



DEPARTMENT OF THE ARMY
UNITED STATES ARMY AVIATION AND MISSILE COMMAND
5300 MARTIN ROAD
REDSTONE ARSENAL AL 35898-5000

November 12, 2021

Office of Chief Counsel

Mr. David Rudometkin
1300 N. Warehouse Road
Fort Leavenworth, KS 66027

Dear Mr. Rudometkin:

This letter is in response to your perfected Freedom of Information Act (FOIA) request dated September 9, 2021, sent to the United States Army Aviation and Missile Command (AMCOM) FOIA Office. The AMCOM FOIA office assigned FOIA number FA-21-0120 to your request.

You requested any and all electronic correspondence between CPT Austin Cheng and LTC Rebecca Farrell, between 1 May 2015 and 1 February 2018.

Responsive records were found. However, a review of the responsive records indicates that all are exempt, in whole, from full public disclosure under the authority of Exemptions 5 and 6 of the FOIA, 5 United States Code Section 552. Exemption 5 of the FOIA protects communications between attorneys in preparation for litigation, and extends to members of the attorney's staff when acting under the attorney's direction. Exemption 6 of the FOIA protects individual privacy when disclosure of the personal information would constitute an unwarranted invasion of privacy or jeopardize that person's security.

You have the right to appeal this response to the Secretary of the Army. The Commanding General, U.S. Army Materiel Command, is the Initial Denial Authority, and by position, I have been delegated the Initial Denial Authority. You should send your appeal to this office, and in turn, we will forward it to the Army General Counsel, the designated Army FOIA appellate authority. To meet the deadline for the appeal, the appeal letter must be received by this office and forwarded to the Secretary of the Army within ninety (90) calendar days of the date of this letter.

Please send correspondence to the following address:

Headquarters, U.S. Army Aviation and Missile Command
ATTN: Legal Office
5300 Martin Road
Redstone Arsenal, AL 35898-5000

For any further assistance or to discuss any aspect of your request, you have the right to contact the Army FOIA Public Liaison Officer, Alecia Bolling, by email at usarmy.hqda-aaa-ahs.mbx.rmda-foia-public-liaison@mail.mil or by phone at (703) 428-6238. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration (NARA) to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: NARA-OGIS, 8601 Adelphi Road-OGIS, College Park, MD 20740-6001, email at ogis@nara.gov, telephone number (202) 741-5570 toll free at (877) 684-6448 or facsimile at (202) 741-5769.

Should you have any questions or concerns regarding the processing of your request, please contact Ms. Julie Williams at 256-313-2595 or email usarmy.redstone.amcom.mbx.g6-foia-office@mail.mil.

Sincerely,

Nathanael Causey

Nathanael Causey
Chief Counsel

9 September 2021

MEMORANDUM FOR Department of the Army, U.S. Army Aviation and Missile Command, AMSAM-CIG-I, AMCOM FOIA Office, Building 5301, 3rd floor, Redstone Arsenal, AL 35898-5000

SUBJECT: Reply to AMCOM FOIA number **FA-21-0120**, Freedom of Information Act (FOIA)/Privacy Act (PA) Request for Communications Between Captain (CPT) Austin Cheng, Formerly of Headquarters and Headquarters Company (HHC), U.S. Army AMCOM Office of the Staff Judge Advocate (OSJA) and Lieutenant Colonel (LTC) Rebecca Farrell, dated 15 May 2021

1. This is a reply to AMCOM FOIA number **FA-21-0120**. According to your interim response, your office received the request from the undersigned on 24 May 2021, but has taken approximately 3 ½ months to provide a response. Your interim response indicated the following:

After reviewing your requested, it has been determined that it lacks the necessary information required in accordance with Army Regulation 25-55.

In order for us to properly process your request, please provide the subject of the emails you would like searched.

2. As per the undersigned's original request under the FOIA and or Privacy Act, he provided all the necessary information required in accordance with AR 25-55. Most notably, the undersigned explicitly indicated **all** communications between: (a) CPT Austin F. Cheng, austin.f.cheng2.mil@mail.mil and (b) LTC Colonel Rebecca Farrell, rebecca.l.farrell7.mil@mail.mil, exclusively concerned the undersigned – so the "subject" of the communications is, "Major David J. Rudometkin" or contains the name of "Rudometkin" or "*United States v. Rudometkin*" or "Major Rudometkin" or any derivative of these names/subject. It is unknown why your office has taken approximately 101 days to determine the undersigned did not provide all the necessary information — when in fact he did originally. This is an unacceptable delay.

3. This request being made by the undersigned is for personal use pursuant to the Privacy Act (5 U.S.C. § 552a), not commercial, and all information will be used for legal purposes.

4. The undersigned is willing to pay fees associated with this request, because this request for information concerns the undersigned and made pursuant to the Privacy Act, (5 U.S.C. § 552a), there should not be any fees associated with it. IAW AR 340-21, *The Army Privacy Program*, "normally, there will be no charge for the first copy of a record provided to an individual to whom the record pertains." In addition, disclosure of the requested information is also within the public interest. "Public interest is official information that sheds light on an agency's performance of its statutory duties, which informs citizens about what their government is doing. ... and likely contribute significantly to public understanding of the operations or activities of the government." In this case, the requested information will likely provide information on the misconduct of two government attorneys obstructing justice. Because such information is within the public interest, the undersigned humbly requests a waiver, if the provisions under the Privacy are not somehow adequate.

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5. In the event this request is denied in whole or in part, please provide a detailed justification for withholding the records and the exemptions claimed.

6. The undersigned provides a cautionary note to concerning the legal review of this request; Mr. Nathanel Causey has certain responsibilities as a supervisory attorney where upon review of the requested information discovers certain improprieties, he is ethically obligated to report such information under the American Bar Association Model Rules, and Army Regulation 27-26, and cannot use Exemption 5 as a shield from reporting or releasing the requested information to the undersigned.

7. The point of contact is the undersigned at 1300 N. Warehouse Road, Fort Leavenworth, KS 66027

I declare under penalty of perjury under the laws of the United States of America the foregoing is true and correct, and I am the person named below. Executed on 9 September 2021.

//original signed//
DAVID J. RUDOMETKIN
SSN: 543-98-9492
DOB: 4-1-71



DEPARTMENT OF THE ARMY
UNITED STATES ARMY AVIATION AND MISSILE COMMAND
5300 MARTIN ROAD
REDSTONE ARSENAL AL 35898-5000

March 4, 2022

Office of Chief Counsel

Mr. David Rudometkin
1300 N. Warehouse Road
Fort Leavenworth, KS 66027

Dear Mr. Rudometkin:

This letter is in response to your Freedom of Information Act (FOIA) request dated December 21, 2021, sent to the United States Army Aviation and Missile Command (AMCOM) FOIA Office. The AMCOM FOIA office assigned FOIA number FA-22-0057 to your request.

You request communications such as any written notes, letters, memorandums and electronic correspondence that was produced by the U.S. Army AMCOM SJA, Colonel (COL) Halverson which contains the name "Rudometkin." The timeframe of the communications is from 1 June 2021 to 1 January 2022.

Responsive records were found. However, a review of the responsive records indicates that all are exempt, in whole, from full public disclosure under the authority of Exemptions 5 and 6 of the FOIA, 5 United States Code Section 552. Exemption 5 of the FOIA protects communications of agency employees that are pre-decisional and deliberative when they do not contain or represent formal agency policies or decisions. Exemption 5 of the FOIA also protects communications between attorneys in preparation for litigation, and extends to members of the attorney's staff when acting under the attorney's direction. Exemption 6 of the FOIA protects individual privacy when disclosure of the personal information would constitute an unwarranted invasion of privacy or jeopardize that person's security.

You have the right to appeal this response to the Secretary of the Army. The Commanding General, U.S. Army Materiel Command, is the Initial Denial Authority, and by position, I have been delegated the Initial Denial Authority. You should send your appeal to this office, and in turn, we will forward it to the Army General Counsel, the designated Army FOIA appellate authority. To meet the deadline for the appeal, the appeal letter must be received by this office and forwarded to the Secretary of the Army within ninety (90) calendar days of the date of this letter.

Please send correspondence to the following address:

Headquarters, U.S. Army Aviation and Missile Command
ATTN: Legal Office (AMCLC-RSA)
5300 Martin Road
Redstone Arsenal, AL 35898-5000

For any further assistance or to discuss any aspect of your request, you have the right to contact the Army FOIA Public Liaison Officer, Alecia Bolling, by email at usarmy.hqda-oaa-ahs.mbx.rmda-foia-public-liaison@mail.mil or by phone at (703) 428-6238. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration (NARA) to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: NARA-OGIS, 8601 Adelphi Road-OGIS, College Park, MD 20740-6001, email at ogis@nara.gov, telephone number (202) 741-5570 toll free at (877) 684-6448 or facsimile at (202) 741-5769.

Should you have any questions or concerns regarding the processing of your request, please contact Ms. Julie Williams at usarmy.redstone.amcom.mbx.g6-foia-office@mail.mil.

Sincerely,



Nathanael Causey
Chief Counsel

21 December 2021

MEMORANDUM FOR Department of the Army, U.S. Army Aviation and Missile Command, AMSAM-CIG-I, AMCOM FOIA Office, Building 5301, 3rd floor, Redstone Arsenal, AL 35898-5000

SUBJECT: Freedom of Information Act (FOIA) Request for Communications Produced by U.S. Army Aviation and Missile Command Staff Judge Advocate (SJA), Colonel Halverson Concerning Major David J. Rudometkin, SSN: 543-98-9492

1. This is a request under the FOIA. This request is for any record of communications such as any written notes, letters, memorandums and electronic correspondence that was produced by the U.S. Army AMCOM SJA, Colonel (COL) Halverson which contains the name "Rudometkin." The timeframe of the communications is from 1 June 2021 to 1 January 2022.

2. The undersigned has personal knowledge through his attorney, Mr. Michael Tewalt that COL Halverson has produced an abundance of communications concerning the undersigned, where COL Halverson has mentioned "not a day has gone by where the name 'Rudometkin' is not mentioned in the OSJA."

3. This request being made by the undersigned is for personal use, not commercial and all information will be used for legal purposes.

4. The undersigned **is** willing to pay fees associated with this request, however because this is a personal use/Privacy Act request there should not be any fees associated with it. If you estimate there will be fees, the undersigned humbly requests a waiver.

