

FILED
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Courts for the District of Columbia

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SIBEL D. EDMONDS
12 Wolfe St.
Alexandria, VA 22314

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,
10th & Pennsylvania Avenue, N.W.
Washington, DC 20535

UNITED STATES DEPARTMENT OF JUSTICE,
9th & Pennsylvania Avenue, N.W.
Washington, DC 20530

THE UNITED STATES OF AMERICA,
c/o United States Department of Justice
9th & Pennsylvania Avenue, N.W.

HONORABLE ERIC HOLDER, U.S. Attorney General,
in His Official Capacity
c/o U.S. Department of Justice
9th & Pennsylvania Avenue, N.W.
Washington, DC 20530

HONORABLE ROBERT S. MUELLER, III, FBI Director,
in His Official Capacity
c/o Federal Bureau of Investigation
10th & Pennsylvania Avenue, N.W.
Washington, DC 20535

Defendants.

Case: 1:11-cv-01329
Assigned To : Roberts, Richard W.
Assign. Date : 7/21/2011
Description: TRO/PI

) **COMPLAINT FOR**
) **INJUNCTIVE AND**
) **DECLARATORY RELIEF**

INTRODUCTION

This is an action under the First Amendment to the United States Constitution, Title 28 of the Code of Federal Regulations, Part 17, the Administrative Procedure Act, in order to require the Federal Bureau of Investigation (“FBI”), the Department of Justice (“DOJ”) and the United States to approve for publication a manuscript created by the Plaintiff, a former FBI contract linguist, to seek review of a denial by the FBI and DOJ, and to enjoin the defendants from taking action against plaintiff for publication of her manuscript.

JURISDICTION AND VENUE

1. This Action involves federal questions under the First Amendment to the United States Constitution, as well as under 28 C.F.R. Part 17, with the United States as a defendant. Accordingly, this Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, and pursuant to the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 551, 553, and 701-706.

2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (e).

PARTIES

3. Plaintiff Sibel D. Edmonds was employed as a Contract Monitor and Contract Linguist by the FBI in Washington, D.C. from September 13, 2001 through March 22, 2002.

4. Sibel Edmonds is the founder and president of the National Security Whistleblowers Coalition (“NSWBC”), a nonprofit organization dedicated to aiding national security whistleblowers. She has appeared on national radio and TV as a commentator on matters related to whistleblowers, national security, and excessive secrecy & classification, and has been featured on CBS 60 Minutes, CNN, MSNBC, NPR, and in the New York Times, Washington Post, Vanity Fair, The American Conservative, and others.

5. Ms. Edmonds won the 2006 PEN/Newman's Own First Amendment Award for her "commitment to preserving the free flow of information in the United States in a time of growing international isolation and increasing government secrecy."

6. Defendant Federal Bureau of Investigation ("FBI") is an agency of the United States government and is headquartered at 10th & Pennsylvania Avenues, N.W., Washington, DC 20535. From September 2001 to March 2002, FBI was the Plaintiff's employer and is the first-level reviewing authority for the proposed publication in question.

7. Defendant U.S. Department of Justice ("DOJ") is an agency of the United States government and is headquartered at 9th and Pennsylvania Avenues, N.W., Washington, DC 20535. At all times relevant to this Complaint, DOJ is the appellate reviewing authority for the proposed publication in question.

8. Defendant United States of America ("United States") is the government of the United States of America.

9. Defendant Honorable Eric Holder is the Attorney General of the United States, is employed by the United States and the DOJ, and is sued in his official capacity.

10. Defendant Honorable Robert S. Mueller, III, is the Director of the Federal Bureau of Investigation, is employed by the United States, the DOJ, and the FBI, and is sued in his official capacity.

FACTS

11. In September 2001, Defendant FBI hired Plaintiff Sibel Edmonds as a contract linguist to perform translation services at the FBI Washington Field Office ("WFO") after September 11, 2001.

12. FBI contract linguists perform document-to-document or audio-to-document translation services, and translate into English from the target language the speech and/or writings of non-English speaking individuals and, on occasion, render translations from English into the target language. FBI contract monitors perform summary translations of voice recordings.

13. Between December 2001, and March 2002, when Plaintiff was terminated, Plaintiff reported a number of whistleblower allegations to FBI management officials.

14. During 2002, Plaintiff interviewed and filed a complaint with the U.S. DOJ Office of the Inspector General (“OIG”), and to the Senate Judiciary Committee.

