

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS**

SETH HARP,)	
)	
Plaintiff,)	
v.)	Civil Action No. 1:23-00106
)	
UNITED STATES ARMY SPECIAL)	
OPERATIONS COMMAND,)	
)	
Defendant.)	

COMPLAINT

Plaintiff Seth Harp brings this action against the Defendant, United States Army Special Operations Command (“USASOC”) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). Plaintiff respectfully alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
2. Venue is proper in this district court under 28 U.S.C. § 1391(e)(1)(C).

PARTIES

3. Plaintiff Seth Harp is a veteran investigative reporter who has written for a wide variety of national publications on subjects related to the military and armed conflict. Plaintiff is a representative of the news media who routinely requests records from federal agencies

pursuant to FOIA, analyzes the responses, and disseminates his findings and the requested records to the American public to inform them about “what their government is up to.”

4. Defendant USASOC is the special operations component of the United States Army, based at Fort Bragg, North Carolina.

5. The Defendant has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

6. In late 2021, military authorities charged a U.S. Army soldier named Staff Sergeant David A. Rankine with a variety of serious crimes under articles 92, 112, 112b, 115, 119b, 120, 128, 128b, 131b, and 134 of the Uniform Code of Military Justice. He was ordered to stand trial in a court martial convened under the auspices of USASOC at Fort Bragg, North Carolina.

7. Pursuant to Staff Sgt. Rankine’s plea of guilty, he was convicted in May 2022 of committing a violent domestic assault, aggravated assault, illegal use of anabolic steroids, illegal use of cocaine, and violation of a military no-contact order. Rankine was sentenced to five years and one month confinement, reduced to the rank of Specialist, and dishonorably discharged from the military.

8. On February 7, 2022 – three months before Rankine’s court martial concluded – Plaintiff properly submitted a written FOIA request to USASOC’s designated FOIA and public affairs officers requesting (a) the written record of Rankine’s court martial, to include the lawyers’ written motions and the judge’s orders; and (b) any and all audio recordings made of the court proceedings.

9. Over the next year, in an extended back-and-forth with the Plaintiff, the Defendant's public affairs officers ("PAOs") made a number of excuses for why they could not or would not release the requested records. They cited the pendency of the ongoing criminal proceedings, various training holidays, bureaucratic complications, overlapping authorities between certain military formations, an inability to locate the records in question, a need to take time to redact the records, and so on.

10. At no time did the Defendant's PAOs ever assert that the requested records were exempt from production under any of the exceptions to FOIA. In fact, the Defendant's deputy PAO informed Plaintiff in an email sent November 16, 2022 that "[c]ourts martial that result in a conviction are part of the public record, so you don't need to put in a FOIA for those."

11. Ultimately, however, the Defendant refused to produce the requested records. In a phone call in early January 2023, the Defendant's deputy PAO finally informed Plaintiff that the requested records had been transferred to the United States Army Court of Criminal Appeals, and advised him to contact the clerk of that court. The PAO stated that the Defendant no longer retained a copy of the requested trial record and audio recordings anywhere in its files. On information and belief, that statement was false.

12. Plaintiff dutifully contacted the clerk of the U.S. Army Court of Criminal Appeals at Fort Belvoir, Virginia, explained to him all of the foregoing, and respectfully reiterated his request for the trial record and audio recordings of Staff Sgt. Rankine's court martial pursuant to his original FOIA request. The clerk flatly refused, telling the Plaintiff that because his original FOIA request had been submitted to the Defendant USASOC, "we lack jurisdiction over your request." Thereafter, the clerk of court declined to respond to any of Plaintiff's follow-up communications.

13. Faced with this Kafkaesque Catch-22, and having already patiently waited nearly a full year for the requested records, Plaintiff decided to file the instant lawsuit.

14. As of the date of this Complaint, the Defendant has failed to: (i) determine whether to comply with Plaintiff's FOIA request; (ii) notify Plaintiff of any such determination and the reasons therefor; (iii) advise Plaintiff of his right to appeal any adverse determination; or (iv) produce the requested records or otherwise demonstrate that the requested records are exempt from production.

15. Because the Defendant has failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A)(i), the Plaintiff is deemed to have exhausted any and all administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C).

COUNT 1

(Violation of 5 U.S.C. § 552: Failure to meet statutory requirements)

16. Plaintiff realleges paragraphs 1 through 15 as if fully stated herein.

17. Defendant has not made determinations or produced records in response to Plaintiff's FOIA request, as required by 5 U.S.C. § 552.

18. Because the Defendant has not met its statutory obligations under FOIA, this Court has the authority to compel it to do so.

COUNT 2

(Violation of 5 U.S.C. § 552: Unlawful withholding of records)

19. Plaintiff realleges paragraphs 1 through 15 as if fully stated herein.

20. Defendant is unlawfully withholding records requested by Plaintiff pursuant to 5 U.S.C. § 552.

21. Plaintiff is being irreparably harmed by reason of Defendant's unlawful withholding of records responsive to Plaintiff's FOIA requests, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to conform their conduct to the requirements of the law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court: (1) order the Defendant to produce, by a certain date, the records identified in paragraph 8, above; (2) order the Defendants to produce a *Vaughn* index of any records withheld under claim of exemption; (3) enjoin Defendants from continuing to withhold the aforesaid documents; (4) grant Plaintiff an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E), and (5) grant Plaintiff such other relief as the Court deems just and proper.

Dated: February 1, 2023

Respectfully submitted,

/s/Seth Harp
Seth Harp
Texas Bar No. 24080930
416 Kemp Street
Austin, Texas 78741

Plaintiff and Attorney at Law

CERTIFICATE OF SERVICE

I, Seth Harp, the Plaintiff in this case and an attorney admitted to practice in this Court, certify that on February 1, 2023, I caused a copy of this Complaint to be mailed to the Attorneys for the Defendant by Certified U.S. Mail at the following addresses:

U.S. Army Special Operations Command
2929 Desert Storm Drive
Fort Bragg, NC 28310

Ms. Stephanie Rico
Civil Process Clerk
Office of the U.S. Attorney for the Western District of Texas
601 NW Loop 410, Suite 600
San Antonio, Texas 78216-5597

Mr. Merrick Garland
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dated: February 1, 2023

/s/Seth Harp
Seth Harp
Plaintiff and Attorney at Law