

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KENT TERRY)

[REDACTED])

and)

DAVID CODREA)

[REDACTED])

Plaintiffs,)

v.)

U.S. DEPARTMENT OF STATE,)
The Executive Office)
Office of the Legal Adviser, Suite 5.600)
600 19th Street, N.W.)
Washington, DC 20522)

Defendant.)

COMPLAINT
(Freedom of Information
Act, 5 U.S.C. §552).

Come now the Plaintiffs, by and through undersigned counsel, and allege
as follows:

1. This is an action under the Freedom of Information Act, 5 U.S.C.
§ 552, for injunctive and other appropriate relief and seeking the disclosure
and release of agency records improperly withheld from Plaintiffs by the U.S.
Department of State (“DoS”).

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1331 and 5 U.S.C. §552(a)(4)(B).

3. Venue lies in this district under 28 U.S.C. §1391(e).

PARTIES

4. Plaintiff Kent Terry (“Terry”) is an adult male resident of the state of Michigan and the brother of slain Border Patrol agent Brian Terry.

5. Plaintiff David Codrea (“Codrea”) is an adult male resident of the state of Ohio and an internet blogger and Second Amendment journalist. In 2011, Codrea was named “Journalist of the Year” by the Second Amendment Foundation for his groundbreaking work exposing the “Fast and Furious” ATF “gunwalking” scandal, and was a co-recipient of Soldier of Fortune Magazine’s “2nd Amendment Freedom Fighter Award,” and Jews for the Preservation of Firearms Ownership’s “David and Goliath Award” for his work on that story. He was also named a 2014 Defender of Liberty by the Second Amendment Foundation.

6. Defendant U.S. Department of State is an agency of the United States Government headquartered at 2201 C Street, N.W., Washington, DC 20520. Defendant has possession, custody and control of records to which Plaintiffs seek access.

STATEMENT OF FACTS

7. On June 30, 2016 Plaintiffs submitted a FOIA request to Defendant seeking access to records pertaining to Operation Fast and Furious and correspondence to and from Kevin O'Reilly. A number of other items were requested in the request and they are incorporated by reference from the attached FOIA Request attached hereto as Exhibit "A."

8. By way of letter dated July 15, 2016, DoS acknowledged receiving Plaintiffs' request on June 30, 2016 and advised the Plaintiffs that the request had been assigned Case Control Number F-2016-07853.

9. As of the date of this Complaint, DoS has failed to: (i) produce the requested records or demonstrate that the requested records are lawfully exempt from production; (ii) notify Plaintiffs of the scope of any responsive records DoS intends to produce or withhold and the reasons for any withholdings, or (iii) inform Plaintiffs that it may appeal any adequately specific, adverse determination.

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

10. Plaintiffs reallege paragraphs 1 through 9 as if fully stated herein.

11. Plaintiffs are being irreparably harmed by reason of DoS' violation of FOIA and Plaintiffs will continue to be irreparably harmed unless DoS is compelled to comply with FOIA.

12. To trigger FOIA's administrative exhaustion requirement, DoS was required to determine whether to comply with Plaintiffs' request within twenty (20) working days of receiving the request, or on or about July 29, 2016. At a minimum, DoS was required to: (1) gather and review the requested documents; (ii) determine and communicate to Plaintiff the scope of any responsive records DoS intended to produce or withhold and the reasons for any withholding; and (iii) inform the Plaintiffs that they may appeal any adequately specific, adverse determination.

13. Because DoS failed to determine whether to comply with Plaintiffs' request within the time period required by FOIA, Plaintiffs are deemed to have exhausted their administrative remedies. 5. U.S.C. § 552(a)(6)(C)(i).

WHEREFORE, Plaintiff respectfully requests that the Court:

(1) Order Defendant to conduct a search for any and all responsive records to Plaintiffs' FOIA request and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiffs' FOIA request;

(2) Order Defendants to produce, by a date certain, any and all non-exempt records to Plaintiffs' FOIA request, and a *Vaughn* index of any responsive records withheld under claim of exemption;

(3) Enjoin Defendants from continuing to withhold any and all non-exempt records responsive to Plaintiffs' 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 Plaintiff such other relief as the Court deems just and proper.

