

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Dr. Paul Maas Risenhoover,
Plaintiff,

Case: 1:23-cv-01265
Assigned To : Unassigned
Assign. Date : 5/4/2023
Description: FOIA/Privacy Act (I-DECK)

v.

US Department of Commerce and US Department of State,
Defendants.

Case No. _____

COMPLAINT

Plaintiff, Dr. Paul Maas Risenhoover, brings this action against the US Department of Commerce and the US Department of State (collectively, "Defendants"), for their failure to release reasonably segregable information related to China's brain control weaponry R&D, as well as Chinese and English language patents, academic articles, and additional forms of Open Source Intelligence about potential Neurotechnology Controls.

JURISDICTION AND VENUE

This action arises under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, et seq. This Court has jurisdiction over this matter pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331. Venue is proper in this District pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

PARTIES

Plaintiff is an individual who resides in the United States, on Formosa, 22 USC 611(m), 22 USC 619, 22 CFR51.1, Congress in debating the Taiwan ENABLING Act, formally extended American possessory interests over the islands of Formosa. The Defense of Formosa Act formally extended powers of jurisdiction and naval and air legislation creating the islands an American possession:
22 CFR § 120.13 United States. *United States, when used in the geographical sense... any territory or possession over which the United States exercises any powers*

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Clerk, U.S. District & Bankruptcy
Court for the District of Columbia

of administration, legislation, and jurisdiction. The US exercises rights of a Principal Victor over Formosa: [S/1716](#)

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LETTER DATED 50/08/25 FROM THE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE SECRETARY-GENERAL CONCERNING FORMOSA

"(4) The action of the United States was expressly stated to be without prejudice to the future political settlement of the status of the island. The actual status of the island is that it is territory taken from Japan by the victory of the Allied forces in the Pacific. Like other such territories, its legal status cannot be fixed until there is international action to determine its future."

<https://www.trumanlibrary.gov/library/public-papers/223/letter-ambassador-warren-austin-restating-us-position-formosa>,

<https://www.presidency.ucsb.edu/documents/letter-ambassador-warren-austin-restating-the-us-position-formosa>,

[https://documents-dds-](https://documents-dds-ny.un.org/doc/UNDOC/GEN/NL5/017/16/pdf/NL501716.pdf?OpenElement)

[ny.un.org/doc/UNDOC/GEN/NL5/017/16/pdf/NL501716.pdf?OpenElement](https://documents-dds-ny.un.org/doc/UNDOC/GEN/NL5/017/16/pdf/NL501716.pdf?OpenElement)

"Even the juridical position of Taiwan is in doubt. The United States also has an interest in [\[Page 620\]](#)Taiwan which we got away from Japan. Japan has merely renounced sovereignty over Taiwan which has not been disposed of by the peace treaty and not ceded to anyone. Consequently the United States also could assert a legal claim until Taiwan is disposed of by some means. We cannot, therefore, admit that the disposition of Taiwan is merely an internal problem."

<https://history.state.gov/historicaldocuments/frus1955-57v02/d282>

"... in distinction to Formosa and Pescadores which have inchoate juridical status under Japanese peace treaty"

<https://history.state.gov/historicaldocuments/frus1952-54v14p1/d305>

The United States, as a principal victor of the war in the Pacific and as the sole occupying power of Japan has great responsibility in the disposition of Formosa;

<https://history.state.gov/historicaldocuments/frus1950v06/d347>

In this connection it may be noted that Japan never ceded sovereignty over Formosa and the Pescadores to China. Japan renounced its own sovereignty but left the future title undefined. Thus the United States as principal victor of Japan has an unsatisfied interest in these former Japanese islands. This treaty, when made and ratified, will replace the Seventh Fleet Presidential order which is becoming of questionable validity from a constitutional standpoint.

<https://history.state.gov/historicaldocuments/frus1952-54v14p1/d365>

In this connection, you will of course recall that the U.S. has a juridical position in that these islands have never been ceded by Japan to China. Japan has renounced its own right and title to the islands, but their future status was deliberately left undetermined, and the U.S. as a principal victor over Japan has an interest in their ultimate future. We are not willing that that future should be one which would enable a hostile regime to endanger the defensive position which is so vital in keeping the Pacific a friendly body of water.

<https://history.state.gov/historicaldocuments/frus1952-54v14p1/d342>,

<https://history.state.gov/historicaldocuments/frus1949v07p2/d89> *She must, in view of the position taken by the Secretary and by the United States Senate, contend that their disposition is for future international action.*

<https://history.state.gov/historicaldocuments/frus1955-57v23p1/d13>

Mr. Dulles said that it might be possible for the treaty merely to require renunciation by Japan of any claims to Formosa and the Pescadores, leaving open the final determination of the status of the islands in question.

<https://history.state.gov/historicaldocuments/frus1950v06/d795>

It is our view that under the San Francisco Treaty, Japan renounced all claim to the Kuriles and South Sakhalin and that disposition of these territories is pending.

