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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

ALBERT J. BOONICH
U.S. DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF INDIANA

HARRY TUNNELL

Plaintiff,

v.

1:14CV 269JD

U.S. DEPARTMENT OF DEFENSE
1000 Defense Pentagon
Washington, DC 20301-1000

Defendant.

COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552, for injunctive and other appropriate relief and seeking the disclosure and release of agency records improperly withheld from plaintiff by Department of Defense (“DOD”) and its components Department of Defense Inspector General (“DODIG”), Department of the Army (“DA”), Joint Base Lewis-McChord (“JBLM”), and U.S. Army Court of Criminal Appeals.

Jurisdiction and Venue

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

3. Plaintiff Harry Tunnell is a private citizen who served on active duty in the U.S. Army, and now resides in Fort Wayne, Indiana. Plaintiff Tunnell requested assistance and information from defendant DOD.

4. DOD, is a Department of the Executive Branch of the United States Government and includes component entities DODIG, DA, JBLM, and U.S. Army Court of Criminal Appeals. DOD is an agency within the meaning of 5 U.S.C. § 552(f).

COUNT ONE

Plaintiff's Request for Assistance from DOD

5. During December 2011 Plaintiff Tunnell contacted DOD through the DODIG Hotline with a request for assistance. On December 16, 2011, DODIG informed Plaintiff Tunnell about the procedures for submitting matters to DODIG. Plaintiff Tunnell assembled the required materials and submitted the first group of documents on January 30, 2012. Additional documents were submitted as required. On March 7, 2012, DODIG agreed to investigate “nonreprisal issues regarding doctrine, inconsistent training at the National Training Center and interference in Command directives/mission letters.” The investigation was assigned Hotline Case Number 122355.

6. Plaintiff Tunnell remained in contact with DODIG via email and telephone to request updates regarding the investigation. On February 12, 2013 Plaintiff Tunnell received an email from DODIG informing him

that a new case number was assigned (20121205-001664), the case was closed, and that Plaintiff Tunnell could make a Freedom of Information Act ("FOIA") request for a copy of the investigation.

Plaintiff's FOIA Request and Defendant DOD's Failure to Timely Comply with Plaintiff's Requests

7. Plaintiff Tunnell submitted the required FOIA request to DODIG on February 14, 2013 as required. On March 15, 2013 Plaintiff received a written response from DODIG dated March 15, 2013 denying the FOIA request and outlining the procedures for an appeal.

8. Plaintiff Tunnell submitted the required appeal on March 31, 2013. On September 13, 2013 Plaintiff Tunnell received an email from DODIG informing him that the appeal was being processed. On November 8, 2013 Plaintiff Tunnell received an email from DODIG informing him that DODIG was continuing to process the appeal. Plaintiff Tunnell continued to request updates from DODIG throughout this process.

9. Plaintiff Tunnell received an email from DODIG on April 15, 2014 informing him that "I [DODIG] received your voicemail message inquiring on the status of your [Tunnell's] request. We are currently processing the documents responsive to your FOIA request. Please call or email me if you have any further questions." Plaintiff Tunnell responded the same day requesting an estimated time of completion. A response has not been received by Plaintiff Tunnell.

10. Plaintiff Tunnell received a letter from DODIG dated May 21, 2014 (Ref: FOIA-2013-00282). The letter includes approximately 75 pages of documents unrelated to the final report of investigation.

11. On June 9, 2014 Plaintiff Tunnell responded to the May 21, 2014 letter from DODIG informing them that they had provided documents unrelated to the request. Plaintiff Tunnell further informed DODIG that if a response was not obtained within 30 days, he would pursue other administrative and legal remedies. As of the date of this complaint, Plaintiff Tunnell has not received a response from DODIG.

12. To date, defendant DOD has not provided any records requested by plaintiff in the respective FOIA requests, notwithstanding the FOIA requirement of an agency response within twenty (20) working days.

13. Plaintiff has exhausted the applicable administrative remedies with respect to his FOIA request to defendant DOD.

14. Defendant DOD has wrongfully withheld the requested records from plaintiff.

COUNT TWO

Plaintiff's FOIA Request and Defendant DOD's Failure to Timely Comply with Plaintiff's Requests

15. Plaintiff Tunnell submitted a FOIA request to defendant DOD through the DA FOIA office on December 20, 2012. The request was acknowledged via letter on January 8, 2013. The letter informed Plaintiff Tunnell that the request was forwarded to JBLM. The request was for documents and records related to LTG Curtis Scaparrotti's investigation of brigade commanders under his command.

