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**UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON**

**STEPHEN RAHER,  
Plaintiff,**

**Case No. CV 09-526-ST**

v.

**FIRST AMENDED COMPLAINT**

**FEDERAL BUREAU OF PRISONS,  
Defendant,**

**and**

**THE GEO GROUP, INC,  
Defendant-Intervenor.**

Plaintiff, Stephen Raher alleges as follows:

**INTRODUCTORY STATEMENT**

1. Plaintiff alleges violations of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, by Defendant Federal Bureau of Prisons (“BOP”). Defendant has refused to disclose responsive records concerning certain phases of the BOP’s series of “Criminal Alien Requirements” and has improperly denied Plaintiff’s request for a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii).

2. Beginning in 1999, the BOP has issued periodic solicitations, known as “Criminal Alien Requirements” (“CARs”), seeking contractor-owned and -operated detention facilities to house criminal aliens.

3. To date the BOP has issued twelve solicitations in the CAR series. Upon information and belief, at least nine contracts have been awarded in connection with CAR solicitations, accounting for detention capacity in excess of twenty-two thousand beds and total consideration in excess of \$1.1 billion.

4. BOP has not released to the public information concerning the terms of contracting for facilities under the CAR series.

5. In connection with scholarly research concerning government contracting for correctional facilities, and to obtain information concerning BOP's procurement activities related to the CAR series, Plaintiff submitted a request pursuant to the FOIA on November 3, 2008.

6. Defendant BOP has failed to provide Plaintiff with an adequate response to his request.

### **JURISDICTION, VENUE, AND BASIS FOR RELIEF**

#### **A. FOIA Claim**

7. This Court has jurisdiction over Plaintiff's first claim pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331 because this claim arises under the FOIA and the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*

8. Venue properly rests with this Court pursuant to 5 U.S.C. § 552(a)(4)(B) because Plaintiff resides within this district.

9. This Court may award Plaintiff declaratory relief pursuant to the FOIA and the Declaratory Judgment Act.

10. Injunctive relief is appropriate under 28 U.S.C. § 2202.

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**B. 42 U.S.C. § 1983 Claim**

11. This Court has jurisdiction over Plaintiff’s second and third claims pursuant to 28 U.S.C. §§ 1343 and 1331 because these actions seek monetary damages for violations of the rights, privileges and immunities secured under the Fifth and Fourteenth Amendments to the Constitution of the United States, 5 U.S.C. § 552, and 42 U.S.C. § 1983.

12. Venue properly rests with this Court pursuant to 28 U.S.C. § 1391(b)(2).

**PARTIES**

13. At all times relevant to the claim against Defendant BOP, Plaintiff Stephen Raheer was a third-year law student at Northwestern School of Law of Lewis & Clark College (“Lewis & Clark”). Plaintiff and Lewis & Clark are both domiciled in Portland, Oregon.

14. Plaintiff is an experienced criminal justice policy analyst with a track record of published research.

15. Defendant BOP is a constituent agency of the United States Department of Justice, within the executive branch of the United States government. 18 U.S.C. § 4041. Defendant is in possession and control of the records sought by Plaintiff. Accordingly, Defendant is subject to the FOIA pursuant to 5 U.S.C. § 552(f).

16. Defendant-Intervenor The GEO Group, Inc., is a Florida corporation, authorized to transact business in Oregon.

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## FOIA STATUORY FRAMEWORK

17. The FOIA requires executive branch agencies of the United States government to release information to the public, upon request, unless one of nine specific statutory exemptions applies. 5 U.S.C. §§ 552(a)(3)(A); 552(b).

18. Upon receiving a FOIA request, an agency has twenty working days to respond by determining whether responsive documents exist and whether the agency will release them. 5 U.S.C. § 552(a)(6)(A)(i).

19. The FOIA does not permit an agency to delay an initial response for longer than ten working days past the statutory deadline, and then only if the agency can demonstrate that it faces “unusual circumstances.” 5 U.S.C. § 552(a)(6)(B). “Unusual circumstances” include the need to search for and collect requested documents from other offices, the need to appropriately examine a voluminous amount of separate and distinct records, and the need to consult with another agency. 5 U.S.C. § 552(a)(6)(B)(iii)

20. A requester is entitled to a waiver of fees associated with responding to a FOIA request when the information sought “is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii).

21. The FOIA requires an agency to issue a final determination resolving an appeal within twenty business days from the date of its receipt. 5 U.S.C. § 552(a)(6)(A)(ii).

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## **STATEMENT OF FACTS**

### **A. Plaintiff's FOIA Request**

22. Upon information and belief, CAR Phases 1, 2, 5, and 6 (the subject of Plaintiff's FOIA Request) provide for government acquisition of approximately 17,200 prison beds, with total consideration exceeding \$263 million.

