

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Sandoval v. U.S. Dep't of Justice

Sandoval v. U.S. Dep't of Justice, 322 F. Supp. 3d 101 (D.D.C. 2018) · Decided August 27, 2018

SUMMARY

Federal inmate's FOIA and Privacy Act claims dismissed on summary judgment for failure to exhaust administrative remedies as to FBI and BOP, and because the U.S. Attorney's Office conducted an adequate search and provided the 100 free pages to which plaintiff was entitled under FOIA and DOJ regulations. The court held that a FOIA requester must exhaust administrative remedies before suing, and that an agency's sworn affidavits demonstrating a reasonable search and compliance with fee limitations are sufficient to defeat claims of unlawful withholding. Plaintiff's unsupported allegations of innocence did not warrant Privacy Act record correction.

CASE DETAILS

COURT	United States District Court for the District of Columbia
WRITING FOR THE COURT	Christopher R. Cooper
JURISDICTION	Federal
DECIDED	August 27, 2018
DISPOSITION	summary judgment granted
PROCEDURAL POSTURE	Defendants' motion for dismissal or, alternatively, for summary judgment.
STANDARD OF REVIEW	For motion to dismiss under Rule 12(b)(1) or 12(b)(6): treat factual allegations as true, grant plaintiff benefit of all inferences. For summary judgment under Rule 56(a): no genuine dispute of material fact and movant entitled to judgment as a matter of law. In FOIA cases, de novo review, burden on agency to sustain action; summary judgment may be granted on basis of agency affidavits that are reasonably specific and not contradicted.
PRECEDENTIAL VALUE	Published
PARTIES	Hector Sandoval v. U.S. Department of Justice, Federal Bureau of Investigation, Bureau of Prisons, U.S. Attorney's Office for the Central District of Illinois

TOPICS

administrative law

exhaustion of remedies

judicial review of agency action

summary judgment

civil procedure

PRACTICE AREAS

FOIA

Privacy Act

Administrative Law

QUESTIONS PRESENTED

1. Whether Sandoval exhausted his administrative remedies before filing FOIA and Privacy Act claims against the FBI and BOP.
2. Whether the U.S. Attorney's Office conducted an adequate search under FOIA and the Privacy Act, and whether Sandoval's Privacy Act correction claim fails.

HOLDINGS

1. Sandoval failed to exhaust administrative remedies because he did not appeal the agencies' initial responses.
2. The U.S. Attorney's Office conducted an adequate search; Sandoval's claim of unlawful withholding fails because he only requested 100 free pages and received that amount.
3. Sandoval's unsupported assertions of innocence do not warrant correction of records.

KEY QUOTATIONS

"In evaluating a motion to dismiss under either Rule 12(b)(1) or 12(b)(6), a court must 'treat a complaint's factual allegations as true ... and must grant a plaintiff 'the benefit of all inferences that can be derived from the facts alleged.'" (at 104)

"Summary judgment is appropriate 'if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" (at 104)

"In FOIA cases, '[s]ummary judgment may be granted on the basis of agency affidavits' when those affidavits 'contain reasonable specificity of detail rather than merely conclusory statements' and when 'they are not called into question by contradictory evidence in the record or by evidence of agency bad faith.'" (at 104-105)

"Prior to filing suit, a FOIA requester must exhaust administrative remedies." (at 105)

"The Court thus concludes that Sandoval has failed to exhaust his administrative remedies and will dismiss the FOIA and Privacy Act claims against the FBI and BOP on that basis." (at 105)

"Sandoval has not argued that the documents produced to him by the Office are unresponsive, or that the Office's search could have been better tailored to find the most responsive documents; rather, he simply argues the Office should have produced more documents. But Sandoval indicated he wanted only the 100 free pages to which he was entitled under FOIA and did not wish the Office to search further." (at 105-106)

"As for Sandoval's additional Privacy Act demand that the Office correct purportedly inaccurate records, Sandoval's unsupported assertions that the case against him was a sham do not warrant such relief." (at 106)

FACTUAL BACKGROUND

Sandoval, a federal inmate convicted in 2002 of kidnapping and firearm offenses, submitted FOIA and Privacy Act requests in 2016 to the FBI, BOP, and U.S. Attorney's Office seeking records to prove his innocence. The FBI found no responsive records; BOP only located his presentence report; the U.S. Attorney's Office initially found none but later expanded its search and produced 100 pages. Sandoval did not administratively appeal the FBI and BOP responses, but he did appeal the U.S. Attorney's Office response, which was affirmed.

