office for United States Attorneys. | 73 | R |
| Basic computer crimes and electronic evidence manual. | 73 | R |
| Behavioral Science Unit : selected readings for the next millennium / compiled and edited by Sandra Lee Coupe. | 76 | R |
| Best practices memorandum. | 78 | R |
| Bomb threats : considerations for a planned response \ source, FBI Bomb Data Center | 87 | R |
| Booker. | 88 | R |
| Briefing papers. | 90 | R |
| Building searches \ source, FBI Bomb Data Center. | 93 | R |

22. Defendants have never acknowledged receipt of these FOIA requests, as required by the statute, or indicated any intention to process them.

23. Defendants have surpassed the time limit for processing these FOIA requests.

24. Having received no response, Plaintiff has made several phone calls to the only publicly available phone number for the JMD, 202-514-3101, but has never been able to reach anyone. When calling that number, after a series of rings it leads to a voice mail box for Karen McFadden. Plaintiff has left two voice messages on that line since August 2017 asking for information on why the JMD is not responding to these FOIA requests.

25. Defendants have never responded to these phone calls or voice messages.

26. On August 31, 2017 Plaintiff sent a follow-up e-mail to the JMD at its e-mail address, JMDFOIA@usdoj.gov, asking why it was not responding to Plaintiff's FOIA requests.

27. On September 15, 2017, Plaintiff sent a second follow-up e-mail message to the JMD at the same address, again asking why there had been no response.

28. Defendants have never responded to these e-mail messages, acknowledged receipt of the FOIA requests, or offered any indication they have any intention of processing or responding to the requests.

29. On November 9, 2017 Plaintiff sent another set of FOIA requests to the JMD at its FOIA e-mail address, including requests for the following documents:

| Document | Catalog Page | Exhibit |
|--|---------------------|----------------|
| Cannabis eradication briefing [videorecording] : Soviet Union. U.S. Dept. of Justice, Drug Enforcement Administration, Cannabis Investigations Section, 1990 | 100 | S |
| Company research [electronic resource] / compiled and updated by the Dept. of Justice Library Staff. | 136 | S |
| Comparing case processing statistics. U.S. Dept. of Justice, [1998] | 137 | S |
| Compendium of FTCA defenses [Internet] / prepared by Robin D. Smith. U.S. Dept. of Justice, Civil Division, | 137 | S |
| Computer and telecommunications fraud : a manual for investigation and prosecution. | 150 | S |
| Computer forensics U.S. Dept. of Justice, Executive Office for United States Attorneys, 2008]. | 150 | S |
| Congressional inquiries concerning the decision-making process and documents of the Executive Branch. | 153 | S |
| Coordinated effects analysis in merger investigations : a guide for Division staff. | 163 | S |
| Core collection U.S. Attorneys' libraries / compiled by the USAO Library Advisory Group. | 163 | S |
| Country report : [electronic resource] Afghanistan. Open Source Center, [2010?] | 168 | S |

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| Country report : [electronic resource] India. Open Source Center, [2010?] | 168 | S |
| Country report : [electronic resource] Pakistan. Open Source Center, [2010?] | 168 | S |
| Country report : [electronic resource] Turkey. Open Source Center, [2010?] | 168 | S |
| Country report : [electronic resource] Venezuela. Open Source Center, [2012] | 168 | S |
| Court papers and practice commentaries drafted by Constitutional Tort Staff Attorneys | 168 | S |
| Court resources subject guide [electronic resource] / compiled and updated by the Dept. of Justice Library Staff. | 168 | S |
| Courtroom evidence. 3rd ed. | 169 | S |
| Crystal meth [electronic reproduction] : ice age in Hawaii. s.n., 1989] | 180 | S |
| Daubert/Scientific evidence : casebook of legal articles. 1999. | 186 | S |
| DEA recruiting [videorecording]. U.S. Dept. of Justice, Drug Enforcement | 187 | S |
| Defending the individual capacity claim / U.S. Dept. of Justice. U.S. Dept. of Justice, Civil Division, | 190 | S |
| Discretionary function exception (part B) / prepared by Jeffrey Axelrad, | 206 | S |
| Discretionary function exception [Internet] / prepared by Jeffrey Axelrad , | 206 | S |
| Discretionary function exception, Part B / prepared by Jeffrey Axelrad ... | 206 | S |
| Discretionary function exception. Part B / prepared by Phyllis J. Pyles ... [et | 206 | S |
| DOJ enforcement of the Constitution [DVD] : police misconduct, the Rodney King case, and the LAPD : September 17, 2009, RFK Main Justice Building, Washington, DC. | 210 | S |
| DOJ ethics training [videorecording]. U.S. Dept. of Justice, 1994. | 210 | S |
| Drug Enforcement Administration aviation program [electronic resource] s.n.] | 219 | S |
| Drug I.D. handouts. [publisher not identified], [1990?] | 220 | S |

