

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

CAPTAIN STEVEN J. ARANGO
5176 Brawner Place
Alexandria, VA 22304

Plaintiff,

v.

Civil Action No.

DEPARTMENT OF THE NAVY,
HEADQUARTERS UNITED STATES
MARINE CORPS
3000 Marine Corps Pentagon
Washington, DC 20350-300

Defendant.

**COMPLAINT FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, as amended, challenging the failure of the Department of the Navy, Headquarters United States Marine Corps, (“Defendant”) to fulfill the request of Captain Steven J. Arango (“Plaintiff”) for records related to: the Preliminary Inquiry (“PI”) conducted pursuant to a Prohibited Activities & Conduct Complaint (“PAC Complaint”) (002023000064) filed by Plaintiff at Marine Base Quantico on or around May 22, 2022; the Command Investigation (“CI”) conducted pursuant to a PAC Complaint (002023000064) filed by Plaintiff at Marine Base Quantico on or around May 22, 2022; and any investigations conducted in response to complaints filed against Isabelle Pauley, LtCol Christian Hur, and LtCol Todd Eslinger.

2. This case seeks declaratory relief that Defendant is in violation of the FOIA for failing to fulfill Plaintiff’s request for records, and injunctive relief that Defendant immediately and fully comply with Plaintiff’s request for records under the FOIA.

PARTIES

3. Plaintiff Captain Steven J. Arango is an active-duty Marine Judge Advocate in the United States Marine Corps, who is currently stationed at Marine Corps Base Quantico. Plaintiff is the FOIA requester in this case.

4. Defendant Department of the Navy, Headquarters United States Marine Corps, is an agency within the meaning of 5 U.S.C. § 552(f). Defendant has possession and control of the requested records and is responsible for fulfilling Plaintiff's request for records.

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).

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

STATUTORY FRAMEWORK

The Freedom of Information Act

7. The FOIA, 5 U.S.C. § 552, requires agencies of the federal government to release requested records to the public unless one or more specific statutory exemptions apply.

8. An agency must respond to a party making a FOIA request within 20 working days, notifying that party of at least the agency's determination whether or not to fulfill the request and of the requester's right to appeal the agency's determination to the agency head. 5 U.S.C. § 552(a)(6)(A)(i).

9. In "unusual circumstances," an agency may delay its response to a FOIA request or appeal, but must provide notice and "the date on which a determination is expected to be dispatched." 5 U.S.C. § 552(a)(6)(B).

10. This Court has jurisdiction, upon receipt of a complaint, “to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” 5 U.S.C. § 552(a)(4)(B).

FACTS UNDERLYING PLAINTIFF’S CLAIM FOR RELIEF

11. On April 20, 2021, the Department of Navy, Headquarters United States Marine Corps, released MCO 5354.1F, which is commonly referred to as the Prohibited Activities & Conduct order (the “PAC Order”). The PAC Order updated the United States Marine Corps’ policy, procedures, and responsibilities for preventing and responding to prohibited conduct involving sexual harassment, prohibited discrimination, harassment, hazing, bullying, dissident and protest activities, and wrongful distribution or broadcasting of intimate images. The PAC Order implements and aligns with Department of Defense and Department of the Navy policies on Military Equal Opportunity, and Harassment and Prevention and Response programs and activities.

12. The PAC Order allows Marines to perform their duties without fear of discrimination, harassment, and relation because it serves as a punitive order. The PAC Order can be used as a sword via formal complaints that must be investigated, and PAC Order violations can result in UCMJ punishment.

13. On September 12, 2023, Plaintiff’s counsel submitted a FOIA request (the “Request”) on Plaintiff’s behalf to the Department of the Navy, Headquarters United States Marine Corps, through the United States Marine Corps’ web-based FOIA portal as directed by the United States Marine Corps FOIA website, seeking:

- a. all investigative reports, preliminary notes, interview notes, interview reports, transcripts, testimonies, memorandums, meeting minutes, endorsements,

recommendations, legal sufficiency reviews, analysis, disposition decisions, communications or correspondence, including emails, letters, and notices, and documents related to the PI conducted pursuant to a PAC Complaint (002023000064) filed by Plaintiff at Marine Base Quantico on or around May 22, 2022;

- b. all investigative reports, preliminary notes, interview notes, interview reports, transcripts, testimonies, memorandums, meeting minutes, endorsements, recommendations, legal sufficiency reviews, analysis, disposition decisions, communications or correspondence, including emails, letters, and notices, and documents related to the CI conducted pursuant to a PAC Complaint (002023000064) filed by Plaintiff at Marine Base Quantico on or around May 22, 2022; and
- c. all investigative reports, preliminary notes, interview notes, interview reports, transcripts, testimonies, memorandums, meeting minutes, endorsements, recommendations, legal sufficiency reviews, analysis, disposition decisions, communications or correspondence, including emails, letters, and notices, and documents related to any investigations conducted in response to complaints filed against Isabelle Pauley, LtCol Christian Hur, and LtCol Todd Eslinger.

