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CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
BY _____	DEPUTY _____

1 Kenneth L Allen
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3 Tucson Arizona 85730
4 520-514-9704
5 kenandbetseyallen@msn.com
6 in Proper Person

4 United States District Court
5 District of Arizona

7 Kenneth Allen)

8 Plaintiff,)

9 vs.)

10 Department of Homeland Security; et al.)


11 Defendant's)

Case No.: No. 09-CV-00373-TUC-FRZ

PLAINTIFF'S OBJECTION TO
DEFENDANTS DHS AND DOS ANSWER
AND MOTION TO DISMISS AND MOTION
FOR A VAUGHN INDEX

12 Comes Now, Plaintiff (Allen) in compliance with Local Rules 7.2 and the FRCP 6, and hereby
13 submits the following Objection to Defendants DHS and DOS Answer, to be incorporated into
14 the Objection, Objection to Defendants Motion to Dismiss a portion of Plaintiffs Complaint and
15 Exhibits B thru L having a total of 69 pages of Exhibits to the above entitled Court and case.

17 Respectfully Submitted on Monday October 12th 2009

18 
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) Case No.: No. 09-CV-00373-TUC-FRZ

) **PLAINTIFF'S OBJECTION TO**
) **DEFENDANTS PARTIAL MOTION TO**
) **DISMISS AND A MOTION FOR A VAUGHN**
) **INDEX**

14 Comes now, Plaintiff in Objection to the Defendants Motion to partial dismissal of Plaintiff's
15 Amended Complaint with a partial response to the Defendants Answer to be incorporated into
16 the pleadings. Plaintiff will also be incorporating necessary portions of Defendants pleadings.

17 **INTRODUCTION**

18 1. The Amended Complaint arises from FOIA requests submitted by Plaintiff (Allen) two to DHS
19 and two to DOS and Plaintiffs Appeals are at issue in this instant case. The first FOIA request,
20 sent on February 9, 2009 and not on the 19th of February as claimed by the defendants,
21 requested a variety of putative records regarding the President, including "an original copy" of
22 the President's birth certificate, "immigration records," naturalization records, name-change
23 records, and passports. DHS responded to this request on February 19, 2009, and informed
24 Allen that "DHS regulations require, in the case of third party information requests, a statement
25 from the individual verifying his or her identity and certifying that individual's agreement that
26 records concerning him or her may be accessed, analyzed and released to a third party." And
27 requested that Plaintiff modify his request, however they gave no specific modification requests,
28

1 Plaintiff did not request any further information with regards to Barack Obama but modified the
2 request asking for exactly the same information pertaining to Barry Soetoro, Stanley Ann
3 Soetoro and Lolo Soetoro; see: Plaintiff exhibit G dated 03-01-09. So its not like the Plaintiff
4 prejudiced Barack Obama. Also see letter to Barack Obama dated March 1 2009 Exhibit E,
5 never answered.

6 2. On April 1st 2009 and not March 31, 2009, Plaintiff filed an administrative appeal to DHS
7 regarding its response to his second FOIA request dated March 18th Plaintiffs exhibit H,
8 contending, that federal privacy laws, and the FOIA exemptions embodied in the FOIA, apply
9 only to citizens,. The FOIA Act protects Citizens and residents here permanently and not
10 illegally, according to the Federal Trade Commission and the commissioner and the
11 commissioner Christine A. Varney "commissioner the FOIA does not protect a foreigner or alien
12 that is not a Permanent resident of the United States of America.
13

14 3. The Privacy Act does have some limitations. Critics have charged, despite the generally
15 laudable goals of the Privacy Act, that the Act's "routine use" exception and the "law
16 enforcement" exception undermine the values of transparency and enhanced protection for
17 sensitive formation. Limited remedies may also diminish enforceability. Finally, the Privacy Act
18 applies only to federal government agencies. It does not cover state and local agencies,
19 Congress, or the private sector. The Act also only protects U.S. citizens and aliens with
20 permanent residence. The Privacy Act does not apply to foreigners, unions, collective
21 associations, or corporations.
22

