

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RECLAIM THE RECORDS and BROOKE)
SCHREIER GANZ,)
))
Plaintiffs,)
))
-against-)
))
UNITED STATES DEPARTMENT OF)
VETERANS AFFAIRS, including its)
Components, the Office of General Counsel,)
the Veterans Benefits Administration,)
and the Veterans Health Administration,)
))
Defendant.)
-----X

No. 18-CV-8449
AMENDED COMPLAINT

Plaintiffs, Reclaim the Records and Brooke Schreier Ganz, by their attorney David B. Rankin of Beldock, Levine & Hoffman, LLP for their complaint, does hereby state and allege:

Preliminary Statement

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. §§552 *et seq.*, seeking the production of agency records improperly withheld by Defendant United States Department of Veterans Affairs (“VA”), specifically its component the Veterans Health Administration (“VHA”) (“Defendant”), in response to requests properly made by Plaintiff.

2. Plaintiff seeks an injunction requiring defendant to release the requested records.

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Jurisdiction and Venue

3. This Court has subject matter jurisdiction of the FOIA claim and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(b). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331.
4. Venue is proper as the records exist on databases within this district.
5. The VHA has constructively denied plaintiffs' request. Plaintiff has exhausted all administrative remedies pursuant to 5 U.S.C. § 522(a)(6)(c).

Parties

6. Brooke Schreier Ganz is the founder of Reclaim the Records, a 501(c)(3) non-profit organization that acquires genealogical and archival data sets and images from government sources for the purpose of making such genealogical data free and accessible to the public at large. Collectively, Brooke Schreier Ganz and Reclaim the Records are referred to as the ("plaintiffs").
7. Defendant VHA is a department of the executive branch of the U.S. government and an agency within the meaning of 5 U.S.C. §§ 551(1) & 552(f)(1). Defendant VHA is a component of VA.

Factual Background

8. By email, on September 20, 2017, plaintiffs sent a FOIA request to the Department of Veteran Affairs Veterans Benefits Administration asking for a copy of the BIRLS Death File. In the request, Ms. Ganz noted that the data contained in the BIRLS Death File had already been made available to the public and was currently available online through at least two major genealogy websites, Ancestry.com and Fold3.com. The Request is Attached hereto as Exhibit 1.

9. After not receiving a response to her inquiry within 20 days, as required by 5 U.S.C.A. § 552(a)(ii), Ms. Ganz sent five follow up emails dated: October 19, 2017, November 8, 2017, November 28, 2017, December 18, 2017, and January 8, 2018.

10. On January 9, 2018 FOIA Officer Gwendolyn Smith denied Ms. Brooke Ganz's request for a copy of the most current and complete BIRLS Death File. Ms. Smith asserted that a full copy of the records could not be provided because the records "contained information that falls within the disclosure protections of FOIA Exemption 6, 5 U.S.C. § 552(b)(6)." Attached hereto as Exhibit 2.

11. On April 6, 2018, Plaintiffs' counsel appealed the January 9, 2018 VBA denial of Ms. Ganz's FOIA request to the VA Office of the General Counsel. Attached hereto as Exhibit 3.

12. On April 26, 2018, Plaintiffs' counsel received a response regarding the appeal from Kenyatta McLeod-Poole, Acting Chief Counsel, Information Law Group, VA Office of the General Counsel. McLeod-Poole of the VA Office of the General Counsel indicated that, through internal investigation, the VHA and not the VBA were the proper custodians of the BIRLS Death File, and that they, the VHA, had been notified of plaintiffs' FOIA request and would process it in a timely manner. Attached hereto as Exhibit 4.

13. On July 26, 2018, the VHA denied plaintiffs' FOIA request in its entirety, stating that VHA's voluntary release of the information to Ancestry.com, was an "erroneous release [which] resulted in a data breach of Veteran's personal information." Attached hereto as Exhibit 5.

14. The defendant's denial of the plaintiffs' request was erroneous.

15. On August 6, 2018, the undersigned appealed the July 26, 2018 denial. Attached hereto as Exhibit 6.

16. On August 7, 2018, the agency acknowledged the appeal. Attached hereto as Exhibit 7.

17. The agency's continuing denial is without merit.

Cause of Action

18. Defendant's failure to promptly make available the records sought by the Request violates the FOIA, 5 U.S.C. § 552(a)(6)(A), and defendant's corresponding regulations.

Request for Relief

WHEREFORE, Plaintiffs respectfully requests that this Court:

- A. Order defendant to immediately process all records responsive to the Request;
- B. Award plaintiff its costs and reasonable attorneys' fees incurred in this action; and
- C. Grant such other relief as the Court may deem just and proper.

Dated: September 17, 2018
New York, New York

Respectfully submitted,



By: _____

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