

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

James E. Coleman, Jr.

ON BEHALF OF RUBEN WRIGHT
Duke University School of Law
Wrongful Convictions Clinic
210 Science Drive
Box 90360
Durham, NC 27708-0360

Plaintiff,

v.

DEPARTMENT OF THE NAVY
1010 Navy Pentagon, 5A532
Washington, DC 20350

Defendant.

CIVIL ACTION DOCKET No.: 19-3191

COMPLAINT

PRELIMINARY STATEMENT

1. Plaintiff James E. Coleman, Jr. brings this action against the Department of the Navy (the “Navy”) under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, to compel the search for and disclosure of records concerning video footage recorded by equipment mounted at the gates of the Camp Lejeune Marine Corps Base on January 5, 2004. The requested records would serve as critical evidence in Ruben Wright’s post-conviction proceedings.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action and these parties pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331. Venue is proper in this district pursuant to 5

U.S.C. § 552(a)(4)(B).

PARTIES

3. Plaintiff James E. Coleman, Jr. is the Co-Director of the Wrongful Convictions Clinic at Duke University School of Law (“Clinic”). The Clinic works to investigate claims of innocence made by incarcerated felons in North Carolina prisons. Plaintiff represents Ruben Wright, former Marine Warrant Officer, in his post-conviction proceedings.
4. Defendant Department of the United States Navy, as a component of the Department of Defense, is an executive branch department of the federal government. The Navy is an agency within the meaning of 5 U.S.C. § 552(f)(1). On information and belief, the Navy has possession, custody, and control of records that Plaintiff seeks in its FOIA request.

FACTS

I. BACKGROUND

5. In 2004, Ruben Wright was a rising star in the United States Marine Corps. He was poised to become the first African American Master Sergeant Major, the highest non-commissioned rank in the Marines, when he was sentenced to life without parole for the murder of retired Marine James Taulbee.
6. The Naval Criminal Investigative Service (“NCIS”), the federal law enforcement agency within the Department of the Navy, was charged with investigating the murder, in aid of the civilian investigation of the crime being conducted by the Onslow County Sheriff’s Department (“OCSD”), which had primary jurisdiction.
7. NCIS suspected the involvement of fellow Marine Randy Linniman. *See Ex. A at A-35–36.* The stock from the gun used to kill Mr. Taulbee was recovered at Mr. Linniman’s house. *Id.* at A-41. Mr. Linniman then confessed to purchasing the gun and bullets used

to kill Mr. Taulbee as well as disposing of the gun's barrel after the murder, which NCIS recovered. *See id.* at A-40–A-42. And he admitted to leaving the Base on the morning of the murder, driving to the Taulbee residence, and then returning to the Base. *Id.* at A-40. But he denied any involvement in the crime, instead stating that he gave Mr. Wright a ride to the Taulbee residence at his request, allegedly without asking any questions. *Id.* at A-40, A-41, A-43. Mr. Linniman claimed he did not know Mr. Wright's purpose in going to the Taulbee residence. *Id.* at A-41–A-43.

8. Mr. Taulbee was murdered in the early morning hours of January 5, 2004 at his residence.
9. Both security gates Mr. Linniman drove through that morning to exit and re-enter the Marine Corps Base were monitored by video surveillance. The Main Gate (through which Mr. Linniman exited the Base) is located at the northern end of the Base on Halcomb Boulevard. The Piney Green Gate (through which Mr. Linniman returned to the Base) is located southeast of the Main Gate off of Piney Green Road. The two gates are approximately 2.1 miles apart.
10. The first documented reference to evidence acquired from the surveillance cameras at these gates is contained in the notes of OCSD Detective Dawn Jauernik. According to Detective Jauernik's notes on January 15, 2004, "[NCIS Agent Briggs] gave me copies of photo's [sic] that were taken of A/Linniman and A/Wright coming onto the base through the piney [sic] Green entrance at 4:39 a.m., on 01-06-04, with A/Linniman driving his white Honda Accord." *See Ex. A at A-110.*
11. Although this evidence shows that NCIS Agent Briggs possessed still photographs pulled

from the surveillance footage on the Base as early as January 15, 2004, NCIS has not produced any records indicating how or from whom the photographs were obtained. Indeed, the Navy has not produced any record documenting NCIS's receipt of the surveillance video on or before January 15, 2004; nor has it documented NCIS's receipt of the photographs made from the footage that NCIS shared with OCSD Detective Jauernik on January 15, 2004.