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| DuPont Plaza Hotel Fire : testing charred evidence [videorecording]. [s.n.], 1986. | 230 | S |
| Election administration reports. | 238 | S |
| Electronic discovery [electronic resource] / compiled and updated by the | 240 | S |
| Electronic discovery [Internet]. U.S. Dept. of Justice, Executive Office | 240 | S |
| Electronic surveillance manual [Internet] : procedures, case law, forms / Electronic Surveillance Unit. | 241 | S |
| Environmental law [electronic resource] / compiled and updated by the Dept. of Justice Library Staff. | 260 | S |
| Envisioning the future of the library : Department of Justice Library System strategic plan for staffing & services for 2010 / developed by Alison Shea ... [et al.] ; with special assistance from Roberta Shaffer. | 263 | S |
| Evaluation of Department of Justice law enforcement training provided to state and local police / prepared by The Evaluation Staff, Justice Management Division | 273 | S |
| Expert witness subject guide [electronic resource] / compiled and updated by the Dept. of Justice Library Staff. | 277 | S |
| Expertise in the Civil Division [electronic resource]. U.S. Dept. of Justice, Civil Division, | 277 | S |
| Extraterritorial issues. U.S. Dept. of Justice, Executive Office | 279 | S |
| Farewell celebration, Alberto R. Gonzales, eightieth Attorney General of | 282 | S |
| Farewell celebration, Michael B. Mukasey, eighty-first Attorney General of | 282 | S |
| Farewell ceremony, Janet Reno [videorecording] : seventy-eighth Attorney | 282 | S |
| Farewell ceremony, John Ashcroft, seventy-ninth Attorney General of the | 282 | S |
| Federal criminal discovery / Criminal Discovery Working Group. U.S. Dept. of Justice, Executive Office for U.S. Attorneys, Office of Legal Education, 2011. | 287 | S |
| Federal criminal trial techniques and procedures. Office of Legal Education, Executive Office for U.S. Attorneys, 2016. | 287 | S |

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| Financial activities, UNICOR, Federal Prison Industries, inc., Pleasanton, California. | 301 | S |
| Finding information on U.S. companies [DVD] / presented by Bridget Gilhool ; producer, Adrienne, Green. | 302 | S |
| First break the rules and then discover your strengths : [videorecording] 2003 executive development series / Kenneth Tucker. Justice Television Network : National Advocacy Center, [2003] | 306 | S |
| Foreign & international law subject guide [electronic resource] / compiled and updated by the Dept. of Justice Library Staff. | 311 | S |
| Foreign origin seizures workstudy / [U.S. Bureau of Narcotics and Dangerous Drugs]. [U.S. Bureau of Narcotics and Dangerous Drugs] | 311 | S |
| Foreign threats against the U.S. [videorecording]. JTN, 2002. | 312 | S |
| FTCA exception : claims arising in a foreign country [Internet] / David E. Dauenheimer. | 319 | S |
| FTCA staff monographs | | S |
| FTCA statute of limitations / [electronic resource] prepared by James G. Touhey, Jr. | 319 | S |
| FTO litigator : a summary of FTO-related case law U.S. Department of Justice, National Security Division, 2010- | 319 | S |
| Fundamental elements of the counterintelligence discipline. Volume 1, Universal counterintelligence core competencies [electronic resource] / Office of the National Counterintelligence Executive, the National Counterintelligence Institute. | 320 | S |
| Gang issues. U.S. Dept. of Justice, Executive Office for U.S. Attorneys, [2008] | 324 | S |
| Gangs. U.S. Dept. of Justice, Executive Office for United States Attorneys, [2006] | 325 | S |
| GHB, a killer new drug [videorecording]. JTN, 2002. | 331 | S |
| Google tips [electronic resource] / Compiled and Updated by the Department of Justice Library Staff | 336 | S |
| Guidance on the use of alternative dispute resolution for litigation in federal courts / US Department of Justice Civil Division | 342 | S |

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| Guidance to Chinese Names and Language | 344 | S |
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30. On November 9, 2017 Plaintiff printed a paper copy of all of the e-mailed FOIA requests sent to the agency between July and November, 2017 in Exhibits A through S and sent them to the JMD with a cover letter asking the JMD to process the FOIA requests.

