

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE NEW YORK TIMES COMPANY	:	X
and CAROL ROSENBERG,	:	
	:	
Plaintiffs,	:	
- against -	:	<u>COMPLAINT</u>
	:	
DEPARTMENT OF DEFENSE,	:	
	:	
Defendant.	:	
	:	
	:	X

Plaintiffs THE NEW YORK TIMES COMPANY and CAROL ROSENBERG, by their undersigned attorneys, allege for their Complaint:

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), to obtain an order for the production of agency records from the Department of Defense (“DOD”) in response to a request properly made by Plaintiffs (jointly, “The Times”).

PARTIES

2. Plaintiff The New York Times Company publishes *The New York Times* newspaper and www.nytimes.com. The New York Times Company is headquartered in this judicial district at 620 Eighth Avenue, New York, New York.

3. Plaintiff Carol Rosenberg is a reporter for *The New York Times* newspaper.

4. Defendant DOD is an agency of the federal government that has possession and control of the records that Plaintiffs seek.

JURISDICTION AND VENUE

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

6. Venue is premised on the place of business of Plaintiffs and is proper in this district under 5 U.S.C. § 552(a)(4)(B).

7. Plaintiffs have exhausted all administrative remedies available in regard to the request at issue. *See* U.S.C. § 552(a)(6)(C).

FACTS

8. On April 27, 2019, Rear Admiral John C. Ring was fired from his position as commander of the prison at Guantánamo Bay. A press release stated that he had been relieved “due to a loss of confidence in his ability to command.” U.S. Southern Command, *News Release: JTF-GTMO commanding officer relieved of duty* (April 29, 2019), <https://bit.ly/2WksmHl>.

Asked about his firing, a spokeswoman for the United States Southern Command (“SOUTHCOM”) cited “a monthlong investigation that was opened in March.” Carol Rosenberg, *Guantánamo Bay Prison Commander Has Been Fired*, *New York Times* (April 28, 2019), <https://nyti.ms/2Kb4Vxy>

9. On May 1, 2019, The Times submitted a FOIA request (the “Request”) to SOUTHCOM, a component of DOD, for “a copy of the command investigation report of Rear Adm. John C. Ring.” The Times sought expedited processing of the Request.

10. On May 3, 2019, the Command FOIA Manager for SOUTHCOM acknowledged receipt of the Request (assigned control number SC 19-062-S).

11. By letter dated May 7, 2019, SOUTHCOM denied The Times’s request for expedited processing.

12. Subsequently, counsel for The Times spoke to the Command FOIA Manager for SOUTHCOM by telephone regarding the status of the Request. The Command FOIA Manager was unable to provide an estimated date of completion for the Request.

COUNT I

13. Plaintiffs repeat, reallege, and reincorporate the allegations in the foregoing paragraphs as though fully set forth herein.

14. The DOD is an agency subject to FOIA and must therefore release in response to a FOIA request any disclosable records in its possession at the time of the request and provide a lawful reason for withholding any other materials as to which it is claiming an exemption.

15. Plaintiffs have exhausted all administrative remedies under FOIA as to the Request, because the DOD failed to make a determination in regard to the Request within 20 business days.

16. Accordingly, Plaintiffs are entitled to an order compelling the DOD to produce records responsive to the Request.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

17. Declare that the documents sought by the Request, as described in the foregoing paragraphs, are public under 5 U.S.C. § 552 and must be disclosed;

18. Order the DOD to undertake an adequate search for the requested records and provide those records to Plaintiffs within 20 business days of the Court's order;

19. Award Plaintiffs the costs of this proceeding, including reasonable attorney's fees, as expressly permitted by FOIA; and

20. Grant Plaintiffs such other and further relief as this Court deems just and proper.

Dated: New York, New York
June 20, 2019

_____/s/_____
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