

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Teresa C. Chambers
Post Office Box 857
Huntingtown, MD. 20639

Plaintiff;

v.

Civil Action No.: _____

U.S. Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

Defendant.

COMPLAINT

1. This action is brought under the Privacy Act, 5 U.S.C. § 552a(g), to compel production of records lawfully requested, to ensure the maintenance and protection of the subject records, to provide damages for the violations of the Act and the adverse impacts on the Plaintiff, and to award attorneys' fees and costs of litigation.

JURISDICTION, VENUE, AND PARTIES

2. This Court has jurisdiction pursuant to 5 U.S.C. § 552a(g)(5). Venue is proper in this Court pursuant to 5 U.S.C. § 552a(g)(5).

3. Plaintiff Teresa C. Chambers is the former Chief of the United States Park Police. Plaintiff is a citizen of the United States and the State of Maryland.

4. Defendant U.S. Department of Interior (DOI) is an agency of the United States. The DOI maintains a system of records containing information pertaining to the Plaintiff and has possession and control of the records at issue in this Complaint.

FACTS RELEVANT TO ALL CLAIMS

5. Plaintiff Teresa Chambers was hired to serve as the Chief of the U.S. Park Police on February 10, 2002. She was the first woman to serve as Chief in the long history of the Park Police.

6. On September 22, 2003, the Plaintiff received a communication via e-mail from her immediate supervisor, Deputy Director Donald Murphy, stating that he had prepared her performance evaluation and was ready to go over it with her.

As of that date, the Plaintiff had been given no indications that there were any concerns about her performance. To the contrary, informal feedback from her superiors had been uniformly positive. In fact, on or about the same day, Deputy Director Murphy also told the Plaintiff in person that the appraisal had been completed and it was a good one.

7. On or about November 20, 2003, the Plaintiff participated in an interview with the *Washington Post*. The interview covered a variety of issues including budgeting and staffing for the parkways and national monuments.

8. On December 2, 2003, the *Washington Post* published a story quoting the Plaintiff and her concerns about budget limitations and the potential impacts on protection of national icons and persons visiting the parks.

9. Similarly, on December 2, 2003, the Plaintiff e-mailed a high-ranking staff member of the Congressional Subcommittee that oversees the DOI and its budget. In her e-mail, the Plaintiff expressed that the staffing and resource crisis faced by the U.S. Park Police curtailed the agency's ability to prevent loss of life or the destruction of our national monuments. The substance of this communication was shared with the Plaintiff's superiors, including Mr. Murphy.

10. On December 5, 2003, Plaintiff was placed on administrative leave pending review of allegations concerning her conduct. In part, the allegations purported that the Plaintiff revealed budget communications and made remarks to the media about the security on the Federal Mall and in the parks and on the parkways in the Washington, D.C.-area. The assertion by the Defendants was that the Plaintiff had done something wrong, but little information was provided to the Plaintiff to advise her of the bases for the Defendant's alleged concerns.

11. On December 12, 2003, the Defendants offered to allow the Plaintiff to return to her position as Chief if she would agree to several stipulations.

12. Among the stipulations required for the Plaintiff's reinstatement was that she would be required to obtain prior approval by Deputy Director Don Murphy or his designee before she could engage in contacts with the media or with a member of Congress or any Congressional staff member. Both the contact and the content of those conversations had to be approved ahead of time.

13. Not only would agreeing to stipulations such as these have impeded the Plaintiff's lawful right to communicate with Congress as well as inhibited her First Amendment freedoms but, from a practical standpoint, these types of prohibitions also would have made it impossible to function effectively as a chief

of police. Consequently, the Plaintiff refused the illegal proposal made by the Defendants.

14. On December 17, 2003, Deputy Director Murphy (Plaintiff's immediate supervisor) proposed the Plaintiff's removal from federal service.

15. On January 29, 2004, Plaintiff filed a complaint with the Office of Special Counsel (OSC) stating that the Defendant's actions against her were motivated by her candid and constructive communications with Congress and the media and her other protected whistleblower activities concerning safety and security for the parkways and national monuments. The OSC failed to take timely action on the Plaintiff's complaint.

