

4. Defendant, the United States Department of Defense, is an agency of the United States Government within the meaning of 5 U.S.C. § 552(f)(1) and is headquartered at 1400 Defense Pentagon, Washington, D.C. 20301-1400. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. On April 10, 2023, FGI submitted a FOIA request online to Defendant. *See* Exhibit A. The requests sought “records sent to, from, or including John Kirby, former Pentagon Press Secretary” with the words “‘Afghanistan’ or ‘Afghan’ in combination with any of these words within the same record:

- Chaos
- Chaotic
- Bedlam
- Cluster*
- Confusion
- Disorder
- Dysfunction
- FUBAR
- FUBU
- Mayhem
- Pandemonium
- SNAFU”

The time period covered by the FOIA request was August 1, 2021 to September 30, 2021.

6. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), Defendant is required to respond to FGI’s FOIA requests within 20 working days of each request.

7. Attorney General Merrick Garland stated that the FOIA is “a vital tool for ensuring transparency, accessibility, and accountability in government,” and that the “‘basic purpose ... is to ensure an informed citizenry,’ which is ‘vital to the functioning of a democratic society [and] needed to check against corruption and to hold the government accountable to the governed.’” Merrick Garland, [*Memorandum for Heads of Executive Departments and Agencies: Freedom of Information Act Guidelines*](#) at 1 (Mar. 15, 2022).

8. In a letter dated April 12, 2023, Defendant advised FGI that it had assigned he request tracking number 23-F-0694. *See* Exhibit B.

9. With regards to FGI's FOIA request, the statutory deadline has passed, and Defendant has failed to provide a substantive response to the FOIA request. In fact, as of the date of this Complaint, Defendant has failed to produce a single responsive record or to assert any claims that responsive records are exempt from production.

10. Since Defendant has failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A)(i), FGI is deemed to have fully exhausted any and all administrative remedies with respect to its FOIA requests. *See* 5 U.S.C. § 552(a)(6)(C).

CAUSE OF ACTION
(Violation of FOIA, 5 U.S.C. § 552)

11. Plaintiff realleges paragraphs 1 through 10 as though fully set forth herein.

12. Defendant has failed to make a determination regarding FGI's April 10, 2023 FOIA request for records within the statutory time limit and is unlawfully withholding records requested by FGI pursuant to 5 U.S.C. § 552.

13. FGI is being irreparably harmed by reason of Defendant's unlawful withholding of requested records, and FGI will continue to be irreparably harmed unless Defendant is compelled to conform its conduct to the requirements of the law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Functional Government Initiative requests that the Court grant all appropriate relief for the violations of FOIA alleged above, including:

- a. An order and judgment requiring the Defendant to conduct a search for any and all records responsive to FGI's FOIA request and to demonstrate that it employed search methods reasonably likely to lead to the discovery of all records responsive to FGI's request;

- b. An order and judgment requiring the Defendant to produce, by a date certain, any and all non-exempt records responsive to FGI's FOIA request and a *Vaughn* index of any responsive records withheld under claim of exemption;
- c. An order and judgment permanently enjoining Defendant from continuing to withhold any and all non-exempt records in this case that are responsive to FGI's FOIA request;
- d. Attorneys' fees and costs to Plaintiff pursuant to any applicable statute or authority, including 5 U.S.C. § 552(a)(4)(E); and
- e. Any other relief that this Court in its discretion deems just and proper.

/s/ Jeremiah L. Morgan

Jeremiah L. Morgan
(D.C. Bar No. 1012943)
William J. Olson
(D.C. Bar No. 233833)
William J. Olson, P.C.
370 Maple Avenue West, Suite 4
Vienna, VA 22180-5615
703-356-5070 (telephone)
703-356-5085 (fax)
jmorgan@lawandfreedom.com

Dated: July 3, 2023

Counsel for Plaintiff
FUNCTIONAL GOVERNMENT
INITIATIVE