23 4. Defendants have incorporated by reference their answer to Plaintiffs complaint except by the
24 incorporation of Barack Obama in any paragraph after paragraph 13, Barack Obama's name
25 was only mentioned in 10 thru 13. I would hope that the agency if they have any information on
26 the person named Barry Soetoro would produce the requested documents if in fact they
27 exist.(citing Nation Magazine, 71 F.3d at 890)); see Horsehead Indus. v. EPA, No. 94-1299, slip
28 op. at 4 n.2 (D.D.C. Jan. 3, 1997) (ruling that "y construing the FOIA request narrowly, [the

1 agency] seeks to avoid disclosing information”); FOIA Update, Vol. XVI, No. 3, at 3 (advising
2 agencies on interpretation of terms of FOIA re an agency “must be careful not to read [a]
3 request so strictly that the requester is denied information the agency well knows exists in its
4 files, albeit in a different form from that anticipated by the requester.” Specifically, agencies
5 should be careful to undertake any “scoping” of documents found in response to a request only
6 with full communication with the FOIA requester. I believe my request to be reasonable and I
7 believe the information I have provided to the agency to be adequate to find the records. See 5
8 U.S.C. § 552(a)(3)(A) (2000 & Supp. IV 2004) (statutory provision requiring that a FOIA request
9 “reasonably describe[]” the records sought); see also, e.g., Ledesma v. U.S. Marshals Serv.,
10 No. 05-5150, 2006 U.S. App. LEXIS 11218, at *2 (D.C. Cir. Apr. 19, 2006). The FOIA requires
11 that “any reasonably segregable portion of a record” must be released after appropriate
12 application of the Act’s nine exemptions.
13

14 5. Defendants have through their pleadings alleged that Plaintiff has used the name Barack
15 Obama for the purpose of his Complaint, that assumption is incorrect see Plaintiffs Exhibit B, F
16 and G , documents released pertaining to Barack Obama, his selective service records PL. EX.
17 B., Barack Obama is only mentioned as a comparison and evidence that not all documents
18 pertaining to Barack Obama are exempt see Plaintiffs Exhibit B, however his selective service
19 records show his date of birth, address at that time which would in fact be considered personal
20 information. It is therefore there factual evidence that the defendants are releasing documents
21 related to Barack Obama that are considered exempt by statute.
22

23 6. Plaintiffs Exhibit C, this registration document was released on January 24th 2007 by
24 Fransiskus School in Jakarta Indonesia, the registration shows Barry Soetoro was registered by
25 his Step Father Lolo Soetoro, it also shows he was an Indonesian citizen and his religion was
26 Islam. Plaintiffs Exhibit D has also been attached, dated August 20 1980, the divorce papers of
27 Stanley Ann and Lolo Soetoro showing Barry Soetoro to be a person.
28

1 7. Defendants answers paragraph 14 thru 44 all refer to President Barack Obama and the
2 person called Barry Soetoro, as the court can see Barry Soetoro is a real person and the object
3 of the Plaintiffs Amended Complaint. Obama is only reference in the beginning of the complaint
4 because not all documents pertaining to him are exempted under the FOIA see selective
5 service response Plaintiff's Exhibit B.

6 8. Defendants complain that "Allegations concerning President Obama or concerning a person
7 named Barry Soetoro are subject to a pending motion to dismiss, and no response is therefore
8 required. Further, paragraph 42 contains conclusions of law, not factual allegations requiring a
9 Response, and on that basis, Defendants deny everything.

10 9. Plaintiff reiterates' the fact that defendants continued use of President Obama's name does
11 not make the complaint about Barack Obama, their actions are misleading and all conclusions
12 of Law and factual allegations made by the Plaintiff are all true and correct to the best of his
13 knowledge and belief.

14 10. Plaintiff's Exhibit E hereto attached is a letter to Barack Obama, it was never answered.

15 11. Plaintiff's Exhibit F contains the last FOIA with regards to Barack Obama dated February 9th
16 2009.

17
18 **OBJECTION TO DEFENDANTS PARTIAL MOTION TO DISMISS AND AUTHORITIES**

19 12. Defendants have filed a motion Pursuant to Fed. R. Civ. P. 12(b), Defendants the U.S.
20 Department of Homeland Security and the U.S. Department of State hereby move the Court to
21 dismiss, in part, this Freedom of Information Act action for lack of jurisdiction and for failure to
22 state a claim for which relief can be granted. Those grounds are misleading and do not justifying
23 dismissal.

