

United States District Court
For the District of Columbia

COMMUNITY FINANCIAL SERVICES ASSOCIATION
A Maryland Corporation
515 King Street
Alexandria, Virginia 22314

Plaintiff

v.

DEPARTMENT OF DEFENSE
1950 Defense Pentagon
Washington, D.C. 20301-1950

Defendant

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff Community Financial Services Association brings this action against the Department of Defense under the Freedom of Information Act 5 U.S.C. 552 (FOIA) to compel compliance with the Act. As grounds for such complaint, the plaintiff alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 5 U.S.C. 552(a)(4)(B) and 28 U.S.C. 1331.

2. Venue is proper in this District pursuant to 28 U.S.C. 1391(e).

PARTIES

3. Plaintiff Community Financial Services Association (CFSA) is a national trade association established to ensure consumer confidence in, and the long term success of, the payday advance industry. Its mission is to promote legislation and regulation that provides payday advance customers with substantive consumer protections while preserving their access to short term credit options and to encourage responsible industry practices. Plaintiff CFSA is a Maryland corporation, with its principal place of business located at 515 King Street, Alexandria, Virginia 22314.

4. Defendant Department of Defense (DOD) is an agency of the United States government and is subject to the requirement of the FOIA. Defendant DOD has possession, custody and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. On August 23, 2006, Plaintiff sent a FOIA request to Defendant DOD, by certified mail with a return receipt requested, seeking access to the following information:

All documents relating to or that were utilized by DoD representatives (including, but not limited to DoD employees, third-party contractors, or any military personnel) in the review and production of the “**Report On Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents,**” (**Report**) and released on August 9, 2006. The requested items relating to the Report include, but are not limited to the following descriptions:

- A. Copies of any work plan for the preparation of this Report and of any interim drafts of the Report, or comments on drafts of the Report, or updates regarding the preparation of the Report.

- B. Copies of any contract or agreement relating to this Report, including compensation terms, between DoD and Col. Marcus Beauregard (USAF-Ret.) or his employer, or any other third-party assisting DoD in preparing this Report.
- C. Copies of all transcripts or summaries or notes of interviews, telephone calls or meetings involving DoD representatives (including, but not limited to DoD employees, third-parties, or any military personnel) in connection with this Report.
- D. Copies of all surveys or statistical analyses conducted or used in connection with this Report.
- E. Copies of all 3,393 anonymous case-studies referenced on p. 39 of the Report and of the Navy study on security revocations and denials for financial reasons, together with any supporting information, as referenced on p. 39 of the Report.
- F. Copies of all emails, or written documents (including, but not limited to, background data, research assistance, proposed findings or suggested draft language) concerning the Report and its preparation submitted to DoD representatives by anyone (including but not limited to, DoD or military personnel, consumer advocacy groups, government agencies, members of Congress, third parties which provided assistance with the compilation of the Report listed in Paragraph 2 of Page 3 of the Report, or other third parties).
- G. Copies of calendars or telephone logs concerning any meetings or discussions with any parties by DoD representatives involved in the preparation of this Report.
- H. Copies of all requests for information by DoD representatives made in connection with this Report, and all written or oral responses made to such requests.

This original request is attached to the complaint as Exhibit A.

6. The Office of Freedom of Information of the Defendant DOD acknowledged receipt of the request in correspondence dated September 8, 2006. This correspondence indicated that processing of the request had begun. In addition, the letter informed the Plaintiff that part "E" of the request had been referred to the Department of the Navy based on a determination that the requested records were within the control of that department. This initial response is attached to the complaint as Exhibit B.

7. On October 24, 2006, counsel for Plaintiff again contacted Defendant DOD to request the status of the August 23, 2006 request. On December 8, 2006, the DOD FOIA

officer assigned to this matter responded by letter that the request was still being processed and that a completion date could not be determined at that time. The response is attached to the complaint as Exhibit C.

8. As of the date of this complaint, Defendant DOD has not produced the requested material nor offered any further explanation for its non production. More than 20 working days have passed since the acknowledgement of the FOIA request.

9. On October 24, 2006, counsel for the Plaintiff wrote to the Office of Chief of Naval Operations, Department of the Navy to inquire on the status of the FOIA request forwarded by Defendant DOD as reflected in its initial September 8, 2006 acknowledgement correspondence.

10. On November 17, 2006, the Head of the FOIA Policy Branch for the Chief of Naval Operations wrote to Plaintiff that it had no record of the referral from DOD and considered the October 24, 2006 inquiry from Plaintiff to be the first request for the material. This request was given a file number (DON 200700083) and assigned to the Central Adjudication Facility for "action and direct response" concerning item "E." This response is attached to the complaint as Exhibit D.

11. On January 16, 2007, the Department of the Navy responded with a partial production of documents concerning item "E" of the initial request. The Department of the Navy is not a defendant in this action.

CAUSE OF ACTION

12. Plaintiff reasserts and incorporates herein the allegations set forth in paragraphs 1 through 11.

13. Under Section 552(a)(3) of the FOIA, Defendant DOD must produce, upon request, documents not specifically exempted by FOIA or for which disclosure is not otherwise prohibited by law within 20 working days.