16. The FOIA request is as follows. "1. Did LTG Curtis Scaparrotti order a command climate AR 15-6 investigation of Staff Sgt. Robert Bales' (accused of murdering 16 Afghan civilians) Brigade Commander? If so, I request a copy of the investigation or a summary of the results. 2. How many brigade commanders at I Corps has LTG Curtis Scaparrotti had investigated for command climate and what were the results of the investigations? 3. If the results are not available for release then a summary of how many command climate investigations of brigade commanders (and which brigade commanders) under LTG Curtis Scaparrotti's command while he was the I Corps Commander is acceptable until the various reports are releasable."

17. Plaintiff Tunnell attempted to remain in contact with JBLM regarding the request via email and telephone. The responses from JBLM were intermittent and the requested materials were not provided. Plaintiff Tunnell contacted the JBLM Inspector General ("IG") office via email and telephone to request assistance. The IG responded via telephone on August 26, 2013 and offered to assist. Plaintiff Tunnell responded via email on August 27, 2013 with the details about the FOIA request. Plaintiff Tunnell continued to remain in contact with JBLM through the IG; however, the FOIA requests were not honored.

18. On May 29, 2014, Plaintiff Tunnell advised JBLM, through the IG office, that he was preparing to file a complaint regarding the FOIA request. JBLM responded to Plaintiff Tunnell via telephone and email. The result of the communication was that Plaintiff Tunnell would have to resubmit the request on a new JBLM form (HJB Form 7, dated March 2014), and JBLM would act upon the request. The form was provided via email to Plaintiff Tunnell on May 30, 2014. Plaintiff Tunnell provided the completed forms via email on June 2, 2014.

19. On June 2, 2014, JBLM responded via email that the requests were received and would be processed.

20. To date, defendant DOD has not provided any records requested by plaintiff in the respective FOIA requests, notwithstanding the FOIA requirement of an agency response within twenty (20) working days.

21. Plaintiff has exhausted the applicable administrative remedies with respect to his FOIA request to defendant DOD.

22. Defendant DOD has wrongfully withheld the requested records from plaintiff.

COUNT THREE

Plaintiff's FOIA Request and Defendant DOD's Failure to Timely Comply with Plaintiff's Requests

23. Plaintiff Tunnell submitted a FOIA request to defendant DOD through the JBLM FOIA office on February 12, 2013. The request was for training videos regarding the plaintiff's tenure of command that were inappropriately marked, thereby, improperly restricting their dissemination.

24. The FOIA request is as follows. "I believe that the following training videos are inappropriately marked as FOUO [For official Use Only] and would like to have them released as unclassified: All videos were produced by the Fort Lewis/Joint Base Lewis McChord Battle Command Training Center. 1. 5/2 ID (SBCT) Discussion of a Commander's Role in Exercising Command and Control. 2. Operation Opportunity Hold: 5/2 SBCT Operations Enduring Freedom. 3. Operation Blowfish: Decision Making Exercise."

25. Plaintiff Tunnell attempted to remain in contact with JBLM regarding the request via email and telephone. The responses from JBLM were intermittent and the requested materials were not provided. Plaintiff

Tunnell contacted the JBLM IG office via email and telephone to request assistance. The IG responded via telephone on August 26, 2013 and offered to assist. Plaintiff Tunnell responded via email on August 27, 2013 with the details about the FOIA request. Plaintiff Tunnell continued to remain in contact with JBLM through the IG; however, the FOIA requests were not honored.

26. On May 29, 2014, Plaintiff Tunnell advised JBLM, through the IG office, that he was preparing to file a complaint regarding the FOIA request. JBLM responded to Plaintiff Tunnell via telephone and email. The result of the communication was that Plaintiff Tunnell would have to resubmit the request on a new Joint Base Lewis-McChord form (HJB Form 7, dated March 2014), and JBLM would act upon the request. The form was provided via email to Plaintiff Tunnell on May 30, 2014. Plaintiff Tunnell provided the completed forms via email on June 2, 2014.