PROCEDURAL HISTORY

Sandoval filed FOIA and Privacy Act requests with FBI, BOP, and U.S. Attorney's Office. After the agencies processed the requests, Sandoval filed suit. The agencies moved for dismissal or summary judgment.

DISPOSITION

summary judgment granted

CASES CITED

- Sandoval v. United States, 2007 WL 2937124 (C.D. Ill. Sept. 26, 2007), aff'd, 574 F.3d 847 (7th Cir. 2009)
- Sparrow v. United Air Lines, Inc., 216 F.3d 1111 (D.C. Cir. 2000)
- Schuler v. United States, 617 F.2d 605 (D.C. Cir. 1979)
- Am. Nat'l Ins. Co. v. FDIC, 642 F.3d 1137 (D.C. Cir. 2011)
- Browning v. Clinton, 292 F.3d 235 (D.C. Cir. 2002)
- Land v. Dollar, 330 U.S. 731 (1947)
- Haase v. Sessions, 835 F.2d 902 (D.C. Cir. 1987)
- Gustave-Schmidt v. Chao, 226 F. Supp. 2d 191 (D.D.C. 2002)
- Military Audit Project v. Casey, 656 F.2d 724 (D.C. Cir. 1981)
- Brayton v. Office of U.S. Trade Rep., 641 F.3d 521 (D.C. Cir. 2011)
- Judicial Watch, Inc. v. U.S. Secret Serv., 726 F.3d 208 (D.C. Cir. 2013)
- Consumer Fed'n of Am. v. Dep't of Agric., 455 F.3d 283 (D.C. Cir. 2006)
- SafeCard Servs., Inc. v. SEC, 926 F.2d 1197 (D.C. Cir. 1991)
- Ground Saucer Watch, Inc. v. CIA, 692 F.2d 770 (D.C. Cir.1981)
- Chambers v. U.S. Dep't of the Interior, 568 F.3d 998 (D.C. Cir.2009)
- Hidalgo v. FBI, 344 F.3d 1256 (D.C. Cir.2003)
- Oglesby v. U.S. Dep't of the Army, 920 F.2d 57 (D.C. Cir.1990)
- Dick v. Holder, 67 F. Supp. 3d 167 (D.D.C. 2014)
- Pinson v. U.S. Dep't of Justice, 189 F. Supp. 3d 137 (D.D.C. 2016)

CITED IN

- Sandoval v. U.S. Dep't of Justice, Sandoval v. U.S. Dep't of Justice, 322 F. Supp. 3d 101, 104 (D.D.C. 2018)

OPINION

PER CURIAM.

CHRISTOPHER R. COOPER, United States District Judge *103Federal Inmate Hector Sandoval filed Freedom of Information Act requests with several law enforcement agencies seeking documents he believes would assist in proving his innocence.

After the agencies processed the requests, Sandoval filed suit. He claims that the agencies failed to produce all the records he sought and to correct allegedly inaccurate records in their possession. The agencies have now moved for dismissal or, in the alternative, for summary judgment.

The Court will grant summary judgment for the agencies.^{I. Factual Background}In 2002, Mr. Sandoval was convicted by a jury of kidnapping and carrying a firearm during and in relation to a violent crime. See *Sandoval v. United States*, 2007 WL 2937124, at *1 (C.D. Ill. Sept. 26, 2007), *aff'd*, 574 F.3d 847 (7th Cir. 2009).

On February 28, 2016, he submitted a request under the Freedom of Information Act ("FOIA") to three agencies-the Federal Bureau of Investigation ("FBI"), the Bureau of Prisons ("BOP"), and the U.S. Attorney's Office for the Central District of Illinois ("U.S. Attorney's Office")-seeking records and documents related to his criminal investigation and prosecution.

See Compl. ¶¶ 12-14. Sandoval believed these documents would prove his innocence in his criminal case. *Id.* Sandoval also submitted a Privacy Act request to the same agencies, requesting that any records the agencies maintained be corrected to reflect Sandoval's alleged innocence of his convicted conduct. Defendants' Motion to Dismiss ("Defs.' MTD") at 20. The FBI responded to Sandoval's requests in April 2016, notifying him that its search of the Central Records System had not uncovered any responsive records.

