

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

MARITIME LEGAL SOLUTIONS, PLLC
276 Fifth Avenue, Suite 704-1454
New York, NY 10001

Plaintiff,

v.

U.S. TRANSPORTATION COMMAND
Scott Air Force Base, IL 62225-5357

Defendant.

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) Civil Action:
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COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for injunctive, declaratory, and other appropriate relief, seeking the release of agency records requested by Plaintiff Maritime Legal Solutions, PLLC (“MLS”) from Defendant U.S. Transportation Command (“TRANSCOM”).
2. Specifically, MLS challenges the failure of TRANSCOM to disclose records in response to MLS’s Freedom of Information Act request (the “FOIA Request”),

and challenges the failure of TRANSCOM to conduct an adequate search of its records for documents responsive to its FOIA Request.

3. TRANSCOM has failed to make a final determination regarding the FOIA Request within the time period prescribed by 5 U.S.C. § 552(a)(6)(A)(i) and 5 U.S.C. § 552(a)(6)(E)(iii).

4. TRANSCOM's failure to make a final determination on MLS's FOIA Request within the statutory time limit violates the FOIA. MLS has constructively exhausted the administrative remedies under 5 U.S.C. § 552(a)(6)(C)(i).

Jurisdiction and Venue

5. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(C)(i). The Court also has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 2201(a), and 2202.

6. Venue in this district is proper under 5 U.S.C. § 552(a)(4)(B), because Plaintiff MLS's principal place of business is located within this judicial district.

Parties

7. Plaintiff MLS is a New York law firm that primarily represents victims of maritime and maritime-related sexual abuse. MLS's principal place of business is in New York City, New York.

8. Defendant TRANSCOM is an agency within the meaning of 5 U.S.C. §§ 552(f)(1) and 701(b)(1). TRANSCOM has possession, custody, and control of records responsive to MLS's FOIA Request.

Procedural History

9. MLS submitted its FOIA Request to TRANSCOM on June 20, 2023 (*Exhibit A*).

10. The FOIA Request was acknowledged as received by TRANSCOM on June 21, 2023 and was assigned FOIA number 23-0053-F (*Exhibit B*).

11. On July 19, 2023 MLS sent a letter to TRANSCOM requesting an Estimated Completion Date. In that letter, MLS wrote, "In accordance with 5 USC § 552(a)(7)(B)(ii), we are now requesting that your office provide us with an Estimated Completion Date by which our FOIA Request will be fully processed." (*Exhibit C*).

12. On July 25, 2023 TRANSCOM responded to MLS's request for an Estimated Completion Date. In its July 25, 2023 response, TRANSCOM stated, "We have classified this as a significant FOIA due to the subject matter, as such we need to send the case file to Office of Assistant to the Secretary of Defense (OATSD)/Privacy Civil Liberties and Transparency (PCLT) for review before release." (*Exhibit D*).

13. In its July 25, 2023 response, TRANSCOM also stated that MLS should expect to wait “45 business days at the earliest before we have a response.” (*Exhibit D*). 45 business days from July 25, 2023 would be approximately September 27, 2023.

14. On August 8, 2023 TRANSCOM again responded to MLS regarding the FOIA Request and estimated an initial response in “early October” of 2023 (*Exhibit E*).

15. As of the date of this complaint, MLS has not received any records from TRANSCOM in response to its FOIA Request. TRANSCOM has failed to make a final determination on MLS’s FOIA Request within the time limits prescribed by the FOIA, and MLS has constructively exhausted the administrative remedies available under the FOIA.

MLS’s CLAIMS FOR RELIEF

COUNT 1

FAILURE TO COMPLY WITH FOIA

16. MLS incorporates each of the foregoing paragraphs of this Complaint.

17. Pursuant to FOIA, 5 U.S.C. § 552(a), MLS has a statutory right to access requested agency records.

18. TRANSCOM has failed to comply with the time limits prescribed by FOIA, 5 U.S.C. § 552(a)(6)(A)(i) for MLS's FOIA Request and has failed to issue a final determination on the FOIA Request.

PRAYER FOR RELIEF

WHEREFORE, MLS respectfully requests that this Court enter a judgment for MLS and award the following relief:

19. Declare the records sought by MLS's FOIA Request are public under 5 U.S.C. § 552 and must be disclosed;

20. Order Defendant, by a date certain, to conduct a search of its records that is designed to prove beyond material doubt that its search for records responsive to MLS's FOIA Request was reasonably calculated to uncover all relevant records.

21. Order Defendant, by a date certain, to demonstrate that they have conducted an adequate search;

22. Order Defendant, by a date certain, to produce to MLS any and all nonexempt records or portions of records responsive to MLS's FOIA Request, as well as a Vaughn index of any records or portions of records withheld due to a claim of exemption;

23. Enjoin Defendant from withholding the requested records;

24. Award MLS its costs and attorney's fees reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and

25. Grant MLS such other and further relief as the Court may deem just and proper.

Dated: August 9, 2023

/s/ J. Ryan Melogy

J. RYAN MELOGY

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**pro hac vice pending*