27. On June 2, 2014, JBLM responded via email that the requests were received and would be processed.

28. To date, defendant DOD has not provided any records requested by plaintiff in the respective FOIA requests, notwithstanding the FOIA requirement of an agency response within twenty (20) working days.

29. Plaintiff has exhausted the applicable administrative remedies with respect to his FOIA request to defendant DOD.

30. Defendant DOD has wrongfully withheld the requested records from plaintiff.

COUNT FOUR

Plaintiff's FOIA Request and Defendant DOD's Failure to Timely Comply with Plaintiff's Requests

31. Plaintiff Tunnell submitted a FOIA request to defendant DOD through the JBLM FOIA office on April 12, 2013. The request was for court martial transcripts related to the testimony of an expert witness.

32. The FOIA request is as follows. "The court martial transcript for an expert witness testimony: Stjepan Mestrovic. Mestrovic testified on behalf of Corporal Jeremy Morlock during Morlock's murder court martial at Joint Base Lewis McChord. The court martial occurred sometime in March/April 2011 at Joint Based Lewis McChord."

33. Plaintiff Tunnell attempted to remain in contact with JBLM regarding the request via email and telephone. The responses from JBLM were intermittent and the requested materials were not provided. Plaintiff Tunnell contacted the JBLM IG office via email and telephone to request assistance. The IG responded via telephone on August 26, 2013 and offered to assist. Plaintiff Tunnell responded via email on August 27, 2013 with the details about the FOIA request. Plaintiff Tunnell continued to remain in contact with JBLM through the IG; however, the FOIA requests were not honored.

34. On May 29, 2014, Plaintiff Tunnell informed JBLM, through the IG office that he was preparing to file a complaint regarding the FOIA request. JBLM responded to Plaintiff Tunnell via telephone and email. The result of the communication was that Plaintiff Tunnell would have to resubmit the request on a new Joint Base Lewis-McChord form (HJB Form 7, dated March 2014), and the FOIA office would act upon the request. The form

was provided via email to Plaintiff Tunnell on May 30, 2014. Plaintiff Tunnell provided the completed forms via email on June 2, 2014.

35. On June 2, 2014, JBLM responded via email that the transcripts had been transferred to the Army Court of Appeals and this office would have to be contacted regarding the FOIA request. Plaintiff Tunnell submitted the FOIA request to the FOIA representative for the Office of the Clerk of Court, U.S. Army Court of Criminal Appeals via fax on June 18, 2014. Plaintiff Tunnell attempted to follow up via telephone numerous times and received one return telephone call from the Office of the Clerk of Court. The FOIA representative stated that he did not currently have an email address, but the account was being established within a few days, and once the account was established he would respond to Plaintiff Tunnell's request. After a few days, Plaintiff Tunnell attempted to contact (on multiple occasions) the Office of the Clerk of Court via telephone without success.

36. To date, defendant DOD has not provided any records requested by plaintiff in the respective FOIA requests, notwithstanding the FOIA requirement of an agency response within twenty (20) working days.

37. Plaintiff has exhausted the applicable administrative remedies with respect to his FOIA request to defendant DOD.

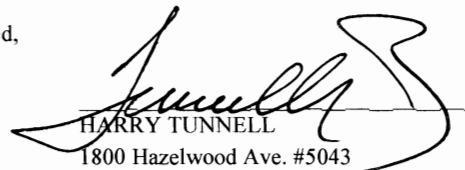
38. Defendant DOD has wrongfully withheld the requested records from plaintiff.

Requested Relief

WHEREFORE, plaintiff prays that this Court:

- A. order defendant DOD to disclose the requested records in their entireties and make copies available to plaintiff;
- B. order defendant DOD to make copies of the requested records available to plaintiff in electronic format where possible;
- C. order defendant DOD to waive fees associated with providing the records, consistent with FOIA provisions allowing such waivers;
- D. provide for expeditious proceedings in this action;
- E. award plaintiff its costs and reasonable attorney's fees incurred in this action; and
- F. grant such other relief as the Court may deem just and proper.

Respectfully submitted,


HARRY TUNNELL
1800 Hazelwood Ave. #5043
Fort Wayne, IN 46895

Plaintiff