

1 THOMAS R. BURKE (State Bar No. 141930)  
ANNIE S. ZHANG (State Bar No. 327381)  
2 DAVIS WRIGHT TREMAINE LLP  
50 California Street, 23rd Floor  
3 San Francisco, California 94111  
Telephone: (415) 276-6500  
4 Facsimile: (415) 276-6599  
Email: thomasburke@dwt.com  
5 anniezhang@dwt.com

6 Attorneys for Plaintiffs  
THE WAR HORSE NEWS and SONNER KEHRT

7  
8  
9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION

12 THE WAR HORSE NEWS and SONNER  
KEHRT,

13 Plaintiffs,

14 v.

15 UNITED STATES DEPARTMENT OF  
16 DEFENSE; UNITED STATES ARMY,

17 Defendants.

Case No. 3:24-CV-02049

**COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF FOR VIOLATION  
OF THE FREEDOM OF INFORMATION  
ACT, 5 U.S.C. § 552 et seq.**

DAVIS WRIGHT TREMAINE LLP

DAVIS WRIGHT TREMAINE LLP

1 Plaintiffs The War Horse News and Sonner Kehrt (collectively, “The War Horse News” or  
2 “Plaintiffs”), by their undersigned attorneys, allege as follows:

3 **INTRODUCTION**

4 1. Water is one of the most precious resources. It is scarce throughout much of the  
5 Western United States and becoming scarcer in some parts of the Eastern United States.<sup>1</sup> The  
6 United States Army requires enough water to carry out its missions without significant  
7 disruptions. Increasing demand for water places stress on the same supplies of ground and surface  
8 water that Army installations currently depend upon. Several Army installations have become  
9 involved in litigation over water rights.<sup>2</sup> In 2014, the Army issued Army Directive 2014-08,  
10 requiring the Army to acquire and maintain water rights; identify, assert, defend and preserve their  
11 water rights under State and Federal law; to locate, record and retain documentation related to  
12 water rights; and to issue a yearly report on the current state of the Army’s water rights.<sup>3</sup> On  
13 June 17, 2022, as part of an investigation into the Army’s water rights, The War Horse News’  
14 investigative journalist Sonner Kehrt made a FOIA Request to the Army for records related to the  
15 annual report, from 2014 through 2021. Nearly two years after The War Horse News made its  
16 FOIA Request, no responsive documents have been produced, necessitating the filing of this FOIA  
17 action.

18 2. The War Horse News brings this action under the Freedom of Information Act  
19 (“FOIA”), 5 U.S.C. § 552 *et seq.*, as amended, to enjoin the Army from continuing to improperly  
20 withhold agency records that are responsive to the FOIA Request The War Horse News sent on  
21 June 17, 2022 (the “FOIA Request”). This FOIA action is necessary because the Army continues  
22 to withhold responsive records since The War Horse News first made the FOIA Request over 21  
23 months ago, which amounts to a constructive denial of the FOIA Request.

24 3. The Freedom of Information Act “focuses on the citizens’ right to be informed  
25 about ‘what their government is up to,’” by requiring the release of “[o]fficial information that  
26

27 <sup>1</sup> Secretary of the Army Memorandum re Army Directive 2014-08 (May 12, 2014),  
[https://www.asaie.army.mil/sites/default/files/PDF/ad2014\\_08.pdf](https://www.asaie.army.mil/sites/default/files/PDF/ad2014_08.pdf).

28 <sup>2</sup> *Id.*

<sup>3</sup> *Id.*

DAVIS WRIGHT TREMAINE LLP

1 sheds light on an agency’s performance of its statutory duties.” *U.S. Dep’t of Justice v. Reporters*  
2 *Comm. for Freedom of the Press*, 489 U.S. 749, 750, 773 (1989) (citation omitted). “[D]isclosure,  
3 not secrecy, is the dominant objective” of FOIA. *Dep’t of Interior v. Klamath Water Users*  
4 *Protective Ass’n*, 532 U.S. 1, 8, (2001) (internal quotation marks and citations omitted). The War  
5 Horse News plays a critical role in providing information to citizens about “what their government  
6 is up to.” Indeed, the First Amendment’s guarantee of freedom of the press is meant to enable  
7 journalists to play an “essential role in our democracy,” to “bare the secrets of government and  
8 inform the people.” *New York Times. Co. v. United States*, 403 U.S. 713, 717 (1971) (Black, J.,  
9 concurring).

10 4. Through its FOIA Request, The War Horse News seeks to fulfill its journalistic  
11 function and to shine a public light on information about the Army’s position on water rights.

