

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE**

JOSE MARCUS PERRUSQUIA

Plaintiff,

v.

TENNESSEE VALLEY AUTHORITY

Defendant.

Civil Action No. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Jose Marcus Perrusquia (“Plaintiff” or “Perrusquia”), by and through his undersigned counsel, hereby alleges as follows:

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA” or the “Act”), for declaratory, injunctive, and other appropriate relief against the Tennessee Valley Authority (“Defendant” or “TVA”). Defendant has unlawfully withheld agency records requested by Plaintiff pursuant to FOIA.

PARTIES

2. Plaintiff Jose Marcus Perrusquia is a journalist who resides in Tennessee.

3. Defendant TVA is an agency of the federal government within the meaning of 5 U.S.C. § 551 and 5 U.S.C. § 552(f) that has possession, custody, and/or control of records that Plaintiff seeks.

4. TVA’s headquarters and FOIA office are in Knoxville, Tennessee.

JURISDICTION AND VENUE

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

6. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(b)(2).

FACTS

7. On January 30, 2022, Plaintiff submitted a FOIA request to TVA via TVA's online FOIA portal (the "Request"). A true and correct copy of the Request is attached as Exhibit A and is incorporated by reference.

8. The Request sought "copies of simple one-page documents (if possible; if not then as few pages as possible) listing the salary and total compensation for each of TVA's four regional vice presidents." Ex. A. The Request limited the date range from December 1, 2020 to January 31, 2022.

9. In the Request, Plaintiff stated that he was a member of the "News Media" for FOIA's fee-categorization purposes. Plaintiff also requested a fee waiver. Ex. A.

10. Upon information and belief, Defendant maintains records responsive to Plaintiff's Request at Defendant's headquarters in Knoxville, Tennessee.

11. On or about March 1, 2022, the TVA denied the Request in writing and noted that the Request "was processed under tracking number #22-FOI-00081" (the "Denial"). A true and correct copy of the Denial is attached as Exhibit B.

12. In the Denial, TVA claimed that the requested records were exempt from disclosure pursuant to FOIA exemptions 5 and 6. Ex. B at 1.

13. On March 2, 2022, Plaintiff appealed TVA's denial of the Request via email (the "Administrative Appeal"). A true and correct copy of the Administrative Appeal is attached as Exhibit C and is incorporated by reference.

14. On or about March 31, 2022, TVA denied the Administrative Appeal in writing (the "Appeal Denial"). A true and correct copy of the TVA's Appeal Denial is attached as Exhibit D.

15. In the Appeal Denial, TVA continued to assert FOIA exemptions 5 and 6 to withhold the requested records. *See* Ex. D at 1-2.

16. As of the date of this Complaint, Plaintiff has received no further communication from TVA with respect to the Request.

CAUSES OF ACTION

VIOLATION OF FOIA FOR WRONGFUL WITHHOLDING OF AGENCY RECORDS

17. Plaintiff repeats, realleges, and incorporates the allegations set forth in the foregoing Paragraphs 1 through 16 as though fully set forth herein.

18. TVA is an agency subject to FOIA. 5 U.S.C. §§ 552(f), 551.

19. The Request properly seeks records under FOIA that are within the possession, custody, and/or control of TVA.

20. The Request complied with all applicable regulations regarding the submission of FOIA requests.

21. TVA has not released any records or portions thereof in response to Plaintiff's Request.

22. TVA improperly withheld the requested public records because neither FOIA exemption 5 nor 6, nor any other statutory exemption justifies withholding the requested public records.

23. TVA has not identified how disclosure of each of the records or portions thereof sought by the Request would foreseeably harm an interest protected by a FOIA exemption and/or why disclosure is prohibited by law. 5 U.S.C. § 552(a)(8)(A).

24. Records responsive to the Request are required to be released under FOIA.

25. TVA has improperly withheld agency records responsive to the Request, in violation of FOIA. 5 U.S.C. § 552(a)(3)(A).

26. Plaintiff has or is deemed to have exhausted his administrative remedies with respect to the Request. 5 U.S.C. § 552(a)(6)(C)(i)

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests this Court:

- 1) order Defendant to conduct a search reasonably calculated to identify all records responsive to the Request;
- 2) enjoin Defendant from withholding all records or portions thereof responsive to the Request that may not be withheld under FOIA;
- 3) issue a declaration that Plaintiff is entitled to disclosure of the records sought by the Request;
- 4) issue a declaration that the Defendant's denial of the Request violates its obligations under FOIA;

- 5) order TVA to provide unredacted copies of the requested records, or copies with only those redactions the Court deems proper;
- 6) award Plaintiff reasonable attorneys' fees and costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- 7) grant such other relief as the Court may deem just and proper.

Dated: September 7, 2022

Respectfully submitted,

/s/ Paul R. McAdoo

Paul R. McAdoo, BPR No. 034066

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