

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

SETH HETTENA,)
9220 Virginian Lane)
La Mesa, CA 91941)
)
Plaintiff,)
)
v.)
)
CENTRAL INTELLIGENCE AGENCY,)
Office of Public Affairs)
Washington, D.C. 20505)
)
Defendant.)

COMPLAINT

1. Plaintiff, SETH HETTENA, brings this Freedom of Information Act suit to force Defendant CENTRAL INTELLIGENCE AGENCY (“CIA”) to produce memos, reports, and other records pertaining to the death of Mandel al-Jamaidi. Mr. Al-Jamaidi died while in CIA’s custody at the Abu Ghraib Prison in November 2003. His death was ruled as a homicide. In violation of the Freedom of Information Act, CIA has failed to issue a determination letter within twenty business days, has failed to produce the records promptly, and has failed to provide an estimated dates of completion for the requests.

PARTIES

2. Plaintiff Seth Hettena is an investigative journalist, whose work has been featured in *The New Yorker*, *Rolling Stone*, *The New York Times*, *The New Republic*, and *The Los Angeles Times*. HETTENA made the FOIA requests at issue in this case.

3. Defendant CENTRAL INTELLIGENCE AGENCY (“CIA”) is a federal agency and subject to the Freedom of Information Act, 5 U.S.C. § 552.

JURISDICTION AND VENUE

4. This case is brought under 5 U.S.C. § 552(a)(4)(B) and presents a federal question conferring jurisdiction on this Court. *See* 28 U.S.C. § 1331.

5. Venue is proper under 5 U.S.C. § 552(a)(4)(B).

BACKGROUND

6. Mr. Al-Jamaidi died during CIA's interrogation at the Abu Ghraib Prison in November 2003. Mr. Al-Jamaidi was one of the CIA's "ghost" prisoners in Abu Ghraib.

7. At Abu Ghraib, Al-Jamaidi's hands were handcuffed behind his back. A second pair of shackles connected his handcuffs to a barred window in the prison's shower room. After about an hour of CIA interrogation, Al-Jamaidi was found dead. He was suspended by his wrists, which were being painfully wrenched up behind his back, a position universally recognized as torture.

8. Al-Jamaidi's death was ruled as a homicide.

9. The U.S. Army's investigation into Al-Jamaidi's death found that the CIA agency personnel who were involved in the interrogation of Al-Jamaidi had not been entirely truthful in their accounts of the incident.

10. The U.S. Department of Justice declined to prosecute anyone involved in Al-Jamaidi's death.

11. The Senate Select Committee on Intelligence's 2012 report on CIA's Detention and Interrogation Program (the "Report") detailed the CIA's use of "enhanced interrogation techniques" that were authorized by the Justice Department as well as the CIA's use of even more brutal "unauthorized" techniques used on prisoners in CIA custody. Former President Barack Obama called the "enhanced interrogation techniques" torture.

12. The Report exposed evidence that contradicted assertions by senior CIA officials that any deviations from approved procedures were immediately reported and punished. The Report also found that the CIA impeded oversight of the interrogation program by the CIA's Office of Inspector General.

13. The records responsive to the FOIA requests at issue in this case would shed light on how CIA investigated its use of "enhanced interrogation techniques" as well as how or if the CIA investigated, disciplined, and corrected the use of "unauthorized" techniques and procedures, such as the "ghost prisoners" in Abu Ghraib prison.

14. The records responsive to the FOIA requests at issue in this case would shed light on how or if anyone in the CIA was held accountable for Mr. Al-Jamaidi's death.

15. The records responsive to the FOIA requests at issue in this case would shed light on how or if CIA justified its continued use of these techniques.

MARCH 29, 2022 FOIA REQUEST (NONREGISTRATION OF DETAINEES)

16. On March 29, 2022, HETTENA submitted a FOIA request to CIA's Office of Inspector General for "a copy of the concluding document (report of investigation, final report, closing memo, referral letter) of an investigation of the nonregistration of detainees, including, but not limited to, an IG report dated December 13, 2005." A true and correct copy of the FOIA request is attached as Exhibit 1.

17. On April 6, 2022, CIA acknowledged receipt of the request and assigned reference number F-2022-01104 to the request. A true and correct copy of the acknowledgement letter is attached as Exhibit 2.

