

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)
OLEG PETROVICH CHEREPANOV))
Oasis Beach Tower))
8 Jumeirah Beach Rd))
Dubai Marina, Apt. 2404))
Dubai, United Arab Emirates))
DHS File No. A089 079 261))
))
Plaintiff)	Civ. Action No.
)	
v.)	
)	
U.S. DEPARTMENT OF STATE)	
2201 C Street, N.W.)	
Washington, DC 20520)	
)	
Defendant.)	
_____)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 5552, for injunctive and other appropriate relief and seeking the disclosure and release of agency records improperly withheld from the Plaintiff, Mr. Oleg Petrovich Cherepanov, by the Defendant, the U.S. Department of State (“DOS”).

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
2. Venue lies in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).
3. Plaintiff seeks declaratory relief under 28 U.S.C. §§ 2201-2202 and Rule 57 of the Federal Rules of Civil Procedure.

PARTIES

4. The Plaintiff, Mr. Oleg Petrovich Cherepanov, was born on August 9, 1970. He is a native and citizen of Russia. He currently resides in Dubai, United Arab Emirates (“UAE”). Plaintiff is the requester of the records being improperly withheld by the Defendant.

5. The Defendant, the U.S. Department of State (“DOS”), is an agency of the Executive Branch of the United States Government. DOS is an agency within the meaning of 5 U.S.C. § 552(f)(1). DOS has possession, custody, and control of records to which the Plaintiff seeks access.

STATEMENT OF FACTS

6. On September 1, 2010, Valentine A. Brown, Esq. of Duane Morris LLP, counsel for Plaintiff Oleg Petrovich Cherepanov, sent via express mail a FOIA request to DOS on behalf of Mr. Cherepanov requesting “copies of all documentation pertaining to Mr. Cherepanov including, but not limited to, information regarding his Visa revocation by the United States Consulate in Yekaterinburg, Russia, and his Visa Application in Dubai, UAE, as well as any information relating to the refusal of his entry into the United States at San Francisco, California, on July 20, 2010.” Mr. Cherepanov’s signed Third Party Authorization was attached to the FOIA request.

7. On or about October 5, 2011, Attorney Brown received an undated letter from Defendant that acknowledged receipt of Plaintiff’s FOIA request. The letter assigned the request Case Control Number 201005806.

8. Pursuant to 5 U.S.C. § 552(a)(6)(A), Defendant was required to respond to Plaintiff's FOIA request within twenty (20) working days from receipt of the FOIA Appeal, or by October 1, 2010.

9. On May 10, 2011, Attorney Brown sent, via Federal Express, a FOIA administrative appeal to DOS, pursuant to 5 U.S.C. § 552(a)(6). On or about May 19, 2011, Attorney Brown received a call from Defendant requesting the date that Mr. Cherepanov had applied for his U.S. visa in Yekaterinburg, Russia. Defendant advised Attorney Brown that the FOIA request is in Yekaterinburg, Russia.

10. On or about May 25, 2011, Attorney Brown received a letter from Defendant dated May 17, 2011, which stated: "Your FOIA request is not subject to administrative appeal at this time, since no specific material has been denied in response to the request." The letter stated further: "[T]he lack of response is not the same as a response indicating that no documents were found."

11. As of the date of this complaint, Defendant has failed to produce any records responsive to Plaintiff's request or demonstrate that responsive records are exempt from production. Nor has Defendant indicated whether or when any responsive records will be produced. Moreover, neither Plaintiff nor Attorney Brown has received any further communication from Defendant.

12. Because Defendant has failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A), Plaintiff is deemed to have exhausted any and all administrative remedies with respect to his FOIA request. *See* 5 U.S.C. § 552(a)(6)(C).

COUNT 1
(Violation of FOIA, 5 U.S.C. § 552)

13. Plaintiff realleges paragraphs 1 through 12 as if fully stated herein.

14. Defendant is unlawfully withholding records requested by Plaintiff pursuant to 5 U.S.C. § 552.

15. Plaintiff is being irreparably harmed by reason of Defendant's unlawful withholding of requested records, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to conform its conduct to the requirements of the law.

16. Defendant has violated the FOIA by failing to produce any and all non-exempt records responsive to Plaintiff's FOIA request within the twenty (20) day time period set forth at 5 U.S.C. § 552(a)(6)(A)(i).

PRAYER

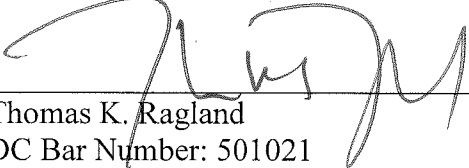
WHEREFORE, Plaintiff respectfully requests that this Court:

1. Order Defendant to conduct a search for any and all responsive records to Plaintiff's FOIA request and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA request;
2. Order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA request and a *Vaughn* index of any responsive records withheld under claim of exemption;
3. Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA request;
4. Grant Plaintiff an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
5. Grant such other relief as the Court deems just and proper.

Respectfully submitted this 2nd day of August 2011,

OLEG PETROVICH CHEREPANOV

By counsel,



Thomas K. Ragland
DC Bar Number: 501021

DUANE MORRIS LLP
505 9th Street N.W., Suite 1000
Washington, DC 20004-2166
Phone: 202.776.7814
Fax: 202.478.1732
tkragland@duanemorris.com

Counsel for Plaintiff

OF COUNSEL:

Anthony L. Gallia, Esq.
Valentine Brown, Esq.
DUANE MORRIS LLP
30 South 17th Street
Philadelphia, PA 19103
Phone: 215-979-1000
Fax: 215-979-1020