

4. The DOD has possession, custody and control of the records Plaintiff seeks.

JURISDICTION AND VENUE

5. This action arises under the Freedom of Information Act (“FOIA”), 5 USC § 552.
6. This Court has jurisdiction over the parties and subject matter pursuant to 5 USC § 552(a)(4)(B). Jurisdiction also lies with this Court under 28 USC § 1331.
7. Venue is proper in this district pursuant to 5 USC § 552(a)(4)(B).

STATEMENT OF FACTS

BACKGROUND

8. The Office of Net Assessment (ONA) is a component of the Office of the Secretary of Defense (OSD). The ONA develops and coordinates net assessments of the standing, trends, and future prospects of US military capabilities and potential, in comparison with those of other countries or groups of countries, so as to identify emerging or future threats or opportunities for the United States. It is essentially an internal planning think tank for the Department of Defense.

PLAINTIFF’S FOIA REQUESTS

9. By email dated July 8, 2014, Plaintiff submitted a FOIA request for “the index of all reports prepared by the Office of Net Assessment from 2009 through 2014.” Plaintiff’s request sought a waiver of fees.

10. Plaintiff received an email dated July 18, 2014, assigning his request tracking number 14-F-1090 and stating that no responsive records could be located. The ONA did not make a determination as to Plaintiff’s request for a fee waiver because there were no assessable fees.

11. Plaintiff replied to the denial by email on July 18, 2014, mentioning an article in Talking Points Memo which referred to an index of ONA reports:

<http://talkingpointsmemo.com/muckraker/exclusive-inside-the-pentagon-s-idea-factory>

12. Plaintiff administratively appealed the no responsive records determination for 14-F-1090 via U.S. Postal mail (on August 8, 2014) and email (on August 7, 2014).

13. By letter dated August 28, 2014 DOD affirmed the ONA's response.

14. By email dated July 18, 2014, Plaintiff submitted a FOIA request for the title pages and summaries of reports prepared by the Office of Net Assessment. Plaintiff's request sought a waiver of fees.

15. Plaintiff received an email dated August 4, 2014, assigning his request tracking number 14-F-1132 and stating that no documents of the kind described in the request could be located and that conducting a further search would create an undue hardship. The ONA did not make a determination as to Plaintiff's request for a fee waiver because there were no assessable fees.

16. Plaintiff replied to the denial by email on August 4, 2014, mentioning that a list similar to what he sought had been created by the ONA previously. The same day, Plaintiff received a response by email stating that ONA went beyond what was required in FOIA by creating the previous list but did not currently have the resources to do after the sequestration.

17. Plaintiff sent an email on August 5, 2014 asking for Defendant's position on the second part of his request, which was for title pages. The next day, Plaintiff received a response by email stating that it would require too much effort to determine what documents are applicable and copy the title pages.

18. Plaintiff administratively appealed the determination for 14-F-1132 via U.S. Postal mail (on August 8, 2014) and email (on August 7, 2014).

19. By letter dated August 28, 2014 DOD affirmed the ONA's response.

20. By email dated August 4, 2014, Plaintiff submitted a FOIA request for "any and all reports prepared/written/drafted by or for the Office of Net Assessment from January 2009 through the date the search for responsive records is conducted." Plaintiff's request sought a waiver of fees.

21. Plaintiff received an email dated August 7, 2014, assigning his request tracking number 14-F-1210 and stating that it was a duplicate of request 14-F-1132 and was being administratively closed.

22. Plaintiff replied to the denial by email on August 7, 2014, stating his request was not a duplicate because his new request sought full reports, not title pages and summaries. Plaintiff received a response to his email on August 7, 2014 stating that his request was so broad as to impose an unreasonable burden on the agency.

23. Plaintiff sent a further email on August 7, 2014, stating his request cannot be deemed invalid simply because it is burdensome. Plaintiff received a response to his email on August 7, 2014 stating that his request was too broad because it sought "all reports" and that if Plaintiff did not respond by August 12, 2014, the office would believe he is no longer interested and close the request.

24. Plaintiff sent a further email on August 7, 2014, complaining that he had not been provided with information about the records at issue. Plaintiff received a response to his email on August 7, 2014 thanking him for submitting an appeal.

25. Plaintiff administratively appealed the no responsive records determination for 14-F-1210 via U.S. Postal mail (on August 8, 2014) and email (on August 7, 2014).

26. By letter dated August 28, 2014 DOD affirmed the ONA's response.

COUNT I:
VIOLATION OF FOIA

27. This Count realleges and incorporates by reference all of the preceding paragraphs.

28. Each of the documents referred to in this Complaint is incorporated herein by reference.

29. The DOD has violated FOIA as to requests 14-F-1090, 14-F-1132, and 14-F-1210 by failing to conduct an adequate search for responsive records, and by improperly withholding responsive records. The DOD has also violated FOIA by failing to grant Plaintiff's requests for a waiver of fees.

30. Plaintiff has been and will continue to be irreparably harmed until Defendant is ordered to comply with FOIA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- (1) Declare Defendant's failure to comply with FOIA to be unlawful;
- (2) Order Defendant to search for and process the requested records without further delay and without payment of search, review, and duplication fees;
- (3) Grant Plaintiff an award of attorney fees and other litigation costs reasonably incurred in this action pursuant to 5 USC § 552(a)(4)(E)(i);
- (4) Grant Plaintiff such other and further relief which the Court deems proper.

Respectfully Submitted,

/s/ Jeffrey Light

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