

Brian Pristera

From: 56 FW/FOIA_PA <56FW.FOIA.PA@us.af.mil>
Sent: Monday, August 1, 2022 12:10 PM
To: Brian Pristera
Subject: RE: FOIA Requests ICO Palen, Joseph

Good Morning,

I've requested an update from headquarters, however, have not yet received a response. I'll request another update and forward that once received.
Thank you.

Heidi Zimmerman, Civ, DAF
FOIA & PA Officer, 56 CS

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

From: Brian Pristera <pristera@militaryattorney.com>
Sent: Monday, August 1, 2022 3:18 AM
To: TIPLING, DUSTIN M Lt Col USAF AETC 56 FW/56 FW/JA
<dustin.tipling.1@us.af.mil>; 56 FW/FOIA_PA <56FW.FOIA.PA@us.af.mil>;
AFRC/A6 FOIA/PA <AFRC.FOIA@us.af.mil>; ngb.foia@mail.mil;
ng.ncr.ngb-arng.mbx.ngb-foia@army.mil; ng.nj.njarng.mbx.jfhq-foia@army.mil
Cc: Petcher, Rhett E CIV DLSA (USA) <rhett.e.petcher.civ@mail.mil>
Subject: [URL Verdict: Neutral][Non-DoD Source] RE: FOIA Requests ICO Palen,
Joseph

All,

Following up on the below correspondence. The purpose of this follow up email is to document the lack of response for use in federal litigation to compel the AF and the NGB to appropriately and lawfully respond to Major (Ret) Palen's FOIA requests. Please respond.

Best Regards,

Brian A. Pristera

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From: Brian Pristera

Sent: Monday, June 13, 2022 9:19 AM

To: dustin.tipling.1@us.af.mil; 56 FW/FOIA_PA <56FW.FOIA.PA@us.af.mil>;

afrc.foia@us.af.mil; ngb.foia@mail.mil;

ng.ncr.ngb-arng.mbx.ngb-foia@army.mil; ng.nj.njarng.mbx.jfhq-foia@army.mil

Cc: Petcher, Rhett E CIV DLSA (USA) <rhett.e.petcher.civ@mail.mil>

Subject: FOIA Requests ICO Palen, Joseph

LtCol Tipling / Ms. Zimmerman / AFRC FOIA Office / NJ Air National Guard
FOIA / NGB FOIA,

The purpose of this email is twofold:

First, as detailed in the following FOIA requests:

2018-03212-F, submitted 9 July 2018, 944th FW

2021-03974-F, submitted 3 August 2021, 944th FW (transferred to the 56th FW)

2021-03975-F, submitted 3 August 2021, 56th FW (transferred from 944th FW)

2021-03976-F, submitted 3 August 2021, NGB

your production of the unredacted (except as required by law) materials are necessary for an upcoming DOHA hearing in front of the Honorable Judge Edward Loughran. Due to the length of time and the delays your lack of production has caused, as well as the over-redaction from the 2018 request, where over 550 pages of roughly 800 were fully redacted inexplicably, Judge Loughran has ordered the Government Attorney, Mr. Rhet Petcher, and I, to provide monthly updates on the status of Maj Palen's requests. This serves as Notice to your respective AFRC and ANG FOIA offices to produce the materials without over-redaction post haste, and to provide an update for the requested materials you cannot immediately produce that includes where the materials are in process and an estimated time to completion.

Secondly, as there has been apparent confusion about who has been contacting whom to get updates, this serves to clarify and to document Maj Joseph Palen's ongoing efforts to get these documents and records directly pertaining to a pending federal hearing on his security clearance and the FOIA offices refusal to communicate with he or I (which we have via detailed email and phone records).

Your offices' refusal to produce materials for FOIA requests from 3 August 2021, and the over-redaction of request 2018-03212-F from 2018 causes a delay of the federal hearing, which has prompted Judge Loughran's interest in the request, and subsequent ordering of monthly updates on the status of these FOIA requests. This email and your responses, or lack of response, will be provided to Judge Loughran to document our ongoing efforts to resolve this request, and if needed for future action including, but not limited to, a Federal lawsuit.

Please provide the requested documents that we know you have already amassed from the 2018 FOIA request 2018-03212-F with only minimal and lawful redactions to avoid the necessity for subsequent legal actions to include the appeal of over-redactions. Additionally, provide us with the current status of the FOIA requests for which you cannot immediately provide the

materials, and include an explanation of why the documents have not been produced given the amount of time that has elapsed.