5. If this request is denied in whole or in part, please provide a detailed justification for withholding the records and the exemptions claimed on which the denial is based.

6. The point of contact is the undersigned at 1300 N. Warehouse Road, Fort Leavenworth, KS 66027

I declare under penalty of perjury under the laws of the United States the foregoing is true and correct, and I am the person named below. Executed on: 21 December 2021

//original signed//
DAVID J. RUDOMETKIN
SSN: 543-98-9492
DOB: 4-1-71

EXHIBIT E-7 of 47



DEPARTMENT OF THE ARMY
UNITED STATES ARMY AVIATION AND MISSILE COMMAND
5300 MARTIN ROAD
REDSTONE ARSENAL AL 35898-5000

March 4, 2022

Office of Chief Counsel

Mr. David Rudometkin
1300 N. Warehouse Road
Fort Leavenworth, KS 66027

Dear Mr. Rudometkin:

This letter is in response to your Freedom of Information Act (FOIA) request dated December 16, 2021, sent to the United States Army Aviation and Missile Command (AMCOM) FOIA Office. The AMCOM FOIA office assigned FOIA number FA-22-0060 to your request.

You request communications such as written notes, letters, memorandums and electronic correspondence such as .pdf files or emails produced by Major Paul D. Carlson who functioned as the Deputy Staff Judge Advocate for the U.S. Army AMCOM OSJA, which contain the name "Makowski" and/or "Rudometkin." The timeframe of the communications is from 1 May 2015 to 25 July 2017.

Responsive records were found. However, a review of the responsive records indicates that all are exempt, in whole, from full public disclosure under the authority of Exemptions 5 and 6 of the FOIA, 5 United States Code Section 552. Exemption 5 of the FOIA protects communications between attorneys in preparation for litigation, and extends to members of the attorney's staff when acting under the attorney's direction. Exemption 6 of the FOIA protects individual privacy when disclosure of the personal information would constitute an unwarranted invasion of privacy or jeopardize that person's security.

You have the right to appeal this response to the Secretary of the Army. The Commanding General, U.S. Army Materiel Command, is the Initial Denial Authority, and by position, I have been delegated the Initial Denial Authority. You should send your appeal to this office, and in turn, we will forward it to the Army General Counsel, the designated Army FOIA appellate authority. To meet the deadline for the appeal, the appeal letter must be received by this office and forwarded to the Secretary of the Army within ninety (90) calendar days of the date of this letter.

EXHIBIT E 8 of 47

Please send correspondence to the following address:

Headquarters, U.S. Army Aviation and Missile Command
ATTN: Legal Office (AMCLC-RSA)
5300 Martin Road
Redstone Arsenal, AL 35898-5000

For any further assistance or to discuss any aspect of your request, you have the right to contact the Army FOIA Public Liaison Officer, Alecia Bolling, by email at usarmy.hqda-aaa-ahs.mbx.rmda-foia-public-liaison@mail.mil or by phone at (703) 428-6238. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration (NARA) to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: NARA-OGIS, 8601 Adelphi Road-OGIS, College Park, MD 20740-6001, email at ogis@nara.gov, telephone number (202) 741-5570 toll free at (877) 684-6448 or facsimile at (202) 741-5769.

Should you have any questions or concerns regarding the processing of your request, please contact Ms. Julie Williams at usarmy.redstone.amcom.mbx.g6-foia-office@mail.mil.

Sincerely,

Nathanael Causey

Nathanael Causey
Chief Counsel

18 September 2021

MEMORANDUM FOR: Department of the Army, U.S. Army Aviation and Missile Command, AMSAM-CIG-I, AMCOM FOIA Office, Building 5301, 3rd floor, Redstone Arsenal, AL 35898-5000

SUBJECT: Privacy Act and Crime Victim Rights Act Request: Communications Produced by **Major Paul D. Carlson**, U.S. Army Aviation and Missile Command (AMCOM) Deputy Staff Judge Advocate (OSJA) Concerning David J. Rudometkin, and Major Leslie A. Makowski (retired) from the timeframe of 1 May 2015 - 25 July 2017

1. This is a request under the Privacy Act (5 U.S.C. § 552a) and the Crime Victim Rights Act (18 U.S.C. § 3771) for records of communications such as any written notes, letters, memorandums and electronic correspondence such as .pdf files or emails produced by **Major Paul D. Carlson** which contains the name "Makowski" and/or "Rudometkin." Major Carlson functioned as Deputy Staff Judge Advocate for U.S. Army AMCOM. The timeframe of the communications is from 1 May 2015 to 25 July 2017.
2. The undersigned is not willing to pay fees associated with this request, because it is made pursuant to the Privacy Act, there should not be any fees associated with it. IAW AR 25-22, *The Army Privacy Program*, paragraph 6-7, "normally, there will be no charge for the first copy of a record provided to an individual to whom the record pertains."
3. Crime Victim Rights. The undersigned was identified as a victim in a police report ((See Redstone Arsenal Law Enforcement Report # 0140-2015-MPC-5C1/13A-7-21/13A-10-52/7J7/3B1/3C4/3H3 provided in a previous Privacy/Crime Victim Rights Act Request) where Ms. Makowski used her car to physically drive into the structure of the undersigned's home, causing approx. \$14,000 in damage. Immediately afterward destroying the undersigned and his children's home on Redstone Arsenal, a high speed chase with police occurred where Ms. Makowski intentionally collided with a police vehicle and attempted to ram through a "GRAB" net deployed at Gate #8 which ended her acts of terror. The undersigned is requesting all records and communications produced by Major Carlson associated with these acts of terror and is entitled to them pursuant to his victim rights indicated in 18 U.S.C. § 3771(a)-(f).
4. In the event this request is denied in whole or in part, please provide a detailed justification for withholding the records and the Privacy Act exemptions claimed on which the denial is based. Because this request is made pursuant to the Privacy Act and Crime Victim Rights Act, FOIA exemptions are inapplicable or cannot be claimed.
5. POC is the undersigned at 1300 N. Warehouse Road, Fort Leavenworth, KS 66027

I declare under penalty of perjury under the laws of the United States of America the foregoing is true and correct, the enclosures is a true and accurate representation, and I am the person named below. Executed on 18 September 2021.

Encl
as

//original signed//
DAVID J. RUDOMETKIN
SSN: 543-98-9492

EXHIBIT G 10 of 47



DEPARTMENT OF THE ARMY
UNITED STATES ARMY AVIATION AND MISSILE COMMAND
5300 MARTIN ROAD
REDSTONE ARSENAL AL 35898-5000

March 7, 2022

Office of Chief Counsel

Mr. David Rudometkin
1300 N. Warehouse Road
Fort Leavenworth, KS 66027

Dear Mr. Rudometkin:

This letter is in response to your Freedom of Information Act (FOIA) request dated December 16, 2021, sent to the United States Army Aviation and Missile Command (AMCOM) FOIA Office. The AMCOM FOIA office assigned FOIA number FA-22-0059 to your request.

You request communications such as any written notes, letters, memorandums and electronic correspondence, such as .pdf files or emails, which were produced by the U.S. Army AMCOM SJA, COL Juan A. Pyfrom, which contains the name "Makowski" and/or "Rudometkin." The timeframe of the communications is from 1 May 2015 to 25 July 2016.

Responsive records were found. However, a review of the responsive records indicates that all are exempt, in whole, from full public disclosure under the authority of Exemptions 5 and 6 of the FOIA, 5 United States Code Section 552. Exemption 5 of the FOIA protects communications of agency employees that are pre-decisional and deliberative when they do not contain or represent formal agency policies or decisions. Exemption 5 of the FOIA also protects communications between attorneys in preparation for litigation, and extends to members of the attorney's staff when acting under the attorney's direction. Exemption 6 of the FOIA protects individual privacy when disclosure of the personal information would constitute an unwarranted invasion of privacy or jeopardize that person's security.

You have the right to appeal this response to the Secretary of the Army. The Commanding General, U.S. Army Materiel Command, is the Initial Denial Authority, and by position, I have been delegated the Initial Denial Authority. You should send your appeal to this office, and in turn, we will forward it to the Army General Counsel, the designated Army FOIA appellate authority. To meet the deadline for the appeal, the appeal letter must be received by this office and forwarded to the Secretary of the Army within ninety (90) calendar days of the date of this letter.

Please send correspondence to the following address:

Headquarters, U.S. Army Aviation and Missile Command
ATTN: Legal Office (AMCLC-RSA)
5300 Martin Road
Redstone Arsenal, AL 35898-5000

For any further assistance or to discuss any aspect of your request, you have the right to contact the Army FOIA Public Liaison Officer, Alecia Bolling, by email at usarmy.hqda-oaa-ahs.mbx.rmda-foia-public-liaison@mail.mil or by phone at (703) 428-6238. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration (NARA) to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: NARA-OGIS, 8601 Adelphi Road-OGIS, College Park, MD 20740-6001, email at ogis@nara.gov, telephone number (202) 741-5570 toll free at (877) 684-6448 or facsimile at (202) 741-5769.

Should you have any questions or concerns regarding the processing of your request, please contact Ms. Julie Williams at usarmy.redstone.amcom.mbx.g6-foia-office@mail.mil.

Sincerely,



Nathanael Causey
Chief Counsel

16 December 2021

MEMORANDUM FOR: Department of the Army, U.S. Army AMCOM, AMSAM-CIG-I, AMCOM FOIA Office, Building 5301, 3rd floor, Redstone Arsenal, AL 35898-5000

SUBJECT: Privacy Act (PA)/ Freedom of Information Act Request: Communications produced by Colonel Juan A. Pyfrom, Staff Judge Advocate U.S. Army Aviation and Missile Command (AMCOM) Office of the Staff Judge Advocate (OSJA) Concerning David J. Rudometkin, and Leslie A. Makowski from the timeframe of 1 May 2016 to 1 May 2017

1. This is a PA/FOIA request for the following information: Any communications such as any written notes, letters, memorandums and electronic correspondence such as .pdf files or emails produced by Colonel Juan A. Pyfrom, juan.a.pyfrom.mil@mail.mil who functioned as the Staff Judge Advocate for the U.S. Army AMCOM OSJA, which contain the name "Makowski" and/or "Rudometkin." The timeframe of the communications is from 1 May 2015 to 25 July 2016.

