

government and fidelity to the rule of law.

4. Defendant U.S. Department of Defense is an agency of the United States Government and is headquartered at 1400 Defense Pentagon, Washington, DC 20301. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

RELATED LITIGATION

5. On September 28, 2010, Plaintiff filed a related FOIA complaint in this court, *Eakin v. U.S. Department of Defense*, SA-10-CA-O748-FB (NSN), seeking records under the Freedom of Information Act. Certain of the same records are involved in this complaint.

6. On October 18, 2012, Plaintiff filed a related complaint in this court, *Eakin vs. American Battle Monuments Commission*, SA-12-CA-1002-FB (HJB).

STATEMENT OF FACTS

7. On May 10, 2016, Plaintiff submitted a FOIA request to the Office of the Secretary of Defense/Joint Staff, (DoD FOIA request number 16-F-0955), a component of Defendant agency, seeking the following:

Electronic (digital) copies of all World War II era Individual Deceased Personnel Files (IDPF's) a/k/a 293 files and/or "X-files" which exist in any digital or electronic format. Included in this request are any indices, data dictionaries, databases or other documents necessary to properly access the requested IDPF documents.

8. On May 11, 2016, Plaintiff submitted a FOIA request to the ODCMO Directorate for Oversight and Compliance, (DoD FOIA request number 16-F-0958), a component of Defendant agency, seeking the following:

1. All contracts, contract amendments/modifications, and similar documents pertaining to contracts for digital scanning of U.S. Army Individual Deceased Personnel Files (IDPFs) previously stored at National Archives and Records Administration (NARA) and which were funded by

the Defense Personnel Accounting Agency (f/k/a Defense POW/MIA Accounting Office).

2. All documents which identify users/agencies having electronic access to the above described digitally scanned Individual Deceased Personnel Files (IDPFs).

9. Defendant notified Plaintiff by letter dated May 13, 2016, that his May 10, 2016 FOIA request (DoD FOIA request number 16-F-0955) had been received, but they would be unable to respond within the 20-day statutory time period. Defendants' letter provided instructions for appeal of this decision. On May 16, 2016, Plaintiff appealed Defendants' decision. Defendant has not responded to Plaintiff's appeal within the time allowed by law which constitutes constructive denial.

10. Defendant notified Plaintiff by email dated May 23, 2016, that his May 11, 2016 FOIA request (DoD FOIA request number 16-F-0958) had been received, but they would be unable to respond within the 20-day statutory time period. Defendants' letter provided instructions for appeal of this decision. On May 23, 2016, Plaintiff appealed Defendants' decision. Defendant has not responded to Plaintiff's appeal within the time allowed by law which constitutes constructive denial.

11. As of the date of this Complaint, Defendant has failed to: (i) produce the requested records or demonstrate that the requested records are lawfully exempt from production; (ii) notify Plaintiff of the scope of any responsive records Defendant intends to produce or withhold and the reasons for any withholdings; or (iii) inform Plaintiff that it may appeal any adequately specific, adverse determination.

COUNT I
(Violation of FOIA, 5 U.S.C. § 552)

12. Plaintiff realleges paragraphs 1 through 11 as if fully stated herein.

13. Defendant is violating FOIA by failing to search for and produce all records responsive to Plaintiff's request or demonstrate that the requested records are lawfully exempt from production.

14. Plaintiff is being irreparably harmed by reason of Defendant's violation of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to comply with FOIA.

15. To trigger FOIA's administrative exhaustion requirement, Defendant was required to determine whether to comply with Plaintiff's request within twenty (20) working days of receiving the request. Accordingly, Defendant's determination was due on or about June 10, 2016. At a minimum, Defendant was required to: (i) gather and review the requested documents; (ii) determine and communicate to Plaintiff the scope of any responsive records Defendant intended to produce or withhold and the reasons for any withholdings; and (iii) inform Plaintiff that it may appeal any adequately specific, adverse determination. *See, e.g., Citizens for Responsibility and Ethics in Washington v. Federal Election Commission*, 711 F.3d 180, 188-89 (D.C. Cir. 2013).