12. The first records produced by NCIS relating to still photographs or video footage from the surveillance cameras are dated January 22, 2004.
13. According to NCIS Special Agent Scott Alexander Vousboukis ("Agent Vousboukis"), on January 22, 2004, Corporal David Fox (Network Security) sent Agent Vousboukis a CD-R that contained footage of the traffic entering and exiting Camp Lejeune on January 5, 2004, between 3:45 a.m. and 5:00 a.m. *See Ex. A at A-12.*
14. After viewing the video footage, Agent Vousboukis informed Detective Robinson of the OCSD that Mr. Linniman left through the Main Gate at 4:08 a.m. and returned through the Piney Green Gate at 4:39 a.m. *See Ex. A at A-87.* In direct contradiction to his later sworn trial testimony, *see* ¶ 19, *infra*, he told Detective Robinson that Mr. Wright was in the back seat of the car Mr. Linniman drove. *Id.* The CD-R contained copies of still photographs, suggesting that this was not the original surveillance video.
15. On March 23, 2004, Agent Vousboukis sent footage from the CD-R allegedly obtained from Corporal Fox on January 22, 2004, to Agent Marc Jaskolka of the NCIS Regional Lab. *See Ex. A at A-13–A-14.* The CD-R copy was entered into the NCIS Resident Agency ("NCISRA") Camp Lejeune Evidence Custody System, under log number 139-

04. *Id.* at A-13. The accompanying report states that it contains video of inbound and outbound gate traffic. *Id.* Agent Vousboukis requested that Agent Jaskolka review the footage of a white Honda Accord, apparently believed to be Mr. Linniman's vehicle. *See* Ex. D at D-23. Agent Vousboukis asked: "Attempt to enhance [sic] this because you can not really see the black male. ... This individual is S/WRIGHT." *Id.* Agent Vousboukis requested that Agent Jaskolka return the CD-R after the enhancements were completed. *See* Ex. A at A-14.
16. On May 24, 2004, the NCISRA Norfolk Forensic Laboratory sent Agent Vousboukis the requested enhanced photographs from the CD-R. *See* Ex. A at A-131. Less than a month later, Agent Vousboukis sent the enhanced photographs to OCSD and the Onslow County District Attorney's Office to be used in the case against Mr. Wright. *Id.* at A-132.
17. At the time of trial, Mr. Wright was provided six still photographs of white cars leaving the Base through the Main Gate on the morning of January 5, 2004. The photographs are labelled "Main Gate Outbound" and were made from video recorded by two different cameras, set at different angles. The still photographs are taken from the video at the following times: 04:06:05, 04:20:58, 04:27:17, and 04:20:57.¹ *See* Ex. A at A-59–A-64.
18. Agent Vousboukis testified that the 04:06:05 screenshot was Mr. Linniman's car leaving through the Main Gate. *See* Ex. A at A-22. Neither NCIS nor OCSD gave Mr. Wright a copy of the Main Gate video footage from which these photographs were pulled.
19. Mr. Wright was, however, provided with video footage from the Piney Green Gate. In it, Mr. Linniman's car returns to the Base through the Piney Green Gate at 4:39 a.m. Agent

¹ There are three photographs timestamped at 4:20:57.

Vousboukis admitted at trial that “[y]ou cannot identify the people in the vehicle” based on the photographs of Mr. Linniman’s car entering the Base. *See* Ex. A at A-22. Asked whether it was possible to tell whether *anybody* was in the backseat of the vehicle, Agent Vousboukis said only that “[i]t was too dark ... to identify anyone in the vehicle.” *Id.* at A-25.

