

# **Exhibit 2**



April 27, 2016

*VIA ONLINE SUBMISSION*

Office of the Secretary of the Air Force  
THRU: 502 CS/SCOK (FOIA)  
151 J Street East  
JBSA-Randolph, Texas 78154-4339

**Re: Appeal of Constructive Denial of Freedom of Information Request  
2016-00737-F**

Dear Sir/Madam:

I am writing to appeal the failure of the United States Department of the Air Force (the "Air Force") to respond to the above-referenced Freedom of Information Act ("FOIA") request.

**I. The Request**

On November 30, 2015, I submitted a FOIA request (the "Request") to the Air Force on behalf of client Human Resources Technologies, Inc., *see* Ex. 1, seeking copies of the following records as they relate to the August 18, 2015 award of a purchase order to Intelligent Decisions, Inc. ("IDI") under its NETCENTS-2 Products contract:

- Any email or other written communications between employees of Intelligent Decisions and personnel within the Air Force regarding EONet software between October 1, 2014 and the date of this letter.
- Any email or written communication related to the dispute over data rights between the Air Force and Human Resources Technology, Inc.
- Any solicitation, request for task or delivery order proposals or quotations, or similar request issued to NETCENTS-2 Products IDIQ contract holders to obtain EONet software.
- Any contract, task order, or delivery order issued to Intelligent Decisions for EONet software or any other product to support the Air Force EO program.
- Any communications between the Air Force and any potential or actual offeror for EONet software.
- Any contract under which contractor David Furlong is employed. A Copy of the duties and responsibilities for David Furlong.
- Any email or other written communications between David Furlong and David Bailey, Lakendrick Knight, Mark Delarosa, James Nally, Tineaka Lollar, James Shaw, John Russell, Jim Carlock, Audie Sanders and CMSgt Danny Wells or anyone else associated with Air Force acquisition of EONet software or the EO Program. Specifically, but not



- limited to, any communication related to David Furlong's access to Human Resources Technology, Inc. EO Software at any time.
- A copy of any screen shots taken by any contractor or government employee of any Human Resources Technology, Inc. software on any Air Force server. Any email or communication related to taking screen shots of Human Resources Technology, Inc. software.
  - Any email or communication from or to David Bailey in any way related to Human Resources Technology, Inc. or EONet software.

The Air Force has decentralized its FOIA program. Although the Request was submitted via the centralized online filing system, the Air Force Personnel Center ("AFPC") was identified as the location to be searched for responsive records.

On December 8, 2015, AFPC responded to the Request, indicating that responsive records were not under the control of AFPC, as the Request related to the award of a purchase order. Ex. 2. Contracting records are maintained by the Air Force Personnel Operations Agency ("AFPOA"), so AFPC transferred the Request to the applicable FOIA office, AFIMSC-IZSI. A FOIA Manager with the 502D Air Force Wing, Joint Base San Antonio, Bobby White, acknowledged the transferred Request on December 22, 2015. Ex. 3. Mr. White stated that the Air Force should submit a formal response by January 21, 2016. *Id.*

Having not received a response by the 21<sup>st</sup>, on January 22<sup>nd</sup>, I reached out to Mr. White, who responded that "[my] request was still being reviewed," and that they hoped to provide a reply by February 5, 2016. Ex. 4. I asked for clarification as to whether the Air Force intended to produce any documents. On January 26, 2016, Mr. White responded to my request for clarification, and explained that it will cost approximately \$4,506.30 to process the Request. *Id.* I approved the expense on behalf of HRTec.

On January 26, 2016, Anita Heath, a FOIA Manager at Hanscom AFB, indicated that she could provide the "[performance work statement ("PWS")] on contract FA8721-14-C-0017 with the information pertaining to the work Mr. Furlong is associated with." Ex. 5. Ms. Heath asked whether this information would satisfy the request pertaining to emails and communications between David Furlong and others. I responded that it would not.

On February 10, 2016, Mr. White provided an update to the Request, stating that the "[R]equest is still being worked" but that, given the number of documents, it "will take a while to process." Ex. 6. He did not provide a time frame. However, he stated that if I were willing to accept "Clearly Releasable" material, the documents would not be required to undergo a legal review and could be produced more quickly. *Id.* HRTec declined to receive Clearly Releasable material only.



On March 16, 2016, Mr. White indicated that the records responsive to the Request were “being forwarded to the Staff Judge Advocate for review.” Ex. 7. On the 18<sup>th</sup>, he apologized for the delay, but “assure[d me] that [the Air Force is] actively working to complete this request.” Ex. 8.

On April 12, 2016, Mr. White again did not produce any records, but stated that “the requested records are still being reviewed by the Staff Judge Advocate.” Ex. 9. He stated that they “hope” to provide a response by April 26<sup>th</sup>.

On April 26<sup>th</sup>, Mr. White again failed to produce any records, stating that “legal is still reviewing the documents.” Ex. 10. He stated that he would “provide another update on 10 May 2016,” but did not indicate whether the documents would be produced by that date.

Nearly five months have passed since the Request was submitted, and the Air Force has not provided any documents responsive to the Request, nor has it identified any basis for withholding such documents.

## **II. The Air Force’s Failure to Respond to the Request Within the Time Period Required by the FOIA Constitutes a Constructive Denial of the Request**

The FOIA requires an agency to respond to a request for records within 20 days. *See* 5 U.S.C. § 552(a)(6)(A)(i). Therefore, the Air Force’s response to the Request was due on or about December 29, 2015. While the Air Force has repeatedly stated that the records are “under review,” it has failed to produce a single document. The Air Force’s failure to respond to the Request within the time period required by the FOIA therefore serves as a constructive denial of the Request, and I am deemed to have exhausted my administrative remedies. *See* U.S.C. § 552(a)(6)(C)(i) (“Any person making a request to an agency for records shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit of this paragraph.”).



I respectfully request that the Air Force produce the documents responsive to the Request forthwith and respond to this appeal within 20 days. *See* 5 U.S.C. § 552(a)(6)(A)(ii). If you have any questions or require any additional information, please contact me directly at (703) 745-1819.

Respectfully,

A handwritten signature in black ink, appearing to be "Lee Dougherty", written over a horizontal line.

Lee Dougherty  
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Exhibits

1. FOIA Request 2016-00737-F
2. Response from AFPC indicating transfer of Request to AFIMSC/IZSI (Dec. 8, 2015)
3. Acknowledgment of Request from Bobby White (Dec. 22, 2015)
4. Email chain with Mr. White regarding estimated cost of production (Jan. 22-26, 2016)
5. Email from Anita Heath regarding production of PWS for IDI's contract (Jan. 26, 2016)
6. Email from Mr. White regarding "Clearly Releasable" information (Feb. 10, 2016)
7. Email from Mr. White indicating records had been sent to SJA for review (Mar. 10, 2016)
8. Email from Mr. White apologizing for delay (Mar. 18, 2016)
9. Email from Mr. White indicating that he "hoped" records would be produced on April 26<sup>th</sup> (Apr. 12, 2016)
10. Email from Mr. White stating that the next update would be on May 10<sup>th</sup> (Apr. 26, 2016)