18. On October 28, 2022, HETTENA sought an estimated date of completion for the request and asked CIA to make a discretionary release of records. CIA never responded. A true

and correct copy of HETTENA's correspondence, sent via USPS Certified Mail, is attached as Exhibit 3.

19. As of the date of this filing, CIA has not issued a determination within twenty business days under 5 U.S.C. § 552(a)(6)(A)(i) and has not complied with the statutory requirement under 5 U.S.C. § 552(a)(3)(A) to make the records promptly available to any person. Nor has the CIA complied with the statutory requirement under 5 U.S.C. § 552(a)(7)(B)(ii) to furnish an estimated date of completion when requested.

AUGUST 17, 2022 FOIA REQUEST TO CIA (COMMENTS ON REPORT)

20. On August 17, 2022, HETTENA submitted a FOIA request to CIA for the following records: “[1] Memo from Assistant Inspector General for Investigations, CIA Re: ‘Comments on Report and Recommendations of the Special Accountability Board Regarding the Death of Manadel al-Jamaidi,’ 22 June 2007, IG 2007-0414; [2] Memo from ADD/CIA, Re: ‘Quality and Objectivity of Office of Inspector General Investigations,’ 15 June 2007, DAC-0325202007; and [3] Chief, Center for Studies in Intelligence, Memo, ‘Report and Recommendation of the Special Accountability Board,’ DAC-05619-2006.” A true and correct copy of the FOIA request is attached as Exhibit 4.

21. On September 1, 2022, CIA acknowledged receipt of the request and assigned reference number F-2022-01780 to the request. A true and correct copy of the acknowledgement letter is attached as Exhibit 5.

22. On October 28, 2022, HETTENA sought an estimated date of completion for the request and asked CIA to make a discretionary release of records. CIA never responded. A true and correct copy of HETTENA's correspondence, sent via USPS Certified Mail, is attached as Exhibit 3.

23. As of the date of this filing, CIA has not issued a determination within twenty business days under 5 U.S.C. § 552(a)(6)(A)(i) and has not complied with the statutory requirement under 5 U.S.C. § 552(a)(3)(A) to make the records promptly available to any person. Nor has the CIA complied with the statutory requirement under 5 U.S.C. § 552(a)(7)(B)(ii) to furnish an estimated date of completion when requested.

SEPTEMBER 23, 2022 FOIA REQUEST (SPECIAL ACCOUNTABILITY BOARD)

24. On September 23, 2022, HETTENA submitted a FOIA request to CIA for copies of the “Report and Recommendations of the Special Accountability Board Regarding the Death of Iraqi Detainee Manadel al-Jamaidi,” A true and correct copy of the acknowledgement letter that quotes the FOIA request is attached as Exhibit 6.

25. On October 6, 2022, CIA acknowledged receipt of the request and assigned reference number F-2022-01964 to the request. A true and correct copy of the acknowledgement letter is attached as Exhibit 6.

26. On October 28, 2022, HETTENA sought an estimated date of completion for the request and asked CIA to make a discretionary release of records. CIA never responded. A true and correct copy of HETTENA’s correspondence, sent via USPS Certified Mail, is attached as Exhibit 3.

27. As of the date of this filing, CIA has not issued a determination within twenty business days under 5 U.S.C. § 552(a)(6)(A)(i) and has not complied with the statutory requirement under 5 U.S.C. § 552(a)(3)(A) to make the records promptly available to any person. Nor has the CIA complied with the statutory requirement under 5 U.S.C. § 552(a)(7)(B)(ii) to furnish an estimated date of completion when requested.

**COUNT I – MARCH 29, 2022 FOIA REQUEST
(NONREGISTRATION OF DETAINEES),
CIA’S FAILURE TO ISSUE A DETERMINATION**

28. The above paragraphs are incorporated herein.
29. The request seeks the disclosure of agency records and was properly made.
30. CIA is a federal agency and subject to FOIA.
31. Included within the scope of the request are one or more records or portions of records that are not exempt under FOIA.
32. CIA has failed to issue a determination within the statutory deadline.

