

Exhibit 23



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BY EMAIL

Douglas Hibbard
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OIP.ComplianceInquiry@usdoj.gov

Re: Administrative Appeals: DOJ-AP-2019-001474 and DOJ-AP-2019-001476

Dear Mr. Hibbard:

I supplement my appeal letter of December 7, 2018, with this letter and the attached documents as further support for the improper denial of my client's FOIA and Privacy Act requests.

The first attachment is the Department of Justice's Guide to the Freedom of Information Act: Procedural Requirements. See *Attachment 1*. The Procedural Requirements, which spans 74 pages, address the Time Limits by which a fulsome response must be made. See, page 32 et seq., including the case cited in FN 133, *S. Yuba River Citizens League v. Nat'l Marine Fisheries Serv.*, No. 06-2845, 2008 WL 2523819, at *15 (E.C. Cal. June 20, 2008) (supporting practice of releasing documents "on a rolling basis" if necessary, as this respects statute's "prompt release" requirement). While EOUSA offered, and I accepted, a rolling production, EOUSA has made one production, on October 29, 2018, but OPR has never made any production, and has ignored my requests for production timelines.

Another case of note is cited in footnote 132 on page 32 of the Procedural Requirements. In *CREW v. FEC*, 711 F.3d 180, 189 (D.C. Cir. 2013), the DC Court made a finding that if an agency does not adhere to FOIA's explicit timelines, the "penalty" for that agency is that the agency cannot rely on the administrative exhaustion requirement because the statute requires that the agency immediately notify the requester of a determination of and reasons for whether to comply with the request. Moreover, the statute requires that the agency immediately notify the requester of the right to appeal to the head of the agency any adverse determination and the statute creates an unusual circumstances safety valve that permits an agency to extend the 20-working-day period

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for response by up to 10 additional days. Additionally, the *CREW* court held that after processing a FOIA request and making a determination, the agency may still need some additional time to physically redact, duplicate or assemble for production the documents located; however, the "agency must do so and then produce records 'promptly.'"

I made initial requests to the USAO-WDVA and OPR on May 6, 2018 and May 8, 2018, for information submitted to the USAO, and potentially other DOJ components, by attorney Paul Beers. See *Attachment 2*. OPR informed me it was not in a position to provide those documents at that time. The USAO-WDVA responded to my email on May 8, 2018 and May 9, 2018. In the responses, the USAO advised that it was considering our request – with input from EOUSA – and would have a response to us soon. However, now more than seven and a half months later, we have yet to receive this requested material from either the USAO-WDVA or EOUSA.

Further, the components of the Department of Justice have had since July 20, 2018, the date we submitted our original formal FOIA/Privacy Act requests, to make a determination and to provide the requested documents. There is no question that the components have failed to meet the time limits as required by the statute. There is also no question that the components have continued to violate the statute by not acting "promptly."

The second attachment to this letter is a recent relevant decision by the Honorable Royce C. Lamberth, United States District Judge for the District of Columbia. See *Attachment 3*. The memorandum opinion in *Judicial Watch, Inc., v. U.S. Department of State*, Case No. 1:14-cv-01242-RCL, which was filed on December 6, 2018, sets forth Judge Lamberth's questions about the process by which the State Department and the Department of Justice handled the FOIA request(s), including the adequacy of the searches into the emails then-Secretary of State, Hillary Clinton, sent and received on a personal email account of hers, which was filed by Judicial Watch, et al. Within the decision, Judge Lamberth questions the intentions of the executive departments based on their actions. He starts his opinion by outlining then-President Obama's standard for federal agencies' compliance with the Freedom of Information Act, as set forth in his Freedom of Information Act Memorandum, 74 Fed. Reg. 4683 (Jan. 21, 2009). In then-President Obama's Memorandum, he clearly outlines a standard of transparency and openness, as it pertains to FOIA requests, as he states, "[i]n the face of doubt, openness prevails." Moreover, "[n]ondisclosure should never be based on an effort to protect the personal interests of Government officials . . . [and] [i]n responding to requests under the FOIA, executive branch agencies . . . should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public." The Memorandum further lays out, "[t]he presumption of disclosure should be applied to all decisions involving FOIA."

Our repeated requests for information, to which we are clearly entitled, under the Privacy Act and FOIA, made to EOUSA/USAO-WDVA and to OPR, have essentially been ignored. The responsive information should be provided to us without any further delay.

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Sincerely,


David G. Barger