20. On January 20, 2006, Mr. Wright was found guilty of murdering Mr. Taulbee without a single piece of physical evidence connecting him to the crime. And although the case against Mr. Wright was constructed largely based on Mr. Linniman’s statements to NCIS, Mr. Linniman did not testify at Mr. Wright’s trial.
21. Instead, the State’s case against Mr. Wright relied largely on the photographic and video evidence that purportedly shows Mr. Wright leaving and returning to base on the morning of the murder. But that evidence is far from clear. As Agent Vousboukis testified, it is not clear that Mr. Wright was in the car with Mr. Linniman when he returned to base through the Piney Green Gate; after reviewing the video, the Onslow County District Attorney and his principal Deputy conceded to Plaintiff that Mr. Wright was not in the car when it returned to the base. The complete video footage recorded at the Main Gate might show that, in fact, Mr. Linniman was alone when he left the Base through the Main Gate. The missing video footage could therefore effectively negate the State’s key evidence of Mr. Wright’s involvement in Mr. Taulbee’s death. But neither the Navy nor the State of North Carolina has ever disclosed that footage to Mr. Wright; nor has the Navy ever accounted for the missing footage.

II. PLAINTIFF’S FOIA REQUESTS AND DEFENDANT’S FAILURE TO REASONABLY RESPOND TO THE REQUESTS

22. On May 11, 2016, Plaintiff requested from NCIS “all records pertaining to security camera videos of Zenaida Taulbee and Randy Linneman [sic] leaving the Marine Corps Base, Camp Lejeune, NC on January 5, 2004” pursuant to the Freedom of Information Act. *See* Ex. A at A-9–A-11.
23. By letter dated May 19, 2016, NCIS informed Plaintiff that for an unknown reason “on April 14, 2016,” 26 days before Plaintiff’s FOIA request, “the requested video footage was permanently transferred to the Onslow County Sherriff’s Office. NCIS no longer maintains a copy.” *See* Ex. A at A-16. “In view of the above, no further action will be taken and your request will be administratively closed.” *Id.*
24. By letter dated July 17, 2016, Plaintiff explained to NCIS that OCSD received the same footage available to Mr. Wright, but not the complete footage from which the still images were pulled prior to January 22, 2004. *See* Ex. A at A-142–A-144. Plaintiff therefore requested “that the Department of Navy investigate ... the circumstances under which the footage that NCIS turned over to OCSD prior to trial was altered, withheld, or destroyed.” Ex. A at A-142.
25. On March 8, 2017, NCIS Agent Sean Devinny emailed Plaintiff that based on his investigation, the gaps in the Piney Green Gate footage in Plaintiff’s possession were due to the cameras being motion-activated, rather than any missing footage. The gaps occurred during periods where there was no traffic to record. Further, Agency Devinny revealed that “the still image [at issue] was taken from footage at the Main Gate” rather than the Piney Green Gate. *See* Ex. A at A-146. But Agent Devinny failed to provide any information about the video footage from the Main Gate, which Plaintiff has *never* seen.

26. This response is improperly narrow. Plaintiff's objective is to locate the video from which the existing screenshots were pulled; therefore, Plaintiff's request was for *all* records "pertaining to security camera videos" of Mr. Linniman leaving or entering the Base, without specifying a specific theory or gate. Agent Devinny's search and response nonetheless focused solely on the Piney Green Gate and failed to provide the Main Gate records, which were also the subject of Plaintiff's FOIA request.
27. Plaintiff filed a FOIA appeal with the Department of the Navy on November 10, 2017. The appeal requested "records of any kind ... pertaining to security camera videos of Randy Linniman leaving and entering the Marine Corps Base, Camp Lejeune, NC, on the morning of January 5, 2004." *See* Ex. A at A-1. It also sought "a detailed account of NCIS's efforts to locate the missing footage." *Id.*
28. The appeal was granted in part and denied in part on December 19, 2017. *See* Ex. B at B-1. The Director of the Navy's General Litigation Division, G. E. Lattin, found that NCIS's search for the missing video records was "adequate." *Id.* at B-2. However, Director Lattin found that NCIS improperly "limited the scope of their search to only the video files in question and not all other records that might have pertained to those files." *Id.* at B-1. He therefore remanded to NCIS to produce any other documents associated with the videos. *Id.* at B-3.
29. On remand, NCIS provided Plaintiff with an Evidence Custody Document, the Management Directed Inquiry, and a copy of a CD which contained 25 files (video clips and photographs). *See* Ex. C & D.
30. These materials merely emphasize the insufficiency of NCIS's search. The Management

