

# **EXHIBIT 5**

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**From:** USASOC FOIA <USASOC.FOIA@socom.mil>  
**Sent:** Wednesday, March 7, 2018 1:14 PM  
**To:** Wagner, Michael  
**Subject:** RE: Watts Constructors, LLC - FOIA Request to USASOC  
**Attachments:** AR 25-55 DA FOIAP.pdf

Mr. Wagner,

There is no change in the estimated fees I provided. Please understand the process to conduct a search for the information you requested requires our IT department to run a search across our entire network, consisting of more than 30K personnel. Please see the questions and answers below to get an idea of how the search process works. Upon review of the information below, and you still want us to proceed with processing your request, you may send a check for \$2112 (1/2 the cost up front), made payable to US Department of Treasury; mailing address: Freedom of Information Act Office, USASOC (AOIM-SPT-FB), 2929 Desert Storm Drive (Stop A), Fort Bragg, NC 28310-9110. We will proceed with processing your request upon receipt of payment amount requested. Also, I have attached a copy of AR 25-55 (see section 6-104; pgs. 21-22) for your reference in accessing fees.

Sincerely,  
Chris

#### Question/Answer

How do I request a search?

Send a request to XXXXX. See Section 5 for details.

When will my search results be available?

We don't know. It depends on the complexity of the search and the availability of system resources. But we will contact you as soon as results are ready for download.

How long does it take for a search to be queued into the System?

It depends on the volume of incoming requests. Allow at least 72 hours.

How do I get a status of my search request?

If XXXXXXX has confirmed receipt of your request, rest assured that we will let you know when results are available. But if you need to know the status, send an email to XXXXXX – be sure to include the Search number.

How will I get the results of my search request?

We will send you a link and instructions to access a secure site.

How do I make a preservation request?

By default all requests are \*search\* requests. If you really, really need a preservation instead, please follow the guidelines for Investigations or Litigations and include a justification for preservation.

What's the difference between a journaled account and a business class account?

Journaled accounts are kept on the Enterprise for 10 years; the extra storage required means they cost more.

Can XXXX search for attachments to emails?

Yes and no. The System treats most non-encrypted attachments as part of the message itself. So we can search some attachments, but not whether there \*is\* an attachment.

Who decides whether an account is journaled or not?

The provisioning organization makes that determination when an account is set up.

Can my organization make all of its user accounts journaled accounts?

Yes, if necessary, but it's going to cost you a lot more for each account (because there will be extra storage costs).

-----Original Message-----

From: Wagner, Michael [mailto:MeWagner@seyfarth.com]

Sent: Tuesday, March 6, 2018 4:09 PM

To: USASOC FOIA <USASOC.FOIA@socom.mil>

Cc: Farabow, Sara Beiro <SFarabow@seyfarth.com>; Blake, David <DBlake@seyfarth.com>

Subject: [Non-DoD Source] RE: Watts Constructors, LLC - FOIA Request to USASOC

Dear Mr. Nesbitt:

Thank you for your response.

Considering that we narrowed our February 20, 2018 FOIA letter to 5 requests, we were surprised to receive an estimate of \$4,224.00. This seems unreasonable given the significantly narrowed scope of our requests and the fact that our requests target a specific project at Fort Carson, Colorado.

Nonetheless, under a full reservation of rights, we will agree to limit our FOIA further to the time period of December 1, 2017 to February 6, 2018 and the following:

#1 All documents, including communications between and among USACE, USASOC, and/or 10th SFG, concerning delays to the completion of the Project.

#5 All documents concerning USASOC and/or 10th SFG's plans to occupy and use the Project. We believe this category will include not only written communications, but also internal memoranda, notes, reports, etc.

#9 All documents, including communications between and among USACE and/or USASOC and 10th SFG, concerning the termination of Watts' Contract at the Project.

#13 All documents referring or relating to the unavailability of security guards, military police, or USASOC/10th SFG personnel to provide security and access at the Project beginning in February 2018.

#14 All documents, including communications between and among USACE and USASOC and/or 10th SFG concerning the estimated time for completion of the Project following the termination of Watts' Contract.

We ask that you use the following operators and search terms when searching USASOC and 10th SFG's records:

- Watts AND access
- Watts AND security
- Watts AND (terminate OR termination)
- Watts AND schedule
- Watts AND delay

In addition, as set forth in my e-mail of February 28, 2018, we are seeking not only e-mails and communications (i.e., the transmittal of information by any means), but also documents, letters, memoranda, reports, photographs, and other records responsive to the above referenced limited requests. Please ensure that your search covers these categories of records.

We are cooperating in good faith with USASOC and have narrowed our requests twice and feel that this is more than reasonable. Our request is now limited to a 2 month period. The narrowing of our request should significantly reduce the search hours and fees. We ask that USASOC and 10th SFG promptly provide us with a revised fee estimate and conduct the search and produce the documents.

Please contact me with any further questions. Thank you.

