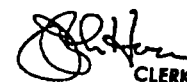


FILED

AUG 26 2011


CLERK

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION**

ARGUS LEADER MEDIA, DBA *ARGUS LEADER*,

Plaintiff,

Case No.: CIV 11-4121

v.

COMPLAINT

UNITED STATES DEPARTMENT OF AGRICULTURE

Defendant.

Plaintiff, Argus Leader Media [*Argus Leader*], for its Complaint, states as follows:

JURISDICTION AND VENUE

1. This action arises under and pursuant to the Freedom of Information Act, 5 U.S.C. §552, to order the production of agency records concerning the identity of businesses that receive federal food stamp revenue under the auspices of the United States Department of Agriculture [USDA]. These records have been improperly held from the plaintiff.

2. This court has jurisdiction over this action pursuant to 5 U.S.C. §552 (a)(4)(B).

3. Venue is proper in this district under 5 U.S.C. §552 (a)(4)(B).

THE PARTIES

4. *Argus Leader* is a newspaper published in Sioux Falls, South Dakota, and has a principal place of business at 200 South Minnesota Avenue, Sioux Falls, South Dakota.

5. Defendant is the Secretary of the Department of Agriculture, the Department of Agriculture being the agency withholding the record sought under the Freedom of Information Act.

FACTS

6. By letter dated February 1, 2011, Plaintiff requested access to data stored on USDA's Food Nutrition Service's STARS database. The requested records pertaining to stores [vendors] in the United States that redeemed food stamps from 2005 through 2010 were: a) store identifiers [unique ID number]; store names; store addresses; store types; annual redemption amounts or EBT [electronic benefit transfer] sales figures for each store. A copy of this letter is attached hereto and incorporated herein as Exhibit 1.

7. By undated letter received February 17, 2011, Plaintiff agreed to release store names and addresses, but furnished an incomplete list. The Defendant's letter went on to deny Plaintiff access to all other requested information on the ground that it was exempt from disclosure under 5 U.S.C. §552 (b)(3) and (b)(4). A copy of this letter is attached hereto and incorporated herein as Exhibit 2.

8. By letter dated February 25, 2011, Plaintiff appealed the denial of this request. A copy of this letter is attached hereto and incorporated herein as Exhibit 3.

9. An official agency response to the letter of appeal has not been received from the Department of Agriculture or its officers or attorneys.

10. The USDA's "unofficial" position was sent by email on July, 2011, and contained the following claims:

[The *Argus Leader*] requested for Store Identifier and Store Type which we withheld. Store type is one of the identifiers designated to each authorized retailer by FNS. CFR 278.1(3)(iv) indicates that the SSNs and related records that are obtained or maintained by authorized persons are confidential....The term "related record" means any record, list, or compilation that indicates, directly or indirectly, the identity of any individual with respect to whom a request for a SSN is maintained. Store identifiers or unique identification numbers would be included in the category of "related records."

[The *Argus Leader*] also requested for EBT redemption data which we withheld. Again from CFR 278.1 we are not allowed to release this information unless it is for the purpose directly connected with the administration and enforcement of the Food Stamp Act....

11. Plaintiff has a right of access to the requested information under 5 U.S.C. 552 (a)(3) and there is no legal basis for Defendant's denial of such access.

WHEREFORE, Plaintiff prays:

1. That this Court order Defendant to provide immediate access to the requested documents and information;
2. Award Plaintiff its costs and reasonable attorney fees in this action as provided under 5 U.S.C. §552(a)(4)(E);
3. Grant such other relief as the Court may deem just and proper.

DATED this 26th day of August, 2011.



JON E. ARNESON, SD. Bar #45
123 South Main Avenue, Ste. 202
Sioux Falls, South Dakota 57104
Telephone: (605) 335-0083
Facsimile: (605) 335-0083
Attorney for Plaintiff