

EXHIBIT 11



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April 20, 2018

BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED

United States Army Special Operations
Command
Freedom of Information Act Office
USASOC (AOIM-FOIA)
2929 Desert Storm Drive
Fort Bragg, N.C. 28310-9110

Secretary of the Army
Attention: Office of the General Counsel
Department of the Army
104 Army Pentagon
Washington, DC 20301-0104

U.S. Army Freedom of Information Office
Department of the Army
7701 Telegraph Road
Casey Building, Suite 144
Alexandria, VA 22315-3905

Re: Appeal of Freedom of Information Act Request No. 18-081

Dear Sir or Madam:

This is an appeal, on behalf of Watts Constructors, LLC (“Watts”), of the United States Army Special Operations Command’s (“USASOC”) decision to assess a fee estimate of \$7,568.00 to FOIA Request No. 18-081 (the “Request”).

Under Army Regulation 25-55 Section 6-104(a), “Fees may not be used to discourage requesters...” Here, USASOC’s fee estimate is arbitrary, completely unreasonable considering the scope of the Request, and meant to discourage and prohibit Watts from obtaining documents and records to which it is entitled under the FOIA. Since this is an appeal of a fee dispute and USASOC has yet to issue a formal initial decision regarding the release of records, we request that the Department of the Army’s (“DA’s”) appellate authority review the fee estimate provided by USASOC, find that it is unreasonable under the circumstances, and direct USASOC to revise its estimate.

In short, for the past two months USASOC has stonewalled Watts by initially concluding that nothing could be released and then dramatically increasing the fee estimate in response to Watts’ significantly narrowed Request. Watts’ initial FOIA letter of February 20, 2018 included 14

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U.S. Army Special Operations Command
Secretary of the Army
U.S. Army Freedom of Information Office
April 20, 2018
Page 2

reasonable requests for documents and records in USASOC's possession and control. In response, USASOC claimed that after reviewing the Request, it was unlikely that any documents could be released. Accordingly, Watts narrowed its FOIA letter to five requests and the time period of December 1, 2016 to present. USASOC then provided a fee estimate of \$4,224.00. Watts narrowed its Request a second time to the time period of December 1, 2017 to February 6, 2018 and provided USASOC with specific search terms. Despite this second limited scope, USASOC would not reduce the fee estimate on the basis that it was required to search the records and documents of 30,000+ USASOC personnel. Consequently, Watts limited its Request a third time to four USASOC custodians, five specific search terms, and the time period of December 1, 2017 to February 6, 2018. USASOC then provided a nonsensical fee estimate of \$7,568.00. At 30,000+ custodians the cost was \$4,224.00, but suddenly the cost for four custodians was \$7,568.00. USASOC's illogical and unreasonable calculation of the fee estimate for records maintained by four USASOC custodians during a two month period must be reviewed and overturned by the DA's appellate authority.

The DA's appellate authority should consider the following facts on appeal, all of which are supported by the enclosed documents and e-mails:

February 20, 2018: This firm, on behalf of Watts, filed the Request with USASOC.

February 23, 2018: USASOC's FOIA Officer, Mr. Christopher Nesbitt, responded that he was referring the Request to the U.S. Army Corps of Engineers, Omaha District ("USACE").

February 23, 2018 at 2:20 PM EST: We objected to the referral and responded that the Request was directed to USASOC and 10th Special Forces Group and not USACE, and that we fully expected USASOC to review the Request and gather the responsive documents and records.

February 23, 2018 at 3:12 PM EST: In reply, USASOC informed us that USACE would have the same communications and documents as USASOC.

February 26, 2018: We again reiterated that Watts' Request was directed to USASOC and 10th SFG and that USASOC is required to conduct an independent search of its records without the interference of USACE. We also requested a fee estimate.

February 26, 2018 at 11:19 AM EST: USASOC switched its focus to the level of difficulty of the search and resulting fees.

February 27, 2018: In good faith, this firm conducted a telephone call with USASOC's FOIA Officer to discuss limiting the scope of the Request to allow USASOC to quickly and efficiently conduct the search.



U.S. Army Special Operations Command
Secretary of the Army
U.S. Army Freedom of Information Office
April 20, 2018
Page 3

February 28, 2018: Under a full reservation of rights, we narrowed the Request down from fourteen to five specific inquiries and also narrowed the time period to December 1, 2016 to Present instead of the original period of July 17, 2014 to Present.

March 5, 2018: USASOC responded that this significantly narrowed version of the Request would cost not less than \$4,224.00.

March 6, 2018: We informed USASOC that the fee estimate was unreasonable considering the narrowed scope, but in the spirit of cooperation, agreed to narrow the Request a second time to the time period of December 1, 2017 to February 6, 2018 (just over two months). We also provided USASOC with specific search terms to further narrow the inquiry.

March 7, 2018: USASOC informed us that the \$4,224 fee estimate was based on a search of the accounts and records of 30,000+ USASOC personnel (and this was the reason for such high fees), but that the fee estimate could be significantly reduced if a specific list of custodians was provided.

March 8, 2018: Pursuant to USASOC's request and under a reservation of rights, we narrowed the Request a third time to only four specific USASOC custodians, five specific operators and search terms, and the two-month period of December 1, 2017 to February 6, 2018.

March 9, 2018: Despite being provided with a significantly limited scope for the Request, USASOC astonishingly increased its fee estimate from \$4,224.00 to \$7,568.00 and indicated, "You may want to pursue this matter other than through FOIA."

March 12, 2018: We requested that USASOC reconsider its position and provide us with a reasonable fee estimate in accordance with its representations of March 7, 2018.

March 13, 2018: USASOC finally provided us with a FOIA control number for the Request, but indicated that it would not reconsider its position.

March 16, 2018: USASOC informed us that it would be administratively closing the Request on March 23, 2018.

March 16, 2018 at 6:23 PM EST: We replied that we were not withdrawing the Request and maintained that fee estimate was unreasonable and again asked that USASOC reconsider the estimate in light of its representations that the fees would be significantly reduced if specific custodians could be identified.

We cooperated in good faith with USASOC in an attempt to resolve this dispute and reach a compromise on the scope of Watts' February 20, 2018 Request. Despite our efforts, USASOC did not cooperate and instead decided to substantially increase its fees in an effort to impede Watts'



U.S. Army Special Operations Command
Secretary of the Army
U.S. Army Freedom of Information Office
April 20, 2018
Page 4

ability to promptly obtain records. USASOC's conduct constitutes an implicit denial of Watts' Request.

We respectfully request that the DA's appellate authority make a final determination on the fee estimate within 20 working days after receipt of this Appeal, find that USASOC's \$7,568.00 fee estimate is unreasonable, require that USASOC provide a realistic estimate that corresponds to the substantially narrowed version of Watts' Request sent to USASOC on March 8, 2018, and order USASOC to release the documents and records sought in the Request.

This Appeal is timely filed. Please contact me if you have any questions or wish to discuss. We look forward to a prompt resolution of Watts' Appeal.

Sincerely,

SEYFARTH SHAW LLP

A handwritten signature in blue ink, appearing to read "Michael E. Wagner, Jr.", written over the printed name below it.

Michael E. Wagner, Jr.

MEW
Enclosures