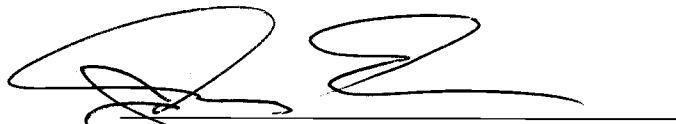
16. Because Defendant failed to determine whether to comply with Plaintiff's request within the time period required by FOIA, Plaintiff is deemed to have exhausted his administrative appeal remedies. 5 U.S.C. § 552(a)(6)(C)(i).

WHEREFORE, Plaintiff respectfully requests that the Court: (1) order Defendant to search for any and all records responsive to Plaintiff's FOIA request and demonstrate that it employed search methods reasonably calculated to uncover all records responsive

to the request; (2) order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA request and a Vaughn index of any responsive records withheld under claim of exemption; (3) enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA request; (4) grant Plaintiff an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and (5) grant Plaintiff such other relief as the Court deems just and proper.

Dated: September 30, 2016

Respectfully submitted,



John Eakin, Plaintiff *pro se*
9865 Tower View, Helotes, TX 78023
210-695-2204 jeakin@airsafety.com

EXHIBITS

- 1A FOIA request dated May 10, 2016 (16-F-0955)
- 1B Defendant's response
- 1C Plaintiff appeal

- 2A FOIA request dated May 11, 2016 (16-F-0958)
- 2B Defendant's response
- 2C Plaintiff appeal

John J. Eakin
9865 Tower View
Helotes, Texas 78023
Telephone 210-695-2204
Email - jeakin@airsafety.com

May 16, 2016

ONE (1) PAGE VIA EMAIL ATTACHMENT TO OSD.FOIAPolicy@mail.mil

ODCMO Directorate for Oversight and Compliance
4800 Mark Center Drive
ATTN: DPCLTD, FOIA Appeals, Mailbox #24
Alexandria, VA 22350-1700

RE: Appeal of Freedom of Information Request No. 16-F-0955


Dear Sir or Madam;;

This is an appeal of my Freedom of Information Request dated May 10, 2016, your case number 16-F-0955. Your response letter was dated May 13, 2016.

Your vague and indefinite response to my request constitutes constructive denial of my request and I appeal your decision not to comply with the response time set out by statute.

I am willing to delay further action to obtain the requested records upon receipt, prior to June 15, 2016, of a reasonable and enforceable schedule for delivery of the requested records.

Sincerely;


John Eakin

Cc: Mr. Charles Marye via email to charles.c.marye.civ@mail.mil

1A



**DEPARTMENT OF DEFENSE
OFFICE OF FREEDOM OF INFORMATION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155**

13 MAY 2016

Ref: 16-F-0955

Mr. John Eakin
9865 Tower View
Helotes, TX 78023

Dear Mr. Eakin:

This is an interim response to your enclosed May 10, 2016, Freedom of Information Act (FOIA) request. Your request was received in this office on May 10, 2016, and assigned FOIA case number 16-F-0955. We ask that you use this number when referring to your request.

You should know that although we have already begun processing your request, we will not be able to respond to your request within the FOIA's 20-day statutory time period as there are unusual circumstances which impact our ability to quickly process your request. These unusual circumstances are (a) the need to search for and collect records from a facility geographically separated from this office; (b) the potential volume of records responsive to your request; and (c) the need for consultation with one or more other agencies or DoD components having a substantial interest in either the determination or the subject matter of the records. For these reasons, your request has been placed in our complex processing queue and will be worked in the order the request was received. Our current administrative workload is 1,663 open requests. We regret the anticipated delay in responding to your request and your continued patience is appreciated.

If you have any questions, please contact the Action Officer assigned to your request, Charles Marye, at charles.c.marye.civ@mail.mil or (571) 372-0407.