Defs.' MTD, Declaration of David M. Hardy ("Hardy Decl."), at 16-17. The BOP, meanwhile, informed Sandoval in September 2016 that its search yielded only Sandoval's presentence report, which Sandoval could review under supervision at the correctional center. *Id.*, Declaration of Ronald L. Rodgers ("Rodgers Decl."), at 9. And for its part, the U.S. Attorney's Office advised Sandoval in June 2016 that its search had come up empty.

Defs.' MTD, Declaration of Princina Stone ("Stone Decl.") at 18. Sandoval did not administratively appeal the FBI and BOP responses. See Hardy Decl. at 5; Rodgers Decl. at 13. He did, however, appeal the U.S. Attorney's Office's response, which was affirmed. See Stone Decl. at 24.^{II. Legal Standard}^{A. Motion to Dismiss}In evaluating a motion to dismiss under either Rule 12(b)(1) or 12(b)(6), a court must "treat a complaint's factual allegations as true... and must grant a plaintiff 'the benefit of all inferences that can be derived from the facts alleged.' " *Sparrow v. United Air Lines, Inc.*, 216 F.3d 1111, 1113 (D.C.

Cir. 2000) (internal citations omitted), quoting *Schuler v. United States*, 617 F.2d 605, 608 (D.C. Cir. 1979); see also *Am. Nat'l Ins. Co. v. FDIC*, 642 F.3d 1137, 1139 (D.C. Cir. 2011). Nevertheless, a court need not accept inferences drawn by the plaintiff that are unsupported by facts alleged in the complaint, nor must the court accept a plaintiff's legal conclusions.

Browning v. Clinton, 292 F.3d 235, 242 (D.C. Cir. 2002). When reviewing a challenge pursuant to Rule 12(b)(1), the court may consider documents outside the pleadings to assure itself that it has jurisdiction. See *Land v. Dollar*, 330 U.S. 731, 735 n. 4, 67 S.Ct. 1009, 91 L.Ed. 1209 (1947); *Haase v. Sessions*, 835 F.2d 902, 906 (D.C. Cir. 1987).

In contrast, a court may ordinarily consider only "the facts alleged in the complaint, documents attached as exhibits or incorporated by reference in the complaint and matters about which the Court may take judicial notice." *Gustave-Schmidt v. Chao*, 226 F.Supp.2d 191, 196 (D.D.C. 2002). B. Motion for Summary Judgment In a FOIA case, a district court reviews the agency's decisions de novo and "the burden is on the agency to sustain its action."

5 U.S.C. § 552(a)(4)(B); *Military Audit Project v. Casey*, 656 F.2d 724, 738 (D.C. Cir. 1981). "[T]he vast majority of FOIA cases can be resolved on summary judgment." *Brayton v. Office of U.S. Trade Rep.*, 641 F.3d 521, 527 (D.C. Cir. 2011). Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."

Fed. R. Civ. P. 56(a). In FOIA cases, "[s]ummary judgment may be granted on the basis of agency affidavits" when those affidavits "contain reasonable specificity of detail rather than merely conclusory statements" and when "they are not called into question by contradictory evidence in the record or by evidence of agency bad faith." *Judicial Watch, Inc. v. U.S. Secret Serv.*, 726 F.3d 208, 215 (D.C.

Cir. 2013), quoting *Consumer Fed'n of Am. v. Dep't of Agric.*, 455 F.3d 283, 287 (D.C. Cir. 2006). However, a plaintiff cannot rebut the good-faith presumption afforded to an agency's supporting affidavits through "purely speculative claims about the existence and discoverability of other documents." *SafeCard Servs., Inc. v. SEC*, 926 F.2d 1197, 1200 (D.C. Cir.

1991), quoting *Ground Saucer Watch, Inc. v. CIA*, 692 F.2d 770, 771 (D.C. Cir. 1981). Similarly, in a Privacy Act case, the court may rely on agency affidavits or declarations to enter summary judgment. See *Chambers v. U.S. Dep't of the Interior*, 568 F.3d 998, 1003 (D.C. Cir. 2009). III. Analysis Prior to filing suit, a FOIA requester must exhaust administrative remedies.