15. In January 2005, the OIG publicly issued a 35-page, single-spaced, declassified report entitled “A Review of the FBI’s Actions in Connection With Allegations Raised By Contract Linguist Sibel Edmonds.” The report, which is publicly available on the OIG’s website, <http://www.justice.gov/oig/special/0501/final.pdf>, stated that the OIG believes that the FBI terminated Ms. Edmonds in retaliation for what would have been a “protected disclosure” for an employee. Because Ms. Edmonds was a contractor and not an employee, she was not covered by the FBI Whistleblowers regulations. The OIG report also discusses and validates many of Ms. Edmonds’ allegations that she raised prior to her termination by the FBI, and made specific “systemic recommendations to the FBI in an attempt to improve its foreign language translation program.”

FBI Guidelines

16. The FBI Guidelines in 28 C.F.R. § 17.18 say that the Section Chief, Records/Information Dissemination Section, Records Management Division, is required to respond substantively to all prepublication review requests within 30 working days. According

to the Guidelines, any decision may be appealed to the Director of the FBI, who has 15 working days to process the appeal.

17. On April 26, 2011, in accordance with 28 C.F.R. § 17.18 and the First Amendment of the United States Constitution, Plaintiff submitted for review a manuscript of a book that she intends to publish. Plaintiff requested that the FBI clear her manuscript for publication within 30 working days. Plaintiff submitted her manuscript to the FBI Prepublication Review Office for prepublication review pursuant to the FBI's prepublication regulations and the FBI's non-disclosure agreement.

18. Plaintiff contends that nothing in the manuscript is classified and that nothing in her manuscript should be barred from publication.

19. As of June 9, 2011, Defendant FBI had failed to respond to Plaintiff's request. Plaintiff considered FBI's failure to respond as a constructive denial of her request, because 30 working days had elapsed from Plaintiff's initial submission of her manuscript for prepublication review.

20. On June 14, 2011, Plaintiff attempted to appeal Defendant FBI's constructive denial of her request to Defendant Robert S. Mueller, III, FBI Director, in accordance with 28 C.F.R. §17.18, the FBI's prepublication clearance guidelines.

21. At 10 a.m. on June 14, 2011, Defendant Robert S. Mueller, III, FBI Director, refused to accept service of Plaintiff's appeal letter by hand. A representative of Ms. Edmonds' counsel attempted to call the office of Defendant Mueller, but his office refused to return a phone call.

22. At 12:45, on June 14, 2011, Zach Wright, the FBI assigned contact person, informed a representative of Plaintiff's counsel that the appropriate place to send the

administrative appeal letter was to 170 Marcel Dr., Winchester, VA 22602, ATTN: Prepublications Review. He did not provide any fax or e-mail address, nor did he provide a contact person within the Director's Office.

23. At 1:58 p.m. on June 14, 2011, Plaintiff's appeal letter was sent via facsimile to Defendant Robert S. Mueller, III and Plaintiff's counsel received a fax transmission receipt after faxing the document.

24. On June 15, 2011, a copy of the Plaintiff's appeal letter was sent by Express Mail to the FBI Prepublication Review Office at 170 Marcel Dr., Winchester, VA 22602. It was accepted and signed for by E Norris on June 16, 2011, according to the United States Postal Service website's Track and Confirm service.

25. By letter dated June 27, 2011, David M. Hardy, Chief, Records Management Division, Record/Information Dissemination Section, FBI, responded to Plaintiff's appeal letter dated June 14, 2011, in which Mr. Hardy stated that an appeal was not yet possible, as the FBI had not yet completed their review of the manuscript and made a decision to be appealed. Mr. Hardy did not address the Plaintiff's appeal on the grounds that the FBI has failed to comply with the time limitations set forth in 28 C.F.R. § 17.18(i) and that more than 30 working days have elapsed since Plaintiff submitted her manuscript for prepublication review.

26. As of July 8, 2011, Sibel Edmonds has exhausted her administrative remedies because 30 working days have elapsed from her initial submission of her manuscript for review, and more than 15 working days have elapsed from the FBI's receipt of Plaintiff's appeal on June 16, 2011. The 15 working days elapsed on July 8, 2011.

27. On June 16, 2011, a copy of the appeal letter was sent by Express Mail to Defendant Robert S. Mueller, III. It was not accepted according to the United States Postal Service website's Track and Confirm service.

28. On June 17, 2011, a copy of the Plaintiff's appeal letter was once again sent by Priority Mail to Defendant Robert S. Mueller, III.

29. This letter was delivered on June 23, 2011, according to the United States Postal Service website's Track and Confirm service.

30. The FBI's website instructs appeals to be sent to the DOJ Freedom of Information Appeal Office of Information Policy, contrary to the FBI Prepublication Guidelines. On June 17, 2011 a copy of the Plaintiff's appeal letter was also to the Freedom of Information Appeal, Office of Information Policy, DOJ, Suite 11050, 1425 New York Ave, NW, Washington, DC 20530.