If you are not satisfied with this action, you have the right to appeal to the appellate authority, Ms. Joo Chung, Director of Oversight and Compliance, Office of the Secretary of Defense, by writing directly to ODCMO Directorate for Oversight and Compliance, 4800 Mark Center Drive, ATTN: DPCLTD, FOIA Appeals, Mailbox# 24, Alexandria, VA 22350-1700. Your appeal must be postmarked within 60 calendar days of the date of this response. Alternatively, you may use the OSD FOIA request portal at <http://pal.whs.mil/palMain.aspx> or email your appeal to OSD.FOIAPolicy@mail.mil. If you use email, please include the words "FOIA Appeal" in the subject of the email. Please also reference case number 16-F-0955 in any appeal correspondence.

Sincerely,

for Charles C. Marye
Stephanie L. Carr
Chief

Enclosure:
As stated

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John J. Eakin
9865 Tower View
Helotes, Texas 78023
Telephone 210-695-2204
Email - jeakin@airsafety.com

May 10, 2016

TWO (2) PAGES VIA FAX TO Fax (571) 372-0500

OSD/JS FOIA Requester Service Center
Office of Freedom of Information
1155 Defense Pentagon
Washington, DC 20301-1155

RE: Freedom of Information Request

Dear Sir or Madam::

The following request is submitted under the provisions of the Freedom of Information Act, 5 U.S. Code § 552.

I request electronic (digital) copies of all World War II era Individual Deceased Personnel Files (IDPF's) a/k/a 293 files and/or "X-files" which exist in any digital or electronic format. Included in this request are any indices, data dictionaries, databases or other documents necessary to properly access the requested IDPF documents. While this request is only for existing digital documents, I request that it be considered as ongoing as additional qualifying documents are located or converted to digital format.

Paper (hardcopies) of the requested records were originally located at the Washington National Records Center (WNRC), a NARA prearchival facility in Suitland, Maryland. The U.S. Army is the owner of these IDPF files which were placed in the facility in 1970. The U.S. Army Adjutant General is the Executive Agent (EA) for the records, but the U.S. Army Records Management and Declassification Agency (RMDA) in Ft. Belvoir, VA was tasked with control of the records. In Fiscal Year 2012, a three year project was begun to scan all 442,000 IDPF files into an archival data library. Primary funding for this digitization project was included in the budget of the Defense POW/MIA Office (DPMO) (now known as the Defense Personnel Accounting Agency [DPAA]). It is these digital documents, along with other existing digital documents that have been created outside of this three year program, which are requested.

In addition to the digital documents created at Ft. Belvoir, VA pursuant to the DPMO/DPAA contract, additional files are believed to exist at the former Joint POW/MIA Accounting Command (JPAC)(now a component of DPAA), the US Army Human Resources Command, and the various military Services casualty offices.

Where documents exist in multiple electronic formats, delivery in portable document format (.pdf) is preferred and requested.

Delivery of the requested documents may be by file transfer protocol (FTP) or by overnight delivery of portable USB hard drives which I will supply upon request.

I agree to pay all reasonable fees involved in copying these digital files for me. Please contact me if these fees are expected to exceed \$500.00.

Note that release of these documents was previously litigated in *Eakin v. US Department of Defense et al, SA-10-CA-0784, Western District of Texas*. In this FOIA litigation it was determined that no valid privacy concerns existed in these WWII era documents and they are immediately releasable.

Please immediately provide me with the log number assigned to this request. I further request that you contact me by email to discuss expected delivery dates of the requested documents as I will consider non-compliance with the requirements of 5 USC § 552(a)(6) to be constructive denial of this request.

Sincerely;

John Eakin

John J. Eakin
9865 Tower View
Helotes, Texas 78023
Telephone 210-695-2204
Email - jeakin@airsafety.com

May 11, 2016

TWO (2) PAGES VIA FAX TO (571) 372-0500

OSD/JS FOIA Requester Service Center
Office of Freedom of Information
1155 Defense Pentagon
Washington, DC 20301-1155

RE: Freedom of Information Request

Dear Sir or Madam::

The following request is submitted under the provisions of the Freedom of Information Act, 5 U.S. Code § 552. I request Copies of the following documents:

1. All contracts, contract amendments/modifications, and similar documents pertaining to contracts for digital scanning of U.S. Army Individual Deceased Personnel Files (IDPFs) previously stored at National Archives and Records Administration (NARA) and which were funded by the Defense Personnel Accounting Agency (f/k/a Defense POW/MIA Accounting Office).
2. All documents which identify users/agencies having electronic access to the above described digitally scanned Individual Deceased Personnel Files (IDPFs).

