

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SPARACINO PLLC,
1920 L Street, N.W., Suite 535
Washington, D.C. 20036,

Plaintiff,

v.

U.S. Department of Defense
1155 Defense Pentagon
Washington, D.C. 20301-1155,

Defendant.

Case No.: 1:19-cv-03136

COMPLAINT FOR VIOLATION OF THE FREEDOM OF INFORMATION ACT

INTRODUCTION

1. Plaintiff Sparacino PLLC (“Sparacino”) represents hundreds of U.S. citizens who were injured, or whose relatives were killed or injured, by terrorist attacks in Iraq, including American military veterans and Gold Star families. Plaintiff brings this action for relief under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), to compel the U.S. Department of Defense (the “Department”) to produce records related to Jaysh al-Mahdi, the Iraqi terrorist group that harmed the American families that Plaintiff represents.

2. Plaintiff properly submitted four targeted requests for relevant Department records pursuant to FOIA and applicable Department regulations.

3. The Department’s statutory deadline for making a determination concerning each request has expired, but the Department has neither produced any documents nor made a determination as to the request. The Department’s failure to act on Plaintiff’s requests violates FOIA.

4. Plaintiff has constructively exhausted administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and now seeks judicial relief compelling the Department to promptly search for and produce the requested records and enjoining any further improper withholding.

JURISDICTION AND VENUE

5. This Court has jurisdiction under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201(a), and 2202.

6. Venue lies in this District under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e)(1).

PARTIES

7. Plaintiff Sparacino PLLC is a law firm with an office in Washington, D.C. Plaintiff submitted each of the FOIA requests identified in this Complaint.

8. Defendant U.S. Department of Defense is an “agency” of the federal government within the meaning of 5 U.S.C. § 552(f)(1). The Department is believed to have possession, custody, and control of records responsive to Plaintiff’s requests.

FACTUAL ALLEGATIONS

I. Background

9. Plaintiff and its undersigned co-counsel represent more than 1,000 U.S. citizens who were killed or injured, or whose relatives were killed or injured, by the Shiite terrorist group Jaysh al-Mahdi in Iraq between 2005 and 2011. These victims of heinous terrorist attacks have asserted claims in this District against large medical-supply companies that helped finance Jaysh al-Mahdi’s terrorist acts by, among other things, making corrupt payments to obtain contracts from the Jaysh al-Mahdi-controlled Ministry of Health (“Ministry”). *See* Second Am. Compl., *Atchley v. AstraZeneca UK Ltd.*, No. 17-cv-02136-RJL (D.D.C. Feb. 4, 2019), ECF No. 106.

10. The Department possesses records relevant to the claims of Plaintiff’s clients. First, the Department played a significant role in analyzing and combatting the flow of money and resources to the Iraqi insurgency. For example, the Department established an interagency working group, the Iraq Threat Finance Cell, centered on interrupting terrorist finance in Iraq.

11. Further, the Department, through a military commission, investigated and charged the terrorist Ali Musa Daqduq. He was a Hezbollah advisor to Jaysh al-Mahdi and assisted with attacks on American forces in Iraq.

12. The Department has also generated recently declassified reports and statistics on Iran’s responsibility for the deaths of American service members.

13. Finally, the Coalition Provisional Authority (CPA) governed Iraq after the 2003 invasion by the United States. A creation of the Department, the CPA has intimate knowledge of the Ministry during the relevant timeframe.

14. Given the Department's aforementioned activities, it likely generated and maintained numerous records relevant to the ways in which Jaysh al-Mahdi raised money for terrorist operations. Such records are relevant to Plaintiff's clients' claims and should be produced.

15. The requested records also have broader public significance beyond the *Atchley* litigation. National media has reported on the *Atchley* plaintiffs – many of whom are Gold Star families and wounded military veterans, and all of whom made great sacrifices for our country – reflecting the public's interest in terrorist financing in Iraq.¹ Further reflecting the public importance of records related to these allegations, the Department of Justice (the "DOJ") is reportedly investigating the corrupt dealings alleged by the *Atchley* plaintiffs,² as several *Atchley* defendants have publicly acknowledged.³ Production of the requested records would thus not only serve the interests of Plaintiff's clients; it would benefit the public interest.

¹ See, e.g., Gardiner Harris, *Lawsuit Claims Three U.S. Companies Funded Terror in Iraq*, N.Y. Times (Oct. 17, 2017); Kyle Swenson, *Lawsuit: Big Pharma Funded Terrorism in Iraq with Payments to Corrupt Health Ministry*, Wash. Post (Oct. 19, 2017).

