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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Irvin Muchnick, an individual	)	Case No.
	)	
Plaintiff,	)	COMPLAINT FOR DECLARATORY AND
vs.	)	INJUNCTIVE RELIEF UNDER THE
	)	FREEDOM OF INFORMATION ACT
U.S. Department of Homeland Security, an	)	
agency of the United States Government	)	PRIVACY ACT CASE
	)	
Defendant	)	5 U.S.C. § 552
	)	
	)	

Plaintiff Irvin Muchnick alleges as follows:

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA").

Plaintiff Irvin Muchnick (hereinafter "Muchnick") seeks injunctive relief to compel the Department of Homeland Security to release all records in the possession of its U.S. Citizenship and Immigration Services agency concerning the visa application, green card files, and ancillary documents in its files of the Irish national George Gibney who reportedly sexually abused numerous young aquatic athletes in Ireland and other countries but who was granted permission to enter and reside in the United States.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this matter and personal

1 jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This Court also has subject  
2 matter jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this District under  
3 5 U.S.C. § 552(a)(4)(B) as Muchnick is and has been domiciled in this District during all  
4 relevant times.

#### 5 PARTIES

6 4. Muchnick is a resident of Berkeley, California.

7 5. Muchnick is a widely published free-lance investigative journalist whose work has  
8 appeared in *The New York Times Magazine*, *Sports Illustrated*, *People*, and many other major  
9 magazines and newspapers. He has been interviewed on forums as diverse as Fox  
10 News' *O'Reilly Factor* and National Public Radio's *Fresh Air* with Terry Gross. He is also an  
11 author of three books, most recently *Concussion Inc.: The End of Football as We Know It* in  
12 which he addresses the social, economic and medical problems associated with head injuries and  
13 professional football.

14 6. Muchnick has also actively investigated and written about the many known instances  
15 of sexual abuse of young swim athletes by their coaches across the United States, including the  
16 various litigations surrounding these scandals, some of which are institutional. These  
17 investigations and journalistic pursuits have brought him directly to the subject of his current  
18 investigations and this instant FOIA request, as will be described below.

19 7. Defendant Department of Homeland Security is a Federal agency within the meaning  
20 of 5 U.S.C. § 552(f) and 5 U.S.C. § 702. Muchnick is informed and believes, and on this basis  
21 alleges, that the National Records Center of the U.S. Citizenship and Immigration Services in  
22 Lee's Summit, Missouri is the specific department within the agency that has custody and  
23 control of the records that Muchnick seeks.

FACTUAL ALLEGATIONS

Underlying Factual Background for the FOIA Request

8. Muchnick is investigating and writing about the Irish-born swim coach George Gibney and the American Swimming Coaches Association in an effort 1) to expose Gibney's past and possibly ongoing evil and criminal activities in the United States, 2) to expose any malfeasance by the American Swimming Coaches Association in abetting Gibney and other swimming coaches to enter and reside in the United States, and 3) to expose any improprieties or negligence on the part of the U.S. Citizenship and Immigration Services, an agency within the Department of Homeland Security, in connection with any decisions to permit Gibney and other swimming coaches to be granted the "legal" right to enter and reside in the United States.

The Arc of Muchnick's FOIA Request

9. On January 27, 2015, Muchnick submitted a formal FOIA request to the U.S. Citizenship and Immigration Services seeking documents related to the visa application and green card files of George Gibney. Attached with that request was an article written by Muchnick that explained who Gibney is as well as Muchnick's purpose in seeking these agency records. A true and correct copy of that request with its attached article is submitted as Exhibit 1 to this Complaint and incorporated herein.

10. On April 27, 2015, Jill A. Eggleston, Director of FOIA Operations, U.S. Citizenship and Immigration Services of the Department of Homeland Security, provided a substantive response in the form of a letter. A true and correct copy of that letter is submitted as Exhibit 2 to this Complaint and incorporated herein.

11. Director Eggleston in that letter stated the following:

"We have completed the review of all documents and have identified 102 pages that are responsive to your request. Enclosed are four pages released in their entirety. We are withholding

1 98 pages in full. In our review of these pages, we have determined that they contain no  
2 reasonably segregable portion(s) of nonexempt information. We have reviewed and have  
3 determined to release all information except those portions that are exempt pursuant to 5 U.S.C.  
4 § 552 (b)(6), (b)(7)(C), and (b)(7)(E) of the FOIA.”