24 13. The Plaintiff "Kenneth Allen" has done everything possible to get the government the DHS
25 and the State of Department to release agency records unlawfully withheld, the plaintiff was also
26 denied due process by the State Department completely and there for had a claim for which this
27
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1 honorable court could grant relief. The Plaintiff has filed a claim in the complaint and will here
2 demonstrate that the facts and allegation contained therein are true and correct.

3 Bestor v. CIA, No. 04-2049, 2005 WL 3273723, at *3 (D.D.C. Sept. 1, 2005) (dismissing
4 Complaint under Rule 12(b)(6) where plaintiff failed to "allege or demonstrate" that he
5 exhausted his administrative remedies); Flowers v. IRS, 307 F. Supp. 2d 60, 66 (D.D.C. 2004)
6 (stating that "the exhaustion requirement is a prudential consideration, not a jurisdictional
7 prerequisite"); Gambini v. U.S. Customs Serv., No. 5:01-CV-300, 2001 U.S. Dist. LEXIS 21336,
8 at *4-5 (N.D. Tex. Dec. 21, 2001) (dismissing Complaint under Rule 12(b)(6) because plaintiff
9 had not exhausted administrative remedies); see also Jones v. U.S. Dep't of Justice, No. 04-
10 1729, 2005 U.S. Dist. LEXIS 20097, at *2 (D.D.C. Sept. 12, 2005) (characterizing exhaustion as
11 "jurisprudential doctrine" rather than jurisdictional requirement); Boyd v. Criminal Div., U.S. Dep't

12
13 14. The defendants allege that the Plaintiff through the Freedom of Information Act ("FOIA")
14 action, seeks private passport, travel, and other records relating to President Barack Obama,
15 his mother, Stanley Ann Dunham, and his mother's former husband, Lolo Soetoro, from the U.S.
16 Department of State ("DOS") and the U.S. Citizenship and Immigration Service ("USCIS").

17 In submitting these requests, Plaintiff has failed to comply with agency regulations
18 promulgated to protect the personal privacy of U.S. citizens and residents. Defendants
19 therefore move the Court to dismiss Plaintiff's Amended Complaint with Plaintiffs Exhibit A
20 with respect to records concerning President Obama.

21
22 15. With due respect to the defendants I did not file the complaint because the government the
23 DHS and State Department withheld documents on Barack Obama, but for Barry Soetoro,
24 Stanley Ann Soetoro and Lolo Soetoro. The fact is that Stanley Ann Soetoro may have been in
25 violation of or non compliance with the rule of law . *Also Stanley Ann Soetoro didn't comply with*
26 *section 301 of the immigration and Nat. Act of 1952; Section 301(a) of the Act, 8 U.S.C. §*
27 *1401(a), defines those persons who "shall be nationals and citizens of the United States at*
28 *birth." Paragraph (7) of § 301(a) includes in that definition a person born abroad "of parents one*

1 of whom is an alien, and the other a citizen of the United States" who has met specified
2 conditions of residence in this country. Section 301(b), however, provides that one who is a
3 citizen at birth under § 301(a)(7) shall lose his citizenship unless, after age 14 and before age
4 28, he shall come to the United States and be physically present here continuously for at least
5 five years. I quote the statute in the margin.[401 U.S. 817 of Rogers v. Bellie decided in 1971]

6 The plan thus adopted by Congress with respect to a person of this classification was to bestow
7 citizenship at birth, but to take it away upon the person's failure to comply with a post-age-14
8 and pre-age-28 residential requirement. It is this deprivation of citizenship, once bestowed, what
9 are in question here are documents that pertain to Stanley Ann Soetoro.

10 16. Plaintiffs Exhibit G was the last FOIA with regards to Barack Obama dated February 19th
11 2009, consists of the request and answer.

12 17. Plaintiffs Exhibit H, a response from DHS and the Appeal, I would just like to remind the
13 court that at no time did the DHS inform me that I had a right to appeal their decision, so I sent
14 the appeal to both DHS and Plaintiffs Exhibit J, letter from the Department of commerce, that
15 agency explained that my appeal had been misdirected.