² See, e.g., Gardiner Harris, *Justice Dept. Investigating Claims that Drug Companies Funded Terrorism in Iraq*, N.Y. Times (July 31, 2018).

³ Three of the five named corporate-family defendants, AstraZeneca, Johnson & Johnson, and Pfizer, disclosed the DOJ investigation in their SEC filings. See AstraZeneca PLC, Report of Foreign Issuer (Form 6-K) at 58 (July 26, 2018) (stating that it "received an inquiry from the US Department of Justice in connection with an anti-corruption investigation relating to activities in Iraq, including interactions with the Iraqi government and certain of the same matters alleged in the [*Atchley*] Lawsuit"); Johnson & Johnson, Quarterly Report (Form 10-Q) at 40-41 (Aug. 2, 2018) ("Also, the company has received an inquiry from the United States Department of Justice regarding the matters set out in the [*Atchley*] complaint."); Pfizer Inc., Quarterly Report (Form 10-Q) at 44 (Aug. 9, 2018) (stating that, "[i]n July 2018, the U.S. Department of Justice requested documents related to [the *Atchley*] matter, which we will be providing"; and noting "government investigations related to contracts with the Iraqi Ministry of Health"). Another defendant, Roche,

II. Plaintiff Submitted Four FOIA Requests For Department Records.

a. Request for Daqduq Military Commission Records

16. On December 20, 2017, Plaintiff properly submitted a FOIA request via email to the Office of the Secretary of Defense and Joint Staff (OSD/JS). The request seeks copies of all records related to the investigation of and charges brought against Ali Musa Daqduq al Musawi (as well as various aliases) by the Office of Military Commissions.

17. The request reasonably describes the records sought and provides all information required by Department regulations to perfect the request. *See* 32 C.F.R. §§ 286.3, 286.5.

18. Per its response letter, the Department received the request December 21, 2017 and assigned a tracking number, 18-F-0339. At no time has the Department requested additional information or notified Plaintiff of any defects with the request. Accordingly, the request triggered the Department's obligation to respond under the statute and its own regulations.

b. Request for Records of Iraqi Threat Finance Cell Working Group

19. On November 13, 2018, Plaintiff properly submitted a FOIA request for records via email to OSD/JS. The request seeks copies of records related to a Baghdad-based interagency working group, known as the Iraq Threat Finance Cell. The request limits the timeframe to July 1, 2005 to December 11, 2011 and limits the scope to those records concerning the Iraqi Ministry of Health, Jaysh al-Mahdi, or Muqtada al-Sadr.

20. The request reasonably describes the records sought and provides all information required by Department regulations to perfect the request. *See* 32 C.F.R. §§ 286.3, 286.5.

confirmed to the press that it “received an inquiry from and is cooperating with the Department of Justice on this matter.” Angus Liu, *Roche, Johnson & Johnson Pulled into Justice Department Probe of Alleged Terrorist Bribes*, FiercePharma (Aug. 2, 2018), <https://www.fiercepharma.com/pharma/roche-johnson-johnson-also-under-justice-department-probe-alleged-terrorist-bribes>.

21. The Department received the request in November 2018. Accordingly, the request triggered the Department's obligation to respond under the statute and its own regulations.⁴

c. Request for Declassified Military Reports and Statistics on Iran's Role in Deaths of Service Members

22. On May 10, 2019, Plaintiff properly submitted a FOIA request via email to OSD/JS. The request seeks (1) complete copies of the "declassified military reports" that Special Representative for Iran and Senior Advisor to the Secretary of State Brian Hook referred to during the April 2, 2019 State Department press briefing; and (2) all communications, documents, reports, analyses, and other records supporting or concerning Mr. Hook's statement that the 608 dead American service members was a "Department of Defense statistic."

23. The request reasonably describes the records sought and provides all information required by Department regulations to perfect the request. *See* 32 C.F.R. §§ 286.3, 286.5.

24. Per its response letter, the Department received the request on May 10, 2019 and assigned a tracking number, 19-F-1162. Accordingly, the request triggered the Department's obligation to respond under the statute and its own regulations.

d. Request for CPA Records Regarding the Ministry

25. On September 11, 2019, Plaintiff properly submitted a FOIA request to the Office of the Secretary of Defense and Joint Staff (OSD/JS). The request seeks copies of all CPA records related to the Ministry or Kimadia.⁵

26. On that same day, per its response letter, the Department received the request and assigned tracking number, FA-20-0004/FP-20-000057. Accordingly, the request triggered the Department's obligation to respond under the statute and its own regulations.