31. The letter was sent by FedEx overnight mail to Defendant Karen McFadden at the publicly-available address for the JMD's FOIA requests: Department of Justice JMD, 950 Pennsylvania Avenue NW, Room 1111RFK, Washington, D.C. 20530.

32. The FedEx tracking number for this package was 7707 1336 0947. According to Fedex records, the package was delivered on November 13, 2017 at 9:38 AM.

33. The defendants have never responded to these requests or acknowledged their receipt.

34. The delay in responding to Plaintiff's FOIA requests is not attributable to Plaintiff.

35. Plaintiff has exhausted all possible administrative remedies available to it and has attempted to contact the JMD's FOIA unit in every way possible.

36. The records Plaintiff has requested are not otherwise available elsewhere.

37. The records Plaintiff has requested are not subject to any exemption under the FOIA that would prohibit their disclosure.

VII. COUNT I – Violation of the FOIA

38. Paragraphs 1 through 37 are incorporated as if fully stated herein.

39. Defendants exceeded the legal response time of twenty days in 5 U.S.C. § 552(a)(6)(A)(i) and failed to give written notice if a ten-day extension was needed in the “unusual circumstances” set forth in 5 U.S.C. § 552(a)(6)(B).

40. Defendants failed to respond to any of the FOIA requests and have exceeded the statutorily allowed response time.

41. Defendants have not requested a ten-day extension.

42. Defendants failed to acknowledge receipt of any of the FOIA requests.

43. Defendants failed to produce documents subject to disclosure under the FOIA or to claim any legally justifiable exemption to their disclosure.

44. Defendants failed to respond to multiple attempts to contact the agency about the FOIA requests.

45. Defendants' delay in responding to the FOIA requests is not justified by any legal defense under the FOIA or the implementing regulations.

VIII. COUNT II – Violation of the APA – Arbitrary and Capricious Conduct

46. Paragraphs 1 through 44 are incorporated as if fully stated herein.

47. Defendants' action in withholding the requested information was and continues to be arbitrary and capricious under 5 U.S.C. § 551 *et seq.*, 5 U.S.C. § 555(b), § 702, § 704, and § 706, the Administrative Procedures Act.

IX. COUNT III – Violation of the Open Government Act of 2007 – Failure to Acknowledge Receipt.

48. Paragraphs 1 through 46 are incorporated as if fully stated herein.

49. Defendants have failed to comply with the Open Government Act of 2007.

50. Generally an agency in receipt of a FOIA request must “assign an individualized tracking number for each request received that will take longer than ten days to process and provide to each person making a request the tracking number assigned to the request.” 5 U.S.C. § 552(a)(7)(A).

51. Defendants have never provided to Plaintiff a tracking number or communicated to Plaintiff in any manner to acknowledge receipt of the requests or to indicate how long they will take to process these requests.

X. PRAYER

52. WHEREFORE, Plaintiff prays this Court:

(A) Find that Defendants exceeded the legal response time of twenty days in 5 U.S.C. § 552(a)(6)(A)(i) and failed to give written notice if a ten-day extension was needed in the “unusual circumstance” set forth in 5 U.S.C. § 552(a)(6)(B).

(B) Find that Defendants improperly withheld responsive documents in violation of the Freedom of Information Act and the Open Government Act of 2007.

(C) Find that the agency action in this case was “arbitrary and capricious” thus violating the Administrative Procedure Act.

(D) Order Defendants to process Plaintiff’s FOIA requests forthwith.

(E) Award Plaintiff all reasonable attorneys’ fees and costs of court related to this lawsuit under the Freedom of Information Act’s fee shifting statute.

(F) Grant such other relief at law and in equity as the Court may deem just and proper.

Respectfully submitted,
Hoppock Law Firm, LLC

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