16 18. Plaintiffs Exhibit L demonstrates the Department of States failure to comply at all with the
17 FOIA to the point they have in fact denied Plaintiffs right to due process of FOIA mandate.
18 An agency is required to make a "determination" on the merits of a FOIA appeal within 20
19 working days of receipt. 5 U.S.C. § 552(a)(6)(A)(ii). The agency must "immediately notify the
20 person making such request of the provisions for judicial review of that determination." Id.

- 21 1. An agency may unilaterally extend the response deadline by up to 10 working
22 days in "unusual circumstances," but only upon giving written notice to the
23 requester. 5 U.S.C. § 552(a)(6)(B)(i). This right may not be exercised if the
24 agency has already exceeded its 10 day response deadline for the initial request.
- 25 2. FOIA requires any denial of a request to list the "names and titles or positions of
26 each person responsible for the denial." 5 U.S.C. § 552(a)(6)(C).
- 27
- 28

1 "An agency seeking to withhold information under an exemption to FOIA has the burden of
2 proving that the information falls under the claimed exemption." GC Micro Corp. v. Defense
3 Logistics Agency, 33 F.3d 1109, 1113 (9th Cir. 1994); see also Lewis v. IRS, 823 F.2d 375, 378
4 (9th Cir.1987). This favorable burden of proof provides rarefied air indeed for a plaintiff's
5 attorney to breathe. The FOIA permits requesters to treat an agency's failure to comply with its
6 specific time limits as full, or "constructive," exhaustion of administrative remedies.¹¹⁰ Thus,
7 when an agency does not respond to a perfected request within the twenty-day (excepting
8 Saturdays, Sundays, and legal holidays.

9 19. The agency has a responsibility to inform the requestor (Plaintiff) that he or she has a right
10 to an administrative appeal and where to direct it. Neither the DHS or the Department of State
11 did that; The special right to immediate judicial review that arises from the lack of a timely
12 response lapses if an agency responds to a request at any time before the requester's FOIA suit
13 is filed; in that situation, the requester must administratively appeal a denial and wait at least
14 twenty working days for the agency to adjudicate that appeal -- as is required by 5 U.S.C. §
15 552(a)(6)(A)(ii) -- before commencing litigation.¹¹⁵ This latter point was well established by the
16 Court of Appeals for the District of Columbia Circuit in Oglesby v. U.S. Dep't of the Army, which
17 held that "an administrative appeal is mandatory if the agency cures its failure to respond within
18 the statutory period by responding to the FOIA request before suit is filed."¹¹⁶ Thus, under
19 Oglesby, if a FOIA requester waits beyond the twenty-day period for the agency's initial
20 response and then, in fact, receives that response before suing the agency, the requester must
21 exhaust his administrative appeal rights before litigating the matter. If an agency makes an
22 adverse determination after the requester has filed suit, however, the requester need not first
23 administratively appeal that determination before pressing forward with the court action.

24 20. In fact the State Department closed the Plaintiffs FOIA case before contacting the Plaintiff,
25 and only then told the Plaintiff to refile the FOIA, see Plaintiffs Exhibit L where they state that the
26 case had been closed in their system; Regardless of whether the agency's response is timely,
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1 the requester's exhaustion obligation may be excused if the agency's response fails to supply
2 notice of the right to file an administrative appeal, as required by 5 U.S.C. § 552(a)(6)(A)(i),¹¹⁹ or
3 ultimately to supply notice of the right to appeal.
4

