

IN THE SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

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Superior Court of the
District of Columbia
Washington, D.C.

WILLIAM A. JACOBSON, d/b/a)
"Legal Insurrection Blog")
Myron Taylor Hall)
Ithaca, NY 14853)

Plaintiff,)

v.)

DISTRICT OF COLUMBIA)
OFFICE OF THE ATTORNEY GENERAL)
441 4th Street, N.W.)
Washington, DC 20001)

and)

DISTRICT OF COLUMBIA)
METROPOLITAN POLICE DEP'T)
300 Indiana Avenue, N.W.)
Washington, DC 20001)

Defendants.)

Civil Action No.
13-0003203

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff William A. Jacobson, d/b/a the "Legal Insurrection Blog," brings this action against Defendants District of Columbia Office of Attorney General ("OAG") and District of Columbia Metropolitan Police Department ("MPD") to compel compliance with the District of Columbia Freedom of Information Act, D.C. Code § 2-531 ("FOIA"). As grounds therefor, Plaintiff alleges as follows:

JURISDICTION

1. The Court has jurisdiction over the persons and subject matter of this action based on D.C. Code § 11-921.

PARTIES

2. Plaintiff William A. Jacobson is an individual and owner and operator of an online politics and law blog known as “Legal Insurrection Blog,” located at <http://legalinsurrection.com>, Myron Taylor Hall, Ithaca, New York 14853.

3. Defendant OAG is a public body and part of the District of Columbia. Defendant has its principal place of business at 441 4th Street, N.W., Washington, DC 20001. Defendant has possession, custody, and control of certain public records to which Plaintiff seeks access.

4. Defendant MPD is public body and part of the District of Columbia. Defendant has its principal place of business at 300 Indiana Ave, N.W., Washington, DC 20001. Defendant has possession, custody, and control of certain public records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. On Sunday December 23, 2012, David Gregory, the host of the NBC news show “Meet the Press” interviewed a guest concerning firearms policy in the United States. During the course of this broadcast interview, Mr. Gregory exhibited a high-capacity ammunition magazine.

6. The possession of such an ammunition magazine was in violation of the law of the District of Columbia.

7. Mr. Gregory displayed the ammunition magazine despite the fact, upon information and belief, that he or persons associated with NBC had been advised in advance by MPD that possession of such of an ammunition magazine was unlawful in the District of Columbia.

8. Following an investigation by MPD, and upon information and belief, the presentation of a Warrant and supporting Affidavit by MPD, OAG declined to prosecute Mr. Gregory or anyone else associated with the broadcast, despite what OAG publicly described as a clear violation of the law. OAG's decision was communicated in a letter dated January 11, 2013, which was made publicly available.

9. Among the bases for the decision not to prosecute, OAG cited a January 9, 2013 letter from attorney Lee Levine, counsel for NBC.

10. On January 14, 2013, Plaintiff submitted a FOIA request to Defendants seeking access to the following records:

1. The January 9, 2013 letter from Lee Levine on behalf of David Gregory, referenced in the letter dated January 11, 2013 from Attorney General Irvin B. Nathan to Mr. Levine which was publicly disclosed on that date.

2. All communications between the District of Columbia Office of Attorney General and/or Metropolitan Police Department, on the one hand, and legal counsel for David Gregory and/or NBC News, on the other hand, with regard to the incident involving the display on television by Mr. Gregory of an alleged high-capacity ammunition clip (the "Gregory incident").

3. All documents in the possession of the MPD and OAG regarding the Gregory Incident, to the extent not exempted from disclosure under applicable law, including but not limited to witness statements, evidence review and possession records, interview notes, and forensic testing.

11. Plaintiff's FOIA request stated that the requested records were not exempt from disclosure under FOIA for, among other reasons, "because the investigation is not ongoing and there is no trade secret, personal privacy right, or confidential source involved."

12. By an e-mail message dated February 20, 2013, and certain follow up emails, Defendant OAG informed Plaintiff that it was withholding certain responsive records, including the January 9, 2013 letter from Lee Levine and certain responsive emails between OAG and MPD,

pursuant to D.C. Code §§ 2-534(a)(3)(A)(i), (a)(4) and (e). The OAG also withheld in their entirety an affidavit and warrant responsive to Plaintiff's request.

13. By a letter dated April 17, 2013, Defendant MPD informed Plaintiff that it was withholding certain responsive records either in whole or in part.

COUNT 1
(Violation of FOIA)

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

15. Defendants have violated FOIA by failing to produce records responsive to Plaintiff's January 14, 2013 FOIA request.


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

WHEREFORE, Plaintiff respectfully requests that the Court: (1) declare Defendants' failure to comply with FOIA to be unlawful; (2) enjoin Defendants from continuing to withhold public records responsive to Plaintiff's January 14, 2013 FOIA request and otherwise order Defendants to produce the requested public records without further delay; (3) grant Plaintiff an award of attorney's fee and other litigation cost reasonably incurred in this action pursuant to D.C. Code § 2-537(c); and (4) grant Plaintiff such other relief as the Court deems just and proper.

Dated: May 13, 2013

Respectfully submitted,

JUDICIAL WATCH, INC.



/s/

James F. Peterson

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