23. On November 3, 2008 Plaintiff submitted a FOIA request ("FOIA Request") to the BOP, a constituent agency of the United States Department of Justice, requesting information relating to CAR Phases 1, 2, 5, and 6. A copy of the FOIA Request is attached to Plaintiff's Complaint (Doc. #1) as Exhibit A and is incorporated herein by this reference.

24. The FOIA Request also included a provision asking that BOP waive the fee that it would otherwise charge to search for and reproduce the responsive records. Plaintiff claimed entitlement to a fee waiver pursuant to the FOIA and 28 C.F.R. § 16.11 because the Request arose from Plaintiff's work as a scholarly researcher at an educational institution.

### **B. DOJ's Denial of Plaintiff's Fee Waiver Request**

25. By letter dated December 2, 2008, BOP denied Plaintiff's fee waiver request. A copy of the BOP's denial is attached to Plaintiff's Complaint as Exhibit B and is incorporated herein by this reference.

26. Plaintiff filed a timely administrative appeal of the fee waiver denial on January 16, 2009. A copy of Plaintiff's fee waiver appeal is attached to Plaintiff's Complaint as Exhibit C and is incorporated herein by this reference. Plaintiff included with the appeal additional material substantiating his entitlement to a fee waiver for this request. Pursuant to BOP's instructions, Plaintiff submitted his appeal to DOJ's Office of Information and Privacy ("OIP").

The return receipt (Postal Service Form 3811) accompanying Plaintiff's fee waiver appeal indicates that the OIP received the appeal on January 30, 2009. Complaint, Exh. C, at 14.

27. By letter dated February 4, 2009, OIP acknowledged receipt of Plaintiff's appeal and stated it would "notify [Plaintiff] of the decision on your appeal as soon as we can." *See* Complaint, Exh. D.

28. On February 10, 2009, Plaintiff spoke with OIP Senior Counsel Brentin Evitt concerning the status of Plaintiff's appeal. Mr. Evitt promised to provide a status update.

29. On February 10, 2009, Mr. Evitt emailed Plaintiff informing him that OIP could not adjudicate the appeal until it received certain background information from BOP. Complaint, Exh. E, at 1. The same day, Plaintiff replied to Mr. Evitt and indicated that all relevant documentation was included with his appeal. *Id.* at 2. Mr. Evitt replied later that day, stating he would "see if [the appeal] may contain enough information for an adjudication." *Id.* at 3.

30. Neither Mr. Evitt, nor any other representative of OIP has contacted Plaintiff since February 10, 2009, despite Plaintiff's subsequent inquiries on February 19 and March 16, 2009. *See id.* at 4-5.

### **C. Plaintiff's Entitlement to a Fee Waiver**

31. Plaintiff's FOIA request seeks information on procurement decisions which govern the conditions of confinement for approximately seventeen thousand immigrant detainees.

32. Conditions of confinement in contract detention facilities are determined in large part by standards developed during procurement negotiations. Accordingly, the disclosure of the requested documents is imperative to informing the public about the strengths and weaknesses of

the U.S. government's procurement activities, stewardship of taxpayer funds, and efficacy of the United States' detention system for criminal aliens.

33. Plaintiff is an experienced criminal justice policy analyst with a track record of published research. *See* Complaint, Exh. C, at 11. He submitted his FOIA request as part of a school-sponsored research project. Plaintiff intends to submit his research project for publication upon its completion.

34. As part of his fee waiver appeal, Plaintiff submitted a sworn affidavit disclaiming any commercial purpose underlying his FOIA request. *Id.* at 13.

#### **D. Defendant's Failure to Provide an Adequate Response to Plaintiff's FOIA Request**

35. Defendant BOP's statement that "[t]here is no evidence that releasing the information to you will contribute to the understanding of the general public at large," *see* Complaint, Exh. B, at 2, is incorrect because it does not accurately reflect the nature of Plaintiff's research. Plaintiff responded to this allegation in his fee waiver appeal.

36. Defendant BOP's statement that "the nature of the request itself and the ability to use these records for commercial use is greater than any public interest in disclosure," *see id.* at 2, is not supported by any reasonable factual basis and constitutes an arbitrary and capricious decision. Plaintiff responded to this allegation in a sworn affidavit submitted with his fee waiver appeal. Complaint, Exh. C, at 13.

37. The FOIA requires an agency to issue a final determination within respect to any appeal within twenty days (excepting weekends and holidays) from the date of receipt. 5 U.S.C. § 552(a)(6)(A)(ii).

38. The deadline to issue a determination with respect to Plaintiff's fee waiver appeal lapsed on March 2, 2009.

39. Defendant did not issue a determination with respect to Plaintiff's fee waiver appeal by March 2, 2009.

40. Plaintiff is deemed to have fully exhausted all administrative remedies required by FOIA. 5 U.S.C. § 552(a)(6)(C)(i).

**E. Defendant-Intervenor's Violation of Plaintiff's Federally Protected Rights**

41. At all times relevant to this action, Defendant-Intervenor GEO has operated the Reeves County Detention Center pursuant to a contract between GEO and Reeves County, Texas.