12 **PARTIES**

13 5. Plaintiff The War Horse News is an award-winning nonprofit newsroom and the  
14 most trusted source for reporting on the human impact of military service. It strives to hold power  
15 to account and to improve the public’s understanding of the true cost of military service. With  
16 nearly \$1 trillion budgeted to defense and veterans, but only 5% of journalism focusing on  
17 military service, The War Horse News is committed to news coverage of the military and those  
18 who serve, and the relationship between civilians and members of the military community.

19 6. Plaintiff Sonner Kehrt (“Ms. Kehrt”) is a resident and citizen of the County of  
20 Alameda in the state of California. She is an investigative journalist for The War Horse News,  
21 where she covers the military and climate change, misinformation, and gender. She studied  
22 government at the U.S. Coast Guard Academy and served for five years as a Coast Guard officer  
23 before earning a Master’s degree in democracy and governance studies from Georgetown  
24 University and a Master’s of journalism from UC Berkeley. She has also worked as a lecturer at  
25 UC Berkeley, teaching classes in writing, reporting, and ethics.

26 7. Defendant U.S. Department of Defense (“DOD”) is a component of the Executive  
27 Branch of the United States Government. Defendant U.S. Army (“the Army”) is one of three  
28 military departments reporting to the Department of Defense. Defendants are each an “agency”

1 within the meaning of 5 U.S.C. § 552(f). Plaintiffs are informed and believe that the Army has  
2 possession and control of the records sought by the FOIA Request.

3 **JURISDICTION**

4 8. This Court has subject-matter jurisdiction over this action and personal jurisdiction  
5 over the parties under 5 U.S.C. § 552(a)(4)(B), 5 U.S.C. § 701-706, and 28 U.S.C. § 1331.

6 **VENUE**

7 9. Venue in the Northern District of California is proper under 5 U.S.C.  
8 § 552(a)(4)(B) as Ms. Kehrt resides in Alameda County and her FOIA Request to the Army  
9 occurred in the County of Alameda. For the same reason, venue also is proper under 28 U.S.C.  
10 § 1391(e).

11 10. Assignment to the Oakland Division is proper under Civil Local Rule 3-2(c) & (d)  
12 because Ms. Kehrt’s work and her FOIA Request to the Army occurred in the County of Alameda,  
13 within this District.

14 **FACTS**

15 11. On June 17, 2022, Ms. Kehrt, while employed for The War Horse News, sent a  
16 FOIA Request to the U.S. Army, requesting copies of annual reports on the state of the Army’s  
17 water rights, specifically:

18 annual reports from the Office of the Assistant Chief of Staff for Installation  
19 Management to the Office of the Assistant Secretary of the Army  
20 (Installations, Energy and Environment) on the state of the Army’s water  
21 rights. Per Army Directive 2014-08 (Water Rights Policy for Army  
22 Installations in the United States), these reports are described: ‘By 31  
23 December of each calendar year, the Office of the Assistant Chief of Staff for  
24 Installation Management (OACSIM) will report to the Office of the Assistant  
25 Secretary of the Army (Installations, Energy and Environment) on the current  
26 state of the Army’s water rights. This report will include the following topics:  
27 an assessment of the sufficiency of existing water rights to meet mission  
28 requirements; the state of documentation to assert, maintain and defend the  
Army’s water rights; and a current summary of all legal challenges to the  
Army’s water rights.’ I request copies of these reports from 2014 through  
2021.

27 12. Ms. Kehrt also asked the Army for a waiver of fees because the information sought  
28 was for continuing coverage of military and veterans’ issues, and was in the public interest.

DAVIS WRIGHT TREMAINE LLP

DAVIS WRIGHT TREMAINE LLP

1 Attached as **Exhibit A** is a true and correct copy of the FOIA Request.

2 13. The Army failed to acknowledge receipt of the FOIA Request. After more than  
3 twenty-one days had passed, Ms. Kehrt sent an email inquiring about the status of the Request.

4 Attached as **Exhibit B** is a true and correct of this email.

5 14. On August 9, 2022, Ms. Kehrt resent the original FOIA Request to a different  
6 Army email address. Attached as **Exhibit C** is a true and correct copy of this email.

7 15. On August 12, 2022, Erica Parker (“Ms. Parker”), Freedom of Information Act  
8 Officer for the Army, acknowledged Ms. Kehrt’s Request, and assigned it case number  
9 FP-22-025509. Attached as **Exhibit D** is a true and correct copy of this letter.

