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December 3, 2018

**Via Certified (No. 7013 1090 0001 5951 9524) Mail and Email to [foiastatus@state.gov](mailto:foiastatus@state.gov)**

U. S. Department of State  
Office of Information Programs and Services  
A/GIS/IPS/RL  
SA-2, Suite 8100  
Washington, D. C. 20522-0208

**RE: FOIA case control number F-2017-12701**

Dear Sir/Madam:

This firm represents Professor John Helmer. This letter constitutes a written notice that unless a prompt action is taken on the outstanding referenced FOIA request, which had been submitted more than 17 months ago, my client will be seeking judicial intervention requesting a court order requiring immediate production as well as award of attorney fees and litigation costs incurred pursuant to 5. U.S.C. §552(a)(4)(E).

On June 10, 2017, Professor Helmer submitted a FOIA request seeking Department of State records pertaining to **Zelman Cowen**, the 19th Governor-General of Australia who was in office from 1977 to 1982. A copy of the request is attached as **Exhibit A** hereto. On June 16, 2017, Professor Helmer received a notification a letter of confirmation from RCB/OIP&S assigning the above-referenced case control number. Since then, Professor Helmer was unable to receive any specific information or reason why the production of the responsive records have been delayed or when the documents can be expected to be produced. The most recent response to his inquiry stated that “[The department] will provide an estimated date of completion to you when it becomes available.” See **Exhibit B**.

Please be advised that pursuant to 5 U.S.C. §552(a)(6)(A)(i), the Department of State was required to determine whether to comply with the document requests within twenty (20) working days of receipt and to notify Professor Helmer immediately of its determination, the reasons therefor, and the right to appeal the adverse determination. As of today’s date, the request has been pending for over 17 months with no action whatsoever from the agency.

Recently, in *Judicial Watch, Inc. v. United States Dep’t of Homeland Sec.*, 895 F.3d 770 (D.C. Cir. 2018) the Court of Appeals for the District of Columbia found that substantial delays in responding to FOIA requests support cognizable FOIA claims, stating that “[t]he statute ‘does not allow agencies to keep FOIA requests bottled up for months or years on end while avoiding any judicial oversight.’” *Id.* at 785 (citations omitted).

**EXHIBIT C**

U. S. Department of State, Office of Information Programs and Services

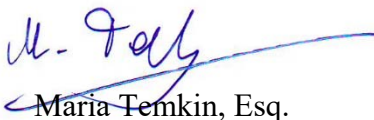
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Similarly here, there is no excuse for the Department of State to continue delaying the response or even provide a concrete deadline for the production. The volume of requests that the agency is faced with does not constitute “exceptional circumstances” for which the statute allows time over 20-days to comply.<sup>1</sup>

Accordingly, please be advised that if Professor Helmer does not receive documents responsive to his request by the end of business day of December 17, 2018, he will be filing a legal action and seeking attorney fees and costs of litigation. Should you wish to discuss this matter further, please feel free to contact the undersigned.

Sincerely,



Maria Temkin, Esq.

For: TEMKIN & ASSOCIATES, LLC

Cc: Kellie Robinson, Public Liaison (by email [RobinsonKN@state.gov](mailto:RobinsonKN@state.gov))  
Professor John Helmer

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<sup>1</sup> As the Court noted in finding agency’s citation of need for “additional time” to produce records inexcusable:

FOIA requires an agency that has not made prompt production to explain its delinquency: It allows additional processing time only “[i]f the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request.” See 5 U.S.C. § 552(a)(6)(C)(i). The statute spells out that “exceptional circumstances” do “not include a delay that results from a predictable agency workload of requests” unless the agency affirmatively shows that it is making “reasonable progress in reducing its backlog of pending requests.” *Id.* § 552(a)(6)(C)(ii). It is emphatically not permissible under FOIA for a court simply to assume that an agency’s circumstances are “exceptional.” There is no ground on this record for relieving the [agency] of its burden of justification and simply presuming the [agency] is systemically entitled to the “additional time” referred to in Section 552(a)(6)(C)(ii).

*Judicial Watch, Inc. v. United States Dep't of Homeland Sec.*, 895 F.3d 770, 789 (D.C. Cir. 2018)