There are also reasons why we should not seek to change the status quo: any United States action supporting Japan's claim to the Kuriles might appear to reflect on our position under the San Francisco Treaty in the Ryukyus and might affect the status of Formosa, which Japan also renounced under the treaty; encouragement of Japanese irredentism in the north might also encourage it in the south

<https://history.state.gov/historicaldocuments/frus1955-57v23p1/d31>

The Basic Initial Post-Surrender Directive to SCAP for the Occupation and Control of Japan, prepared by the Joint Chiefs of Staff JCS Directive No. 18 of November 8, 1945,⁴ Section 4, paragraph d) provides for the complete governmental and administrative separation from Japan of certain Pacific islands acquired by Japan since 1914, Manchuria, Formosa, the Pescadores, Korea, Karafuto (southern Sakhalin), and "such other territories as may be specified in future directives." This provision of JCS 18, which it may be noted did not specifically mention the Kuril Islands, was carried out by General Headquarters through a directive to the Japanese Government on January 29, 1946 (Scapin 677). In defining the areas to be separated from Japan governmentally and administratively, Scapin 677 specifically enumerates the

Kuril Islands as well as the Habomai Group and Shikotan Island. Historically, this is the first time that the Habomai–Shikotan area is dealt with in a document of international character concerned with the territorial boundaries of Japan. Although the Habomai-Shikotan area was under Soviet occupation at the time Scapin 677 was drafted, such specific mention of the area in this directive has unfortunately tended to endorse if not validate the Soviet position there. In a sense, therefore, it is believed that Scapin 677, while fundamentally a General Headquarters administrative matter, will be regarded by the Soviet Government as tantamount to an addendum to or extension of the provisions of the Yalta Agreement.

<https://history.state.gov/historicaldocuments/frus1949v07p2/d106>

Directive by President Truman to the Supreme Commander for the Allied Powers in Japan (MacArthur)

<https://history.state.gov/historicaldocuments/frus1945v07/d390>

The Prime Minister suggested that the Republic of China must somehow be brought to view this matter in proper perspective. He recalled that the legal status of the island of Formosa was not determined at the San Francisco Peace Conference, at which Japan merely renounced her sovereignty. He repeated a suggestion he had made to Ambassador Stevenson, that a conference of those nations which attended the San Francisco Conference be called to determine the legal status of Formosa.

<https://history.state.gov/historicaldocuments/frus1961-63v22/d337>

Taking the hon. and learned Member's first point of the United States—Formosa Treaty which, on his argument, would be invalid if our conception of the position is correct, the fact is that Formosa is not under Chinese sovereignty. That does not mean that the Chinese Nationalists have no right to be there. Their presence springs from their military occupancy in which they were placed by the Allied Powers in 1945, pending future arrangements. The United States can make a valid treaty with them in that role of temporary occupants of territory whose future sovereignty is undecided.

<https://api.parliament.uk/historic-hansard/commons/1955/may/04/far-east-formosa-and-the-pescadores>

The Chinese Government was asked by the Allies to take the surrender of the Japanese forces on the island. That is the reason the Chinese are there now.

<https://www.trumanlibrary.gov/library/public-papers/223/letter-ambassador-warren-austin-restating-us-position-formosa>

China claims the US are in possession of Formosa:

*A statement issued on September 4 by the PRC Government declared a 12-mile limit for Chinese territorial waters. The final paragraph reads: **"The Taiwan and Penghu areas are still occupied by the United States by armed force. This is an unlawful encroachment on the territorial integrity and sovereignty of the People's Republic of China. Taiwan, Penghu and such other areas are yet to be recovered, and the Government of the People's Republic of China has the right to recover these areas by all suitable means at a suitable time. This is China's internal affair, in which no foreign interference is tolerated."** Text is in *American Foreign Policy: Current Documents, 1958*, p. 1199. ↵*

<https://history.state.gov/historicaldocuments/frus1958-60v19/d66>

Defendant US Department of Commerce is an agency of the United States government, responsible for promoting economic growth and job creation.

Defendant US Department of State is an agency of the United States government, responsible for foreign policy and international relations. The Department resides in this District.

FACTS

On October 25, 2021, the Bureau of Industry and Security (BIS), a part of the US Department of Commerce, announced that it is considering new export controls on Brain Control Interface (BCI) hardware and technology. In its advanced notice of public rulemaking ("BCI Notice"), BIS asked for public comments on the scope and extent of these potential controls and whether they should be aligned with export controls implemented by international allies. Public comments were due to BIS on December 10, 2021.