**COUNT II – MARCH 29, 2022 FOIA REQUEST
(NONREGISTRATION OF DETAINEES),
CIA’S FAILURE TO CONDUCT A REASONABLE SEARCH**

33. The above paragraphs are incorporated herein.
34. The request seeks the disclosure of agency records and was properly made.
35. CIA is a federal agency and subject to FOIA.
36. CIA has failed to conduct a reasonable search for records responsive to the request.

**COUNT III – MARCH 29, 2022 FOIA REQUEST
(NONREGISTRATION OF DETAINEES),
CIA’S FAILURE TO PRODUCE RECORDS**

37. The above paragraphs are incorporated herein.
38. The request seeks the disclosure of agency records and was properly made.
39. CIA is a federal agency and subject to FOIA.
40. Included within the scope of the request are one or more records or portions of records that are not exempt under FOIA.
41. CIA has failed to produce records responsive to the request.

**COUNT IV – AUGUST 17, 2022 FOIA REQUEST (COMMENTS ON REPORT),
CIA’S FAILURE TO ISSUE A DETERMINATION**

42. The above paragraphs are incorporated herein.
43. The request seeks the disclosure of agency records and was properly made.
44. CIA is a federal agency and subject to FOIA.
45. Included within the scope of the request are one or more records or portions of records that are not exempt under FOIA.
46. CIA has failed to issue a determination within the statutory deadline.

**COUNT V – AUGUST 17, 2022 FOIA REQUEST (COMMENTS ON REPORT),
CIA’S FAILURE TO CONDUCT A REASONABLE SEARCH**

47. The above paragraphs are incorporated herein.
48. The request seeks the disclosure of agency records and was properly made.
49. CIA is a federal agency and subject to FOIA.
50. CIA has failed to conduct a reasonable search for records responsive to the request.

**COUNT VI – AUGUST 17, 2022 FOIA REQUEST (COMMENTS ON REPORT),
CIA’S FAILURE TO PRODUCE RECORDS**

51. The above paragraphs are incorporated herein.
52. The request seeks the disclosure of agency records and was properly made.
53. CIA is a federal agency and subject to FOIA.
54. Included within the scope of the request are one or more records or portions of records that are not exempt under FOIA.
55. CIA has failed to produce records responsive to the request.

**COUNT VII – SEPTEMBER 23, 2022 FOIA REQUEST
(SPECIAL ACCOUNTABILITY BOARD),
CIA’S FAILURE TO ISSUE A DETERMINATION**

56. The above paragraphs are incorporated herein.

57. The request seeks the disclosure of agency records and was properly made.

58. CIA is a federal agency and subject to FOIA.

59. Included within the scope of the request are one or more records or portions of records that are not exempt under FOIA.

60. CIA has failed to issue a determination within the statutory deadline.

**COUNT VIII – SEPTEMBER 23, 2022 FOIA REQUEST
(SPECIAL ACCOUNTABILITY BOARD),
CIA’S FAILURE TO CONDUCT A REASONABLE SEARCH**

61. The above paragraphs are incorporated herein.

62. The request seeks the disclosure of agency records and was properly made.

63. CIA is a federal agency and subject to FOIA.

64. CIA has failed to conduct a reasonable search for records responsive to the request.

**COUNT IX – SEPTEMBER 23, 2022 FOIA REQUEST
(SPECIAL ACCOUNTABILITY BOARD),
CIA’S FAILURE TO PRODUCE RECORDS**

65. The above paragraphs are incorporated herein.

66. The request seeks the disclosure of agency records and was properly made.

67. CIA is a federal agency and subject to FOIA.

68. Included within the scope of the request are one or more records or portions of records that are not exempt under FOIA.

69. CIA has failed to produce records responsive to the request.

WHEREFORE, HETTENA asks the Court to:

- i. declare that CIA violated FOIA;
- ii. order CIA to conduct a reasonable search for records;
- iii. order CIA to issue a determination for the above-referenced FOIA requests;

- iv. order CIA to promptly produce all non-exempt requested records or portions of records;
- v. enjoin CIA from withholding non-exempt public records under FOIA;
- vi. award Plaintiffs attorneys' fees and costs; and
- vii. award such other relief the Court considers appropriate.

Dated: November 29, 2022

RESPECTFULLY SUBMITTED,

/s/ Matthew V. Topic

Attorney for Plaintiff
SETH HETTENA

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