

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

THE MILITARY RELIGIOUS FREEDOM
FOUNDATION,

Plaintiff,

v.

Case No.

UNITED STATES AIR FORCE ACADEMY
and DEPARTMENT OF THE AIR FORCE,

Defendants.

COMPLAINT FOR INJUNCTIVE RELIEF AND DISCLOSURE OF DOCUMENTS

Plaintiff The Military Religious Freedom Foundation (“MRFF”), by and through undersigned counsel, hereby submits this Complaint for Injunctive Relief and Disclosure of Documents pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), for injunctive relief to compel the disclosure and release of agency records improperly withheld by Defendants United States Air Force Academy (“USAFA”) and Department of the Air Force and for other appropriate relief.

JURISDICTION AND VENUE

1. This Court has both subject matter jurisdiction over this matter and personal jurisdiction over the parties. 5 U.S.C. § 552(a)(4)(B).
2. Venue is proper in the United States District Court for the District of New Mexico. 5 U.S.C. § 552(a)(4)(B).

PARTIES

3. Plaintiff MRFF is a non-profit organization established in Albuquerque, New Mexico for the purpose of protecting the religious freedom of all soldiers, sailors, Marines, airmen, midshipmen, cadets, and veterans throughout the United States of America.

4. Defendant USAFA is a university and Air Force installation, which is subject to the requirements of FOIA.

STATEMENT OF FACTS

August 2011 Request

5. MRFF filed a request for information from USAFA on August 29, 2011, pursuant to FOIA.

6. The 2011 FOIA request (“Request”) sought:

- a. All agency records relating to MRFF, including but not limited to records relating to any actual, alleged, or suspected clients, supporters, or sympathizers of MRFF;
- b. All agency records relating to Michael L. “Mikey” Weinstein, Founder and President of MRFF, from November 17, 2010 to the date USAFA would produce the results of the FOIA search;
- c. All agency records relating to Dr. Ronald David Mullin, a longtime MRFF client, current MRFF Director of FOIA Affairs at USAFA and former USAFA Associate Professor of Economics, as well as to his service dog, “Caleb,” from January 1, 1997 to the date USAFA would produce the results of the FOIA search;
- d. All agency records relating to Casey M. Weinstein from January 1, 1999 to the date USAFA would produce the results of the FOIA search;
- e. All agency records relating to Curtis G. Weinstein from January 1, 2001 to the date USAFA would produce the results of the FOIA search;
- f. All agency records relating to Amanda L. Weinstein (formerly Amanda L. Baranek) from January 1, 1999 to the date USAFA would produce the results of the FOIA search;

- g. All agency records relating to Bonnie L. Weinstein from January 1, 1999 to the date USAFA would produce the results of the FOIA search; and
 - h. All agency records relating to Amber J. Weinstein from January 1, 2006 to the date USAFA would produce the results of the FOIA search.
- 7. The Request is attached as Ex. 1 and is incorporated herein.
- 8. Bonnie Weinstein is MRFF's Development Director and has been since before August 2011.
- 9. Casey Weinstein, Curtis Weinstein, Amanda Weinstein, and Amber Weinstein are all longtime MRFF clients and/or participatory supporters of the organization.
- 10. MRFF did not receive any response to the Request from USAFA within twenty (20) days of its Request, as mandated by FOIA. 5 U.S.C. § 552(a)(6)(A)(i).
- 11. MRFF did not receive any notice from USAFA of unusual circumstances requiring an extension of the statutory deadline within twenty (20) days of its Request, as mandated by FOIA. 5 U.S.C. § 552(a)(6)(b)(ii).
- 12. USAFA did not respond to MRFF's August Request until March 2, 2012, approximately seven months after the statutory deadline to respond.
- 13. On March 2, 2012, USAFA notified MRFF that it was working on the Request and would produce responsive documents at the earliest possible date ("Notification"). The Notification is attached as Ex. 2 and is incorporated herein.
- 14. MRFF received a "first interim response" ("First Response") from USAFA on May 17, 2012, which included 1,000 pages of documents responsive to only two of the eight categories included in MRFF's Request.

15. Significant portions of the documents produced as part of USAFA's First Response were improperly redacted, allegedly because they included information that would invade another individual's personal privacy within the exemption contained in 5 U.S.C. § 552(b)(6) ("Exemption 6").

16. The First Response is attached as Ex. 3 and is incorporated herein.

17. MRFF received a "second interim response" ("Second Response") from USAFA on February 20, 2015, approximately three years after the First Response.