Plaintiff submitted a request for information related to BCI technology on October 20, 2022, to Defendant US Department of Commerce. The request was assigned the tracking number DOC-BIS-2022-000415. The requested information included reasonably segregable information related to China's brain control weaponry R&D, as well as Chinese and English language patents, academic articles, and additional forms of Open Source Intelligence about potential Neurotechnology Controls. The initial reply from the Department of Commerce included 800 pages of largely blacked out

materials with total redactions and no metadata or headers of any kind whatsoever, even for what appears in context to be news reports, academic papers, PUBMED abstracts, patents, and additional Open Source Intelligence.

Despite Plaintiff's request, Defendants have failed to release the requested information. Defendants have also failed to provide a response to Plaintiff's request, or provide any updates on the status of the request.

Plaintiff has exhausted all administrative remedies and has appealed the denial of his request to Defendant Grace Agyekum, US DOC BIS FOIA PL, with appeal tracking number DOC-OS-2023-000296.

Plaintiff also discovered that Defendants over-disclosed irrelevant "rantings" sent by email by a Vietnamese American that were not related to the proposed BIS rulemaking action against the Chinese Academy of Military Medicine for weaponized BCI devices. This information is not relevant to Plaintiff's request and should not have been disclosed.

CLAIMS FOR RELIEF

Count One - Failure to Release Reasonably Segregable Information

Defendants have failed to release reasonably segregable information related to China's brain control weaponry R&D, as well as Chinese and English language patents, academic articles, and additional forms of Open Source Intelligence about potential Neurotechnology Controls. Defendants' actions violate FOIA, 5 U.S.C. § 552(a)(3)(A), and Plaintiff is entitled to a declaration that Defendants have violated FOIA, an order requiring Defendants to release the requested information, and additional relief.

Count Two: Failure to Release Reasonably Segregable Information on China's Brain Control Weaponry R&D relied on in the Commerce Department rulemaking

The Plaintiff requested information on China's brain control weaponry R&D from the US Department of Commerce and the US Department of State under the FOIA Act.

The US Department of Commerce and the US Department of State have failed to release reasonably segregable information on China's brain control weaponry R&D.

The Plaintiff is entitled to this information and their failure to respond constitutes a violation of FOIA.

Count Three: Failure to Release Chinese and English Language Patents, Academic Articles, and Additional Forms of Open Source Intelligence

The Plaintiff requested Chinese and English language patents, academic articles, and additional forms of Open Source Intelligence on potential neurotechnology controls from the US Department of Commerce and the US Department of State under the FOIA Act.

The US Department of Commerce and the US Department of State have failed to release these records.

The Plaintiff is entitled to these records and their failure to respond constitutes a violation of FOIA.

Count Four: Failure to Follow FOIA Timelines

The Plaintiff submitted FOIA requests to the US Department of Commerce and the US Department of State.

The US Department of Commerce and the US Department of State have failed to respond within the timelines established under the FOIA Act.

The Plaintiff is entitled to these records and their failure to respond within the FOIA timelines constitutes a violation of FOIA.

Count Five: Over-disclosure of Irrelevant Records

The US Department of Commerce over-disclosed irrelevant "rantings" sent by email by a Vietnamese American and not related to the proposed BIS rulemaking action against the Chinese Academy of Military Medicine for weaponized BCI devices.

The Plaintiff is entitled to records that are relevant to the requested information, and the over-disclosure of irrelevant records constitutes a violation of FOIA.

Cause of Action Six: Failure to Acknowledge and Process Referral of Equities by the US Department of Commerce to the US Department of State

The US Department of Commerce referred 25 pages of equities to the US Department of State in response to the Plaintiff's FOIA request.

The US Department of State has failed to acknowledge the transfer of these responsive records or to process them under the FOIA Act.

The Plaintiff is entitled to these records and their failure to respond constitutes a violation of FOIA.

Prayer for Relief

WHEREFORE, the Plaintiff requests that this Court:

- A. Declare that the US Department of Commerce and the US Department of State have violated the FOIA Act by failing to provide responsive records to the Plaintiff in a timely manner;
- B. Order the US Department of Commerce and the US Department of State to produce all responsive records, including all the information they considered in the rulemaking, all public comments, all Chinese and English language patents, academic articles, and medical literature and translations, and all Open Source intelligence of the same which is non-classifiable or not in fact classified;
- C. Order the US Department of Commerce and the US Department of State to provide a Vaughn index or similar index, with respect to any responsive records withheld in whole or in part, that identifies each responsive document or portion thereof, the FOIA exemption(s) relied upon for withholding, and a brief explanation of how each exemption applies to the withheld document or portion thereof;
- D. Award Plaintiff its reasonable costs and attorneys' fees pursuant to 5 U.S.C. § 552(a)(4)(E);
- E. Grant Plaintiff such other and further relief as the Court deems just and proper.

Respectfully,

A handwritten signature in blue ink, appearing to read "Paul Maas Risenhoover". The signature is fluid and cursive, with a large initial "P" and a long, sweeping tail.

Dr. Paul Maas Risenhoover

AmericanFormosaTrustArea@gmail.com