2. The undersigned is willing to pay for fees associated with this request.

3. In the event this request is denied in whole or in part, please provide a detailed justification for withholding the records and exemptions claimed on which the denial is based.

4. POC is the undersigned at 1300 N. Warehouse Road, Fort Leavenworth, KS 66027

I declare under penalty of perjury under the laws of the United States of America the foregoing is true and correct, and I am the person named below. Executed on: 16 December 2021.

//original signed//
DAVID J. RUDOMETKIN

EXHIBIT E 13 of 47

13 October 2021

MEMORANDUM FOR: Department of the Army, U.S. Army Aviation and Missile Command, AMSAM-CIG-I, AMCOM FOIA Office, Building 5301, 3rd floor, Redstone Arsenal, AL 35898-5000

SUBJECT: Privacy Act, Crime Victim Rights Act, Freedom of Information Act Request: Communications Produced by **Colonel Juan A. Pyfrom**, U.S. Army Aviation and Missile Command (AMCOM) Staff Judge Advocate (OSJA) Concerning David J. Rudometkin, and Major Leslie A. Makowski (retired) from the timeframe of 1 May 2015 - 25 July 2016

1. This is a request under the Privacy Act (5 U.S.C. § 552a) and the Crime Victim Rights Act (18 U.S.C. § 3771), and Freedom of Information Act, (5 U.S.C. § 552) for records of communications such as any written notes, letters, memorandums and electronic correspondence such as .pdf files or emails produced by **Colonel Juan A. Pyfrom** which contains the name "Makowski" and/or "Rudometkin." **Colonel Juan A. Pyfrom** functioned as Staff Judge Advocate for U.S. Army AMCOM. The timeframe of the communications is from 1 May 2015 to 25 July 2016.

2. The undersigned requests communications made by **COL Juan A. Pyfrom**, juan.a.pyfrom.mil@mail.mil which contains the name "Makowski" and/or "Rudometkin," during the timeframe 1 May 2015 to 25 July 2016 to and from the following individuals:

- a. Timothy K. Chism, timothy.k.chism.civ@mail.mil, Chief of Claims, AMCOM OSJA
- b. Major Paul D. Carlson, paul.d.carlson.mil@mail.mil, DSJA, AMCOM OSJA
- c. Captain Kathy Hartsfield, cathy.h.hartsfield.mil@mail.mil, SAUSA, Chief of Military Justice, AMCOM OSJA
- d. Captain Austin Cheng, austin.f.cheng2.mil@mail.mil, SAUSA, Chief of Military Justice, AMCOM OSJA
- e. CW2 Shane Drabek, Criminal Investigation Command, Redstone Arsenal, AL
- f. Lieutenant Colonel Rebecca L. Farrell, rebecca.l.farrell7.mil@mail.mil, Office of the Staff Judge Advocate, 101st Airborne Division, Fort Campbell, KY
- g. Mark K. Thompson, mark.k.thompson14.civ@mail.mil, Captain, DES, Law Enforcement Operations/Police Division, RSA, AL
- h. Ms. Betty Anderson, betty.d.anderson.civ@mail.mil, U.S. Army IMCOM, HQs USAG Redstone Arsenal, AL
- i. John Hamilton, Colonel, U.S. Army, Commander, USAG, Redstone Arsenal (RSA)
- j. William Marks, Colonel, U.S. Army, Commander, USAG-Redstone Arsenal (RSA)
- k. Michael R. Sheehy, Director, Directorate of Emergency Services (DES), RSA, AL
- l. Kim Tycer, SES, Army Material Command (AMC) Legal Center, RSA, AL

EXHIBIT E 14 of 47

m. Dennis Via, General, Commander, U.S. Army AMC, RSA, AL

n. David Estes, U.S. Attorney's Office, Huntsville, AL, U.S. District for the District of Northern Alabama, Northeastern Division

o. Russell Penfield, District Attorney, U.S. District for the District of Northern Alabama

p. Robert Posey, District Attorney (acting), U.S. District for the District of Northern Alabama

3. The undersigned is willing to pay fees up to \$256 associated with this request, provided the fee exemption provisions of the Privacy Act, Crime Victim Rights Act, and the Freedom of Information Act do not apply.

4. Privacy Act. Because this request is being made pursuant to the Privacy Act, there should not be any fees associated with it. IAW AR 25-22, *The Army Privacy Program*, paragraph 6-7, "normally, there will be no charge for the first copy of a record provided to an individual to whom the record pertains."

5. Crime Victim Rights. The undersigned was identified as a victim in a police report ((See Redstone Arsenal Law Enforcement Report # 0140-2015-MPC-5C1/13A-7-21/13A-10-52/7J7/3B1/3C4/3H3 provided in a previous Privacy/Crime Victim Rights Act Request) where Ms. Makowski used her car to physically drive into the structure of the undersigned's and her children's home, causing approx. \$14,000 in damage. Immediately afterward destroying the home on Redstone Arsenal, a high speed chase with police occurred where Ms. Makowski intentionally collided with a police vehicle and attempted to ram through a "GRAB" net deployed at Gate #8 which ended her acts of terror. The undersigned is requesting all records and communications produced or received by **COL Juan A. Pyfrom**, juan.a.pyfrom.mil@mail.mil, which were associated in the law enforcement, investigation, prosecution, and the Garrison commander's required reporting of with these acts of terror with the Redstone Arsenal Senior Commander. The undersigned is entitled to these records pursuant to his victim rights indicated in 18 U.S.C. § 3771(a)-(f).

6. Freedom of Information Act. The undersigned also asserts there is public interest in producing the records and on this basis requests an exemption of fees, if the Privacy, Crime Victim fee exemptions do not apply. Disclosure of the requested information is within the public interest. "Public interest is official information that sheds light on an agency's performance of its statutory duties, which informs citizens about what their government is doing. ...and likely contribute significantly to public understanding of the operations or activities of the government." In this case, the requested information should be of a great public interest in revealing the misconduct of COL Pyfrom on various counts: by failing to provide the undersigned and his sister any crime victim rights IAW 18 U.S.C. § 3771; by assisting Mr. Timothy K. Chism to make a false claims determination in March 2016 concerning Ms. Makowski's acts of terror in violation of 18 U.S.C. 1001; illegally granting "de facto immunity" to Ms. Makowski by failing to comply with the entirety of the federal immunity statute, 18 U.S.C. § 6001 et seq., failing to report very serious criminal acts on Redstone Arsenal, AL to the U.S. Army Judge Advocate General, as required by AR 27-10. The requested information will reveal to

the public, processes involving the absolute injustice of COL Pyfrom in failing in his regulatory/statutory duties Such information will contribute significantly to the transparency of Redstone Arsenal, AL and U.S. Army AMCOM operations which wrongfully manipulated the due administration of justice, therefore the subject matter is inherently within the broad audience of the public.

7. In the event this request is denied in whole or in part, please provide a detailed justification for withholding the records and the Privacy Act exemptions claimed on which the denial is based. Because this request is made pursuant to the Privacy Act and Crime Victim Rights Act, there are certain FOIA exemptions are inapplicable or cannot be claimed.

8. POC is the undersigned at 1300 N. Warehouse Road, Fort Leavenworth, KS 66027

I declare under penalty of perjury under the laws of the United States of America the foregoing is true and correct, the enclosures is a true and accurate representation, and I am the person named below. Executed on: 13 October 2021.

//original signed//
DAVID J. RUDOMETKIN
SSN: 543-98-9492



DEPARTMENT OF THE ARMY
UNITED STATES ARMY AVIATION AND MISSILE COMMAND
5300 MARTIN ROAD
REDSTONE ARSENAL AL 35898-5000

March 10, 2022

Office of Chief Counsel

Mr. David Rudometkin
1300 N. Warehouse Road
Fort Leavenworth, KS 66027

Dear Mr. Rudometkin:

This letter is in response to your perfected Privacy Act/Freedom of Information Act (FOIA) request dated October 13, 2021, sent to the United States Army Aviation and Missile Command (AMCOM) FOIA Office. The AMCOM FOIA office assigned FOIA number **FA-22-0010** to your request.

You request communication such as written notes, letters, memorandums and electronic correspondence such as .pdf files or emails messages between LTC Anthony Adolph, U.S. Army AMCOM SJA, and/or Major Paul D. Carlson Deputy Staff Judge Advocate, and MG Douglas M. Gabram, the U.S. Army AMCOM Commander, where the subject or anywhere within the content of communications references "Rudometkin." The timeframe of the communications is between 1 October 2016 and 30 September 2017.

Responsive records were found. However, a review of the responsive records indicates that all are exempt, in whole, from full public disclosure under the authority of Exemptions 5 and 6 of the FOIA, 5 United States Code Section 552. Exemption 5 of the FOIA protects communications of agency employees that are predecisional and deliberative when they do not contain or represent formal agency policies or decisions. Exemption 6 of the FOIA protects individual privacy when disclosure of the personal information would constitute an unwarranted invasion of privacy or jeopardize that person's security.

You have the right to appeal this response to the Secretary of the Army. The Commanding General, U.S. Army Materiel Command, is the Initial Denial Authority, and by position, I have been delegated the Initial Denial Authority. You should send your appeal to this office, and in turn, we will forward it to the Army General Counsel, the designated Army FOIA appellate authority. To meet the deadline for the appeal, the appeal letter must be received by this office and forwarded to the Secretary of the Army within ninety (90) calendar days of the date of this letter.

Please send correspondence to the following address:

Headquarters, U.S. Army Aviation and Missile Command
ATTN: Legal Office (AMCLC-RSA)
5300 Martin Road
Redstone Arsenal, AL 35898-5000

For any further assistance or to discuss any aspect of your request, you have the right to contact the Army FOIA Public Liaison Officer, Alecia Bolling, by email at usarmy.hqda-oaa-ahs.mbx.rmda-foia-public-liaison@mail.mil or by phone at (703) 428-6238. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration (NARA) to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: NARA-OGIS, 8601 Adelphi Road-OGIS, College Park, MD 20740-6001, email at ogis@nara.gov, telephone number (202) 741-5570 toll free at (877) 684-6448 or facsimile at (202) 741-5769.

Should you have any questions or concerns regarding the processing of your request, please contact Ms. Julie Williams at usarmy.redstone.amcom.mbx.g6-foia-office@army.mil.

