

## EXHIBIT 3



**John D. Fitzpatrick**

July 17, 2015

VIA CERTIFIED MAIL AND  
ELECTRONIC MAIL TO *ogc.foia@bop.gov*

Wanda M. Hunt, Chief  
FOIA/PA Section  
Federal Bureau of Prisons  
Department of Justice  
Room 841, HOLC Building  
320 First Street, N.W.  
Washington, DC 20534

Ian Guy, Supervisory Attorney-Advisor  
FOIA/PA Section  
Federal Bureau of Prisons  
Department of Justice

Dear Ms. Hunt and Mr. Guy:

My client Supermax, Inc. (“Supermax”) first requested records under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 on **January 30, 2015**. Supermax made eight discrete requests for records within the possession or control of the Bureau of Prisons (“BOP”) or Federal Prison Industries, Inc. (“FPI”), also known by its trade name Unicor (collectively BOP and FPI are referred to as “Unicor”) relating to a group of business transactions. If it was inclined to do so, Unicor could undoubtedly retrieve these records expeditiously—we suspect all of the records responsive to requests (ii)-(vii) are maintained in folder stored electronically on the desktop of single custodian. Request (i) requires a handful of individuals to search and retrieve from their email servers messages exchanged with Earl Jordan, a task they could likely complete in less than a minute.

Despite our regular inquiries and patience through a series of unmet estimates for retrieval of these documents, in less than two weeks Unicor will have delayed responding to Supermax’s request for **6 months**. During this period, Unicor twice

notified me (on February 6 and June 16) that the retrieval might be delayed, apologizing in the most recent notice for the delay and expressing “hope” that the responsive records would be received “within the next two weeks” (*i.e.* by June 30, 2015). That was apparently wishful thinking because Unicorn has neither provided a determination nor produced a single document.

This delay flouts the statutory mandate that government agencies are allowed no more than twenty working days in which to respond to a request. 5 U.S.C. § 552(a)(6). When an agency fails to respond within that statutory timeframe, it has constructively denied the request. *Oglesby v. U.S. Dep't of Army*, 920 F.2d 57, 65 (D.C. Cir. 1990) (“Congress adopted the time limit provision in the FOIA in order to ‘contribute to the fuller and faster release of information, which is the basic objective of the Act.’” (*quoting* H.R. Rep. No. 93-876, 93d Cong., 2d Sess., reprinted (1974) U.S. Code Cong. & Ad. News 6267 at 6271)).

Unicorn’s stonewalling also violates the President’s direction that “openness prevails” in the dissemination of information to the public. Memorandum for the Heads of Executive Dep’ts and Agencies, 74 Fed. Reg. 15, 4683 (Jan. 26, 2009). The executive instruction that “[a]ll agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA...” is simply not being met. *Id.* Supermax cannot discern Unicorn’s reasons for refusing its requests but the fact that the documents are being sought to advance Supermax’s interests in litigation in no way diminishes its right to access the material. *See NLRB v. Robbins Tire & Rubber Co.*, 98 S. Ct. 2311, 2327 (U.S. 1978).

For ease of reference, Supermax restates its requests here:

- (i) All communications between Unicorn (including, but not limited to, its Program Manager Mark Gustafson, Chief of Procurement Lisabeth Day, General Manager Kimberly Armfield or Legal Department) and Earl Jordan concerning any subject;
- (ii) All draft agreements exchanged between Unicorn and either Jordan or Glovepaq;
- (iii) All agreements between Unicorn and Glovepaq;
- (iv) All requirements that Glovepaq provided to Unicorn;
- (v) All purchase orders that Glovepaq provided to Unicorn;
- (vi) All invoices Unicorn generated for services rendered or costs incurred to Glovepaq;
- (vii) All remittances that Glovepaq sent to Unicorn for the invoices; and,

(viii) Any written notice that either Unicorn or Glovepaq sent to the other pursuant to a contract for services.

The information Supermax requests may not be defensibly withheld under any of the exemptions that FOIA allows and Supermax has now exhausted its administrative remedies with respect to this request.

I trust that upon re-consideration, you will rectify the conduct constructively denying my client access to the documents requested. If Unicorn either denies this appeal or does not respond to it by August 14, 2015, rest assured we will seek judicial review of the denial. As part of that action we will request that the district court enjoin Unicorn “from withholding agency records and [] order the production of any agency records improperly withheld” from Supermax. *See* 5 U.S.C. § 552(a)(4)(B).

If you have any questions regarding this appeal, you may contact me by telephone (at 312.251.1012) or electronic mail (at [jfitzpatrick@mandellmenkes.com](mailto:jfitzpatrick@mandellmenkes.com)). I look forward to your timely response.

Sincerely,



John D. Fitzpatrick

cc: Jeffrey Hesser ([jhesser@cassiday.com](mailto:jhesser@cassiday.com))  
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