5 12. The four pages released by the agency that actually contained text consisted of a  
6 public alert published by AbuseWatch.net, an international watchdog organization, concerning  
7 George Gibney and a blank INS form, and are submitted as Exhibit 3, which is incorporated  
8 herein. That public alert describes in detail the reported allegations and earlier journalistic  
9 investigations into Gibney’s longstanding pattern of sexually abusing youngsters and why  
10 AbuseWatch.net was seeking more information about Gibney and his whereabouts. The  
11 significance of Gibney’s case in Ireland, and the controversies surrounding his flight from  
12 Ireland, are reported in this same public alert located in the Citizenship and Immigration  
13 Services’ own files. The remaining 98 pages were completely blank, except that each of the 98  
14 pages contained a one-line reference citing in a perfunctory manner the specific FOIA exemption  
15 under which the agency was withholding the particular document. To demonstrate more clearly,  
16 submitted as Exhibit 4, and incorporated herein, is page 80, chosen at random, from the 102  
17 pages – this page is identical to the 97 other pages “withheld in full” by the Defendant except for  
18 the stated specific exemption relied upon by the Defendant.

19 13. On May 21, 2015, Muchnick filed a timely appeal from the agency’s response dated  
20 April 27, 2015. A true and correct copy of that appeal is attached as Exhibit 5 and incorporated  
21 herein. In that appeal Muchnick mounted several legal arguments, most prominently that it  
22 appeared illogical that portions of the documents being withheld pursuant to the cited  
23 exemptions were not “reasonably segregable”. Muchnick contended there, and continues to  
24 contend, that this basis for withholding is not tenable.

1 14. In a response dated June 12, 2015, the Department of Homeland Security summarily  
2 denied the appeal. A true and correct copy of that response is submitted as Exhibit 6 and  
3 incorporated herein. This present litigation follows.

4 CAUSE OF ACTION

5 Violation of the Freedom of Information Act:

6 Wrongful Withholding of Agency Records

7 15. Muchnick re-alleges and incorporates by reference paragraphs 1–14 above as if fully  
8 stated herein.

9 16. Plaintiff properly requested records within the custody and control of Defendant U.S.  
10 Department of Homeland Security.

11 17. Defendant Department of Homeland Security has failed to release responsive records  
12 to Muchnick, in violation of FOIA. 5 U.S.C. § 552(a)(3)(A). Muchnick has exhausted the  
13 applicable administrative remedies with respect to his request. 5 U.S.C. § 552(a)(6)(C)(i).

14 18. Accordingly, Defendant stands in violation of Federal law and Muchnick is entitled to  
15 the declaratory and injunctive relief he seeks, as set forth hereafter.

16  
17 REQUESTED RELIEF

18 WHEREFORE, Plaintiff Muchnick respectfully requests this Court:

- 19 1) order Defendant U.S. Department of Homeland Security and its U.S. Citizenship and  
20 Immigration Services to conduct a reasonable search for all records responsive to  
21 Plaintiff's January 27, 2015 FOIA request, and to immediately produce to Plaintiff's  
22 undersigned counsel all records responsive to Plaintiff's FOIA request in their  
23 entirety;

- 1 2) declare that Muchnick is a member of the media who is seeking the release of these  
2 documents in the public interest, and is therefore entitled to any applicable fee  
3 waivers as allowed by law;
- 4 3) order Defendant to promptly produce a sufficiently detailed *Vaughn* Index identifying  
5 any document or portion of a document withheld, and stating the statutory exemption  
6 claimed;
- 7 4) issue a declaration that Muchnick is entitled to disclosure of the requested records;
- 8 5) provide for expeditious proceedings in this action;
- 9 6) award Muchnick reasonable attorney fees and litigation costs reasonably incurred in  
10 this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- 11 7) grant such other relief as the Court may deem just and proper.
- 12

13 Respectfully submitted,

14 Date: July 1, 2015

/s/

15 Roy S. Gordet,

16 Attorney for Plaintiff Irvin Muchnick  
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