

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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| MARRITA MURPHY, |) |
| 4751 Whitehaven Parkway, N.W. |) |
| Washington, D.C. 20007-1558 |) |
| |) |
| DANIEL J. LEVEILLE, |) |
| 4751 Whitehaven Parkway, N.W. |) |
| Washington, D.C. 20007-1558 |) |
| |) |
| Plaintiffs, |) |
| |) |
| v. |) Civil Action No. 1:03CV02394 (JGP) |
| |) |
| INTERNAL REVENUE SERVICE, |) Judge John Garrett Penn |
| 1111 Constitution Ave., N.W. |) |
| Washington, DC 20224-0002 |) Deck Type: FOIA/Privacy Act |
| |) |
| |) Date Stamp: 11/19/2003 |
| Defendants. |) |
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COMPLAINT

This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 522, as amended, and the Privacy Act, 5 U.S.C. § 552a, to order the production of agency records, concerning and related to Plaintiffs and as set forth below.

JURISDICTION

1. This court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 5 U.S.C. § 552a(g).

PARTIES

2. Plaintiffs Marrita Murphy and Daniel J. Leveille are citizens of the United States and have requested access to agency records pertaining to themselves as set forth below.

3. Defendant Internal Revenue Service (“IRS”) is an agency of the United States government and is headquartered in Washington, D.C. The IRS has possession of and control over the records that plaintiffs seek.

FACTS

4. By letter dated January 16, 2003, plaintiffs, by and through counsel, submitted a request to the IRS, pursuant to the Freedom of Information and Privacy Acts (“FOIPA”) seeking access to documents pertaining to themselves as stated in said request letter.

5. Having received no response to plaintiffs’ January 16, 2003 FOIPA request, plaintiffs, by and through counsel, submitted a FOIA and Privacy Act administrative appeal by letter dated October 15, 2003, to the IRS Riverside Appeals Office.

6. By letter dated November 13, 2003, the IRS responded to plaintiffs’ administrative appeal by stating, *inter alia*, there was no jurisdiction for an administrative appeal for lack of a timely response from a Disclosure Officer of the IRS, and that the FOIA statute provides for judicial remedies when a determination on a FOIA request is not made by the agency within the statutory time deadlines.

7. To date, plaintiffs have not received a response to their original FOIPA request made on January 16, 2003, and plaintiffs have been denied access to the agency records that are responsive to their FOIPA request.

COUNT I

(Denial of Access to Records)

8. Plaintiffs incorporates by reference paragraphs 1 through 7, inclusive, and all allegations contained therein.

9. To date, Defendant has denied, and/or constructively denied, plaintiffs access to records they have requested through the above-referenced January 16, 2003 FOIPA request.

10. Plaintiffs have exhausted all administrative remedies pursuant to the Freedom of Information Act and the Privacy Act related to their January 16, 2003 FOIPA request.

11. Plaintiffs have a statutory right to the records that they seek, and there is no legal basis for defendant's refusal to disclose those records.

12. Defendant should be enjoined from withholding the records that are responsive to the plaintiffs' above-referenced January 16, 2003 FOIPA request.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

(a) Declare that defendant's refusal to disclose the records requested by plaintiffs under the Freedom of Information Act and Privacy Act is unlawful;

(b) Order defendant to make the requested records available to plaintiffs under the Freedom of Information Act and Privacy Act as requested forthwith;

(c) Order preliminary and permanent injunctive relief as appropriate;

- (d) Award plaintiffs their costs and reasonable attorneys' fees in this action; and
- (e) Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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Attorneys for Plaintiffs

November 19, 2003