

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Sparacino PLLC
1920 L Street, NW, Suite 535
Washington, DC 20036

Plaintiff,

v.

Department of State
Office of the Legal Advisor
2201 C Street, N.W.
HST Room 6321
Washington, D.C. 20520

Defendant.

Case No.: _____

**COMPLAINT FOR VIOLATION OF THE
FREEDOM OF INFORMATION ACT**

INTRODUCTION

1. Plaintiff Sparacino PLLC (“Sparacino” or “Plaintiff”), along with Willkie Farr & Gallagher LLP (“Willkie”), represents over 700 U.S. military veterans, and/or their families, who were killed or wounded by the Islamic Republic of Iran (“Iran”) through its support for terrorists in Iraq from 2003 to 2017. *See Martino et al. v. Islamic Republic of Iran*, Docket No. 1:21-cv-01808 (D.D.C. Jul. 07, 2021) (“*Martino*”). Plaintiff brings this action for relief under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), to compel the United States Department of State (the “Department” or “State”) to produce records, as required by law, relating to the wrongful injuries and deaths of these victims of terrorism.

2. On December 29, 2021, Plaintiff properly submitted a targeted request to the Department in accordance with FOIA and applicable Department regulations, requesting certain specified records pertaining to the injuries and deaths of 12 identified civilian government contractors and 286 military servicemembers in Iraq from 2003 to 2017 (the “Request”).

3. The Department’s statutory deadline for making a determination concerning Plaintiff’s Request has since expired.

4. The Department has not produced any documents, sought any extension, nor made a determination as to the Request.

5. The Department’s failure to act on Plaintiff’s Request violates FOIA and the Department’s own FOIA regulations.

6. More than a decade ago, the President directed federal agencies to adopt a “presumption in favor of disclosure” and to respond to FOIA requests “promptly and in a spirit of cooperation,” so that “openness prevails.” FOIA Pres. Mem., 74 Fed. Reg. 4683, 4683 (Jan. 21,

2009). The Department has thus far disregarded this directive in failing to provide a determination or response to Plaintiff's Request within the time period required by FOIA.

7. The requested records have broader public significance beyond the *Martino* litigation. Official government publications, policy analysts, and the national media have all reported on America's efforts to hold Iran accountable for its support of terrorism in Iraq, reflecting the public's interest in allegations that Iran financed terrorism in Iraq.¹

8. Plaintiff has constructively exhausted administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i), and now seeks judicial relief compelling the Department to promptly search for and produce the requested records, and enjoining any further improper withholding.

JURISDICTION AND VENUE

9. This Court has jurisdiction under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201(a), and 2202.

10. Venue lies in this District pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e)(1).

PARTIES

11. Plaintiff Sparacino is a law firm with an office in Washington, D.C. Plaintiff submitted the FOIA Request identified in this Complaint.

¹ See, e.g., *Iran Ordered to pay \$879 Million to Khobar Towers Bombing Survivors: MM ~Law LLC*, CISION PR NEWSWIRE (July 7, 2020), <https://www.prnewswire.com/news-releases/iran-ordered-to-pay-879-million-to-khobar-towers-bombing-survivors-mmlaw-llc-301088893.html>; Natalie Rodriguez, *New Path To Justice May Await Terror Victims After Court Win*, LAW360 (May 31, 2020), <https://www.law360.com/articles/1278222/new-path-to-justice-may-await-terror-victims-after-court-win>; Richard A. Oppel Jr. and Nicholas Bogel-Burroughs, *'I Lost My Legs': Wounded in Iraq, He Sued Iran*, THE NEW YORK TIMES (JAN. 12, 2020), <https://www.nytimes.com/2020/01/12/us/suleimani-iran-attacks.html>; see also Tim Arango, et al, *The Iran Cables: Secret Documents Show How Tehran Wields Power in Iraq*, THE NEW YORK TIMES (Nov. 19, 2019), <https://www.nytimes.com/interactive/2019/11/18/world/middleeast/iran-iraq-spy-cables.html>; Edward Wong and Eric Schmitt, *U.S. Pressures Iraq Over Embrace of Militias Linked to Iran*, THE NEW YORK TIMES (Mar. 19, 2019), <https://www.nytimes.com/2019/03/19/world/middleeast/iraq-us-tensions-iran.html>.

12. Defendant State is an “agency” of the federal government within the meaning of 5 U.S.C. § 552(f)(1). State is believed to have possession, custody, and control of records responsive to Plaintiff’s Request.

FACTUAL ALLEGATIONS

I. PLAINTIFF PROPERLY SUBMITTED A FOIA REQUEST FOR DEPARTMENT RECORDS

13. On December 29, 2021, Plaintiff properly submitted a targeted request to the Department in accordance with FOIA and applicable Department regulations, requesting a specified list of records, files, reports, and other related documents pertaining to specified attacks in Iraq that resulted in the injuries or deaths of 298 identified U.S. servicemembers and civilian government contractors. Two charts attached as exhibits to the Request identified the attacks by incident date and location; identified the victims by name, date of birth, military or civilian status, rank, branch or employer, and company and unit; and provided other relevant details, where available.

