

**EXHIBIT E**

**Wendy Bray**

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**From:** Shaun C. Kennedy  
**Sent:** Thursday, May 5, 2022 12:57 PM  
**To:** Springs, Charles  
**Cc:** Ryan K. Lundquist; Wendy Bray  
**Subject:** RE: Acknowledgment of FOIA Request 2022-02900-F

**Importance:** High

Good afternoon, Mr. Springs:

According to our records, USAFA's deadline to respond to our FOIA request was on April 19, 2022. See U.S.C. § 552(a)(6)(A)(i) ("Each agency, upon any request made under paragraph (1), (2), or (3) of this subsection, shall determine within 20 days (excepting Saturday, Sundays, and legal public holidays) after receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor."). A written determination is sufficient if it includes "the agency's determination of whether or not to comply with the request; the reasons for its decision; and notice of the rights to the requester to appeal to the head of the agency if the initial agency decision is adverse." *Thomas v. Dep't of Health & Hm. Servs., Food & Drug Admin.*, 587 F. Supp. 2d 114, 117 (D.D.C. 2008) (quoting *Oglesby v. Dep't of the Army*, 920 F.2d 57, 61-62 (D.C. Cir. 1990)). An executive agency's mere acknowledgement of a FOIA request does not constitute a "determination" under FOIA.

FOIA permits an executive agency a limited extension to provide a written determination to the extent a FOIA request involves "unusual circumstances." See 5 U.S.C. § 552(6)(B)(iii) ("In unusual circumstances . . . the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by notice to the person making such request setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days, except as provided in clause (ii) of this subparagraph.") (emphasis added). FOIA requires an executive agency, therefore, to provide a written notice to the requester invoking the "unusual circumstances" exception within twenty working days and provide a final written determination no later than a total of thirty working days from the date of receipt of the FOIA request. Even if the acknowledgement in your email below could loosely construed as invoking the "unusual circumstances" exception, USAFA's deadline to provide a final response was May 3, 2022 (*i.e.*, 10 working days after April 19, 2022).

Importantly, an executive agency's failure to comply with any time limit proscribed by FOIA prohibits the assessment of search fees against the requester. See 5 U.S.C. § 552(a)(4)(A)(viii) ("An agency shall not assess search fees . . . under this subparagraph if the agency fails to comply with any time limit under paragraph (6)"). In 2007, the OPEN Government Act of 2007 amended FOIA to include 5 U.S.C. § 552(a)(6)(A)(viii). See Pub. L. No. 110-59, 121 Stat. 2524 (2007). The legislative history of the OPEN Government Act explains that the purpose of 5 U.S.C. § 552(a)(4)(A)(viii) is to "address the growing backlog of FOIA requests and restore meaningful deadlines for agency action" by "impos[ing] consequences on agencies that do not act in good faith or otherwise fail to comport with FOIA's requirements." *Bensman v. Nat'l Park Serv.*, 806 F. Supp. 2d 31, 37-38 (D.D.C. 2011) (quoting Pub. L. 110-59, 121 Stat. 2524). "To underscore Congress's belief in the importance of the statutory limit, the [OPEN Government Act] declares

that an agency shall not assess search fees . . . if the agency fails to comply with any time limit of FOIA." *Id.* (emphasis in original). Accordingly, an executive agency's failure to provide a written determination within the ten working day extension permitted by the "unusual circumstances" provision of 5 U.S.C. § 552(a)(6)(B)(i) prohibits the assessment of any search fees.

As of the date of this email, however, the USAFA has not provided this office with a final determination within the time required by 5 U.S.C. § 552(6)(A)(i). Because USAFA failed to comply with the statutory time limits proscribed by FOIA, USAFA waived the right to assess and collect search fees related to this FOIA request.

As you know, the subject FOIA request identified specific records that should be easily collected and produced. Our letter requested that USAFA prioritize the production of records correspondence to Request Nos. 1, 4, 5, 8, 9, and 10. At your earliest convenience, please provide a date certain of when USAFA will make those records available, as well as an estimated time-frame to comply with the entirety of the FOIA request?

Thank you in advance for your assistance.

Regards,  
Shaun

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**From:** Springs, Charles <usafa.foia@us.af.mil>  
**Sent:** Friday, April 8, 2022 11:07 AM  
**To:** Shaun C. Kennedy <SCKennedy@hollandhart.com>  
**Subject:** Acknowledgment of FOIA Request 2022-02900-F

**External Email**

Dear Mr. Kennedy

We received your Freedom of Information Act request dated 22-Mar-22, for the contract file for Contract No. FA7000-19-C-A022 on 22-Mar-22. We have assigned case number 2022-02900-F to identify your request.

Because our organization has a significant number of pending FOIA requests which prevents us from making a response determination within 20 workdays, we have instituted multitrack processing of requests. Based on the information you provided, we have placed your request in the Complex track. Our policy is to process requests within their respective tracks in the order in which we receive them. We do process each FOIA request as quickly as we can.

The FOIA provides for the collection of fees determined by the costs of processing a FOIA request and the fee category in which the requester is eligible. We have determined your fee category to be "Commercial." As a result, you are required to pay all document search, review and duplication cost over \$25.00.

If you have any questions, you may contact our office at 719-333-6231 or e-mail us at [usafa.foia@us.af.mil](mailto:usafa.foia@us.af.mil). Please refer to FOIA case number 2022-02900-F.

Sincerely,

Charles Springs  
Chief Freedom of Information Act Officer  
United States Air Force Academy