

Kenneth L Allen  
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in Proper Person

**United States District Court  
District of Arizona**

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|--|---|---|
| Kenneth Allen  | ) | Case No.: No. 09-CV-00373-TUC-FRZ   |
| Plaintiff,   | ) | <b><u>Plaintiffs Motion to Compel Compliance<br/>with Discovery Order</u></b> |
| vs.  | ) |   |
| <b><u>DHS [Department of Homeland Security]<br/>and the US Department of State; et al.</u></b> | ) |   |
| Defendant's  | ) |   |

Plaintiff (Kenneth L Allen) respectfully moves this court pursuant to the Freedom Of Information Act, 5 USC § 552 and 552(2), the FRCP 37(a) and LRciv 37.1 to compel the Defendants, the Department of Homeland Security (DHS) and Department of State (DOS) to comply with their agreement made between Mr Bowen and Myself [ Kenneth Allen] during discussion before our Joint Status Report [ Doc.33] .and in accordance with Rule 26(f) FRCP., disclosing any matter under A to J , 1 thru 16 of the order directing Defendants to process plaintiffs ("FOIA") requests. Mr Bowen said that the defendants had some of the document and they could be delivered as on or about 4 to 6 weeks that was 3-10-2010 it has been more than 8 weeks.

**Background**

On February 2nd 2010, the Court ordered defendants DHS and Dos, through Counsel for a joint report, in accordance with Rule 26(f) to discuss certain complex matters pertaining to the FOIA requests made by the Plaintiff, And to discuss discovery and possible limitations thereof. Counsels were ordered to comply with Rule 26(f) and seek to minimize the expense of this action.  
Plaintiff contacted defendants counsel on February the 23rd 2010 asking Mr. Bowen, counsel for the defendants if they had come to any conclusions and he responded that they had not

1 contacted him ( email Exhibit B). And on 3-12-2010 we filed a Status report with the final search  
2 date June 30, 2010. That wasn't the disclosure date, the documents already in the custody of  
3 the defendants should have been released.

4 The execution of a court order cannot be stayed by a party's decision to suspend compliance  
5 with the order; Federal Practice and Procedures § 2903 at 495 (2d ed. 1995) if no stay has been  
6 obtained, an injunction that the district court has granted remains in effect; Id., 2904 at 498. In  
7 the present case no stay has been sought or granted. On a motion for a stay, " it is the movants  
8 obligation to justify the courts exercise of such an extraordinary remedy; Cuomo v United States  
9 Nuclear Regulatory Comm., 772 F. 2d at 978. The defendants said nothing about waiting until  
10 June to release the requested documents, nor did they ask for a stay with regards to the release  
11 of documents.

12 The decision whether to grant a stay is a matter of the courts discretion; FRCP Rule 62 ©. By  
13 staying its "own" compliance with the courts order, the defendants have usurped the courts  
14 discretion and deprived the Plaintiff of the response in which he is entitled.

15 **Authority**

16 The Freedom Of Information Act, 5 USC § 552, provides that "the district court...has jurisdiction  
17 to enjoin the agency from withholding agency records and to order production of any agency  
18 record improperly withheld." 5 USC § 552(a)(4)(B). Further this court has plenary power to  
19 regulate the proceeding in a fair manner; see: Landis v North Am. Co. 1936, 57 S.Ct 163, 166,  
20 299 US 248, 254-255.

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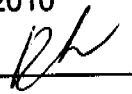
**Conclusion**

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2 Plaintiff has conferred with the opposing counsel, and to the best of my knowledge and belief  
3 unless the defendant adhere to the order and their agreement to release documents, the plaintiff  
4 cannot make a clear decision on what course of action to precede further therefore denying  
5 Plaintiff right to due process of the law.

6 For the above mentioned reasons, plaintiff respectfully requests the Court to compel defendants  
7 to comply with the courts February 2nd 2010 Order and to provide final response to plaintiffs  
8 FOIA request by a date certain.

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10 Respectfully Submitted.

11 Dated this 5/20/2010

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14 Kenneth L Allen  
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16 Tucson, AZ 85730  
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PROOF OF SERVICE

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I Kenneth L Allen declare under the penalty of perjury that I have served the Motion to compel to Defendants Counsel Brigham J. Bowen, US Trail Attorney, US Department of Justice, Civil Division, Federal programs Branch, PO Box 883, Washington DC 20044.

Dated Thursday, May 20, 2010

  
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Kenneth Allen, in proper person

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