

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

MICHAEL W. GAHAGAN

CIVIL ACTION

VERSUS

NO. 15-6218

UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES, ET AL.

SECTION A(3)

ORDER AND REASONS

The following motion is before the Court: **Fourth Motion for Summary Judgment (Rec. Doc. 82)** filed by plaintiff Michael Gahagan. Defendants United States Citizenship and Immigration Services (“USCIS”) and United States Customs and Border Protection (“CBP”) (at times collectively “Defendants” or “the Government”) oppose the motion. The motion, scheduled for submission on June 14, 2017, is before the Court on the briefs without oral argument.

This Freedom of Information Act (“FOIA”) case involves a dispute between Michael W. Gahagan, an immigration attorney, and the defendant federal agencies. Gahagan submitted two FOIA requests in his own name to Defendants seeking the production of agency records for use in representing one of his clients in pending removal proceedings. Gahagan filed FOIA requests with USCIS and CBP on July 27, 2015 and July 29, 2015, respectively, seeking specific agency records. Gahagan’s allegation with respect to both agencies is that they refused to conduct a legally adequate search responsive to his FOIA requests, refused to produce all responsive agency records in their possession, and failed to produce a legally adequate *Vaughn* index. (Rec. Doc. 1, Complaint ¶¶ 21 & 25). Gahagan prayed for declaratory and injunctive relief in order to obtain the agency documents responsive to his FOIA requests as well as attorney’s fees. (*Id.* ¶ 35). (Rec. Doc. 53, Court’s Order and Reasons at 1-2).

Gahagan's fourth motion for summary judgment pertains to two partially withheld pages of responsive agency information -- Plaintiff's Exhibit 25 (Rec. Doc. 78-7 SEALED). USCIS referred the pages to the FBI in March 2017, even though the pages were retrieved in response to Plaintiff's July 27, 2015 FOIA request. Plaintiff was notified of the referral on April 4, 2017. On May 10, 2017 the FBI released the partially withheld pages to Plaintiff. Plaintiff complains that USCIS never informed him or the Court that these pages had been withheld. Moreover, Plaintiff complains that the Government has not provided an appropriate Vaughn index for the pages or conducted a segregability analysis.

The redactions in the two pages are based on the FOIA exemption found at 5 U.S.C. § 552(b)(7)(E). Exemption 7E excludes from FOIA production "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law."

This Court has already opined that the procedure of referral does not per se violate FOIA. (Rec. Doc. 53, Order & Reasons 8/19/16 at 7). That finding was based of course on the fact that referral had not thus far presented a significant delay to the requester in receiving FOIA responsive records. The administrative mix-up that resulted in the nearly two year delay in referring the two pages at issue to the FBI was explained in the Government's opposition, and while no bad faith is apparent, the FOIA does not speak in terms of good or bad faith.¹

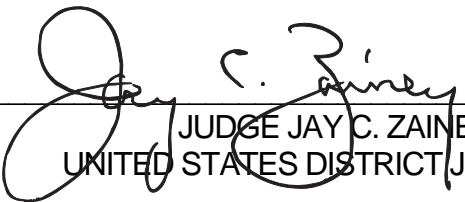
¹ The Court finds the explanation of the administrative delay found in the publicly-available declarations to be sufficient. The Court therefore has not obtained or otherwise reviewed the non-publicly-available declarations prepared by the Government, which remain in the possession of the Department of Justice. See Plaintiff's Motion to Strike Ex Parte Declarations (Rec. Doc. 92).

The Court finds that the declaration of David M. Hardy (Rec. Doc. 86-3) serves as a proper Vaughn index for the two partially withheld pages, and that the Government performed an appropriate segregability analysis.

Accordingly, and for the foregoing reasons;

IT IS ORDERED that the **Fourth Motion for Summary Judgment (Rec. Doc. 82)** filed by plaintiff Michael Gahagan is **DENIED**.

July 24, 2017



JUDGE JAY C. ZAINY
UNITED STATES DISTRICT JUDGE