Sincerely,

Michael Wagner | Seyfarth Shaw LLP  
975 F Street, N.W. | Washington, DC 20004  
Direct: +1-202-828-3592 | Fax: +1-202-641-9260 mewagner@seyfarth.com | [CAUTION] www.seyfarth.com  
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-----Original Message-----

From: USASOC FOIA [mailto:USASOC.FOIA@socom.mil]  
Sent: Monday, March 5, 2018 4:32 PM  
To: Wagner, Michael <MeWagner@seyfarth.com>  
Subject: RE: Watts Constructors, LLC - FOIA Request to USASOC

Mr. Wagner,

To conduct a search & review for the information you requested (using search the terms The Project & Watts contract; December to present) is estimated at: \$4224 (96 hours X \$44 per hour); this cost does not include search & review of PST/Archive files for 30K+ personnel. Please note, this estimate may go north or south of the cost provided. Let me know if you agree to pay this fee amount, with half of the amount due prior to us processing your request. Also, please provide us with any additional search terms, if the aforementioned doesn't meet your criteria. Lastly, we will not be able to respond to this request with 20 working days.

Sincerely,  
Chris

-----Original Message-----

From: Wagner, Michael [mailto:MeWagner@seyfarth.com]  
Sent: Wednesday, February 28, 2018 9:02 AM  
To: USASOC FOIA <USASOC.FOIA@socom.mil>  
Subject: [Non-DoD Source] RE: Watts Constructors, LLC - FOIA Request to USASOC

Mr. Nesbitt:

Thank you for speaking with me yesterday.

As discussed, we would like USASOC and 10th SFG to conduct an internal search of their records to identify documents that are responsive to our requests. We do not want USACE to conduct a search.

While we maintain that we are entitled to all documents set forth in our requests and reserve all rights, in the interest of expediency, we would like to limit the current search to the following requests included in our February 20, 2018 letter:

#1 All documents, including communications between and among USACE, USASOC, and/or 10th SFG, concerning delays to the completion of the Project. Please limit the search to the time frame of December 1, 2016 through present.

#5 All documents concerning USASOC and/or 10th SFG's plans to occupy and use the Project. We believe this category will include not only written communications, but also internal memoranda, notes, reports, etc.

#9 All documents, including communications between and among USACE and/or 10th SFG, concerning the termination of Watts' Contract at the Project. Again, please limit the search to the time frame of December 1, 2016 through present.

#13 All documents referring or relating to the unavailability of security guards, military police, or USASOC/10th SFG personnel to provide security and access at the Project beginning in February 2018.

#14 All documents, including communications between and among USACE and USASOC and/or 10th SFG concerning the estimated time for completion of the Project following the termination of Watts' Contract.

We are seeking not only communications (i.e., the transmittal of information by any means), but also documents, letters, memoranda, reports, photographs, and other records responsive to the above referenced requests.

We reserve the right to expand our request to include the remaining items in our February 20, 2018 letter after this initial search. Please send us an estimate of fees for the current search prior to conducting the search. Thank you for your assistance with this matter.

Sincerely,

Michael Wagner | Seyfarth Shaw LLP  
975 F Street, N.W. | Washington, DC 20004  
Direct: +1-202-828-3592 | Fax: +1-202-641-9260 mewagner@seyfarth.com | [CAUTION] [CAUTION]  
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-----Original Message-----

From: USASOC FOIA [mailto:USASOC.FOIA@socom.mil]  
Sent: Monday, February 26, 2018 11:19 AM  
To: Wagner, Michael <MeWagner@seyfarth.com>  
Subject: RE: Watts Constructors, LLC - FOIA Request to USASOC

Mr. Wagner,

If we search our files for records (emails) that originated at/or from the USACE, we will referred the material to them for processing, based on the contract number you provided; and you will have to pay fees associated at both agencies. Your fee category is "commercial requester," you pay fees for search and review (\$44 per hour) and copying (\$.15 per page). Here is an example of fees, based on a normal search: 8 hours search & 40 hours reviewing (\$2112); and \$.15 per page (if anything is released). As stated in our conversation, based on a preliminary review of the information you are requesting, nothing may be released if the material/information is internal to a decision making (see FOIA Exemptions b3 10 USC 130b & b6, privacy concerns; b4, financial information; b5, deliberative). Even if nothing is released to you, you will still have to pay fees; paying 1/2 of the fees amount upfront. Let me know if you want us to proceed with processing your request and I will get with our IT department for an estimated fees to process your request.

Sincerely,  
Chris Nesbitt

-----Original Message-----

From: Wagner, Michael [mailto:MeWagner@seyfarth.com]  
Sent: Monday, February 26, 2018 9:37 AM  
To: USASOC FOIA <USASOC.FOIA@socom.mil>  
Subject: [Non-DoD Source] RE: Watts Constructors, LLC - FOIA Request to USASOC

Mr. Nesbitt:

We did not send a FOIA request to USACE and do not want them to conduct a records search at this time. Rather, we want USASOC and 10th SFG, the agencies to whom we addressed our FOIA request, to conduct a search of their records and produce responsive documents. Under the FOIA Act, USASOC is required to conduct an independent search of its records and make its documents available for inspection and copying. If there are no such responsive documents, then USASOC must notify us of this.