Sincerely,



Nathanael Causey
Chief Counsel

13 October 2021

MEMORANDUM FOR: Department of the Army, U.S. Army Aviation and Missile Command, AMSAM-CIG-I, AMCOM FOIA Office, Building 5301, 3rd floor, Redstone Arsenal, AL 35898-5000

SUBJECT: RE: AMCOM FOIA Number **FA-22-0010**. SUBJECT: Privacy Act Request: Communications between Colonel (COL) Martha L. Foss and, U.S. Army Aviation and Missile Command (AMCOM) Staff Judge Advocate (SJA) and Major General (MG) Douglas M. Gabram, AMCOM Commander, Concerning David J. Rudometkin

1. The undersigned received an official response from your office via certified mail on 12 October 2021. The official response indicates the undersigned sent a request dated 18 September 2021 and received by your office on October 4, 2021.

2. The undersigned is willing to pay for fees associated with this request, if those fees are above the automatic waiver provisions in AR 25-55 where more than 2 hours search time and more than 100 pages of documents are produced in response to the request. The undersigned has informed your office of the automatic waiver provision in his previous request for records.

3. The undersigned respectfully disagrees with your office's opinion concerning the Privacy Act, and again request a copy of his records, where there will be no charge for the first copy of a record provided to an individual to whom the record pertains (see AR 25-22, paragraph 6-7). Your official response indicates the following:

Additionally, your request will not be processed under the Privacy Act because the information you request is not contained in a Privacy Act System of Records, indexed, or retrieved by your name or personal identifier. 5 USC 552A(D)(1):

The undersigned does in fact have information contained in a system of records and is requesting information exclusively concerning him which is searchable in the U.S. Army enterprise email and is contained in files at the U.S. Army AMCOM Office of the Staff Judge Advocate. The AMCOM OSJA is required to maintain the undersigned's file for at least five years. As per AR 25-22, *The Army Privacy Program*, Chapter 3-1 defines "system of records" which is simply "a group of records, whatever the storage media (paper, electronic and so forth)..."^{Id.} The emails generated or files maintained by U.S. Army AMCOM OSJA qualifies as a system of record. Also, based on the statute 5 U.S.C. § 552a(d)(1), if the undersigned were able to personally walk into the AMCOM OSJA, he would be able review his file or have the OSJA make a copy of his files or have NETCOM produce archived emails which exclusively concern the undersigned.

4. Based on statute and regulation cited concerning the Privacy Act, the undersigned respectfully requests your office reconsider your denial of processing his request under the Privacy Act. If your office denies processing the request under the Privacy Act, please provide a detailed justification on which you base the denial, in light of the information provided in Paragraph 3 of this memo.

5. The undersigned is willing to pay up to \$40 for the production of documents, produced above the automatic waiver threshold indicated in AR 25-55 and if the

EXHIBIT E 19 of 47

provisions of AR 25-22, Chapters 3-1, Chapter 6-7 do not apply which also waives fees for the production of the first copy of the requested records exclusively concerning the undersigned.

6. POC is the undersigned at 1300 N. Warehouse Road, Fort Leavenworth, KS 66027

I declare under penalty of perjury under the laws of the United States of America the foregoing is true and correct, and I am the person named below. Executed on: 13 October 2021.

//original signed//
DAVID J. RUDOMETKIN
SSN: 543-98-9492



DEPARTMENT OF THE ARMY
UNITED STATES ARMY AVIATION AND MISSILE COMMAND
5300 MARTIN ROAD
REDSTONE ARSENAL AL 35898-5000

March 31, 2022

Office of Chief Counsel

Mr. David Rudometkin
1300 N. Warehouse Road
Fort Leavenworth, KS 66027

Dear Mr. Rudometkin:

This letter is in response to your Freedom of Information Act (FOIA) request dated September 18, 2021, sent to the United States Army Aviation and Missile Command (AMCOM) FOIA Office. The AMCOM FOIA office assigned FOIA number FA-22-0008 to your request.

You requested records of communication such as written notes, letters, memorandums and electronic correspondence between COL Martha L. Foss, and/or Major Paul D. Carlson, and MG Douglas M. Gabram, the U.S. Army AMCOM Commander, where the subject or the content of communications references "Rudometkin." The timeframe of the communications is between 1 October 2017 and 1 June 2019.

Responsive records were found. However, a review of the responsive records indicates that all are exempt, in whole, from full public disclosure under the authority of Exemptions 5 and 6 of the FOIA, 5 United States Code Section 552. Exemption 5 of the FOIA protects communications between attorneys and their clients relating to a legal matter for which the client has sought professional advice. Exemption 6 of the FOIA protects individual privacy when disclosure of the personal information would constitute an unwarranted invasion of privacy or jeopardize that person's security.

You have the right to appeal this response to the Secretary of the Army. The Commanding General, U.S. Army Materiel Command, is the Initial Denial Authority, and by position, I have been delegated the Initial Denial Authority. You should send your appeal to this office, and in turn, we will forward it to the Army General Counsel, the designated Army FOIA appellate authority. To meet the deadline for the appeal, the appeal letter must be received by this office and forwarded to the Secretary of the Army within ninety (90) calendar days of the date of this letter.

Please send correspondence to the following address:

Headquarters, U.S. Army Aviation and Missile Command
ATTN: Legal Office
5300 Martin Road
Redstone Arsenal, AL 35898-5000

For any further assistance or to discuss any aspect of your request, you have the right to contact the Army FOIA Public Liaison Officer, Alecia Bolling, by email at usarmy.hqda-oaa-ahs.mbx.rmda-foia-public-liaison@mail.mil or by phone at (703) 428-6238. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration (NARA) to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: NARA-OGIS, 8601 Adelphi Road-OGIS, College Park, MD 20740-6001, email at ogis@nara.gov, telephone number (202) 741-5570 toll free at (877) 684-6448 or facsimile at (202) 741-5769.

Should you have any questions or concerns regarding the processing of your request, please contact Ms. Julie Williams at usarmy.redstone.amcom.mbx.g6-foia-office@mail.mil.

Sincerely,



Nathanael Causey
Chief Counsel

13 October 2021

MEMORANDUM FOR: Department of the Army, U.S. Army Aviation and Missile Command, AMSAM-CIG-I, AMCOM FOIA Office, Building 5301, 3rd floor, Redstone Arsenal, AL 35898-5000

SUBJECT: RE: AMCOM FOIA Number **FA-22-0008**. SUBJECT: Privacy Act Request: Communications between Colonel (COL) Martha L. Foss and, U.S. Army Aviation and Missile Command (AMCOM) Staff Judge Advocate (SJA) and Major General (MG) Douglas M. Gabram, AMCOM Commander, Concerning David J. Rudometkin

1. The undersigned received an official response from your office via certified mail on 12 October 2021. The official response indicates the undersigned sent a request dated 18 September 2021 and received by your office on October 4, 2021.

2. The undersigned is willing to pay for fees associated with this request, if those fees are above the automatic waiver provisions in AR 25-55 where more than 2 hours search time and more than 100 pages of documents are produced in response to the request. The undersigned has informed your office of the automatic waiver provision in his previous request for records.

3. The undersigned respectfully disagrees with your office's opinion concerning the Privacy Act, and again request a copy of his records, where there will be no charge for the first copy of a record provided to an individual to whom the record pertains (see AR 25-22, paragraph 6-7). Your official response indicates the following:

Additionally, your request will not be processed under the Privacy Act because the information you request is not contained in a Privacy Act System of Records, indexed, or retrieved by your name or personal identifier. 5 USC 552A(D)(1):

The undersigned does in fact have information contained in a system of records and is requesting information exclusively concerning him which is searchable in the U.S. Army enterprise email and is contained in files at the U.S. Army AMCOM Office of the Staff Judge Advocate. The AMCOM OSJA is required to maintain the undersigned's file for at least five years. As per AR 25-22, *The Army Privacy Program*, Chapter 3-1 defines "system of records" which is simply "a group of records, whatever the storage media (paper, electronic and so forth)..."*Id.* The emails generated by COL Foss or files maintained by U.S. Army AMCOM OSJA qualifies as a system of record. Also, based on the statute 5 U.S.C. § 552a(d)(1), if the undersigned were able to personally walk into the AMCOM OSJA, he would be able review his file or have the OSJA make a copy of his files or have NETCOM produce archived emails which exclusively concern the undersigned.

4. Based on statute and regulation cited concerning the Privacy Act, the undersigned respectfully requests your office reconsider your denial of processing his request under the Privacy Act. If your office denies processing the request under the Privacy Act, please provide a detailed justification on which you base the denial, in light of the information provided in Paragraph 3 of this memo.

EXHIBIT E 23 of 47

5. The undersigned is willing to pay up to \$40 for the production of documents, produced above the automatic waiver threshold indicated in AR 25-55 and if the provisions of AR 25-22, Chapters 3-1, Chapter 6-7 do not apply which also waives fees for the production of the first copy of the requested records exclusively concerning the undersigned.

6. POC is the undersigned at 1300 N. Warehouse Road, Fort Leavenworth, KS 66027

I declare under penalty of perjury under the laws of the United States of America the foregoing is true and correct, and I am the person named below. Executed on: 13 October 2021.

//original signed//
DAVID J. RUDOMETKIN
SSN: 543-98-9492



DEPARTMENT OF THE ARMY
UNITED STATES ARMY AVIATION AND MISSILE COMMAND
5300 MARTIN ROAD
REDSTONE ARSENAL AL 35898-5000

REPLY TO
ATTENTION OF

11 August 2021

AMAM-CIB-R

Mr. David Rudometkin
1300 N. Warehouse Road
Fort Leavenworth, KS 660237

Dear Mr. Rudometkin,

This letter serves as an interim response to your Freedom of Information Act request received by this office on May 24, 2021. Your request was assigned AMCOM FOIA case number FA-21-0121.

You request electronic correspondence, such as emails or .pdf documents between CPT Austin F. Cheng, austin.f.cheng2.mil@mail.mil and Captain Cade Shiozaki and the following, who are court reporters:

Ms. Shirley Barlow
Ms. Priscilla Jackson
Earnestine Jones

The search timeframe for these communications is between 1 May 2015 and 1 May 2019. The content of all messages between Captains Cheng and Shiozaki was exclusive to your case, United States v. Rudometkin.