16. On June 28, 2004, the Plaintiff filed an appeal with the U.S. Merit Systems Protection Board (MSPB) seeking a hearing on the actions taken by the Defendants.

17. On July 9, 2004, Paul Hoffman, Deputy Assistant Secretary for Fish, Wildlife and Parks, issued a decision to remove the Plaintiff from federal service. The Defendant's termination of the Plaintiff was included in the issues raised before the MSPB.

18. On August 11, 2004, Deputy Director Murphy provided testimony under oath in a deposition called by the Plaintiff.

19. During his deposition, Mr. Murphy testified that he prepared a written "performance appraisal" for the Plaintiff in the late Summer of 2003. Specifically, Mr. Murphy stated, in relevant part, the following in response to questions:

Q. Have you prepared a written performance appraisal for Ms. Chambers in her position as the chief since she took that job?

A. Yes.

Q. And that was a written appraisal?

A. Yes.

Q. And what form did it take? Was it a narrative? Was it --

A. It was a narrative.

Q. Okay. Was it titled a job appraisal? Performance appraisal?

A. It was just titled performance appraisal.

Q. And was it communicated to Ms. Chambers?

A. No.

Q. Okay. And when do you recall preparing that? Let me rephrase that question while you're thinking. Did you first -- let me ask you did you prepare it? Were you the one who prepared it?

A. Yes.

Q. Okay. Then go ahead and think about when you prepared it.

A. It was in the summer, around the summer, late summer of 2003.

* * * * *

Q. Do you know why this particular appraisal was not communicated to Ms. Chambers?

A. It was simply a matter of scheduling. We often prepared things, had things that we tried to schedule. There wasn't any other reason than that.

Q. Okay. Is there [sic] a particular document, a final or a draft?

A. It was, it was a final. It was going to be -- we would have sat down and discussed it. I had put it in final form.

20. Plaintiff sought the appraisal during the MSPB process but was denied access by the Defendants. The MSPB Administrative Judge (AJ) also refused to order the release of the performance appraisal to the Plaintiff.

21. Following a hearing, on October 6, 2004, the MSPB AJ issued an Initial Decision. The decision struck some of the bases upon which the Defendant relied to terminate the Plaintiff, but ultimately sustained Plaintiff's termination.

22. The Plaintiff's MSPB appeal is presently before the full Board. Among the many issues on appeal is the AJ's refusal to order release of the Plaintiff's performance appraisal.

23. By letter dated October 26, 2004, PEER submitted a Privacy Act/FOIA request on behalf of the Plaintiff to: Ms. Diane Cooke, Administrative Program Center, National Park Service Headquarters, 1849 C Street, NW, Washington, D.C. 20240. The letter was titled *FOIA/PRIVACY ACT REQUEST*. The Plaintiff provided a designation of representative advising the Defendant that PEER could act as her representative regarding the request for records.

24. PEER's October 26, 2004 Privacy Act/FOIA request on behalf of former Chief Chambers sought the following records:

- i. A draft employee evaluation written by Deputy Director Donald Murphy concerning Chief Teresa Chambers during the time period covering 2002 and/or 2003.
- ii. All routings or transmittal documents indicating what officials received copies of the draft evaluation referred to in paragraph i.

25. On November 18, 2004, DOI responded to Plaintiff's request stating: "We are taking a 10-day extension under 43 C.F.R. § 2.13 in order to properly process your request due to the need to consult with other components of the National

Park Service and the Department.” The Defendant further stated: “A final reply will be sent to you on or before December 23, 2004.”

26. On January 6, 2005, Defendant responded by letter to Plaintiff’s FOIA/Privacy Act request stating: “The National Park Service needs additional time to process your FOIA request due to the need to consult with other components in the Department.”

27. On January 18, 2005, Defendant stated in a letter that “[w]e have searched our files and did not find any documents responsive to your request.”