14. Pursuant to 5 U.S.C. § 552 (a)(4)(iii), Plaintiff requested a waiver of fees associated with the processing of the Request. As explained in Plaintiff's Request, a fee waiver is appropriate because the disclosure of the requested information is in the public interest, such that it is likely to contribute significantly to the public understanding of the operations and activities of the United States Marine Corps. Specifically, disclosure is likely to contribute to the public understanding of

how the United States Marine Corps handles complaints alleging violations of the PAC Order. Disclosure is also likely to contribute to the public understanding of how the United States Marine Corps conducts investigations into PAC Order violations, and whether the investigatory process in connection with PAC Order violations is comprehensive. Plaintiff intends to analyze and share the information he receives that is responsive to the Request with the public through memoranda, reports, and/or press releases.

15. Pursuant to 5 U.S.C. § 552 (b), Plaintiff also requested that all responsive materials falling within a statutory exemption be redacted and segregated, such that responsive, non-exempt materials are produced even if they include redactions

16. Plaintiff further noted that a Glomar denial with respect to the first two categories of records requested would be improper because the Department of the Navy, Headquarters United States Marine Corps, has already officially acknowledged the fact of the existence of the PI and the CI conducted in response to Plaintiff's PAC Complaint (002023000064). Specifically, on June 30, 2023, the Department of the Navy, Headquarters United States Marine Corps, produced various documents in response to a prior FOIA request submitted by Plaintiff (DON-USMC-2023-009512) that confirm the completion, and in turn the existence, of both the PI and the CI referenced in the first two categories of requested records. One such document is the Prohibited Activities and Conduct Complaint Form. This form contains the PAC Complaint number referenced in Plaintiff's Request: 002023000064. The PAC Complaint number is commonly referred to as a Dash Report Number. This form also provides an "explanation of [the] actions taken or attempted to resolve the complaint." According to the form, "[a] PI was conducted on 15 July 2022," and "a CI was conducted and completed." Plaintiff's Request is attached to this Complaint as Exhibit 1.

17. To date, Plaintiff has neither received any records from Defendant in response to the Request, nor received any correspondence from Defendant regarding its determination as to the scope of any documents it intends to produce and/or any exemptions that it will claim with respect to any withheld documents. Plaintiff has also not received an estimated date by which Defendant will complete its processing of Plaintiff's Request. The only correspondence Plaintiff has received from Defendant is as follows:

- a. On September 12, 2023, Defendant confirmed receipt of Plaintiff's Request.
- b. On September 13, 2023, Defendant acknowledged receipt of Plaintiff's Request and informed Plaintiff that the Request had been forwarded to Marine Corps Base Quantico—a United States Marine Corps installation located in Virginia. Defendant also directed Plaintiff to reach out to Ms. Maria Gonzalez—the FOIA representative assigned to the Request—for questions regarding the Request.
- c. On September 25, 2023, Defendant advised Plaintiff that his request for a fee waiver had been granted. Since then, Defendant has not contacted Plaintiff or his attorneys regarding the Request.

18. On October 23, 2023, Plaintiff's counsel contacted Ms. Maria Gonzalez for an update on the status of the Request. Neither Ms. Gonzalez, nor any other individual working at the FOIA office for the Department of the Navy, United States Marine Corps division, responded.

19. On November 2, 2023, Plaintiff's counsel contacted Ms. Sally Hughes—Ms. Gonzalez's supervisor—for an update on the status of the Request. Neither Ms. Hughes, nor any other individual working at the FOIA office for the Department of the Navy, United States Marine Corps division, responded.

20. Plaintiff is harmed by Defendant's failure to comply with the Request because that failure harms Plaintiff's ability to provide full, accurate, and current information to the public on a matter of public interest. Absent this critical information, Plaintiff cannot advance his mission of educating the public to ensure the public continues to have a vital voice in government decisions.

21. Plaintiff has exhausted his administrative remedies.

PLAINTIFF'S CLAIMS FOR RELIEF

CLAIM ONE

(Failure to Produce Records Under the FOIA)

22. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

23. Plaintiff, through the Request, properly asked for records within Defendant's control.

24. Defendant has neither produced any records to Plaintiff in response to the Request, nor timely issued a determination as to the scope of any documents it intends to produce and/or any claims of statutory exemption.

25. Plaintiff has exhausted the applicable administrative remedies with respect to Defendant's wrongful withholding of the records sought in Plaintiff's Request. 5 U.S.C. § 552(a)(6)(c)(i).

26. Defendant violated the FOIA's mandate to release agency records to the public, by failing to release the records Plaintiff specifically requested. 5 U.S.C. §§ 552(a)(3)(A), 552(a)(4)(B). Accordingly, Plaintiff is entitled to injunctive and declaratory relief with respect to the release and disclosure of the records requested in the Request.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- (1) Declare that Defendant violated the FOIA by failing to lawfully satisfy Plaintiff's Request;
- (2) Order Defendant to process and release immediately all records responsive to Plaintiff's Request at no cost to Plaintiff;
- (3) Retain jurisdiction of this action to ensure the processing of Plaintiff's Request and that no agency records are wrongfully withheld;
- (4) Award Plaintiff reasonable attorney fees and litigation costs in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (5) Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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/s/ Ephraim Wernick

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