10 16. Between October 18, 2022 and January 16, 2024, Ms. Kehrt repeatedly inquired  
11 about the status of the FOIA Request but never received any documents from the Army. Attached  
12 as **Exhibit E** and **Exhibit F** are true and correct copies of the email exchanges between Ms. Kehrt  
13 and Ms. Parker.

14 17. On October 18, Ms. Kehrt sent an email to Ms. Parker, inquiring about the status of  
15 FOIA Request. Ms. Parker responded the same day, stating that she will confirm the status with  
16 her operations directorate and provide an official response.

17 18. After not receiving a further response, Ms. Kehrt followed up with Ms. Parker on  
18 November 1, 2022, and again on December 20, 2022. Ms. Parker responded on December 27,  
19 2022, stating that her operations directorate was “still researching.”

20 19. On January 10, 2023, Ms. Parker reported that she “was sent the reports you  
21 requested and am currently reviewing them before sending my recommendations for release to  
22 OTJAG [Office of the Judge Advocate General] for approval.”

23 20. Ms. Kehrt asked for an update on February 21, 2023, to which Ms. Parker  
24 responded on February 24, 2023.

25 21. On April 12, 2023, Ms. Kehrt sent an email to Ms. Parker, inquiring again about  
26 the status of the FOIA Request. Ms. Parker responded the same day, stating that her legal  
27 representative had some questions about the Request and she had to go back to her operations  
28 directorate with the questions.

DAVIS WRIGHT TREMAINE LLP

1           22.     On June 1, 2023, Ms. Kehrt requested another update. Ms. Parker responded on  
2 June 6, 2023, stating that the documents “now has to be reviewed by legal again for approval for  
3 me to send it to the Initial Denial Authority for release.” On June 23, 2023, Ms. Parker informed  
4 Ms. Kehrt that the documents were being sent back to legal for another review.

5           23.     On August 16, 2023, Ms. Parker informed Ms. Kehrt that the information was still  
6 being reviewed by legal, and that “many cases take some time depending on the priority of the  
7 case.”

8           24.     On October 26, 2023, Ms. Parker responded to another inquiry from Ms. Kehrt to  
9 state that her attorney at OTJAG reached out to her environmental peer to get some guidance on  
10 the release.

11           25.     On November 13, 2023, Ms. Kehrt again inquired about the status of the Request.  
12 Ms. Parker responded two days later that “the Environmental Attorney is working on a write up in  
13 regards to what can/will be released and why.” Ms. Parker also explained, “There are a few things  
14 in regards to water that have been on the Army’s hot topics list for quite some time.”

15           26.     After another month of silence, Ms. Kehrt again asked for an estimated date of  
16 completion. Ms. Parker responded on December 22, 2023, stating that she would check with legal  
17 because “[a]pparently there are some water rights terms that are on the hot topics list so the  
18 environmental lawyer is working on a memorandum of response on some of them.”

19           27.     After waiting more than a year and a half, Ms. Kehrt wrote to the Army and  
20 Ms. Parker on January 16, 2024, and informed them that unless The War Horse News started  
21 receiving documents by March 1, 2024, they would assume the Army is not producing documents  
22 and would be prepared to file suit. On January 18, 2024, Ms. Parker apologized for the extended  
23 delay and reiterated that she is unable to release any documents without the Army signing a  
24 memorandum of approval upon legal review.

25           28.     On March 28, 2024, Ms. Parker sent an email to Ms. Kehrt, stating that she  
26 “reached out to legal on a status for your case and am waiting to hear back from the environmental  
27 lawyer again.” Attached as **Exhibit G** is a true and correct copy of this email.

28



**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request the Court award them the following relief:

- A. Declare that Defendants violated FOIA in their response to Plaintiffs’ FOIA Request;
- B. Order Defendants to immediately disclose the requested records to Plaintiffs and enter an injunction prohibiting Defendants from continuing to withhold the requested records;
- C. Order Defendants to immediately disclose any responsive records in their possession or control to Plaintiffs;
- D. Award Plaintiffs their reasonable costs and attorney’s fees;
- E. Grant such further relief as the Court may deem just and proper.

Dated: April 4, 2024

Respectfully submitted,

DAVIS WRIGHT TREMAINE LLP  
THOMAS R. BURKE  
ANNIE S. ZHANG

By: /s/ Annie S. Zhang  
Annie S. Zhang

Attorneys for Plaintiffs  
THE WAR HORSE NEWS and SONNER KEHRT

DAVIS WRIGHT TREMAINE LLP

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28