31. This copy of Plaintiff's appeal letter were delivered on June 22, 2011, respectively, according to the United States Postal Service website's Track and Confirm service.

32. By letter dated July 8, 2011, Katherine Pierson for Anne D. Work, Senior Counsel, Administrative Appeals Staff, DOJ, Office of Information Policy, responded to Plaintiff's appeal letter dated June 14, 2011, in which she stated that an appeal was not yet possible because no adverse determination had yet been made by the FBI for the Office of Information Policy to consider. Ms. Pierson only addressed the Plaintiff's appeal on the grounds that the FBI has failed to comply with the time limitations set forth in 28 C.F.R. § 17.18(i) as they would be handled under the Freedom of Information Act, a statute which is inapplicable in this instance. Ms. Pierson also suggested that Plaintiff contact the FBI directly regarding the status of her request.

33. Sibel Edmonds has exhausted her administrative remedies because 30 working days have elapsed from her initial submission of her manuscript for review, and more than 15 working days have elapsed from the FBI's receipt of Plaintiff's appeal. Defendants have constructively denied both the Plaintiff's request for prepublication review and her appeal.

COUNT I

(Violation of First Amendment to the United States Constitution)

34. Plaintiff hereby realleges Paragraphs 1 through 33 as if fully stated herein.

35. Plaintiff enjoys the right of Freedom of Speech, as guaranteed by the First Amendment to the U.S. Constitution.

36. Defendants, acting under color of federal authority, have and are continuing to deprive Plaintiff of her First Amendment rights by refusing to grant her permission to publish the documents submitted by Plaintiff for prepublication review.

37. Defendants have also deprived Plaintiff of her First Amendment rights by failing to specify any particular portion of the documents that allegedly are objectionable so as to allow Plaintiff to contest them to address Defendants' alleged concerns or to make changes so that she may publish her material in a timely manner.

38. As a result of Defendants' unlawful conduct, Plaintiff has been injured and she is entitled to declaratory and injunctive relief.

COUNT II

(Violation of 28 C.F.R. § 17.18)

39. Plaintiff hereby realleges Paragraphs 1 through 38 as if fully stated herein.

40. Plaintiff is entitled to judicial review of Defendants' denial to grant her prepublication review pursuant to 28 C.F.R. § 17.18. Plaintiff has exhausted her administrative

remedies. Defendants have constructively denied both Plaintiff's request and appeal.

Defendants have also violated their own regulations pertaining to prepublication review and they have failed to comply with the time requirements in the regulations.

41. Defendants acted contrary to law and contrary to their own procedures in refusing to grant Plaintiff permission to publish the documents submitted by Plaintiff for prepublication review and/or failing to specify any particular portion of the documents that allegedly are objectionable so as to allow Plaintiff to revise them to address Defendants' alleged concerns.

42. As a result of Defendants' unlawful conduct, Plaintiff has been injured and she is entitled to declaratory and injunctive relief.

COUNT III

(Violation of the Administrative Procedures Act)

43. Plaintiff hereby realleges Paragraphs 1 through 42 as if fully stated herein.

44. Defendants' actions and failure to act as required by 28 C.F.R. Part 17, constitute final agency decisions.

45. Defendants acted arbitrarily, capriciously, and contrary to law and their own procedures in refusing to grant Plaintiff permission to publish the documents submitted by Plaintiff for prepublication review and/or failing to specify any particular portion of the documents that allegedly are objectionable so as to allow Plaintiff to revise the documents to address Defendants' alleged concerns, in violation of 5 U.S.C. §§ 706(2)(A)(B) and (D).

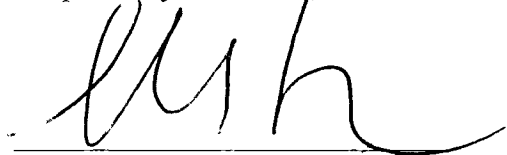
46. As a result of Defendants' unlawful conduct, Plaintiff has been injured and she is entitled to declaratory and injunctive relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

- (a) declare Defendants' refusal to grant her permission to publish her documents violates the First Amendment, 28 C.F.R. Part 17, and the Administrative Procedure Act;
- (b) enjoin Defendants from continuing to refuse to grant her permission to publish her documents;
- (c) grant Plaintiff preliminary and permanent injunctive relief as may be requested;
- (d) award her reasonable attorney's fees and costs;
- (e) grant such other relief as the Court may deem just and proper.

Respectfully submitted,



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