42. On or about June 22, 2009, in its capacity as operator of the Reeves County Detention Center, GEO received correspondence from BOP providing notice of plaintiff's FOIA request and related lawsuit, and inviting GEO to submit written objections to the disclosure of any information it felt was exempt from FOIA disclosure.

43. On or about October 13, 2009, in its capacity as operator of the Reeves County Detention Center, GEO received supplemental correspondence from BOP identifying additional responsive documents and once again inviting GEO to submit written objections to the disclosure of any information it felt was exempt from FOIA disclosure.

44. Upon information and belief, GEO responded to BOP's June 22 and October 13 notices by orally objecting to the disclosure of records which are responsive to Plaintiff's FOIA request.

45. In objecting to disclosure of records which are responsive to Plaintiff's FOIA request, GEO has relied on arguments which are not warranted by existing law; are not supported by a nonfrivolous arguments for the extension, modification, or reversal of existing law; are not



supported by facts; and are intended primarily to delay or deny the fulfillment of Plaintiff's FOIA request.

46. When responding to BOP's June 22 and October 13 notices, GEO acted with reckless or callous indifference to Plaintiff's rights protected under the United States Constitution and federal statute.

**FIRST CLAIM**  
**Freedom of Information Act, 5 U.S.C. § 552**

47. Plaintiff realleges and incorporates the allegations of all preceding paragraphs of this Complaint as if fully set forth herein.

48. By failing to provide all records responsive to Plaintiff's FOIA Request, Defendant has violated the FOIA's mandate to release agency records to the public. 5 U.S.C. § 552(a)(6).

49. Under the FOIA, Defendant is required to grant Plaintiff's request for a fee waiver with respect to his FOIA Request, because the information is sought for a non-commercial purpose and disclosure is likely to contribute significantly to public understanding of the operations and activities of the government. 5 U.S.C. § 552(a)(4)(A)(iii).

50. Plaintiff has a statutory right to have Defendant process the Request and fee waiver appeal in a manner which complies with FOIA. Plaintiff's rights in this regard were violated when Defendant unlawfully denied Plaintiff's fee waiver request.

51. Unless enjoined by this court, Defendant will continue to violate Plaintiff's statutory rights to receive records under the FOIA.

52. Plaintiff is entitled to obtain the requested records immediately at no cost.

53. Plaintiff is entitled to reasonable costs of litigation, including attorney fees, pursuant to the FOIA. 5 U.S.C. § 552(a)(4)(E).

**SECOND CLAIM**  
**42 U.S.C. § 1983; Procedural Due Process**

54. Plaintiff realleges and incorporates the allegations of all preceding paragraphs of this Complaint as if fully set forth herein.

55. Defendant-Intervenor GEO, in its capacity as agent of Reeves County, Texas, is a person acting under color of the law of the State of Texas.

56. GEO purposefully and deliberately avoided submitting its objections to Plaintiff's FOIA request in writing, in contravention of both the BOP's express instructions and the Department of Justice's regulations requiring such objections to be submitted in "a detailed written statement" (28 C.F.R. § 16.8(f)).

57. By disobeying the requirement to submit written objections, GEO deprived Plaintiff of his right to procedural due process as protected by the Fifth and Fourteenth Amendments to the Constitution of the United States.

58. As a proximate result of GEO's actions, Plaintiff sustained needless litigation and suffered damages in the amount of approximately \$4,500.

**THIRD CLAIM**  
**42 U.S.C. § 1983; Freedom of Information Act**

59. Plaintiff realleges and incorporates the allegations of all preceding paragraphs of this Complaint as if fully set forth herein.

60. By objecting to disclosure of information on the grounds of baseless and frivolous arguments, Defendant-Intervenor GEO has deprived Plaintiff of his right to access public information as protected by the Freedom of Information Act, 5 U.S.C. § 552.

61. As a proximate result of GEO's actions, Plaintiff sustained needless litigation and suffered damages in an amount to be proven.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that this Court enter a judgment:

(1) declaring that Defendant BOP has violated FOIA by failing to timely provide all records responsive to Plaintiff's FOIA Request;

(2) ordering Defendant BOP to grant Plaintiff the fee waiver sought in this action;

(3) ordering Defendant BOP to make all records responsive to the Request available to Plaintiff at no cost within twenty days;

(4) ordering Defendant-Intervenor GEO to pay Plaintiff compensatory damages, under 42 U.S.C. § 1983, in the amount of \$4,500.

(5) ordering Defendant-Intervenor GEO to pay Plaintiff exemplary damages, under 42 U.S.C. § 1983, in the amount of \$20,000.

(6) awarding Plaintiff his litigation costs and reasonable attorneys' fees in this action; and,

(7) ordering such other relief as the Court may deem just and proper.

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Respectfully submitted, November 22, 2010,

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