18. The Second Response is attached as Ex. 4 and is incorporated herein.

19. The Second Response stated that an additional 7,216 documents had been collected as potentially responsive, 3,173 of which had been reviewed.

20. The Second Response stated that the 3,173 documents reviewed were being withheld on the basis that they contained "personal information in other files that, if disclosed would result in a clearly unwarranted invasion of personal privacy," citing Exemption 6.

21. The Second Response did not include any description or other information regarding the withheld documents explaining how they fell within Exemption 6.

22. The Second Response did not include the names and titles and/or positions of each person responsible for the denial of the requested information, as required by FOIA. 5 U.S.C. § 552(a)(6)(c).

23. The Second Response stated that USAFA expected to review and produce the remaining 4,043 documents no later than June 30, 2015.

24. The Second Response erroneously claimed that MRFF's 2011 Request had been withdrawn when the referenced January 17, 2013 correspondence in no way withdrew MRFF's

Request and instead simply stated that further correspondence should be directed to another attorney working on the matter.

25. The January 17, 2013 correspondence is attached to Ex. 5 as its Ex. A and is incorporated herein.

26. USAFA failed to produce any additional documents or provide any additional information by its own deadline of June 30, 2015.

March 2015 Appeal

27. MRFF issued an appeal of the Second Response (“Appeal”) on March 6, 2015.

28. The Appeal is attached as Ex. 5 and is incorporated herein.

29. USAFA did not respond to the appeal with a final determination within twenty days, as required by FOIA. 5 U.S.C. § 552(a)(6)(A)(ii).

30. To date, USAFA has not made any determination regarding MRFF’s Appeal.

31. On August 5, 2015, USAFA provided MRFF with yet another anticipated completion date of September 15, 2015 for producing the requested documents.

32. The August 5, 2015 email is attached as Ex. 6 and is incorporated herein.

33. USAFA failed to produce additional responsive documents by its own deadline of September 15, 2015.

34. On September 15, 2015, USAFA emailed MRFF to explain that it was continuing to process the request for documents “because the records sought are voluminous and complicated.” USAFA promised monthly updates in regard to its processing of the four-year old request and subsequent appeal.

35. The September 15, 2015 email is attached as Ex. 7 and is incorporated herein.

36. To date, USAFA has not produced the promised documents, let alone the requested documents.

37. To date, USAFA has not provided any update, periodic or otherwise, as promised.

38. USAFA has ignored the statutory deadlines of FOIA, as well as its own promised deadlines, in connection with MRFF's 2011 Request.

39. USAFA's actions concerning MRFF's 2011 Request violate FOIA.

40. USAFA's actions concerning MRFF's 2011 Request, including but not limited to the withholding of 3,173 documents, are arbitrary and capricious.

41. USAFA similarly ignored the statutory deadlines of FOIA in connection with at least one other FOIA request by MRFF in 2013.

42. The actions of USAFA concerning MRFF's 2011 Request and the similar actions concerning another MRFF FOIA request in 2013 demonstrate a pattern, practice, and/or policy to refuse to abide by the terms of FOIA and such a pattern, practice, and/or policy will cause continued injury to MRFF in connection with future FOIA requests.

43. USAFA's pattern, practice, and/or policy to refuse to abide by the terms of FOIA is unlawful and arbitrary and capricious.

CLAIM I: VIOLATION OF THE TERMS OF FOIA

44. The allegations contained in Paragraphs 1-43 are incorporated as if fully set forth herein.

45. FOIA requires that requests receive a response within twenty (20) days. 5 U.S.C. § 552(a)(6)(A)(i).

46. USAFA failed to provide MRFF with any response regarding its FOIA request until approximately seven months after the statutory deadline.

47. USAFA has only produced 1,000 pages of responsive documents, despite admitting that an additional 7,216 pages have been located.

48. USAFA stated in its Second Response that 3,173 pages of the additional documents would not be produced pursuant to Exemption 6.

49. To date, USAFA has not provided MRFF with any information concerning the 3,173 pages of documents withheld showing that they fall within Exemption 6.

50. To date, USAFA has neither produced nor provided any information concerning the remaining 4,043 pages of documents it admits to have already located.

51. The Second Response did not include the names and titles and/or positions of each person responsible for the denial of the requested information, as required by FOIA.

52. FOIA requires that an appeal of a denial of a FOIA request receive a determination regarding the appeal within twenty (20) days. 5 U.S.C. § 552(a)(6)(A)(ii).