14. Failure of the Defendant DOD to release these records or not otherwise explain the failure to release is in violation of the FOIA.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

(1) Declare that the Department of Defense's failure to release the requested records by the Plaintiff is unlawful;

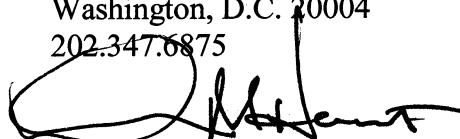
(2) Order the Department of Defense to make the requested records available to the Plaintiff;

(3) Award Plaintiff its costs, reasonable attorney's fees and other disbursements in this action, and

(4) Grant such other and further relief as may be just and proper.

DATED this 2nd day of February, 2007

Butera & Andrews
Attorneys for Plaintiff
1301 Pennsylvania Avenue N.W.
Suite 500
Washington, D.C. 20004
202.347.6875



By /s/ Dennis M. Hart (935643)

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Washington, D.C. 20301-1950

Defendant

Exhibit A

BUTERA & ANDREWS

ATTORNEYS AT LAW

1301 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004-1701

TELEPHONE
(202) 347-6875

HTTP://WWW.BUTERA-ANDREWS.COM

FACSIMILE
(202) 347-6876

August 23, 2006

By Certified Mail
7003 1680 0004 9704 6416

Directorate for Freedom of Information and Security Review
1155 Defense Pentagon
Room 2C757
Washington, D.C. 20301-1155

Dear Sirs:

This is a request for information under the Freedom of Information Act (5 USC 552).

On behalf of our client CFSA, I request a copy of the following documents to be provided to me:

All documents relating to or that were utilized by DoD representatives (including, but not limited to DoD employees, third-party contractors, or any military personnel) in the review and production of the "**Report On Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents,**" (Report) and released on August 9, 2006. This DoD report to Congress is in answer to the requirements established in Section 579 of the National Defense Authorization Act for Fiscal Year 2006. This Report was developed and released through the office of Dr. David Chu, Under Secretary of Defense for Personnel and Readiness, and/or the office of Ms. Leslye Arsht, Deputy Under Secretary of Defense for Military Community and Family Policy, with Col. Marcus Beauregard (USAF-Ret.), now employed as a private contractor in connection with DoD's Financial Readiness Program, reportedly directing how the Report was compiled, and with the involvement of Mr. George Schaefer, Director, DoD State Liaison Office.

The requested items relating to the Report include, but are not limited to the following descriptions:

BUTERA & ANDREWS

- A. Copies of any work plan for the preparation of this Report and of any interim drafts of the Report, or comments on drafts of the Report, or updates regarding the preparation of the Report.
- B. Copies of any contract or agreement relating to this Report, including compensation terms, between DoD and Col. Marcus Beauregard (USAF-Ret.) or his employer, or any other third-party assisting DoD in preparing this Report.
- C. Copies of all transcripts or summaries or notes of interviews, telephone calls or meetings involving DoD representatives (including, but not limited to DoD employees, third-parties, or any military personnel) in connection with this Report.
- D. Copies of all surveys or statistical analyses conducted or used in connection with this Report.
- E. Copies of all 3,393 anonymous case-studies referenced on p. 39 of the Report and of the Navy study on security revocations and denials for financial reasons, together with any supporting information, as referenced on p. 39 of the Report.
- F. Copies of all emails, or written documents (including, but not limited to, background data, research assistance, proposed findings or suggested draft language) concerning the Report and its preparation submitted to DoD representatives by anyone (including but not limited to, DoD or military personnel, consumer advocacy groups, government agencies, members of Congress, third parties which provided assistance with the compilation of the Report listed in Paragraph 2 of Page 3 of the Report, or other third parties).
- G. Copies of calendars or telephone logs concerning any meetings or discussions with any parties by DoD representatives involved in the preparation of this Report.
- H. Copies of all requests for information by DoD representatives made in connection with this Report, and all written or oral responses made to such requests.

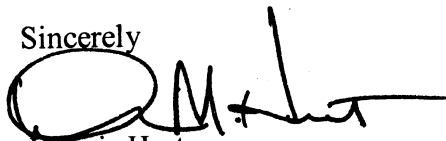
You should know that on this matter we represent a trade association, the Community Financial Services Association (CFSA), consisting of private businesses involved in the payday lending industry and are seeking this information for use by CFSA in representing the payday lending industry's legitimate legislative and other business interests.

CFSA is willing to pay fees for this request up to a maximum of \$2,500 without further authorization. However, if you estimate that the fees will exceed this limit, please inform me first so that I can consider authorizing a higher amount to avoid delay.

BUTERA & ANDREWS

Please note that I can be contacted at 202-347-6875 to discuss any aspect of this request.

Sincerely

A handwritten signature in black ink, appearing to read "Dennis Hart", with a large circular flourish on the left and a long horizontal stroke extending to the right.