28. On January 26, 2005, the Plaintiff, through counsel, wrote to the Defendant advising that the agency should reconsider its determination that no responsive documents existed. Plaintiff brought to the Defendant’s attention the fact that the appraisal was identified and described by Deputy Director Murphy in his sworn deposition testimony. In addition, the Plaintiff advised the Defendant to check directly with Mr. Murphy and agency lawyers to determine if her appraisal was being kept with them.

29. On February 4, 2005, the Defendant responded to Plaintiff’s January 26, 2005 letter stating that it was treating the letter as an appeal of its FOIA response.

However, the Plaintiff did not seek to appeal the determination and the Defendant's characterization of the January 26th letter as an appeal is incorrect.

30. The Plaintiff has reapplied for the position of Chief of the U.S. Park Police. The application packet requires that the Plaintiff and other applicants provide their most recent performance appraisal. The Plaintiff was unable to provide an appraisal.

31. The Plaintiff is unable to effectively compete for positions in the federal government because she has been denied access to her performance appraisal. Most positions in the federal government require the applicant to submit her last performance appraisal as part of the application packet.

**COUNT I: Defendants have refused to
provide access to records that name the Plaintiff**

32. The Plaintiff incorporates the prior paragraphs herein by reference.

33. By letter dated October 26, 2004, the Plaintiff requested from the Defendants and was denied the timely acquisition of her performance appraisal and related documents.

34. A timely response providing access to the records requested should have been provided on or before December 23, 2004.

35. Defendant's willful refusal to timely provide the records requested violates the Privacy Act. See, *e.g.*, 5 U.S.C. § 552a(d).

36. Defendant's willful refusal to timely provide the records requested prohibited unlawfully the Plaintiff from seeking corrections to any information that may be contained in the documents she requested. The Defendant's refusal to allow review and correction of records (if necessary) is likewise a violation of the Privacy Act. See, *e.g.*, 5 U.S.C. § 552a(d).

37. Defendant's refusal to timely provide records pertaining to the Plaintiff has damaged the Plaintiff's ability to successfully compete for positions in the federal government. Consequently, the Plaintiff has lost the opportunity to apply for positions and has lost income and benefits and may have adversely impacted Plaintiff's ability to exercise her statutory rights related to her removal.

**COUNT II: Defendants may have destroyed or altered
Plaintiff's performance appraisal and/or related documents**

38. The Plaintiff incorporates the prior paragraphs herein by reference.

39. By e-mail dated September 22, 2003 Deputy Director Murphy stated to the Plaintiff that her performance appraisal had been prepared and was ready for her to review.

40. Similarly, on August 11, 2004, Deputy Director Murphy testified under oath that the Plaintiff's performance appraisal existed and that he had prepared it in 2003.

41. By letter dated January 18, 2005, the Defendants asserted that no record of the Plaintiff's performance appraisal or related documents existed.

42. Defendant has failed to establish and maintain physical safeguards to ensure the security and confidentiality of records in its possession in violation of the Privacy Act and the Defendant's regulations. See, *e.g.*, 5 U.S.C. § 552a(e)(9) and (10); 43 C.F.R. § 2.51.

43. Defendant's refusal to properly safeguard records pertaining to the Plaintiff has damaged the Plaintiff's ability to successfully compete for positions in the federal government. Consequently, the Plaintiff has lost the opportunity to apply for positions and has lost income and benefits and may have adversely impacted Plaintiff's ability to exercise her statutory rights related to her removal.

RELIEF REQUESTED

44. WHEREFORE, Plaintiff Teresa Chambers prays that this Court:

- (a) Declare that the Defendants have violated the Privacy Act by withholding the requested records;
- (b) Order the Defendants to immediately make the requested records available to the Plaintiff;
- (c) Alternatively, declare that the Defendants have violated the Privacy Act by failing to safeguard records pertaining to the Plaintiff;
- (d) Award the Plaintiff damages for all lost income, benefits, and/or other adverse impacts;
- (e) Award Plaintiff all costs and attorneys' fees pursuant to 5 U.S.C. § 552a(g)(2); and
- (f) Order such other relief, as the Court or jury may deem just and appropriate.

JURY DEMAND

Trial by jury is requested on all issues that may be considered by a jury.

Respectfully submitted,

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Dated: February 24, 2005