The U.S. Army Aviation and Missile Command (AMCOM) has reviewed your request and found 449 pages of documents determined to be responsive to your request. We are referring your request and responsive documents to the following agency for Initial Denial Authority (IDA) Review and final response to you:

Office of the Judge Advocate General
2200 Army Pentagon
Washington, DC 20310-2200
usarmy.pentagon.hqda-otjag.mbx.foia@mail.mil

Upon receipt of your referral, the FOIA Office will advise you on how they will process your request. Additionally, they may refer your request to the appropriate subcomponent to review, make a release determination, and provide a formal response to you.

If you have any questions or concerns regarding this referral, please contact this office at usarmy.redstone.amcom.mbx.g6-foia-office@mail.mil

Sincerely,

Julie Williams

Julie Williams

Freedom of Information Act Office, AMCOM

9 September 2021

MEMORANDUM FOR Department of the Army, U.S. Army Aviation and Missile Command, AMSAM-CIG-I, AMCOM FOIA Office, Building 5301, 3rd floor, Redstone Arsenal, AL 35898-5000

SUBJECT: Reply to AMCOM FOIA number **FA-21-0121**; Freedom of Information Act (FOIA)/Privacy Act (PA) Request for Communications Between Captain (CPT) Austin Cheng and CPT Cade Shiozaki, Formerly of Headquarters and Headquarters Company (HHC), U.S. Army AMCOM Office of the Staff Judge Advocate (OSJA) and Court Reporters: Ms. Shirley Barlow, Priscilla Jackson and Earnestine Jones

1. This is a reply to AMCOM FOIA number **FA-21-0121**. The undersigned received two interim responses from your office. The first response dating **11 August 2021**, your office provided the following reply:

The [U.S. Army AMCOM] has reviewed your request and found 449 pages of documents determined to be responsive to your request. We are referring your request and responsive documents to the following agency for Initial Denial Authority (IDA) and Review and final response to you:

Office of the Judge Advocate General
2200 Army Pentagon
Washington, DC 20310-2200
usarmy.pentagon.hqda-otjag.mbx.foia@mail.mil

Upon receipt of your referral the FOIA Office will advise you on how to they will process your request. Additionally they may refer your request to the appropriate subcomponent to review, make a release determination, and provide a formal response to you.

2. Then your office on **18 August 2021**, provided another response (received by the undersigned on 9 September 2021), which apparently contradicted the first response for the records requested:

Responsive records were found. However, a review of the responsive records indicates that all are exempt, in whole, from full public disclosure under the authority of Exemptions 5 and 6 of the FOIA, 5 USC § 552. Exemption 5 of the FOIA protects communications between attorney's in preparation for litigation, and extends to members of the attorney's staff when acting under the attorney's direction. Exemption 6 of the FOIA protects individual privacy when disclosure of the personal information would constitute an unwarranted invasion of privacy or jeopardize the person's security.

3. The undersigned is seeking multiple points of clarification between these two responses:

a. The 11 August 2021 response referenced the OTJAG as the IDA. Is this the correct IDA or not correct?

b. The 18 August 2021, response appears to contradict the 11 August 2021 response. Is the AMCOM Legal Center now the IDA versus the OTJAG?

4. Exemption 5. The opinion provided by Mr. Nathanel Causey that the undersigned's requested records are exempt, in whole, from full public disclosure under the authority of Exemptions 5 and 6 of the FOIA, 5 USC § 552 is plain error on multiple points:

a. The request for information was made under the **Privacy Act** and/or the FOIA. Therefore, the reference to Exemption 5 is inapplicable because there is no, "full public disclosure" because the information requested exclusively pertains to the undersigned and made pursuant to the Privacy Act.

b. Any and all communications made by CPT Austin Cheng and/or CPT Cade Shiozaki to court-reporters (Ms. Shirley Barlow, Ms. Priscilla Jackson, and Earnestine Jones) exclusively concerned a verbatim transcript and complete record of the undersigned's official proceedings, *United States v. Rudometkin*. So, there is inherently no content or communications made in preparation of litigation. Their only relationship is ensuring the preparation and publication of a verbatim and complete transcript of proceedings exclusively concerning the undersigned. Therefore, FOIA Exemption 5 is inapplicable.

c. Ms. Shirley Barlow, Ms. Priscilla Jackson, and Earnestine Jones are not part of the AMCOM OSJA and definitely not a part of Austin Cheng's and/or CPT Cade Shiozaki's staff. Therefore, FOIA Exemption 5 is inapplicable.

d. Exemption 6 is also inappropriate, as all names are known within the requested information. If redactions of specific names are required under Exemption 6, the undersigned has no issue. However completely denying "any and all" information under Exemption 6 is inappropriate and there is an abundance of case law in support of this position — which Mr. Nathanael Causey should already know.

5. The undersigned provides a cautionary note to concerning the legal review of this request; Mr. Nathanael Causey has certain responsibilities as a supervisory attorney where upon review of the requested information discovers certain improprieties, he is ethically obligated to report such information under the American Bar Association Model Rules, and Army Regulation 27-26, and cannot use Exemption 5 as a shield from reporting or releasing the requested information to the undersigned.

6. The undersigned requests Mr. Causey reconsider his denial of the requested information. Because of his plain and gross error in the denial, the undersigned considers such an opinion and abuse of discretion, and will promptly file a FOIA/PA and or APA lawsuit for the requested information because the decision of your agency is arbitrary, capricious, or otherwise not in accordance with the law.

7. This request being made by the undersigned is for personal use pursuant to the Privacy Act (5 U.S.C. § 552a), not commercial, and all information will be used for legal purposes.

8. The undersigned is not willing to pay fees associated with this request, because this request for information concerns the undersigned and made pursuant to the Privacy Act, (5 U.S.C. § 552a), there should not be any fees associated with it. IAW AR 340-21, *The Army Privacy Program*, "normally, there will be no charge for the first copy of a record provided to an individual to whom the record pertains." In addition, disclosure of the requested information is also within the public interest. "Public interest is official information that sheds

light on an agency's performance of its statutory duties, which informs citizens about what their government is doing. ...and likely contribute significantly to public understanding of the operations or activities of the government." In this case, the requested information will likely provide information on the misconduct of two or more government attorneys obstructing justice (see 18 U.S.C. § 1505). Because such information is within the public interest, the undersigned humbly requests a waiver, if the provision under the Privacy Act is somehow not adequate.

9. In the event this request is denied in whole or in part, please provide a detailed justification for withholding the records and the exemptions claimed.

10. The point of contact is the undersigned at 1300 N. Warehouse Road, Fort Leavenworth, KS 66027

I declare under penalty of perjury under the laws of the United States of America the foregoing is true and correct, and I am the person named below. Executed on 9 September 2021.

//original signed//
DAVID J. RUDOMETKIN
SSN: 543-98-9492
DOB: 4-1-71



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
UNITED STATES ARMY AVIATION AND MISSILE COMMAND
5300 MARTIN ROAD
REDSTONE ARSENAL AL 35898-5000

01 September 2021

AMAM-CIB-R

Mr. David Rudometkin
1300 N. Warehouse Road
Fort Leavenworth, KS 66027

Dear Mr. Rudometkin,

This letter formally responds to your Freedom of Information Act (FOIA) request received by this office on May 24, 2021. Your request was assigned AMCOM FOIA number FA-21-0118. Please reference this number when communicating with this office.

You request documentation uploaded by the U.S. Army AMCOM OSJA to the U.S. Army Review Boards Agency (ARBA) SharePoint™ site, concerning David J. Rudometkin. This upload was performed by Lieutenant Colonel Daniel D. Derner or CPT Benjamin Young (AMCOM, Chief, Military Justice) on or about 3 June 2020.

The U.S. Army Aviation and Missile Command reviewed your request. We are not the owner of record for this request; therefore, your request is being referred to the following agency for review and final response to you:

Army Board for Correction of Military Records
Army Review Boards Agency (ARBA)
<http://arba.army.pentagon.mil>
Office: 703-545-5747

Upon receipt of your request, the FOIA Office will advise you on how they will process your request. Additionally, they may refer your request to the appropriate sub-component to review, make a release determination, and provide a formal response to you.

If you have any questions or concerns regarding this referral, please contact this office at usarmy.redstone.amcom.mbx.g6-foia-office@mail.mil

Sincerely,

Julie Williams

Julie Williams

Freedom of Information Act Office, AMCOM

9 September 2021

MEMORANDUM FOR Department of the Army, U.S. Army Aviation and Missile Command, AMAM-CIB-R, AMCOM FOIA Office, Building 5301, 3rd floor, Redstone Arsenal, AL 35898-5000

SUBJECT: Reply to AMCOM FOIA Number **FA-21-0118**: Freedom of Information Act/Privacy Act (FOIA/PA) Request: Documentation uploaded by the AMCOM Office of the Staff Judge Advocate (OSJA) to the Army Review Boards Agency, Sharepoint™ site, concerning David J. Rudometkin, SSN: 543-98-9492

1. This is a request under FOIA/PA and a reply to your office's official response dated 1 September 2021, AMCOM FOIA Number **FA-21-0118**. Your office indicated the following:

The U.S. Army Aviation and Missile Command reviewed your request. We are not the owner of record for this request; therefore, your request is being referred to the following agency for review and final response to you:

Army Board for Correction of Military Records
Army Review Boards Agency (ARBA)
<http://arba.army.pentagon.mil>
Office: 703-545-5747

2. This reply is erroneous on multiple points:

a. The undersigned's original request dated 2 May 2021 (encl 1), clearly states a request for documentation uploaded **by the U.S. Army AMCOM OSJA** to the U.S. Army Review Boards Agency (ARBA) Sharepoint™ site, concerning David J. Rudometkin, SSN: 543-98-9492. Therefore, the originator of the communication is obviously the AMCOM OSJA, not the ARBA.

b. The undersigned specifically stated the upload of information concerning him was performed by Lieutenant Colonel Daniel D. Derner or CPT Benjamin Young (AMCOM, Chief, Military Justice) on or about 3 June 2020. Therefore, the originator of the communication is obviously Lieutenant Colonel Daniel D. Derner or CPT Benjamin Young, not the ARBA.

c. The undersigned specifically stated the date "3 June 2020" where Lieutenant Colonel Daniel D. Derner or CPT Benjamin Young uploaded the information concerning the undersigned. This date was specified for a reason, because the undersigned has an email (encl 2) which specifically mentions this date and the actions performed by CPT Benjamin Young. Therefore, the originator of the communication is obviously Lieutenant Colonel Daniel D. Derner or CPT Benjamin Young, not the ARBA.

