

Appendix H
Supplement to Appeal



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February 10, 2014

VIA U.S. MAIL AND FACSIMILE – (937) 522-3096

Office of the Secretary of the Air Force
U.S. Air Force School of Aerospace Medicine
Karen Cook
Carmen Oglesby
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88 CS/SCOKIF (FOIA)
3810 Communications Blvd
Wright-Patterson AFB, OH 45433-5767

**Re: SUPPLEMENT TO ADMINISTRATIVE APPEAL
of Freedom of Information Act Request
FOIA Request Assigned Case Nos. 2014-00247-F & 2014-00423-F ST2**

Dear Sir or Madam:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, as amended (“FOIA”), and the implementing rules and policies of the Department of the Air Force (“Air Force”), including but not limited to DoD Regulation 5400.7-R_AFMAN 33-302, Paragraphs C5.3.1-C5.3.6, the C-123 Veterans Association (“C-123 Veterans”), by counsel and on behalf of its members, hereby files this Supplement for incorporation into C-123 Veterans’ appeal relating to the above-referenced FOIA Request, filed October 11, 2013.¹ This Supplement responds to the Air Force’s February 3, 2014 letter stating that a time extension is necessary (“Extension Letter,” copy attached as Exhibit 4).

Under 5 U.S.C. § 552(a)(6)(A)(i) and DOD5400.7 R_AFMAN 33-302 C5.2.5, the time by which the Air Force was required to respond to the FOIA request was November 13, 2013, or at the latest by November 27, 2013, if it exercised the ten-day extension permitted under 5 U.S.C. § 552(a)(6)(B) for when unusual circumstances are present.² Indeed, the initial October 18, 2013 letter confirming receipt of the Request and assigning it case number 2014-00247-F,

¹ Attached as Exhibits 1-3 are, respectively, a copy of C-123 Veterans’ October 11, 2013 FOIA request, a copy of your agency’s confirmation of receipt of the request, and a copy of a subsequent letter assigning the request to Wright-Patterson AFB. Note that while the assignment letter (Exhibit 3), indicates that a fee waiver was denied, C-123 Veterans subsequently appealed that determination, it was reversed, and the fee waiver was granted. These documents also appear as part of Exhibit 3.

² This is not to concede that unusual circumstances were present, but rather only notes the outer limit of time to respond that is permitted under the statute and rules.

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stated that your agency would “provide ... our release determination by 13 November 2013.” See Exh. 2. But the Air Force has not responded substantively to C-123 Veterans’ FOIA request, and has offered no explanation why its response has been delayed.

On October 25, 2013, your agency sent a further letter stating the FOIA request had been assigned to Wright-Patterson AFB and assigned the additional case number 2014-00423-F ST2. See Exh. 3. Finally, on February 3, 2014, more than two months after a response was required, your agency sent the Extension Letter, which references case number 2014-00423-F ST2, and which states that the Air Force will produce a response “no later than 3 April 2014.” It further stated that an appeal could be filed from this determination that an extension is required, within 60 days.

Not only does the Extension Letter fail to acknowledge that the Air Force was required to respond to the FOIA request by now, or that it failed to do so, it does not even acknowledge that C-123 Veterans has *already* appealed the Air Force’s non-response on December 16, 2013, and that it has likewise failed to issue a decision on that appeal, which was due at the latest by January 30, 2014 under 5 U.S.C. § 552(a)(6)(A)(ii) and DOD5400.7-R_AFMAN 33-302 C5.3.4.

The Extension Letter is not timely; the Air Force was required to respond to the FOIA request at the latest by November 27, 2013. There is no excuse for such failure to respond by administrative agencies charged with helping “promote [the] policy of broad disclosure of Government documents” that is necessary to “ensure an informed citizenry, vital to the functioning of a democratic society.” *Center for Public Integrity v. Department of Energy*, 191 F.Supp.2d 187, 189 (D.D.C. 2002). Moreover, while it may not be necessary that an agency provide all records responsive to a request by the statutory deadline to meet its FOIA obligations, it must at least provide *something* that can be fairly characterized as a “response” to a request for records under the Act. *Pollack v. DOJ*, 49 F.3d 115, 118-19 (4th Cir. 1995). The Air Force has not done so here. Finally getting around to sending the Extension Letter, after an appeal was already filed for failure to issue a response, does not satisfy the Air Force’s burden here.

C-123 Veterans thus files this supplemental appeal without prejudice to its claim that, because the Air Force failed to respond to the FOIA request within the statutory time limit, the Extension Letter has no effect. It also request that this Supplement be deemed a party of, and incorporated into, the original appeal, which has now been pending for nearly 2 months.

It is our hope this appeal can be resolved quickly and without the expenditure of substantial additional resources. As noted in the appeal already on file, time is of the essence, as the requested information relates to the health of many veterans, including members of C-123 Veterans, as well as to their VA claims, military retirement disability awards, and ongoing and future medical care for exposure to toxins during their military service, and there are C-123 members who are seriously ill with maladies that impact their life expectancies. Given the urgent need for the records requested from your agency to obtain potential medical aid and other relief for C-123 Veterans’ members, we ask that the records requested be provided as expeditiously as possible. In addition, it is imperative that C-123 Veterans receive all records sought in the FOIA request to which it is entitled.

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Conclusion

For the foregoing reasons, your office should grant the appeal that this letter supplements, to require the timely production of the requested records. If there are questions regarding this matter, or if there is information we can provide to bring it to an expeditious resolution, please contact us. We will look forward to a response to this appeal within the twenty working days specified by FOIA and Air Force rules.

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. London', written over the typed name.

Ronald G. London

Enclosures

cc: C-123 Veterans Association

Exhibits 1-4 to the Appeal Supplement are omitted as duplicative of Appendices B, C, D, E, F, and G to the Complaint