Dated: August 6th, 2017

Respectfully Submitted,

KENT TERRY & DAVID CODREA

/s/ Stephen D. Stamboulieh

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June 30, 2016

Office of Information Programs and Services
A/GIS/IPS/RL
U.S. Department of State
Washington, DC 20522-8100
Fax: (202) 261-8579

Via Facsimile

RE: Freedom of Information Act Request

Dear Freedom of Information Officer

Pursuant to the Freedom of Information Act (5 U.S.C. § 552), David Codrea (“Codrea”) and Kent Terry (“Terry”) hereby request that the U.S. Department of State produce the following within twenty (20) business days:

1. All correspondence, including electronic mail and any other documents pertaining to Operation Fast and Furious;
2. All authorizations and/or permits to export firearms from Operation Fast and Furious into Mexico;
3. All copies of End Use Statements signed by an appropriate Government of Mexico authority attesting as to the use and end destination of the firearms from Operation Fast and Furious;
4. All copies of Import Licenses issued by the Government of Mexico documenting approval for the firearms from Operation Fast and Furious to enter Mexican sovereign territory;
5. All correspondence to and from Kevin O'Reilly¹;
6. All correspondence, if not already provided under Item #1, to and from the ATF field office in Mexico regarding Operation Fast and Furious;

¹ See generally: <http://www.examiner.com/article/why-is-white-house-blocking-gunwalker-testimony-from-former-nsc-director>

7. All correspondence, if not already provided under Item #1, to and from any official authority from the Government of Mexico; and

8. All correspondence, if not already provided under Item #1, to and from any agency of the United States of America, including but not limited to ATF, DOJ, US Customs and Border Protection, ICE, DEA and TSA, regarding Operation Fast and Furious.

If any responsive record or portion thereof is claimed to be exempt from production under FOIA, please provide sufficiently detailed identifying information with regards to each allegedly exempt record or portion of record to allow us to assess the propriety of the claimed exemption(s). *See Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). In addition, any reasonably segregable portion of a responsive record must be provided after redaction of any allegedly exempt material.

David Codrea also hereby requests a waiver of both search and duplication fees pursuant to 5. U.S.C. §§ 552(a)(4)(A)(ii)(II) and (a)(4)(A)(iii). Codrea is entitled to a waiver of search fees under 5. U.S.C. § 552(a)(4)(A)(ii)(II) because he is a member of the news media. Codrea regularly obtains information about the operations and activities of government through FOIA and other means and uses his editorial skills to turn this information into distinct works and publishes and disseminates these works to the public through various publications. He intends to do likewise with the records he receives in response to this request.

Codrea is also entitled to a complete waiver of both search fees and duplication fees pursuant to 5. U.S.C. § 552(a)(4)(A)(iii). Under this provision, records:

shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.

Kent Terry is the brother of slain US Customs and Border Protection Agent Brian Terry, who was murdered with a firearm that was connected to Operation Fast and Furious. Terry intends to likewise publish and report on responsive documents provided to this FOIA to shed light on Operation Fast and Furious and should also be entitled to a complete waiver of both search fees and duplication fees as the illegal export and illegal use of firearms is greatly in the public interest.

In addition, if records are not produced within twenty (20) business days, the requesters are entitled to a complete waiver of search and duplication fees under Section 6(b) of the OPEN Government Act of 2007.

In the event the request for a waiver of search and/or duplication costs is denied, my clients will pay up to \$150 in search and/or duplication costs. My clients request that I be contacted before any such costs are incurred, in order to prioritize search and duplication efforts.

If you do not understand this request or any portion thereof, or if you need clarification, please contact me immediately at (601) 852-3440 or by email at stephen@sdslaw.us. I look forward to receiving the requested documents and a waiver of both search and duplication costs within twenty (20) business days.

Warm regards,



Stephen Stamboulieh