14. The Request was submitted to the Department’s Office of Information Programs and Services via email (FOIARequest@state.gov), as directed on the Department’s FOIA website. *See Requesting Department of State Information*, U.S. DEPARTMENT OF STATE, (March 23, 2022, 11:42 AM), <https://foia.state.gov/Request/>, attached as **Exhibit 1** (“You can also submit by email to FOIARequest@state.gov”). The Request “reasonably describes” the records Plaintiff seeks and believes to be in the possession of the Department as required by FOIA. 5 U.S.C. § 552(a)(3)(A)(i). The Request, its attachments, and the original transmission email are attached as **Exhibit 2**.

15. On January 7, 2022, the Department’s Requester Communications Branch contacted Willkie via email and requested that Willkie “confirm whether or not the individuals

listed in Attachments A and B were employed/contracted by the U.S. Department of State”. The email also noted, “In general, under the provisions of the FOIA and Privacy Act, access to information about private individuals cannot be given to unauthorized third parties absent the individuals’ written consent. . . .” *See Exhibit 3.*

16. Willkie responded by email on January 12, 2022, confirming that five of the civilian government contractors identified in Attachment A of the Request were believed to have been contracted by the U.S. Department of State and providing more information about each contractor available from the Department’s website. Willkie also stated, “With respect to the remaining seven attack victims identified in Attachment A, we are currently in the process of obtaining proof of death in a form consistent with the guidance provided on the Department’s website. Based upon this guidance it is our understanding that, given that all twelve of the civilian attack victims are deceased, written authorization is not required to disclose the requested information.” *See Exhibit 4; see also Authorization for the Release of Records to Another Individual, U.S. DEPARTMENT OF STATE, (March 25, 2022, 9:42 AM), <https://foia.state.gov/Request/ThirdPartyAuthorization.aspx>.*

17. On January 18, 2022, the Department’s FOIA Program Manager/FOIA Public Liaison sent an acknowledgment email to Willkie confirming the Department’s receipt of Plaintiff’s December 19, 2021 Request and assigning it FOIA Number F-2022-03199. *See Exhibit 5.*

18. On January 18, 2022, Willkie provided proof of death for each of the 12 civilian government contractors identified in Attachment A to the Request in a form consistent with the guidance on the Department’s website. Willkie also requested that the Department provide an estimated date of completion for the Request. *See Exhibit 6.*

19. On January 20, 2022, the Department's FOIA Requester Service Center confirmed receipt of Willkie's January 18, 2022 email and stated that it would provide an estimated date of completion for the Request as soon as possible. *See Exhibit 7.*

20. On January 25, 2022, the Department's FOIA Requester Service Center contacted Willkie via email and stated that the estimated date of completion for the Request is August 28, 2024, amounting to over a *two-and-a-half year period* to respond to the Request. *See Exhibit 8.*

21. To date, Plaintiff has not received a determination or substantive response with respect to its Request.

22. The Department has never asserted that Plaintiff's December 29, 2021 Request failed to reasonably describe the records sought or was improper or deficient in any manner. Nor has the Department requested any additional information from Plaintiff (other than the proof of death which Willkie provided), nor sought an extension to the deadline to respond pursuant to FOIA. Instead, the Department has failed to provide a determination or otherwise respond to Plaintiff's Request in violation of FOIA other than to say that they don't intend to respond to the request until August 2024, in clear violation of the statutory requirements of FOIA.

II. THE DEPARTMENT FAILED TO MAKE A DETERMINATION WITHIN FOIA'S TIME LIMITS FOR PLAINTIFF'S REQUEST AND PLAINTIFF HAS CONSTRUCTIVELY EXHAUSTED ADMINISTRATIVE REMEDIES

A. The Department Violated FOIA's Time Limits and Search Requirements

23. Pursuant to 5 U.S.C. § 552(a)(3)(A), after receiving Plaintiff's Request, the Department was required to search for responsive records, including making reasonable efforts to search for records in electronic format and to promptly produce the records it located. Further, pursuant to 5 U.S.C. § 552(a)(6)(A)(i), after the Department conducted its required search for responsive documents, the Department was required to make a determination within 20 working days of receiving the FOIA request, unless within the 20-day period, pursuant to § 552(a)(6)(B)(i),

the Department provided Plaintiff written notice that the Department had determined that “unusual circumstances” apply and was thereby seeking an extension of no more than 10 working days. *See* 22 CFR § 171.11(e).