3. The U.S. Army AMCOM and its OSJA have not exercised due diligence in the search for requested records. The search for such records should be readily and easily accessible; not only has the AMCOM OSJA unnecessarily delayed the response to the undersigned's request (which was received by your office on 24 May 2021), but appears to avoid its statutory obligations under the Privacy Act (5 U.S.C. § 552a) and the Freedom of Information Act (5 U.S.C. § 552), which is itself a violation of the Administrative Procedure Act (5 U.S.C. § 701 et seq.)

EXHIBIT E 31 to 47

4. In light of the facts, U.S. Army AMCOM OSJA is undeniably the originator of the information requested, not the ARBA. The undersigned again requests information as stated on his original request for:

documentation uploaded by the U.S. Army AMCOM OSJA to the U.S. Army Review Boards Agency (ARBA) Sharepoint™ site, concerning David J. Rudometkin, SSN: 543-98-9492. This upload was performed by Lieutenant Colonel Daniel D. Derner or CPT Benjamin Young (AMCOM, Chief, Military Justice) on or about 3 June 2020

5. In addition, the undersigned requests any email communications made by the U.S. Army AMCOM OSJA directly in response to AMCOM FOIA Number **FA-21-0118**, which is the undersigned's original request. Undoubtedly, there are electronic communications made, as it is beyond question the information requested originated from the AMCOM OSJA.

6. This request being made by the undersigned is for personal use, not commercial and all information will be used for legal purposes.

7. I am not willing to pay fees associated with this request, because this request for information concerns the undersigned and made pursuant to the Privacy Act, there should not be any fees associated with it. Also, the undersigned estimates there should be no more than 2 hours of search time and less than 100 pages of records, so the "automatic waiver" of fees applies. If in the highly unlikely event there will be fees beyond the scope of the Privacy Act and the automatic fee waiver provision in AR 25-55, the undersigned humbly requests a waiver. Disclosure of the requested information is in the best interest of military justice and will contribute significantly to the transparency and public trust of the military justice system.

8. In the event this request is denied in whole or in part, please provide a detailed justification for withholding the records and the exemptions claimed on which your denial is based.

9. The point of contact is the undersigned at 1300 N. Warehouse Road, Fort Leavenworth, KS 66027

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, the enclosures are true and accurate representations, and I am the person named below. Executed on: 9 September 2021

//original signed//
DAVID J. RUDOMETKIN
SSN: 543-9492

12 October 2021

MEMORANDUM FOR: Department of the Army, U.S. Army Aviation and Missile Command, AMSAM-CIG-I, AMCOM FOIA Office, Building 5301, 3rd floor, Redstone Arsenal, AL 35898-5000

SUBJECT: RE: AMCOM FOIA Number **FA-22-0007**, Reply to AMCOM FOIA Number **FA-21-0118**: Freedom of Information Act/Privacy Act (FOIA/PA) Request: Documentation uploaded by the AMCOM Office of the Staff Judge Advocate (OSJA) to the Army Review Boards Agency, Sharepoint™ site, concerning David J. Rudometkin, SSN: 543-98-9492

1. The undersigned received an official response from your office via certified mail on 12 October 2021. The official response indicates the undersigned sent a request dated 9 September 2021 and received by your office on October 4, 2021.

2. The undersigned notes there is an error to your official response. Your office wrongfully closed **FA-21-0118**. The undersigned provided your office evidence in the form of an email clearly indicating the AMCOM OSJA is the owner of the records requested, as per paragraph 2(c) of the 9 September 2021 reply to FA-21-0118:

The undersigned specifically stated the date "3 June 2020" where Lieutenant Colonel Daniel D. Derner or CPT Benjamin Young uploaded the information concerning the undersigned. This date was specified for a reason, because **the undersigned has an email (encl 2) which specifically mentions this date and the actions performed by CPT Benjamin Young. Therefore, the originator of the communication is obviously Lieutenant Colonel Daniel D. Derner or CPT Benjamin Young, not the ARBA.**

4. The undersigned notes an additional error in your official response concerning the following:

Also in order for us to conduct a proper search, please provide the names and email addresses of the individuals at the AMCOM OSJA that you would like searched.

The undersigned already provided the names of LTC Daniel Derner and CPT Benjamin Young in the reply to **FA-21-0118**.

5. The undersigned is willing to pay for fees associated with this request, if those fees are above the automatic waiver provisions in AR 25-55 where more than 2 hours search time and more than 100 pages of documents are produced in response to the request. The undersigned has informed your office of the automatic waiver provision in his previous request for records.

6. The undersigned respectfully disagrees with your office's opinion concerning the Privacy Act, and again request a copy of his records, where there will be no charge for the first copy of a record provided to an individual to whom the record pertains (see AR 25-22, paragraph 6-7). Your official response indicates the following:

EXHIBIT E 33 of 47

Additionally, your request will not be processed under the Privacy Act because the information you request is not contained in a Privacy Act System of Records, indexed, or retrieved by your name or personal identifier. 5 USC 552A(D)(1):

The undersigned does in fact have information contained in a system of records and is requesting information exclusively concerning him which is searchable in an email and is contained in files at the U.S. Army AMCOM Office of the Staff Judge Advocate. The AMCOM OSJA is required to maintain the undersigned's file for at least five years. As per AR 25-55, *The Army Privacy Program*. Chapter 3-1 of this regulation defines "system of records" which is simply "a group of records, whatever the storage media (paper, electronic and so forth)..."Id. Certainly, emails generated by LTC Derner or CPT Young or files maintained by U.S. Army AMCOM OSJA and uploaded to the ARBA Sharepoint qualifies as a system of record. Also, based on the statute 5 U.S.C. § 552a(d)(1), if the undersigned were able to personally walk into the AMCOM OSJA, he would be able review his file and have the OSJA make a copy or have LTC Derner produce emails concerning the subject matter.

7. Based on statute and regulation cited in the Privacy Act, the undersigned respectfully requests your office reconsider your denial of processing his request under the Privacy Act. If your office denies processing the request under the Privacy Act, please provide a detailed justification on which you base the denial, in light of the information provided in Paragraph 6 of this memo.

8. POC is the undersigned at 1300 N. Warehouse Road, Fort Leavenworth, KS 66027

I declare under penalty of perjury under the laws of the United States of America the foregoing is true and correct, and I am the person named below. Executed on: 12 October 2021.

//original signed//
DAVID J. RUDOMETKIN
SSN: 543-98-9492

EXHIBIT E 34 of 47

From: [REDACTED] LTC USARMY AMCOM (USA)
To: [REDACTED] CPT USARMY AMCOM (USA)
Subject: RE: Rudometkin Update (UNCLASSIFIED)
Date: Wednesday, June 3, 2020 11:26:07 AM

CLASSIFICATION: UNCLASSIFIED

[REDACTED] If
not, that's fine but if we can that would be good.

-----Original Message-----

From: [REDACTED] CPT USARMY AMCOM (USA)
Sent: Wednesday, June 3, 2020 10:50 AM
To: [REDACTED] LTC USARMY AMCOM (USA) [REDACTED]@mail.mil>
Cc: [REDACTED] SFC USARMY AMCOM (USA) [REDACTED]@mail.mil>
Subject: FW: Rudometkin Update (UNCLASSIFIED)

CLASSIFICATION: UNCLASSIFIED

Sir,

For your SA. I spoke with [REDACTED] this morning, as expected, and we were able to get all of the documents added to the ARBA sharepoint.

Very respectfully,

[REDACTED]

[REDACTED]

CPT, JA
Trial Counsel & Special Assistant US Attorney Office of the Staff Judge
Advocate Redstone Arsenal, AL
Office: [REDACTED]

CONFIDENTIALITY NOTICE: This electronic transmission may contain privileged information, attorney work-product and/or communications prepared in anticipation of litigation. This information is protected from disclosure under the Freedom of Information Act, 5 USC Sec. 552, and other applicable authority. Do not forward or release this communication outside of DoD channels without the prior approval of the sender. If this transmission is received in error, please notify the sender and delete all copies of this message.

-----Original Message-----

From: [REDACTED] CPT USARMY AMCOM (USA)
Sent: Wednesday, June 3, 2020 10:40 AM
To: Neumann, Dana D MAJ USARMY AVNCOE (USA) [REDACTED]@mail.mil>
Subject: Rudometkin Update (UNCLASSIFIED)

CLASSIFICATION: UNCLASSIFIED

Ma'am,

This morning I was able to finish submitting all the required RFGOS documents to HRC/ARBA for the Rudometkin case. I was told that it would likely take 2-3 months before a ARBA makes a final decision, possibly even longer due to COVID-19.

As always, I will let you know if I have any further updates or if I am told that more paperwork is necessary.

If I remember correctly, the last time we spoke you said you believe you will PCS before ARBA will likely take action. If so, do you already know who will replace you on this case?

Very respectfully,

[REDACTED]

[REDACTED]

CPT, JA
Trial Counsel & Special Assistant US Attorney Office of the Staff Judge
Advocate Redstone Arsenal, AL
Office: [REDACTED]

CONFIDENTIALITY NOTICE: This electronic transmission may contain privileged information, attorney work-product and/or communications prepared in anticipation of litigation. This information is protected from disclosure under the Freedom of Information Act, 5 USC Sec. 552, and other applicable authority. Do not forward or release this communication outside of DoD channels without the prior approval of the sender. If this transmission is received in error, please notify the sender and delete all copies of this message.