Dennis Hart

Butera & Andrews

Counsel for CFSA

202-347-6875

dhart@butera-andrews.com

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DEPARTMENT OF DEFENSE
1950 Defense Pentagon
Washington, D.C. 20301-1950

Defendant

Exhibit B



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

08 SEP 2006
Ref: 06-F-2620

Mr. Dennis Hart
Butera & Andrews
1301 Pennsylvania Ave, N.W.
Washington, D.C. 20004-1701

Dear Mr. Hart:

This is an interim response to your August 23, 2006, Freedom of Information Act (FOIA) request on behalf of Community Financial Services Association (CFSA) for all documents relating to or that were utilized by Department of Defense (DoD) representatives in the review and production of the "Report On Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents (Report)" released on August 9, 2006. We received your request on August 29, 2006, and assigned it FOIA case number 06-F-2620.

With regard to any processing fees associated with your request, we have placed you in the commercial requester fee category. As such, you are responsible for all processing fees associated with this request. Processing will be assessed at the established DoD fee rates of: clerical search time--\$20 per hour; professional search time--\$44 per hour; executive search time--\$75 per hour; and document reproduction at \$0.15 per page. We will process your request up to the \$2,500 that you have authorized, but anticipate that the cost of processing your request may exceed \$2,500. We are, therefore, asking the components of the Office of the Secretary of Defense (OSD), which may have responsive records, to prepare an estimate of the processing costs, which we will provide to you.

Item E of your request seeks access to copies of "the Navy study on security revocation and denials for financial reasons, together with supporting information" as referenced in the Report. This Office is responsible for handling all FOIA requests for access to records maintained only by the Office of the Secretary of Defense (OSD) and the Joint Staff (JS). Accordingly, we are referring this portion of your request to the Navy for review and direct response to you. If you have any questions regarding this referral, you should contact the Navy FOIA office at:

Department of the Navy
Office of the Chief of Naval Operations
N09B10
2000 Navy Pentagon
Washington, D.C. 20340-2000

We will begin to process your request within the OSD and will advise you of the cost estimate as soon as possible.

Sincerely,

A handwritten signature in black ink that reads "Will Kammer". The signature is written in a cursive style with a large, sweeping "W" and a long, horizontal tail.

Will Kammer
Chief

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DEPARTMENT OF DEFENSE
1950 Defense Pentagon
Washington, D.C. 20301-1950

Defendant

Exhibit C



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

DEC 08 2006

Ref: 06-F-2620

Mr. Dennis Hart
Butera & Andrews
1301 Pennsylvania Avenue, N.W.
Washington, DC 20004-1701

Dear Mr. Hart:

This is in response to your October 24, 2006, letter requesting the status of your August 23, 2006, Freedom of Information Act request (FOIA case #06-F-2620).

We appreciate your letter and can assure you that this Office shares your interest in obtaining the responsive documents you requested, without undue delay. Your FOIA request is being processed as expeditiously as possible in accordance with procedural requirements promulgated in Department of Defense (DoD) Regulation 5400.7-R, and on the internet at: <http://www.defenselink.mil/pubs/foi/>. As you are aware, your request is extensive and detailed, and our internal inquiry has determined that a search for responsive records has identified over 5000 pages of potentially responsive material. This case is currently being processed and the documents are being reviewed to determine their responsiveness and releasability. However, a completion date cannot be determined at this time due to the complexity of the case, the amount of material being processed and our own administrative workload, which consists of over 2400 cases.

This Office is proceeding deliberately, systematically and conscientiously in order to assist with the processing of records responsive to your request. Once the processing is completed, we will provide you with a substantive response. If you should have any questions, please contact the action officer assigned to the case, Mr. Aaron Graves, at (703) 696-3190.

Sincerely,

A handwritten signature in cursive script that reads "Will Kammer".

Will Kammer
Chief

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Defendant

Exhibit D



DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
2000 NAVY PENTAGON
WASHINGTON, D.C. 20350-2000

IN REPLY REFER TO

5720
Ser DNS-36D/6U833647
November 17, 2006

Mr. Dennis Hart
Butera and Andrews
1301 Pennsylvania Avenue, N.W.
Washington, DC 20004-1701

Dear Mr. Hart:

This refers to your Freedom of Information Act (FOIA) request of October 24, 2006. Your request was received by this office on November 7, 2006, and assigned Case File Number DON 200700083.

Please be advised that our files do not reflect receipt of a referral from DOD FOIA. Based on their letter which you provided, we are referring your request for a copy of DONCAF report cited on page 39 of the "Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents" to the Navy Central Adjudication Facility (DONCAF), 716 Sicard Street SE, Washington DC 20388-5389, for action and direct response to you regarding item E.

Should you have any questions, please contact Ms. M. Phyllis Shaw of my staff at (202) 685-6530.

Sincerely,

A handwritten signature in cursive script that reads "Doris M. Lama".

DORIS M. LAMA
Head, DON PA/FOIA Policy Branch
By direction of the
Chief of Naval Operations
(202) 685-6545