Please provide us with an estimate of the fees to process our request. We look forward to your response.

Sincerely,

Michael Wagner | Seyfarth Shaw LLP  
975 F Street, N.W. | Washington, DC 20004  
Direct: +1-202-828-3592 | Fax: +1-202-641-9260 mewagner@seyfarth.com | [CAUTION] [CAUTION]  
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-----Original Message-----

From: USASOC FOIA [mailto:USASOC.FOIA@socom.mil]  
Sent: Friday, February 23, 2018 3:12 PM  
To: Wagner, Michael <MeWagner@seyfarth.com>  
Subject: RE: Watts Constructors, LLC - FOIA Request to USASOC

Mr. Wagner,

Upon consultation with USACE, it was determined that your request fell under their purview, based on the subject contract in your request. The subject of your request related to communication between USASOC & USACE. They would have the same communication (emails) we would have, if any exist. However, if you want to pay for both agencies to conduct a search for records, let me know and I will provide you with the estimated fee for us to process your request, as we discussed in our phone conversation.

Sincerely,  
Chris Nesbitt

-----Original Message-----

From: Wagner, Michael [mailto:MeWagner@seyfarth.com]  
Sent: Friday, February 23, 2018 2:20 PM  
To: USASOC FOIA <USASOC.FOIA@socom.mil>  
Subject: [Non-DoD Source] RE: Watts Constructors, LLC - FOIA Request to USASOC

Dear Mr. Nesbitt:

Thank you for your response.

Our FOIA request is directed to USASOC and 10th SFG and seeks documents from those agencies and not USACE, so we're not sure why our request has been referred to USACE, Omaha District. In accordance with the FOIA Act, we fully expect that USASOC and 10th SFG will review our requests and gather their responsive documents and records.

We maintain that USASOC and 10th SFG must produce these documents within 20 working days of receipt of our February 20, 2018 letter in accordance with the Act. Please contact me if you wish to discuss this matter further.

Sincerely,

Michael Wagner | Seyfarth Shaw LLP  
975 F Street, N.W. | Washington, DC 20004  
Direct: +1-202-828-3592 | Fax: +1-202-641-9260 mewagner@seyfarth.com | [CAUTION] [CAUTION]  
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-----Original Message-----

From: USASOC FOIA [mailto:USASOC.FOIA@socom.mil]  
Sent: Friday, February 23, 2018 9:04 AM  
To: Wagner, Michael <MeWagner@seyfarth.com>  
Subject: RE: Watts Constructors, LLC - FOIA Request to USASOC

Mr. Wagner,

We referred your request to the US Army Corps of Engineers, Omaha District. You should receive acknowledgement from them very soon, or you may contact them at: [CAUTION] [CAUTION] [CAUTION] [CAUTION] [https://urldefense.proofpoint.com/v2/url?u=http-3A\\_\\_www.nwo.usace.army.mil\\_&d=DwlGaQ&c=fMwtGtbwbi-K\\_84JbrNh2g&r=U0W7foJ8cBhHkoSauTH1UfcLKE8gb0L7b\\_6PzQfREck&m=zKZwMAZRyLeXYSuC4F5YiKRKTYdVAvUL59K6t6rovvg&s=UDsPLd6M7oqZFP1I0gTfEIQS7AzRy6TsUyo0\\_S3zqPo&e=](https://urldefense.proofpoint.com/v2/url?u=http-3A__www.nwo.usace.army.mil_&d=DwlGaQ&c=fMwtGtbwbi-K_84JbrNh2g&r=U0W7foJ8cBhHkoSauTH1UfcLKE8gb0L7b_6PzQfREck&m=zKZwMAZRyLeXYSuC4F5YiKRKTYdVAvUL59K6t6rovvg&s=UDsPLd6M7oqZFP1I0gTfEIQS7AzRy6TsUyo0_S3zqPo&e=) [CAUTION] [CAUTION] [CAUTION]

Sincerely,

Christopher Nesbitt

FOIA/PA Officer

U.S. Army Special Operations Command

(910) 432-9233 / DSN: 239-9233

christopher.nesbitt@socom.mil (NIPR)

chris.w.nesbitt@usasoc.socom.smil.mil (SIPR)

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Section 552a. If you have inadvertently received this document, please return it to the sender and destroy any copies.

-----Original Message-----

From: Wagner, Michael [mailto:MeWagner@seyfarth.com]

Sent: Tuesday, February 20, 2018 11:31 AM

To: USASOC FOIA <USASOC.FOIA@socom.mil>

Subject: [Non-DoD Source] Watts Constructors, LLC - FOIA Request to USASOC

Dear Sir or Madam:

Please see attached FOIA Request directed to United States Army Special Operations Command and United States Army 10th Special Operations Forces Group.

Sincerely,

Michael Wagner | Seyfarth Shaw LLP



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