CLASSIFICATION: UNCLASSIFIED

CLASSIFICATION: UNCLASSIFIED

CLASSIFICATION: UNCLASSIFIED

2 May 2021

MEMORANDUM FOR Department of the Army, U.S. Army Aviation and Missile Command, AMAM-CIB-R, AMCOM FOIA Office, Building 5301, 3rd floor, Redstone Arsenal, AL 35898-5000

SUBJECT: Freedom of Information Act/Privacy Act (FOIA/PA) Request: Documentation uploaded by the AMCOM Office of the Staff Judge Advocate (OSJA) to the Army Review Boards Agency, Sharepoint™ site, concerning David J. Rudometkin, SSN: 543-98-9492

1. This is a request under FOIA/PA. This request is the documentation uploaded by the U.S. Army AMCOM OSJA to the U.S. Army Review Boards Agency (ARBA) Sharepoint™ site, concerning David J. Rudometkin, SSN: 543-98-9492. This upload was performed by Lieutenant Colonel Daniel D. Derner or CPT Benjamin Young (AMCOM, Chief, Military Justice) on or about 3 June 2020.
2. This request being made by the undersigned is for personal use, not commercial and all information will be used for legal purposes.
3. I am not willing to pay fees associated with this request, because this is a personal use request there should not be any fees associated with it. If you estimate there will be fees, the undersigned humbly requests a waiver. Disclosure of the requested information is in the best interest of military justice and will contribute significantly to the transparency and public trust of the military justice system.
4. In the event that this request is denied in whole or in part, please provide a detailed justification for withholding the records and the exemptions claimed on which your denial is based.
5. The point of contact is the undersigned at 1300 N. Warehouse Road, Fort Leavenworth, KS 66027 or Pearl Rudometkin, (256) 399-7147, pearlrudometkin@gmail.com, 241 Monterey Cir. Gadsden, AL 35901.
6. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named below. Executed on: 2 May 2021

//original signed//
DAVID J. RUDOMETKIN
SSN: 543-9492

EXHIBIT E 37 of 47

9 November 2021

MEMORANDUM FOR Department of the Army, U.S. Army Aviation and Missile Command, AMAM-CIB-R, AMCOM FOIA Office, Building 5301, 3rd floor, Redstone Arsenal, AL 35898-5000

SUBJECT: **RE: Appeal**, AMCOM FOIA Number **FA-21-0104**. SUBJECT: Privacy Act (PA) Request for Communications from U.S. Army AMCOM Office of the Staff Judge Advocate (OSJA) to the Fort Campbell, KY and 101st Airborne Division OSJA and the Trial Counsel Assistance Program (TCAP)

1. The undersigned received an appeal notification from your office, dated October 20, 2021 concerning AMCOM FA-21-0104. This concerns a request from the undersigned dating from March 2021 and your office provided an interim response on 15 April 2021.
2. The undersigned did not submit an appeal. The undersigned merely brought to the attention of your office it did not exercise due diligence in the search for requested records. This was reflected in two memos dating 1 September 2021 (encl 1) and 12 October 2021 (encl 2).
4. The undersigned provided your office a memorandum as evidence communications were made by LTC Daniel D. Derner and CPT Benjamin Young concerning the undersigned. SUBJECT: Post-Trial Processing Time, *United States v. Major David Rudometkin*, dated 4 November 2020. This memo had a specific quote showing records exist, "Therefore Trial Counsel frequently contacted outside offices, such as the 101st Airborne Division OSJA and TCAP, for assistance due to the complexities of this case." Id.
5. Apparently your office determined that when it does not desire to search for records, although such records exist, that an "appeal" is in order to the Secretary of the Army's General Counsel. This is an abuse of discretion by your office — Congress did not intend such actions by agencies in the FOIA statute to delay productino, when your agency has the records requested.
6. Based on evidence previously submitted that the requested records exist, the undersigned again requests your office produce the records requested.
7. The undersigned is willing to pay for fees.
8. In the event this request is denied in whole or in part, please provide a detailed justification for withholding the records and the exemptions claimed on which your denial is based.
9. The point of contact is the undersigned at 1300 N. Warehouse Road, Fort Leavenworth, KS 66027

I declare under penalty of perjury under the laws of the United States of America the foregoing is true and correct, and I am the person named below.

//original signed//
DAVID J. RUDOMETKIN

EXHIBIT E 38 of 47

12 October 2021

MEMORANDUM FOR: Department of the Army, U.S. Army Aviation and Missile Command, AMSAM-CIG-I, AMCOM FOIA Office, Building 5301, 3rd floor, Redstone Arsenal, AL 35898-5000

SUBJECT: RE: AMCOM FOIA Number **FA-22-0006**, SUBJECT: Privacy Act (PA) Request for Communications from U.S. Army AMCOM Office of the Staff Judge Advocate (OSJA) to the Fort Campbell, KY and 101st Airborne Division OSJA and the Trial Counsel Assistance Program (TCAP)

1. The undersigned received an official response from your office via certified mail on 12 October 2021. The official response indicates the undersigned sent a request dated 9 September 2021 and received by your office on October 4, 2021.
2. The undersigned notes there is an error to your official response, the undersigned sent a request for the information (see subject) dated **1 September 2021**, not 9 September. The original request is enclosed. Also, of note **FA-22-0006 apparently overlaps with FA-21-0104**. The undersigned is uncertain if a new request was accidentally generated by your office.
3. The undersigned notes there is another error in your official response in the second paragraph.

You request electronic communications made by LTC Daniel C. Cerner or Captain Benjamin Young, with the Trial Counsel Assistance Program (TCAP). Where the subject of the notes, notes, letters, memorandums or electronic correspondence there appears the name "Rudometkin"..

This is not what was requested on the 1 September 2021 request. The undersigned specifically stated the following:

Request for any written notes, letters, memorandums and any electronic correspondence such as .pdf files or emails sent, received, or forwarded by Lieutenant Colonel Daniel D. Derner (the AMCOM SJA) and CPT Benjamin Young (AMCOM, Chief, Military Justice) to and from the Fort Campbell, KY and 101st Airborne Division OSJA where the subject of the notes, letters, memorandums, or electronic correspondence contains the name of "Rudometkin" anywhere within the body of such correspondence there appears the name of "Rudometkin."

Your office has omitted the above paragraph in your official response.

4. The undersigned notes an additional error in your official response concerning the following:

Also in order for us to conduct a proper search, please provide the names and email addresses or the employees of the Trial Counsel Assistance Program (TCAP) that you would like searched

As per the 1 September 2021 request, the undersigned asserted the AMCOM OSJA did not exercise due diligence in their search for records and provided a memo indicating communications were in fact made by the AMCOM OSJA to the TCAP Program and the 101st Airborne Division OSJA at Fort Campbell, KY. The undersigned does not know of the exact names of the individuals in these offices, however based on direct evidence in a memo generated by the AMCOM OSJA, the undersigned requested LTC Derner and CPT Young be queried.

5. The undersigned is willing to pay for fees associated with this request, if those fees are above the automatic waiver provisions in AR 25-55 where more than 2 hours search time and more than 100 pages of documents are produced in response to the request. The undersigned has informed your office of the automatic waiver provision in his previous request for records.

6. The undersigned respectfully disagrees with your office's opinion concerning the Privacy Act, and again request a copy of his records, where there will be no charge for the first copy of a record provided to an individual to whom the record pertains (see AR 25-22, paragraph 6-7). Your official response indicates the following:

Additionally, your request will not be processed under the Privacy Act because the information you request is not contained in a Privacy Act System of Records, indexed, or retrieved by your name or personal identifier. 5 USC 552A(D)(1):

The undersigned does in fact have information contained in a system of records and is requesting information exclusively concerning him which is searchable in an email and is contained in files at the U.S. Army AMCOM Office of the Staff Judge Advocate. The AMCOM OSJA is required to maintain the undersigned's file for at least five years. As per AR 25-55, *The Army Privacy Program*. Chapter 3-1 of this regulation defines "system of records" which is simply "a group of records, whatever the storage media (paper, electronic and so forth)..."Id. Certainly, emails generated by LTC Derner or CPT Young or files maintained by U.S. Army AMCOM OSJA qualifies as a system of record. Also, based on the statute 5 U.S.C. § 552a(d)(1), if the undersigned were able to personally walk into the AMCOM OSJA, he would be able review his file and have the OSJA make a copy or have LTC Derner produce emails concerning the subject matter.

7. Based on statute and regulation cited in the Privacy Act, the undersigned respectfully requests your office reconsider your denial of processing his request under the Privacy Act. If your office denies processing the request under the Privacy Act, please provide a detailed justification on which you base the denial, in light of the information provided in Paragraph 6 of this memo.

8. POC is the undersigned at 1300 N. Warehouse Road, Fort Leavenworth, KS 66027

I declare under penalty of perjury under the laws of the United States of America the foregoing is true and correct, and I am the person named below. Executed on: 12 October 2021.

//original signed//
DAVID J. RUDOMETKIN

EXHIBIT E 40 of 47

1 September 2021

MEMORANDUM FOR Department of the Army, U.S. Army Aviation and Missile Command, AMAM-CIB-R, AMCOM FOIA Office, Building 5301, 3rd floor, Redstone Arsenal, AL 35898-5000

SUBJECT: Privacy Act (PA) Request for Communications from U.S. Army AMCOM Office of the Staff Judge Advocate (OSJA) to the Fort Campbell, KY and 101st Airborne Division OSJA and the Trial Counsel Assistance Program (TCAP)

1. On 7 March 2021, the undersigned generated a request under the FOIA/PA for any written notes, letters, memorandums and any electronic correspondence such as .pdf files or emails sent, received, or forwarded by Lieutenant Colonel Daniel D. Derner (the AMCOM SJA) and CPT Benjamin Young (AMCOM, Chief, Military Justice) to and from the Fort Campbell, KY and 101st Airborne Division OSJA where the subject of the notes, letters, memorandums, or electronic correspondence contains the name of "Rudometkin" anywhere within the body of such correspondence there appears the name of "Rudometkin."

2. Your office generated an interim response dated 15 April 2021, and assigned an AMCOM FOIA Tracking Number **FA-21-0104**. Your interim response also indicated the undersigned's request lacked the necessary information required, and in order to properly process the request, you requested the names of the people at Fort Campbell, KY and 101st Airborne Division OSJA that you would like searched along with a timeframe for the communications.

3. The undersigned provided a list of names and date ranges. Later, your office replied that there were no records responsive to the request.

4. The undersigned asserts that perhaps your office or the AMCOM OSJA have not applied due diligence in searching records responsive to the request. The undersigned has evidence communications were made by LTC Daniel D. Derner and CPT Benjamin Young which is contained in a memorandum (encl) SUBJECT: Post-Trial Processing Time, United States v. Major David Rudometkin, from the AMCOM OSJA, dated 4 November 2020:

Therefore Trial Counsel frequently contacted outside offices, such as the 101st Airborne Division OSJA and TCAP, for assistance due to the complexities of this case.