⁴ The Department did not assign this request a tracking number even though Plaintiff sent the Department the request again via email.

⁵ Kimadia is the Ministry's import arm.

III. The Department Failed to Make Determinations within FOIA's Time Limits, and Plaintiff Has Constructively Exhausted Administrative Remedies.

a. Request for Daqduq Military Commission Records

27. Under the ordinary operation of FOIA's twenty-day compliance period, the Department had to respond to Plaintiff's December 20, 2017 request no later than January 23, 2018. *See* 5 U.S.C. § 552(a)(6)(A)(i) (requiring a determination within 20 working days of receipt of a FOIA request).

28. The Department's untimely acknowledgment letter, postmarked April 25, 2018, asserted that "unusual circumstances" existed that impacted its "ability to quickly process" the request. The assertion of unusual circumstances was conclusory and boilerplate, and did not adequately justify such an extension. Regardless, assuming that such circumstances once existed, it has been more than a year and a half since the Department received the request.

29. Over the course of nearly a year, Sparacino sent numerous emails requesting updates on production related to the request. Many of these emails went unanswered by the Department. When the Department did respond, the responses were riddled with excuses for the ongoing delays of production. Between May 2018 and January 2019, Sparacino was given several projected production dates, none of which were met. The original production date was July 31, 2018. No production was made on this date. Then, on November 2, 2018, Sparacino was informed the Department would begin producing responsive documents on a rolling basis beginning within the next ten days. No production was made. On December 20, 2018, a year from the date of the submission of the request, Sparacino was informed that production was anticipated for some time in mid-January 2019. Despite several follow-up emails during January 2019 by Sparacino, the Department failed to make any production.

30. As of the date of this Complaint, the Department has failed to produce any documents responsive to the request (despite admitting that such documents exist). In the intervening year and a half, Plaintiff has contacted Department personnel about the status of its request multiple times but has received excuse after excuse about the mounting delay. Despite several inquiries, therefore, Plaintiff has no idea when – or even if – the Department intends to respond to its pending request.

31. The Department's failure to comply with FOIA's deadline for making a determination constructively exhausts Plaintiff's administrative remedies and authorizes Plaintiff to bring suit in this District to compel prompt production and to enjoin continued wrongful withholding of records responsive to Plaintiff's request. *See* 5 U.S.C. § 552(a)(6)(C)(i).

b. Request for Records of Iraqi Threat Finance Cell Working Group

32. Under the ordinary operation of FOIA's twenty-day compliance period, the Department had to respond to Plaintiff's November 13, 2018 request no later than December 12, 2018. *See* 5 U.S.C. § 552(a)(6)(A)(i) (requiring a determination within 20 working days of receipt of a FOIA request).

33. It has been almost a year since the Department received Plaintiff's request. Yet, as of the date of this Complaint, the Department has failed to produce any documents responsive to the request. Indeed, the Department has claimed to be unable to locate the request despite several emails from Sparacino beginning on May 9, 2019, resending the request and identifying the Department component to which the request was sent. Each of the emails sent by Sparacino to the Department contained the request and named the recipient component of the Department.

34. In the intervening months, Plaintiff contacted Department personnel multiple times about the status of its request but has received only excuses. Thus, despite several inquiries, Plaintiff has no idea when – or even if – the Department intends to respond to its pending request.

35. The Department's failure to comply with FOIA's deadline for making a determination constructively exhausts Plaintiff's administrative remedies and authorizes Plaintiff to bring suit in this District to compel prompt production and to enjoin continued wrongful withholding of records responsive to Plaintiff's request. *See* 5 U.S.C. § 552(a)(6)(C)(i).

c. Request for Declassified Military Reports and Statistics on Iran's Role in Deaths of Service Members

36. Under the ordinary operation of FOIA's twenty-day compliance period, the Department had to respond to Plaintiff's May 10, 2018 request by no later than June 10, 2019. *See* 5 U.S.C. § 552(a)(6)(A)(i) (requiring a determination within 20 working days of receipt of a FOIA request).

37. It has been over three months since the Department received the request. As of the date of this Complaint, however, the Department has failed to produce any documents responsive to the request.

