

1 Michael Napier, State Bar No. 002603
2 **NAPIER, COURY & BAILLIE, P.C.**
3 2525 East Arizona Biltmore Circle, Suite 135
4 Phoenix, Arizona 85016
5 mike@napierlawfirm.com
6 (602) 248-9107

7 *Attorneys for Plaintiff*

8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE DISTRICT OF ARIZONA**

10 EDWARD “BUD” TUFFLY,)
11)
12 Plaintiff,)
13)
14 v.)
15)
16 UNITED STATES DEPARTMENT)
17 OF HOMELAND SECURITY,)
18)
19 Defendant.)
20)

Civil Action No.

21 **COMPLAINT**

22 Plaintiff Edward “Bud” Tuffly brings this action against the U.S. Department of
23 Homeland Security to compel compliance with the Freedom of Information Act, 5 U.S.C.
24 § 552 (“FOIA”) and the Privacy Act, 5 U.S.C. § 552a (“Privacy Act”). As grounds
25 therefor, Plaintiff alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

PARTIES

1
2 3. Plaintiff Edward “Bud” Tuffly is a private citizen residing in Tuscon,
3 Arizona.

4 4. Defendant United States Department of Homeland Security is an agency of
5 the United States Government and is headquartered at 601 South 12th Street, Arlington,
6 VA 22202. Defendant has possession, custody, and control of records to which Plaintiff
7 seeks access.
8

9 **STATEMENT OF FACTS**

10 5. On November 10, 2014, Plaintiff submitted a request to U.S. Immigration
11 and Customs Enforcement (“ICE”), a component of Defendant, seeking access to:

- 12 A. Records sufficient to identify all ICE detainees
13 released in late February or early March 2013 from the
14 following detention facilities due to alleged fiscal or
15 budget uncertainty: (a) Central Arizona Correctional
16 Center in Florence, Arizona; (b) Eloy Detention Center
17 in Eloy, Arizona; (c) Florence Correctional Center in
18 Florence, Arizona; (d) Florence SPC in Florence,
19 Arizona; and (e) Pinal County Adult Detention Center
20 in Florence, Arizona.
- 21 B. For each detainee identified in response to Request No.
22 1, the I-213 form(s) documenting the detainee’s arrest.
- 23 C. For each detainee identified in response to Request No.
24 1, records sufficient to identify: (a) the date the
25 detainee was released; (b) the facility from which the
detainee was released; (c) the detainee’s criminal
history or criminal charges at the time of release; (d)
methods of supervision to which the detainee was
subjected; and (e) whether the detainee appeared for
subsequent removal or other proceedings and/or was
removed from the United States.

1 6. By electronic mail dated November 17, 2014, ICE sought clarification from
2 Plaintiff. Specifically, ICE requested an exact date range. ICE also stated, that upon
3 receipt of the clarification, ICE would begin processing Plaintiff's request.

4 7. On the same day, November 17, 2014, Plaintiff responded by electronic
5 mail to ICE. Plaintiff identified an exact date range for the records that he was
6 requesting: February 22, 2013 through March 15, 2013.

7 8. ICE was required to determine whether to comply with Plaintiff's request
8 within 20 days of receipt of the clarification, excepting Saturdays, Sundays, and legal
9 public holidays, pursuant to 5 U.S.C. § 552(a)(6)(A). Pursuant to this same provision,
10 ICE also was required to notify Plaintiff immediately of the determination, the reasons
11 therefor, and the right to appeal an adverse determination to the head of the agency.
12 Excluding weekends and the intervening Thanksgiving Holiday, ICE was required to
13 make its determination and provide Plaintiff with the requisite notifications by December
14 16, 2014.

15 9. As of the date of this Complaint, ICE has failed to make a determination
16 about whether it will comply with Plaintiff's request, notify Plaintiff of the determination,
17 or notify Plaintiff of his right to appeal an adverse determination to the head of the
18 agency. Nor has ICE produced any records responsive to his request, indicated when any
19 responsive records will be produced, or demonstrated that responsive records are exempt
20 from production.
21
22
23
24
25

1 10. Because ICE has failed to comply with the time limit set forth in 5 U.S.C. §
2 552(a)(6)(A), Plaintiff is deemed to have exhausted any and all administrative remedies
3 with respect to his FOIA request.

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

6 11. Plaintiff realleges paragraphs 1 through 10 as if fully stated herein.

7 12. Defendant is unlawfully withholding records requested by Plaintiff
8 pursuant to FOIA.

9 13. Plaintiff is being irreparably harmed by reason of Defendant's unlawful
10 withholding of requested records, and Plaintiff will continue to be irreparably harmed
11 unless Defendant is compelled to conform its conduct to the requirements of the law.
12

13 WHEREFORE, Plaintiff respectfully requests that the Court: (1) order Defendant
14 to conduct a search for any and all records responsive to Plaintiff's request and
15 demonstrate that it employed search methods reasonably likely to lead to the discovery of
16 records responsive to Plaintiff's request; (2) order Defendant to produce, by a date
17 certain, any and all non-exempt records responsive to Plaintiff's request and a *Vaughn*
18 index of any responsive records withheld under claim of exemption; (3) enjoin Defendant
19 from continuing to withhold any and all non-exempt records responsive to Plaintiff's
20 request; (4) grant Plaintiff an award of attorneys' fees and other litigation costs
21 reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and (5) grant
22 Plaintiff such other relief as the Court deems just and proper.
23
24

25 //

1 Dated: January 15, 2015

Respectfully submitted,

2 **NAPIER, COURY & BAILLE, P.C.**

3
4 By: _____

5 Michael Napier, State Bar No. 002603
6 2525 East Arizona Biltmore Circle, Suite 135
7 Phoenix, Arizona 85016
8 mike@napierlawfirm.com
9 (602) 248-9107

10 *Counsel for Plaintiff*