

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

L. LEE THWEATT

§

PLAINTIFF

§

§

V.

§

CIVIL ACTION NO. 14-cv-3011

§

OFFICE OF THE INSPECTOR

§

GENERAL,

§

DEPARTMENT OF DEFENSE

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DEFENDANT

§

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ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT COURT:

L. Lee Thweatt (“Plaintiff”) files this Original Complaint to compel the Defendant’s compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), and respectfully shows the Court as follows:

A.

PARTIES

1. Plaintiff is an individual citizen of the State of Texas and resides in Harris County, Texas.
2. The Defendant is an agency of the United States government, specifically, the Office of the Inspector General of the Department of Defense, located at 4600 Mark Center Drive, Alexandria, Virginia 22350-1500. Defendant has custody, control and possession of the documents to which Plaintiff seeks access.

B.
JURISDICTION AND VENUE

3. This court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

4. Venue is proper in the Houston Division of the Southern District of Texas because the Plaintiff both resides and has his principal place of business within the Houston Division of the Southern District of Texas.

C.
FACTS

5. Plaintiff, L. Lee Thweatt, is a former United States Marine Corps officer and judge advocate, now in private law practice in Houston, Texas. Plaintiff is the requester of the records which Defendant is now unlawfully withholding.

6. Defendant is an agency of the United States government and has possession of the documents that Plaintiff seeks.

7. Following an investigation by the Defendant into whether General James F. Amos, USMC, abused his position and power as the Commandant of the United States Marine Corps to unlawfully influence the outcomes of certain military justice proceedings, the media reported that the Defendant issued written findings in early August 2014 which did not substantiate any misconduct by General Amos.¹ To date, the Defendant's report in this regard has not been released to the public.

8. In order to read the Defendant's investigations and reports concerning General Amos' actions, and to understand how the Defendant could have reached its remarkable findings of unsubstantiated misconduct by General Amos despite the

¹ <http://www.marinecorpstimes.com/article/20140809/NEWS/308090040/With-IG-ruling-clearing-Marine-commandant-observers-say-openness-will-bring-closure>

existence of 1) a sworn affidavit from Marine Corps Lieutenant General Thomas Waldhauser that essentially confirmed General Amos' unlawful command influence, and 2) legal pleadings from United States Marine Corps lawyers which judicially admitted and confirmed General Amos' unlawful command influence before a military judge, the Plaintiff sent a Freedom of Information Act Request to the Defendant.

9. Via electronic filing submitted to the Defendant's Freedom of Information Act website on August 6, 2014, Plaintiff requested access to "all records and final reports germane to the IG [Inspector General] complaints by Major James Weirick, USMC pertaining to malfeasance by General James F. Amos, the Commandant of the Marine Corps, his subordinate officers and commanders and his staff at Headquarters, U.S. Marine Corps." A copy of this electronic submission is attached as **Exhibit 1** to this Complaint.

10. By letter dated August 26, 2014, Plaintiff was wrongfully denied access to the requested information on the grounds that the information was purportedly exempt from disclosure under the provisions of 5 U.S.C. §§ 552(b)(6) and (7), respectively. A copy of the Defendant's letter is attached as **Exhibit 2** to this Complaint.

11. By letter dated September 5, 2014, Plaintiff administratively appealed the Defendant's denial of this request. A copy of the Plaintiff's administrative appeal is attached as **Exhibit 3** to this Complaint.

12. By email on October 9, 2014, Plaintiff was notified by the Defendant that "This is an interim response to your September 5, 2014 letter appealing our response to your August 6, 2014, Freedom of Information Act request. We received your

appeal on September 8, 2014. We currently have an administrative workload of 24 open appeal cases.” A copy of this email is attached as **Exhibit 4** to this Complaint. The Plaintiff responded to the Defendant’s email later that same day and because the Defendant did not provide an expected date for completion of the appeal, Plaintiff inquired as to the expected completion date for the administrative appeal. *Id.* To date, the Defendant has not responded to the Plaintiff’s inquiry regarding the expected completion for the administrative appeal.

D.
FOIA VIOLATION

13. Plaintiff has a right of access to the requested information under 5 U.S.C. § 552(a)(3), and there is no legitimate legal basis for Defendant's denial of such access. Moreover, Defendant has not responded to the Plaintiff’s administrative appeal within the statutory deadline for doing so. Because Defendant has not complied with the time limit set forth in 5 U.S.C. § 552(a)(6)(A), Plaintiff is deemed to have exhausted any and all administrative remedies with respect to his FOIA request, per 5 U.S.C. § 552(a)(6)(C).

E.
RELIEF SOUGHT

14. Plaintiff respectfully moves this Court for an order requiring Defendant to:

- 1) produce the requested documents; 2) provide within 30 days after service of the Complaint in this action, an itemized, indexed inventory of every agency record or portion thereof responsive to Plaintiff's request which Defendant asserts to be exempt from disclosure, accompanied by a detailed justification statement covering each refusal to release records or portions thereof in accordance with the indexing

requirements of *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974); 3) award Plaintiff litigation costs in this action, as provided in 5 U.S.C. § 552(a)(4)(E); and 4) grant such other and further relief as this Court may deem just and proper.

Respectfully Submitted,

TERRY & THWEATT, P.C.

By: /s/ L. Lee Thweatt
L. Lee Thweatt
Texas Bar No. 24008160
Federal I.D. No. 36618
One Greenway Plaza, Suite 100
Houston, Texas 77046-0102
(713) 600-4710 (Telephone)
(713) 600-4706 (Telecopier)
lthweatt@terrythweatt.com