Based on this memo, it is abundantly clear electronic communications were made by the AMCOM OSJA to and from the 101st Airborne Division OSJA and (TCAP) the Trial Counsel Assistance Program. The undersigned again requests any and all electronic communication made by LTC Derner and CPT Young between the organizations listed in the memo. At this point in time, the undersigned does not have the specific names of all the individuals LTC Derner and CPT Young made communications concerning the undersigned and his case, however this can be easily obtained by querying them, as LTC Derner and CPT Young will be intimately familiar with the subject matter.

5. The date range for the requested communications is between 15 October 2019 and 1 April 2021.

6. This request being made by the undersigned is for personal use under the Privacy Act.

EXHIBIT E 41 of 47

7. This request is not for commercial purposes and all information will be used for legal purposes only. The undersigned is willing to pay fees associated with this request. Also, because this request is made pursuant to the Privacy Act. IAW AR 340-21 *The Army Privacy Program*, "normally, there will be no charge for the first copy of a record provided to an individual to whom the record pertains."

8. Also, disclosure of the requested information is also within the public interest. "Public interest is official information that sheds light on an agency's performance of its statutory duties, which informs citizens about what their government is doing. ...and likely contribute significantly to public understanding of the operations or activities of the government." In this case the requested information will reveal to the public the processes involving the AMCOM OSJA regulatory/statutory duties concerning post-trial processing within the military justice system, and provide transparent explanations as to why the AMCOM OSJA had to recruit so much help in what should be "routine processes." Again, the information will contribute significantly to the transparency and public trust of the military justice process.

9. Additionally, (if applicable) if the expected amount of records produced is below 2 hours of search time and 100 pages, the "automatic waiver" provision in Army Regulation 25-55 applies for a waiver of fees. If you estimate the records produced will exceed 100 pages/2hrs of research time, and there will be fees, the undersigned humbly requests a waiver, as disclosure of the requested information is in the public interest as stated earlier. Also, if such waiver is not granted, the undersigned respectfully requests a full explanation from your agency as to why producing the requested records is not within the public interest.

10. In the event this request is denied in whole or in part, please provide a detailed justification for withholding the records and the exemptions claimed on which your denial is based.

11. The point of contact is the undersigned at 1300 N. Warehouse Road, Fort Leavenworth, KS 66027

I declare under penalty of perjury under the laws of the United States of America the foregoing is true and correct, and I am the person named below.

//original signed//
DAVID J. RUDOMETKIN
SSN: 543-98-9492



DEPARTMENT OF THE ARMY
UNITED STATES ARMY AVIATION AND MISSILE COMMAND
5300 MARTIN ROAD
REDSTONE ARSENAL AL 35898-5000

June 14, 2022

Office of Chief Counsel

Mr. David Rudometkin
1300 N. Warehouse Road
Fort Leavenworth, KS 66027

Dear Mr. Rudometkin:

This letter is in response to your perfected Privacy Act request dated October 12, 2021, sent to the United States Army Aviation and Missile Command (AMCOM) Freedom of Information Act (FOIA) Office. The AMCOM FOIA office assigned FOIA number FA-22-0004 to your request.

You request government records maintained by the U.S. Army AMCOM Office of the Staff Judge Advocate which were intended for use in the official proceedings of United States v. Rudometkin. This is a request for investigative or discovery files/records such as: documents, books, papers, photographs, statements, electronic communications (such as .pdf documents, emails, etc.) which are within the possession, custody, or control of the AMCOM OSJA which were intended for use as evidence involving the official proceedings of United States v. Rudometkin.

Responsive records were found. However, these records, exempt from the disclosure provisions of the Privacy Act, are being withheld in full from public disclosure under the authority of 5 USC 552a(d)(5): "[N]othing in this [Act] shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding." As these records were compiled in anticipation of a court-proceeding, 5 USC 552a(d)(5) exempts them from the Privacy Act's general access provisions.

You have the right to appeal this response to the Secretary of the Army. The Commanding General, U.S. Army Materiel Command, is the Initial Denial Authority, and by position, I have been delegated the Initial Denial Authority. You should send your appeal to this office, and in turn, we will forward it to the Army General Counsel, the designated Army Privacy Act and FOIA appellate authority. To meet the deadline for the appeal, the appeal letter must be received by this office and forwarded to the Secretary of the Army within sixty (60) calendar days of the date of this letter.

Please send correspondence to the following address:

Headquarters, U.S. Army Aviation and Missile Command
ATTN: Legal Office
5300 Martin Road
Redstone Arsenal, AL 35898-5000

For any further assistance or to discuss any aspect of your request, you have the right to contact the Army FOIA/PA Public Liaison Officer, Alecia Bolling, by email at usarmy.hqda-oaa-ahs.mbx.rmda-foia-public-liaison@mail.mil or by phone at (703) 428-6238. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration (NARA) to inquire about the FOIA/PA mediation services they offer. The contact information for OGIS is as follows: NARA-OGIS, 8601 Adelphi Road-OGIS, College Park, MD 20740-6001, email at ogis@nara.gov, telephone number (202) 741-5570 toll free at (877) 684-6448 or facsimile at (202) 741-5769.

Should you have any questions or concerns regarding the processing of your request, please contact Ms. Julie Williams at email: usarmy.redstone.amcom.mbx.g6-foia-office@mail.mil.

Sincerely,



Nathanael Causey
Chief Counsel

12 October 2021

MEMORANDUM FOR: Department of the Army, U.S. Army Aviation and Missile Command, AMSAM-CIG-I, AMCOM FOIA Office, Building 5301, 3rd floor, Redstone Arsenal, AL 35898-5000

SUBJECT: RE: AMCOM FOIA Number **FA-22-0004**, Request for Investigative Files Maintained by the U.S. Army AMCOM OSJA

1. The undersigned received an official response from your office via certified mail on 12 October 2021. The official response indicates the undersigned sent a request dated September 9, 2021 and received by your office on October 4, 2021.

2. The official response also indicated the following: "We are unable to process your request at this time. In accordance with Army Regulation 25-55, the requestor must acknowledge their willingness to pay any FOIA fees associated with the processing of the request in order for the request to be processed."

3. The undersigned is willing to pay for fees associated with this request, if those fees are above the automatic waiver provisions in AR 25-55 where more than 2 hours search time and more than 100 pages of documents are produced in response to the request. The undersigned has informed your office of the automatic waiver provision in his previous request for records.

4. The undersigned respectfully disagrees with your office's opinion concerning the Privacy Act, and again request a copy of his records, where there will be no charge for the first copy of a record provided to an individual to whom the record pertains (see AR 25-22, paragraph 6-7). Your official response indicates the following:

Additionally, your request will not be processed under the Privacy Act because the information you request is not contained in a Privacy Act System of Records, indexed, or retrieved by your name or personal identifier. 5 USC 552A(D)(1):

The undersigned does in fact have information contained in a system of records and is requesting information exclusively concerning him which is maintained in a file at the U.S. Army AMCOM Office of the Staff Judge Advocate. The AMCOM OSJA is required to maintain the undersigned's file for at least five years. As per AR 25-55, *The Army Privacy Program*, Chapter 3-1 of this regulation defines "system of records" which is simply "a group of records, whatever the storage media (paper, electronic and so forth)..." Id. Certainly, the undersigned's file maintained at the U.S. Army AMCOM OSJA qualifies as a system of record. Also, based on the statute 5 U.S.C. § 552a(d)(1), if the undersigned were able to personally walk into the AMCOM OSJA, he would be able review his file and have them make a copy.

5. Based on statute and regulation cited in the Privacy Act, the undersigned respectfully requests your office reconsider your denial of processing his request under the Privacy Act. If your office denies processing the request under the Privacy Act, please provide a detailed justification on which you base the denial, in light of the information provided in Paragraph 4 of this memo.

EXHIBIT E 45 of 47

6. If the records produced are beyond the "automatic exemption" and other records do not fall within the Privacy Act, the undersigned is willing to pay up to \$80 for records which fall outside these two provisions.

7. POC is the undersigned at 1300 N. Warehouse Road, Fort Leavenworth, KS 66027

I declare under penalty of perjury under the laws of the United States of America the foregoing is true and correct, and I am the person named below. Executed on: 12 October 2021.

//original signed//
DAVID J. RUDOMETKIN
SSN: 543-98-9492

EXHIBIT E 46 of 47

21 August 2021

MEMORANDUM FOR U.S. Army Aviation and Missile Command, AMSAM-CIG-I,
AMCOM FOIA Office, Building 5301, 3rd floor, Redstone Arsenal, AL 35898-5000

SUBJECT: Privacy Act (5 U.S.C. § 552a) Request for Government Records,
Maintained by U.S. Army AMCOM Office of the Staff Judge Advocate, 3439 Honest
John Road, Redstone Arsenal, AL 35898

1. This is a request under the Privacy Act. The undersigned requests a copy of any and all government records maintained by the U.S. Army AMCOM Office of the Staff Judge Advocate which were intended for use in the official proceedings of *United States v. Rudometkin*. This is a request for investigative or discovery files/records such as: documents, books, papers, photographs, statements, electronic communications (such as .pdf documents, emails, etc.) which are within the possession, custody, or control of the AMCOM OSJA which were intended for use as evidence involving the official proceedings of *United States v. Rudometkin*. This is not a request for the official record of those proceedings, such records are maintained by the Army Court of Criminal Appeals.

2. This request is not for commercial purposes and all information will be used for legal purposes only. The undersigned is not willing to pay fees associated with this request, because this is a Privacy Act request; In accordance with Army Regulation (AR) 340-21, *The Army Privacy Program*, "normally, there will be no charge for the first copy of a record provided to an individual to whom the record pertains." If fees are assessed, the undersigned respectfully requests a full explanation from your agency.

3. In the event this Privacy Act request is denied in whole or in part, please provide a detailed justification for withholding the records and the exemptions claimed on which a denial is based.

4. The POC is the undersigned at 1300 N. Warehouse Road, Fort Leavenworth, KS 66027

I declare under penalty of perjury under the laws of the United States of America the foregoing is true and correct (28 U.S.C. § 1746), and I am the person named below.
Executed on: 21 August 2021

//original signed//
DAVID J. RUDOMETKIN
SSN: 543-98-9492

EXHIBIT E 47 of 47