24. In order to make a determination under FOIA, an Agency is required to state which documents will be produced or withheld, provide reasons for any withholding, and inform Plaintiffs of their appellate rights. *See* 5 U.S.C. § 552(a)(6)(A)(i). An Agency that fails to do so has not made a determination as required by FOIA. *See Citizens for Responsibility and Ethics in Washington v. Federal Election Comm’n*, 711 F.3d 180 (D.C. Cir. 2013); *Spannaus v. DOJ*, 824 F.2d 52, 59 n.7 (D.C.Cir.1987). For the foregoing Request, the Department has not stated which documents will be produced or withheld, provided reasons for any withholding, nor informed Plaintiff of its appellate rights. The Department has only responded to inform Plaintiff that it does not intend to provide a response to the Request until August 2024, over two-and-a-half years after the request was submitted. The Department thus has not made a determination as required by FOIA. *Id.*

25. Given that Plaintiff’s Request was submitted on December 29, 2021, more than 60 working days ago, the Department has since violated both the maximum 20- and 30-working-day deadline to provide a determination for Plaintiff’s request as required by FOIA.

26. The Department’s failure to make a determination or any production within the required time period violates 5 U.S.C. §§ 552(a)(6)(A)(i) and (B)(i), as well as the Department’s own FOIA regulations. *See* 22 CFR § 171.11(e).

B. Plaintiff Has Constructively Exhausted Administrative Remedies

27. As stated above, the maximum 20- and 30-working-day time limit for a determination have long since expired, and Plaintiff is therefore “deemed to have exhausted

administrative remedies” with respect to the foregoing FOIA violations. 5 U.S.C. § 552(a)(6)(C)(i).

28. FOIA thus authorizes Plaintiff to bring suit in this District to compel prompt production and enjoin continued wrongful withholding of records responsive to the Request. 5 U.S.C. § 552(a)(4)(B).

CLAIMS FOR RELIEF

COUNT ONE: Failure to Comply with FOIA

29. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

30. Plaintiff properly requested records within the possession, custody, and control of the Department.

31. The Department is an agency subject to FOIA.

32. The Department was required under 5 U.S.C. § 552(a)(3) to conduct a reasonable search for records responsive to Plaintiff’s FOIA Request and make responsive records promptly available to Plaintiff.

33. The 20-working-day deadline under 5 U.S.C. § 552(a)(6) for the Department to conduct such a search and to make a determination as to Plaintiff’s FOIA Request, informing Plaintiff which documents the Department intends to produce and withhold, and the reasons for withholding any documents, has expired.

34. The 30-working-day deadline under 5 U.S.C. § 552(a)(6)(b) for the Department to conduct such a search and make a determination as to Plaintiff’s FOIA Request, which would have applied had the Department, within 20 working days of receiving the Request, provided Plaintiff written notice that the Department had determined that “unusual circumstances” apply and was thereby seeking an extension of no more than 10 working days, has also expired.

35. The Department has wrongfully failed to conduct such a search and to make and communicate to Plaintiff a determination as to Plaintiff's FOIA Request within the statutory deadline imposed by FOIA.

36. The Department has additionally wrongfully failed to make records responsive to the Request promptly available to Plaintiff.

37. Plaintiff has exhausted administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

38. Plaintiff is entitled to an order compelling the Department to conduct reasonable searches sufficient to locate records responsive to the Request and to expeditiously produce all responsive records, subject to withholdings agreed to by the parties or approved by the Court.

39. To facilitate determination of the validity of any withholdings based on FOIA exemptions the Department may ultimately assert, Plaintiff seeks an order compelling the Department to produce indexes justifying redactions to or withholding of responsive records.

COUNT TWO: Declaration Precluding Assessment of Fees

40. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

41. The Department has failed to comply with the statutory time limits under 5 U.S.C. § 552(a)(6).

42. The Department has not discussed or attempted to discuss with Plaintiff how or whether Plaintiff is required to limit the scope of Plaintiff's FOIA Request.

43. No court has determined that exceptional circumstances exist.

44. Accordingly, Plaintiff is entitled to a declaration that the Department may not assess any search fees associated with Plaintiff's Request, pursuant to 5 U.S.C. § 552(a)(4)(A)(viii) and 28 U.S.C. § 2201(a).

PRAYER FOR RELIEF

45. Plaintiff requests that the Court:
- a. Order the Department to expeditiously conduct a reasonable search for all records responsive to Plaintiff's FOIA request, to the extent such a search has not already been conducted, and to demonstrate that it employed search methods reasonably likely to lead to the discovery of responsive records;
 - b. Order the Department to produce within twenty (20) days or such other time as the Court deems proper all records responsive to Plaintiff's Request that are subject to disclosure under FOIA, as agreed to by the parties or determined by the Court, and indexes justifying any withholdings or redactions;
 - c. Declare that the Department failed to comply with the time limits under 5 U.S.C. § 552(a)(6) and that search fees therefore may not be assessed under 5 U.S.C. § 552(a)(4)(A)(viii) with respect to Plaintiff's Request;
 - d. Award Plaintiff attorneys' fees and costs incurred in relation to this case, pursuant to 5 U.S.C. § 552(a)(4)(E); and
 - e. Grant Plaintiff any other relief the Court deems just and proper.

Dated: April 13, 2022

Respectfully submitted,

/s/ Ryan E. Sparacino

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