5 **STATEMENT OF FACTS**

6 21. Plaintiffs Exhibit I was the DHS response to the FOIA Appeal dated April 15 2009 where the
7 stated that I treat their letter as a denial and take action in the appropriate court. And Plaintiffs
8 Exhibit K will clearly show that the DHS has promised to release non exempt document
9 pertaining to Lolo Soetoro. The "sole cognizable public interest for FOIA is the interest 'to open
10 agency action to the light of public scrutiny,' to inform the citizenry 'about what their government
11 is up to.'" Rosenfeld v. U.S. Dep't of Justice, 57 F.3d 803, 811 (9th Cir. 1995) (quoting Dep't of
12 Justice v. Reporters Comm. for Freedom of the Press, 489 U.S. 749, 773 (1989)). It is not
13 designed to allow the citizenry unfettered access to the private affairs of other citizens, however
14 famous they may be. Billington v. Department of Justice, 11 F. Supp. 2d 45, 62 (D.D.C.
15 1998) (although public officials in some circumstances have diminished privacy, they
16 maintain privacy interests in nonpublic information), aff'd in part, vacated in part on other
17 grounds, 233 F.3d 581 (D.C. Cir. 2000). Thus, private information about a public figure that
18 does not reveal the operations or activities of government "falls outside the ambit of the
19 public interest that the FOIA was enacted to serve." Reporters Comm., 489 U.S. at 775.
20 The FOIA (along with the Privacy Act of 1974, 5 U.S.C. § 552a, and other statutory and
21 regulatory provisions) is carefully crafted to balance the public interest in disclosure of
22 government information with an individual's right to privacy. See Blazy v. Tenet, 194 F.3d
23 90, 96 (D.C. Cir. 1999) (quoting Legislative History of the Privacy Act of 1974, at 861 (1976)
24 (noting that the original congressional staffs observed that "[p]erhaps the most difficult task
25 in drafting Federal privacy legislation was that of determining the proper balance between
26 the public's right to know about the conduct of their government and their equally important
27
28

1 right to have information which is personal to them maintained with the greatest degree of
2 confidence by Federal agencies”). Again I must persist on the fact that the Defendant maintains
3 Barck Obama is the target of this complaint, I say they are wrong, this complaint is for the
4 release of documents pertaining only to the Soetoro's , Barry, Stanley Ann and Lolo.
5 In a case before the Supreme in 1990 brought by The American Civil Liberties Union and
6 Computer Professionals for Social Responsibility in of Respondents No. 90-747, the case being
7 about how to evaluate competing interests in privacy and open government under Exemption .
8 That exemption provides that agencies may withhold only personal information “the disclosure
9 of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. S.
10 552(b) (6) (1986) (emphasis added). Although the names and addresses at issue here are
11 personal information that implicates an Exemption 6 privacy interest, that interest does not
12 outweigh the strong public interest in the light that their release would shed on implementation
13 of the Government’s immigration policy. Thus, their disclosure would not “constitute a clearly
14 unwarranted invasion of personal privacy,” and FOIA compels their release.

16 **STANDARD OF REVIEW**

17 22. The United States district courts are vested with exclusive jurisdiction over FOIA cases by
18 section (a)(4)(B) of the Act, which provides in pertinent part: On complaint, the district court of
19 the United States in the district in which the complainant resides, or has his principal place of
20 business, or in which the agency records are situated, or in the District of Columbia, has
21 jurisdiction to enjoin the agency from withholding agency records and to order the production of
22 any agency records improperly withheld from the complainant, *Allen v Soetoro*, 09-Cv-00373-
23 Tuc-FRZ was filed on July 6th 2009 and Amended on September 21 2009. *Allen v DHS*, 09-CV-
24 00373-TUC-FRZ.

26 23. This Court will not grant the defendants' motions to dismiss pursuant to Fed. R. Civ. P.
27 12(b)(6) “unless it appears beyond doubt that the plaintiff can prove no set of facts in support of
28

1 his claim which would entitle him to relief. In fact here we have an agency that has waited until
2 after the complaint has been filed, then decides to promise the release of documents. see: [PL.

3
4 EX. K], referring to Lolo Soetoro. " See *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S. Ct. 99
5 (1957); *Kowal v. MCI Communications Corp.*, 16 F.3d 1271, 1276 (D.C. Cir. 1994). Accordingly,
6 at this stage in the proceedings, the Court must accept as true all of the complaints' factual
7 allegations. See *Doe v. United States Dep't of Justice*, 753 F.2d 1092, 1102 (D.C. Cir. 1985).
8 Plaintiffs are entitled to "the benefit of all inferences that can be derived from the facts alleged."
9 *Kowal*, 16 F.3d at 1276.

10 The Defendants have concluded that the Plaintiffs complaint be dismissed where it pertains to
11 Barack Obama, there is only reference to Barack Obama , paragraphs 10 thru 13 can be
12 removed from the complaint if that would resolve defendants complaint . The Complaint pertains
13 only to Barry Soetoro, Stanley Ann Soetoro and Lolo Soetoro.
14

15 **NOT ALL THE DOCUMENTS ARE EXEMPT**

16 24. As a general rule, "[t]he 'segregability requirement applies to all documents and all
17 exemptions in the FOIA.' To meet this requirement, agency declarations must address the issue
18 "with reasonable specificity."³⁰² Indeed, conclusory language in agency declarations that does
19 not provide a specific basis for segregability findings by district courts may be found inadequate.

