

Exhibit A

SPARACINO
— PLLC

1920 L Street, N.W., Suite 535
Washington, D.C. 20036
(202) 629-3530

May 27, 2020

Via Electronic Mail (OSD.FOIA-APPEAL@mail.mil)

Joo Chung, Director of Oversight and Compliance, Office of the Secretary of Defense
ODCMO Directorate for Oversight and Compliance
4800 Mark Center Drive
ATTN: DPCLTD
FOIA Appeals, Mailbox #24
Alexandria, VA 22350-1700

Re: Freedom of Information Act Appeal – CENTCOM Case No. 19-0021

Dear Ms. Chung,

This is an appeal under the Freedom of Information Act, 5 U.S.C. § 552 *et seq.* (“FOIA”).

My law firm represents over 1,200 American veterans and civilians, and their families (including over 180 Gold Star Families), in connection with deaths and injuries caused by terrorists in Iraq. On behalf of our clients, we have filed a lawsuit against pharmaceutical companies that contracted with the Iraqi Ministry of Health, alleging that they funded terrorists who killed or wounded thousands of Americans in Iraq. As part of our investigation of these allegations, we submitted a FOIA request to United States Central Command (“CENTCOM”) for two specific, 2007 reports regarding U.S. military, political, and counterinsurgency efforts in Iraq, and certain documents related to or referenced in these reports. We sought these records on behalf of our clients who have made great sacrifices in connection with America’s involvement with Iraq.

The chronology of relevant events is as follows:

- On October 30, 2018, Dustin Lee of Sparacino PLLC (“SPLLC”) submitted a FOIA request and two exhibits thereto (“Request No. 19-0021”) to CENTCOM’s FOIA Requester Service Center by electronic mail. Request No. 19-0021 is attached hereto as **Exhibit 1**. It specifically describes the records sought, including citation to and attachment of media reports depicting the requested reports, providing relevant date ranges, and naming ten members of the relevant committees or “teams” tasked with preparing the reports and/or their contents. *Id.*
- On November 13, 2018, SPLLC received a letter (dated November 2, 2018) from CENTCOM signed by Major Joseph Murphy, Chief of the Command Records Branch (“November 2, 2018 Letter,” attached hereto as **Exhibit 2**). The November 2, 2018 Letter acknowledged that CENTCOM’s FOIA Requester Service Center received

Request No. 19-0021 the day Mr. Lee submitted it, October 30, 2018. *Id.* at 1. The November 2, 2018 Letter stated that the “FOIA Requester Service Center...has a substantial number of pending FOIA cases,” included a URL that allowed users to check the status of their FOIA requests,¹ and indicated that Request No. 19-0021 was number 952 in CENTCOM’s FOIA queue. *Id.*

- Over the ensuing sixteen (16) months, SPLLC did not receive any additional communication or substantive information from CENTCOM regarding Request No. 19-0021.
- On March 3, 2020, an unnamed member of CENTCOM’s FOIA Requester Service Center emailed Mr. Lee a denial letter, dated February 27, 2020 – five days before the accompanying email – and signed by Major General D. Scott McKean (“February 27, 2020 Letter,” attached hereto as **Exhibit 3**). The February 27, 2020 Letter stated, in pertinent part, that: 1) “a thorough good faith search” yielded 513 (presumably responsive) pages;² and 2) Major General McKean withheld all 513 pages in their entirety, citing 5 U.S.C. § 552(b)(1) and sections 1.4(a), 1.4(d), and 1.7(e) of Executive Order 13526. *Id.* at 1. Thus, the February 27, 2020 Letter constituted a complete denial of Request No. 19-0021. *Id.*

By this letter, we appeal CENTCOM’s final determination on the following grounds.

Failure to Explain the Basis for the Assertion of FOIA Exemptions

CENTCOM’s February 27, 2020 Letter does not explain the basis for any of CENTCOM’s sweeping assertions of exemptions from FOIA. We do not understand, and CENTCOM does not explain, how all of the information withheld would reveal classified information, either with respect to particular documents or when compiled. CENTCOM’s vague and blanket assertion of statutory exemptions does not provide us with sufficient detail to assess the applicability of any exemptions or draft a substantive appeal. CENTCOM must fill in these blanks.

Failure to Segregate Information Subject to Disclosure

Of the 513 pages of documents CENTCOM has found to be responsive to Request No. 19-0021, CENTCOM has not released a single word. 5 U.S.C. § 552(b) mandates that if CENTCOM believed “some portions of the requested records are exempt from disclosure,” it should “disclose any reasonably segregable non-exempt portions of the requested records.” It is not clear that

¹ On or about the time SPLLC received the November 2, 2018 Letter, the site (<http://www.centcom.mil/Home/FOIA>) indicated that CENTCOM was processing FOIA requests submitted as far back as 2014.

² The February 27, 2020 Letter intimates, but does not explicitly state, that the 513 pages are responsive to Request No. 19-0021. *Id.* at 1.

CENTCOM made this determination, or on what basis it withheld the responsive documents in their entirety. An agency may withhold complete records only where “the exempt portions are ‘inextricably intertwined with [non]exempt portions,’” *Johnson v. Exec. Office for U.S. Attorneys*, 310 F.3d 771, 776 (D.C. Cir. 2002), and “the excision of exempt information would impose significant costs on the agency and produce an edited document with little informational value,” *Mays v. Drug Enft Admin.*, 234 F.3d 1324, 1327 (D.C. Cir. 2000).

We would object to CENTCOM determining, without consulting us, that any segregable information has “little informational value,” as only we can determine what information has value to our clients. And while it is possible the purportedly exempt and non-exempt portions of the documents are inextricable, CENTCOM has not so claimed, or explained how that is true. At a minimum, CENTCOM should provide us sufficient detail to determine whether there are non-exempt portions of the records and detail CENTCOM’s basis for withholding them.

* * *

In the event this appeal is denied, you are required to provide a written response describing the reasons for the denial, names and titles of each person responsible for the denial and the procedures required to invoke judicial assistance in this matter. *See* 5 U.S.C. § 552(a)(6)(ii). We reserve our rights under FOIA to seek judicial review, including the award of attorney’s fees, if this appeal is denied or your response is not forthcoming within 20 working days.

Thank you for your time and attention to this matter.

Sincerely,



Patrick McMullen
Sparacino PLLC
patrick.mcmullen@sparacinopllc.com

Enclosures