53. Despite its self-imposed deadlines and promised timeline, USAFA has failed to make a determination regarding MRFF's March, 2015 appeal.

54. USAFA has repeatedly ignored the requirements of FOIA, as well as its own proposed extended deadlines.

55. USAFA's actions are in violation of the requirements of FOIA and Plaintiff is entitled to the relief set forth below.

56. USAFA's actions in connection with MRFF's Request are arbitrary and capricious.

CLAIM II: PATTERN AND PRACTICE OF VIOLATING TERMS OF FOIA

57. The allegations contained in Paragraphs 1-56 are incorporated as if fully set forth herein.

58. USAFA failed to produce any documents or otherwise respond to MRFF's Request within twenty (20) days, as required by FOIA.

59. MRFF received USAFA's First Response on May 17, 2012, approximately nine months after the statutory deadline.

60. USAFA issued a Second Response on February 20, 2015, more than three years after receiving MRFF's Request.

61. The Second Response did not include the names and titles and/or positions of each person responsible for the denial of the requested information, as required by FOIA.

62. In its Second Response, USAFA admitted that additional responsive documents had been located and anticipated producing them no later than June 30, 2015.

63. USAFA failed to produce any documents or provide any information concerning MRFF's Request by its own stated deadline of June 30, 2015.

64. On August 5, 2015, USAFA informed MRFF via email that it anticipated producing additional responsive documents no later than September 15, 2015.

65. USAFA failed to produce any documents or provide any information concerning MRFF's Request by its own stated deadline of September 15, 2015.

66. USAFA has repeatedly ignored the requirements of FOIA, as well as its own proposed extended deadlines.

67. MRFF filed a second FOIA request ("Second Request") on November 27, 2013, requesting documents not at issue in this litigation.

68. USAFA failed to respond to MRFF's Second Request until February 18, 2015 – over one year after the Second Request was received.

69. USAFA's consistent disregard for the requirements of FOIA in connection with MRFF's Request shows a pattern and practice of violating the terms of FOIA.

70. USAFA's similar disregard for the requirements of FOIA in connection with MRFF's Second Request shows a pattern and practice of violating the terms of FOIA.

71. USAFA has adopted a policy of failing to abide by the terms of FOIA in connection with requests made by MRFF.

72. USAFA's policy of failing to abide by the terms of FOIA in connection with requests made by MRFF will impair MRFF's lawful access to information and documents in the future.

73. The impairment of MRFF's lawful access to information and documents will cause MRFF to suffer continuous injury and Plaintiffs are entitled to the relief set forth below.

CLAIM III: IMPROPER INVOCATION OF FOIA EXEMPTION

74. The allegations contained in Paragraphs 1-73 are incorporated as if fully set forth herein.

75. Significant portions of the 1,000 pages produced by USAFA were redacted, allegedly pursuant to Exemption 6.

76. USAFA failed to provide MRFF with any information concerning how the redacted portions fit within Exemption 6 and thereby render redaction proper.

77. At least some redacted information, on its face, does not fit within Exemption 6. By way of example, USAFA consistently redacted the name/email address of the recipient of various MRFF newsletters – thus, implying that the identity of an individual on MRFF's own mailing list should be kept confidential from MRFF.

78. In its Second Response, USAFA claimed it was withholding an additional 3,173 pages of documents pursuant to Exemption 6.

79. USAFA failed to provide MRFF with any information concerning how the withheld documents fit within Exemption 6 and would thereby render withholding proper.

80. Blanket objections and/or conclusory allegations are not sufficient to refuse to produce responsive documents in connection to a FOIA request.

81. USAFA's improper redaction of information, not within Exemption 6, cast further doubt upon its unexplained, unsupported and complete withholding of 3,173 pages of documents allegedly pursuant to the same exemption.

82. USAFA has improperly invoked Exemption 6 and Plaintiffs are entitled to the relief set forth below.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

1. An order directing USAFA to release all records requested in MRFF's FOIA Request;
2. An injunction against USAFA from relying on Exemption 6, as well as any other FOIA exemption not previously relied upon in its withholding of documents;
3. An order stating that USAFA's actions violate the terms of FOIA;
4. A finding that USAFA's actions are arbitrary and capricious; and
5. An order directing USAFA to pay all costs and attorney fees associated with the filing of this litigation.

Respectfully submitted,

/s/Vincent J. Ward

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