Where documents exist in multiple electronic formats, delivery in portable document format (.pdf) is preferred and requested.

Delivery of the requested documents may be by file transfer protocol (FTP) or by overnight delivery of portable USB hard drives which I will supply upon request.

I agree to pay all reasonable fees involved in copying these digital files. Please contact me if these fees are expected to exceed \$250.00.

2A

Please immediately provide me with the log number assigned to this request. I further request that you contact me by email to discuss expected delivery dates of the requested documents as I will consider non-compliance with the requirements of 5 USC § 552(a)(6) to be constructive denial of this request.

Sincerely;

John Eakin

16-F-0958

To: "jeakin@airsafety.com" <jeakin@airsafety.com>
CC: "Santos, Adrienne M CIV WHS ESD (US)" <adrienne.m.santos.civ@mail.mil>
Subject: OSD/JS Freedom of Information Act Request 16-F-0958: Interim Response

John J. Eakin
Helotes, TX 78023

Sent electronically to: jeakin@airsafety.com

Dear Mr. Eakin,

This is an interim response to your attached May 11, 2016, Freedom of Information Act (FOIA) request for certain "Individual Deceased Personnel Files" records. This office received your request on May 11, 2016, and assigned FOIA case number 16-F-0958. We ask that you use that number when referring to your request.

You should also know that although we have already begun processing your FOIA request, we are unable to respond to your request within the FOIA's 20 day statutory time period, as there are unusual circumstances which affect our ability to process your request quickly. These unusual circumstances are: (a) the need to search for and collect records from a facility geographically separated from this Office; (b) the potential volume of records responsive to your request; and (c) the need for consultation with one or more other agencies or DoD components having a substantial interest in either the determination or the subject matter of the records. For these reasons, your request has been placed in our complex processing queue and will be worked in the order the request was received. Our current administrative workload is 1,665 open requests. We regret the anticipated delay in responding to your request and we appreciate your patience.

If you have any additional questions please contact me, the Action Officer assigned to your request, at patrice.e.parker.civ@mail.mil or (571) 372-0468.

If you are not satisfied with this action, you have the right to appeal to the appellate authority, Ms. Joo Chung, Director of Oversight and Compliance, Office of the Secretary of Defense, by writing directly to ODCMO Directorate for Oversight and Compliance, 4800 Mark Center Drive, ATTN: DPCLTD, FOIA Appeals, Mailbox# 24, Alexandria, VA 22350-1700. Your appeal must be postmarked within 60 calendar days of the date of this response. Alternatively, you may use the OSD FOIA request portal at <http://pal.whs.mil/palMain.aspx> or email your appeal to OSD.FOIAPolicy@mail.mil. If you use email, please include the words "FOIA Appeal" in the subject of the email. Please also reference case number 16-F-0958 in any appeal correspondence.

Thank you,

Patrice E. Parker
Government Information Specialist
for Adrienne M. Santos on behalf of
Stephanie L. Carr, Chief,
Freedom of Information Act Division
OSD/JS FOIA Office
patrice.e.parker.civ@mail.mil

2B



16-F-0958 FOIA Request.pdf



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John J. Eakin
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May 23, 2016

ONE (1) PAGE VIA EMAIL ATTACHMENT TO OSD.FOIAPolicy@mail.mil

ODCMO Directorate for Oversight and Compliance
4800 Mark Center Drive
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Dear Sir or Madam::

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I am willing to delay further action to obtain the requested records upon receipt, prior to June 15, 2016, of a reasonable and enforceable schedule for delivery of the requested records.

Sincerely:



John Eakin

Cc: Patrice E. Parker via email to Patrice.e.parker.civ@mail.mil

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