Recent Background:

We were informed by the Department of Hearings and Appeals counsel, Mr. Rhett Petcher, that at least one of the pending FOIA requests submitted on 3 August 2021, is being held up due to fees for the request. This was the first time that we have been informed of required fees for this request. There has been no notice or request for any fees to Maj Palen. Regardless, the fees should be waived for two reasons:

First, the AFRC request, currently 2021-03975-F is for materials that were already produced once, in 2018, but were over-redacted. Maj Palen pared down the dates range for the latest request, and in fact the already-existing file was transferred to Ms. Heidi Zimmerman from MSgt Montoya for Ms. Zimmerman to review in July & August of 2021. Nothing needed to be reproduced and no search efforts were needed as already verified by Ms. Zimmerman.

Second, due to the passage of extraordinary time to process this request from both AFRC and the ANG, coupled with the prejudice Maj Palen continues to endure due to your offices' unwillingness to communicate with him on his requests is justifiable reason for a fee waiver for both pending requests. We have made numerous attempts to follow up specifically with the AFRC in the past months that have gone unanswered. Such attempts are documented in email and phone records should any party in AFRC contend otherwise. ANG has only sent Maj Palen confirmation of receipt of his request, which he received - preposterously - months after making the request.

As stated above, we know that the requested AFRC materials were previously amassed and marked for proposed redactions at least 3 years ago for FOIA request number 2018-03212-F. We also know that the requested records are unfavorable to the Air Force and to numerous officers to whom the records involve, specifically Col Trena Savageau, Col Korey Amundson, Col Sean Rassas, among others.

We know this because LtCol Dan Vaillant, the former SJA for the 944th FW told then Maj Palen's legal counsel that the records were very bad for the Air Force and for the officers involved in taking disciplinary action against then Maj Palen. We also know this from Ms. Zimmerman, who informed Maj Palen directly as early as the Fall 2021, that the records contained

both negative information to the Air Force, senior officers, and that the redactions of releasable information did not seem to follow the rules for redaction in several places, resulting in over-redaction for information that was not legally protected.

Aside from our unanswered and documented history of requesting these records for the purpose of a federal hearing, which the Air Force initiated against Maj Palen, and the failure of your offices to respond, false statements of the Air Force's attempts to communicate with Maj Palen tarnish the few notices that have been provided. In particular, in a memorandum dated 4 August 2021, attached for reference, MSgt Sandra Montoya states that she attempted to contact Maj Palen three times to discuss his FOIA request. That never happened and we encourage MSgt Montoya to provide any evidence of those attempts. We have records of email communication with MSgt Montoya in August 2021, after the date of that memo, in which there is an open and responsive dialogue, but no mention of her attempts to reach us or discussion of the FOIA request.

Additionally, I personally, as well as Maj Palen, have submitted multiple requests for the status of the FOIA request to Ms. Zimmerman via email and voicemail, asking for case status and new points of contact, even indicating that the request was specifically for a federal hearing initiated by the Air Force, that have been unanswered. Our last received email correspondence was in November 2021 when we were informed that the requested materials were amassed and sent to Washington DC for higher level review, without giving us the points of contact necessary to ensure the materials are delivered to Maj Palen.

Based on that information as well as the previous over-redaction of the 2018 request, it seems obvious that what is occurring here is AFRC and ANG are deliberately denying Maj Palen the requested records by delaying processing, misleading about communication on the requests, and now asking for fees months later. AFRC and ANG seem determined to use all tactics including delay, denial, and over-redaction to keep Maj Palen from receiving records we already know exist, which we also know are unfavorable to the Air Force and senior leaders named above, and which are necessary for this federal hearing.

In short, AFRC and ANG are denying Maj Palen his rights and they are abusing the FOIA system in order to protect senior leaders of the Air Force from accountability for their deliberate mistreatment of Major Palen and manipulation of the Air Force administrative punishment system. There is no other explanation for the warnings given to us from LtCol Dan Vaillant and Ms. Zimmerman, the absurd delay, the failure to communicate, the false

statements of attempts to coordinate with Maj Palen, and attempted over-redactions that have been reported to us by Luke AFB's own FOIA officer, Ms. Zimmerman. We are again demanding AFRC and ANG provide the requested records in accordance with the law and with the minimal redactions required, and in a timely manner from this late point.

Best Regards,

Brian A. Pristera

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