20 25. *Gavin v. SEC*, No. 04-4522, 2005 WL 2739293, at *4 (D. Minn. Oct. 24, 2005) (ordering
21 agency to provide detailed affidavits as record is insufficient to enable determination as to
22 whether agency has sustained its burden of reasonable segregability), reconsideration denied,
23 2006 WL 208783 (D.D.C. Jan. 26, 2006); *Edmonds Inst. v. U.S. Dep't of the Interior*, 383 F.
24 Supp. 2d 105, 110 (D.D.C. 2005) (directing defendant to produce more detailed Vaughn Index
25 because its "generalized paragraph on segregability" does not suffice); *The Wilderness Soc'y v.*
26 *U.S. Dep't of the Interior*, 344 F. Supp. 2d 1, 19 (D.D.C. 2004) (holding that "a blanket
27
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1 declaration that all facts are so intertwined to prevent disclosure . . . does not constitute a
2 sufficient explanation of non-segregability"); Wiener v. FBI, No. 83-1720, slip op. at 13
3 (C.D. Cal. Sept. 27, 2004) (finding that agency's conclusory justifications fail to meet agency's
4 burden of proof regarding segregability); Dorsett v. U.S. Dep't of the Treasury, 307 F. Supp. 2d
5 28, 41 (D.D.C. 2004) (denying summary judgment in part "[b]ecause of [agency's] inadequate
6 and conclusory segregability explanation," and ordering renewed motion with affidavit solely
7 addressing segregability); Animal Legal Def. Fund, 44 F. Supp. 2d at 301 (holding that
8 conclusory statement regarding segregability is "patently insufficient"); see also Patterson v.
9 IRS, 56 F.3d 832, 839 (7th Cir. 1995) ("[B]ecause the [agency declaration] lumps all of the
10 withheld information together in justifying nondisclosure, the district court could not have
11 independently evaluated whether exempt information alone was being withheld or deleted in
12 each instance."). 5 U.S.C. § 552(b) (2000 & Supp. IV 2004) (sentence immediately following
13 exemptions). Pub. L. No. 93-502, 88 Stat. 1561. See Billington v. U.S. Dep't of Justice, 233
14 F.3d 581, 586 (D.C. Cir. 2000) (emphasizing that the FOIA's segregability requirement limits
15 exemption claims to "discrete units of information; to withhold an entire document, all units of
16 information in that document must [be exempt]"); Schiller v. NLRB, 964 F.2d 1205, 1209 (D.C.
17 Cir. 1992) ("The focus in the FOIA is information not documents and an agency cannot justify
18 withholding an entire document simply by showing that it contains some exempt material."
19 (quoting Mead Data Cent., Inc. v. U.S. Dep't of the Air Force, 566 F.2d 242, 260 (D.C. Cir.
20 1977))); see also Attorney General's Memorandum on the 1974 Amendments to the Freedom of
21 Information Act 14 (Feb. 1975); FOIA Update, Vol. XIV, No. 3, at 11-12 ("OIP Guidance: The
22 'Reasonable Segregation' Obligation"). But cf. Piper & Marbury, L.L.P. v. USPS, No. 99-2383,
23 2001 WL 214217, at *4 (D.D.C. Mar. 6, 2001) (magistrate's recommendation) (erroneously
24 extrapolating from the segregability mandate the notion that "there is no authority for the
25 proposition that entire documents are exempt from FOIA"), adopted (D.D.C. Mar. 30, 2001).
26
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28 See Thomas v. U.S. Dep't of Justice, No. 1

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CONCLUSION

Regardless of whether the agency's response is timely, the requester's exhaustion obligation may be excused if the agency's response fails to supply notice of the right to file an administrative appeal, as required by 5 U.S.C. § 552(a)(6)(A)(i). For the reasons discussed above, Plaintiff (Kenneth Allen) respectfully requests that this court not dismiss any part of the Amended Complaint.

Respectfully submitted this 11th day of October 11, 2009



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