38. Since receiving the request, the Department has requested additional information related to the request, which Sparacino has repeatedly provided. Sparacino provided this information during a lengthy telephone conversation with a Department representative, as well as through multiple emails. Despite Sparacino's efforts to comply with these numerous requests for additional information, the Department threatened to administratively close the request if additional, clarifying information was not provided by June 28, 2019. On June 28, 2019, Sparacino contacted the Department and requested a thirty-day extension to provide the additional information. On July 1, 2019, the Department granted the extension, and provided a new suspension date of August 1, 2019. On July 10, 2019, Sparacino again contacted the Department and was given instructions, with which Sparacino complied. Despite repeated attempts by Sparacino to comply with the Department's requests for additional information and instructions,

the Department has ultimately failed to provide any type of notice or response as to the status of this request.

39. Despite several inquiries, Plaintiff has received no indication from the Department of the current status of this request, including when – or even if – the Department intends to respond to its pending request.

40. The Department's failure to comply with FOIA's deadline for making a determination constructively exhausts Plaintiff's administrative remedies and authorizes Plaintiff to bring suit in this District to compel prompt production and to enjoin continued wrongful withholding of records responsive to Plaintiff's request. *See* 5 U.S.C. § 552(a)(6)(C)(i).

d. Request for CPA Records Regarding the Ministry

41. Under the ordinary operation of FOIA's twenty-day compliance period, the Department had to respond to Plaintiff's September 11, 2019 request by no later than October 9, 2019. *See* 5 U.S.C. § 552(a)(6)(A)(i) (requiring a determination within 20 working days of receipt of a FOIA request).

42. It has been over 20 working days since the Department received the request. As of the date of this Complaint, however, the Department has failed to produce any documents responsive to the request.

CLAIMS FOR RELIEF

Count I: Failure to Comply with FOIA

43. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

44. Plaintiff properly made four requests for records within the possession, custody, and control of the Department.

45. The Department is an agency subject to FOIA.

46. The Department was required under 5 U.S.C. § 552(a)(3) to conduct a reasonable search for records responsive to Plaintiff's FOIA requests.

47. The time limit under 5 U.S.C. § 552(a)(6) for the Department to conduct such a search and to make a determination as to each of Plaintiff's four FOIA requests has expired.

48. The Department has wrongfully failed to communicate to Plaintiff a determination as to each of Plaintiff's four FOIA requests.

49. Pursuant to 5 U.S.C. § 552(a)(3)(A), the Department was required to produce promptly all responsive records that are subject to disclosure under FOIA.

50. The Department has wrongfully failed to make such a production for either of Plaintiff's four FOIA requests.

51. Plaintiff has exhausted administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

52. The Court should therefore order the Department to promptly produce all responsive records, subject to withholdings agreed to by the parties or approved by the Court.

53. To facilitate determination of the validity of any withholdings based on FOIA exemptions the Department might ultimately assert, Plaintiff seeks an order compelling the Department to produce indexes justifying redactions to or withholding of responsive records.

Count II: Declaration Precluding Assessment of Fees

54. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

55. The Department has failed to comply with time limits under 5 U.S.C. § 552(a)(6).

56. The Department did not provide timely written notice to Plaintiff of any unusual circumstances.

57. The Department has not discussed or attempted to discuss with Plaintiff how or whether Plaintiff could limit the scope of any of Plaintiff's four FOIA requests.

58. No court has determined that exceptional circumstances exist.

59. Accordingly, Plaintiff is entitled to a declaration that the agency may not assess any search fees associated with any of Plaintiff's four FOIA requests, pursuant to 5 U.S.C. § 552(a)(4)(A)(viii).

PRAYER FOR RELIEF

Plaintiff respectfully requests that the Court:

- a. Order the Department to promptly conduct a reasonable search for all records responsive to Plaintiff's four FOIA requests, to the extent such a search has not already been conducted, and to demonstrate that it employed search methods reasonably likely to lead to the discovery of responsive records;
- b. Order the Department to produce within 20 days or such other time as the Court deems proper all records responsive to Plaintiff's four FOIA requests that are subject to disclosure under FOIA, as agreed to by the parties or determined by the Court, and indexes justifying any withholdings or redactions;
- c. Declare that the Department failed to comply with the time limits under 5 U.S.C. § 552(a)(6) and that search fees therefore may not be assessed under § 552(a)(4)(A)(viii) with respect to either of Plaintiff's four FOIA requests;
- d. Award Plaintiff attorney's fees and costs incurred in relation to this case, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- e. Grant Plaintiff any other relief the Court deems just and proper.

Dated October 18, 2019

Respectfully submitted,

/s/ Christopher J. Cormier

Christopher J. Cormier

(D.C. Bar No. 496384)

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