Hidalgo v. FBI, 344 F.3d 1256, 1258 (D.C. Cir. 2003). An agency has twenty days to determine if it will comply with the request, and it must notify the requestor of this decision. 5 U.S.C. § 552(a)(6)(A)(i). The agency's response should include its "determination of whether or not to comply

with the request[,] the reasons for its *105decision[,] and if the decision is adverse, notice of the requestor's right "to appeal to the head of the agency."

Oglesby v. U.S. Dep't of the Army, 920 F.2d 57, 65 (D.C. Cir. 1990). Once the agency responds, "the FOIA requestor must appeal to the head of the agency" before bringing suit. *Id.* The agency must then make a determination on the appeal within twenty days. § 552(a)(6)(A)(ii).

However, if an agency fails to respond within twenty days, a requestor "shall be deemed to have exhausted his administrative remedies with respect to [a] request" and may file suit. § 552(a)(6)(C) (i). A plaintiff raising Privacy Act claims must also exhaust his administrative remedies prior to bringing suit. § 552a(g)(1)(A); *Dick v. Holder*, 67 F.Supp.3d 167, 188 (D.D.C.).

2014). Sworn affidavits submitted by the government establish that Sandoval did not exhaust his administrative remedies before the FBI and BOP. Both agencies initially responded in a timely manner to Sandoval's requests. *Hardy Decl.* at 16-17; *Rodgers Decl.* at 9. Importantly, both informed Sandoval of his administrative appeal rights. See *Hardy Decl.* at 3-4; *Rodgers Decl.* at 6-7.

According to the sworn agency affidavits, Sandoval never filed an appeal of his requests. See *Hardy Decl.* at 5; *Rodgers Decl.* at 13. And Sandoval points to no allegations or evidence to contradict these assertions. The Court thus concludes that Sandoval has failed to exhaust his administrative remedies and will dismiss the FOIA and Privacy Act claims against the FBI and BOP on that basis. The government has submitted an affidavit from Princina Stone, an Attorney Advisor with EOUSA, which advises U.S. Attorney's Offices in responding to FOIA and Privacy Act requests.

Stone avers that upon receiving Sandoval's request, the U.S. Attorney's Office conducted a search for all records in its possession responsive to the request and "determined it did not possess any records that proved 'the actual innocence of the kidnapping and firearm [charges].'" *Stone Decl.* at 4. The U.S. Attorney's Office, after reviewing Sandoval's complaint in this case, then decided to expand the scope of its prior search and performed an additional one.

Id. at 4-5. This second search returned more results, and the Office provided Sandoval with a production of over 100 pages of records. *Id.* at 5. Since Sandoval had been provided the 100 free pages he was entitled to under FOIA, the Office inquired whether Sandoval wanted them to continue responding to his request-which would require he pay fees-or stop its search after producing the 100 documents.

Id. at 12-13. Sandoval requested the agency stop after 100 pages. *Id.* at 16. The government contends this search is adequate, and the Court agrees. Sandoval has not argued that the documents produced to him by the Office are unresponsive, or that the Office's search could have been better

tailored to find the most responsive documents; rather, he simply argues the Office should have produced more documents.

But Sandoval indicated he wanted only the 100 free pages to which he was entitled under FOIA and did not wish the Office to search further. The Office's search was able to uncover 100 responsive pages, which is all that Sandoval was entitled to under the statute and DOJ regulations. 28 C.F.R. § 16.10(d)(4)(i)-(ii); see *Pinson v. U.S. Dep't of Justice*, 189 F.Supp.3d 137, 150 (D.D.C.

2016) (discussing § 16.10(d)(4)(i)-(ii)). That fact is fatal to Sandoval's unlawful-withholding argument under both FOIA and the Privacy Act. And as for Sandoval's additional Privacy Act demand that the Office correct *106purportedly inaccurate records, Sandoval's unsupported assertions that the case against him was a sham do not warrant such relief. See, e.g., Compl. ¶¶ 34-36 (asserting that government witnesses lied).

The Court therefore dismisses Sandoval's FOIA and Privacy Act claims against the U.S. Attorney's Office.
IV. Conclusion
For the foregoing reasons, the Court will grant Defendants' motion for summary judgment. A separate Order shall accompany this memorandum opinion.