

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JASON LEOPOLD,
1669 Benedict Canyon Drive
Beverly Hills, CA 90210,

PLAINTIFF

VS.

DEPARTMENT OF JUSTICE,
950 Pennsylvania Ave., NW
Washington, DC 20530,

DEFENDANT

Judge _____
Civil Action No. _____

COMPLAINT

THE PARTIES

1. Plaintiff Jason Leopold is a citizen of California.
2. Plaintiff is an investigative reporter for VICE News covering a wide-range of issues, including Guantanamo, national security, counterterrorism, civil liberties, human rights, and open government. Additionally, his reporting has been published in The Guardian, The Wall Street Journal, The Financial Times, Salon, CBS Marketwatch, The Los Angeles Times, The Nation, Truthout, Al Jazeera English and Al Jazeera America.
3. Defendant Department of Justice (“DOJ”) is an agency of the United States within the meaning of 5 USC § 552(f).
4. The Office of the Solicitor General (“OSG”) is a component within the DOJ.
5. The DOJ has possession, custody and control of the records Plaintiff seeks.

JURISDICTION AND VENUE

6. This action arises under the Freedom of Information Act (“FOIA”), 5 USC § 552.

7. This Court has jurisdiction over the parties and subject matter pursuant to 5 USC § 552(a)(4)(B). Jurisdiction also lies with this Court under 28 USC § 1331.

8. Venue is proper in this district pursuant to 5 USC § 552(a)(4)(B).

STATEMENT OF FACTS

BACKGROUND

9. According to its web site, the “The task of the Office of the Solicitor General is to supervise and conduct government litigation in the United States Supreme Court. Virtually all such litigation is channeled through the Office of the Solicitor General and is actively conducted by the Office. The United States is involved in approximately two-thirds of all the cases the U.S. Supreme Court decides on the merits each year.”

10. Little is known publicly about communications between the Solicitor General’s office and individual Supreme Court justices.

11. Even less is known about electronic communications between the Solicitor General and individual Supreme Court justices. Indeed, it is not even publicly known whether any of the justices presently have official email addresses. In 2013, Justice Kagan stated in an interview that while she has a personal email address and the Court’s clerks email each other, the Court as a whole “hasn’t really ‘gotten to’ email.” Will Oremus, “Elena Kagan Admits Supreme Court Justices Haven’t Quite Figured Out Email Yet” (Aug. 20, 2013), available at http://www.slate.com/blogs/future_tense/2013/08/20/elena_kagan_supreme_court_justices_have_n_t_gotten_to_email_use_paper_memos.html

12. The nature and existence of communications, or lack thereof, between the Solicitor General and Supreme Court justices is a matter of great public importance.

Accordingly, Plaintiff submitted a FOIA request just under a year ago for emails between the current or any former Solicitor General and any Supreme Court justice. Having received no substantive response to his FOIA request, Plaintiff now brings the present suit.

PLAINTIFF'S FOIA REQUEST

13. On January 11, 2015, Plaintiff submitted a FOIA request via the DOJ's FOIA Portal, requesting all emails sent by the current or former Solicitor General to any member of the United States Supreme Court. Plaintiff's FOIA request also sought a waiver of fees.

14. Plaintiff received a response from OIP dated February 5, 2015 stating that the request was being forwarded to the Office of the Solicitor General for processing. The response further indicated that the request had been assigned tracking number FOIA-2015-01310.

15. Plaintiff has received no further communication from OIP or OSG with respect to request 15-1310.

16. Because more than 20 business days have elapsed with no final determination from the agency as to whether it will release records, Plaintiff is deemed to have constructively exhausted his administrative remedies.

COUNT I: **VIOLATION OF FOIA**

17. This Count realleges and incorporates by reference all of the preceding paragraphs.

18. Each of the documents referred to in this Complaint is incorporated herein by reference.

19. The DOJ has violated FOIA as to request 15-1310 by improperly withholding responsive records and failing to grant, or even rule on, Plaintiff's request for a waiver of fees.

20. Plaintiff has been and will continue to be irreparably harmed until Defendant is ordered to comply with FOIA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- (1) Declare Defendant's failure to comply with FOIA to be unlawful;
- (2) Order Defendant to search for and process the requested records without further delay and without payment of search, review, and duplication fees;
- (3) Grant Plaintiff an award of attorney fees and other litigation costs reasonably incurred in this action pursuant to 5 USC § 552(a)(4)(E)(i);
- (4) Grant Plaintiff such other and further relief which the Court deems proper.

Respectfully Submitted,

/s/ Jeffrey Light

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