Directed Inquiry reflects an improper focus on the idea that there might be “missing segments” of the available video footage showing “nefarious activity” such as the “manipulat[ion]” of the footage. *See* Ex. D at D-1. Instead of searching for all available video, Agent Devinny reviewed the already available video footage and found that “there were missing gaps of recordings . . . however . . . the missing recording appeared to correlate with instances when no vehicular or foot traffic crossed in front of the cameras.” *Id.* at D-50. He therefore concluded that “there was no merit that the video was manipulated . . . This investigation is closed.” *Id.* at D-1; *see also id.* at D-6 (closing the inquiry “[b]ased on” findings that the gaps in the video were explained by motion-activated recording systems). The Management Directed Inquiry makes clear that NCIS’s search focused on the available video to the exclusion of the missing footage recorded at the Main Gate, failing to fully address Mr. Wright’s FOIA request, which sought *all* records related to the video footage.

31. Plaintiff explained as much in a response to NCIS’s supplemental documents on January 26, 2018, stating: “Your review and the subsequent decision to close the MDI are based explicitly on your conclusion that the photograph we provided of the white Honda leaving Camp Lejeune at 4:06:05 was not taken from any of the three cameras at the Piney Green Gate, and therefore video taken from those cameras was not manipulated, altered, or destroyed. That conclusion does not address my complaint, which was not intended to be limited to video from the Piney Green gate, but implicitly included whatever video camera captured the white Honda leaving at 4:06:05.” *See* Ex. E at E-1. “The fact that we have several screen shots taken from video recorded at the Main Gate on the early morning of January 5, 2004, it is clear that such video existed. NCIS has not

accounted for that video, and the explanation for the gaps in the Piney Green gate [does] not explain the missing video from the main gate.” *Id.* at E-2.

32. By email dated March 14, 2018, Agent Devinnny informed Plaintiff that NCIS has produced all the relevant materials in their possession and that NCIS “believe[s] the initial complaint was answered by the Management Directed Inquiry.” *See* Ex. F at F-1.
33. Plaintiff has received no further information from NCIS.
34. Plaintiff has exhausted all administrative remedies with respect to his FOIA requests to the Navy. *See* 5 U.S.C. § 522(a)(6)(C)(i).

CAUSE OF ACTION

Violation of FOIA for Failure to Release Records Sought by Plaintiff’s Request

35. Plaintiff incorporates by reference and realleges paragraphs 1-34.
36. Plaintiff properly requested records within the possession, custody, and control of NCIS.
37. The Navy is an agency subject to FOIA and must therefore make reasonable efforts to search for requested records and to promptly make the requested records available. 5 U.S.C. § 552(a)(3)(A), (C).
38. On information and belief, Defendant has failed to reasonably review agency records for the purpose of locating those records which are responsive to the FOIA requests.
39. Defendant has violated its duties under 5 U.S.C. § 552 and its own regulations implementing FOIA at 32 C.F.R. § 286 *et seq.*, including but not limited to the duties to conduct a reasonable search for responsive records, to take reasonable steps to release all nonexempt information, and to not withhold responsive records.
40. Plaintiff is therefore entitled to injunctive and declaratory relief requiring Defendant to

make reasonable efforts to search for records responsive to the FOIA requests, produce all non-exempt records responsive to those FOIA requests, and provide indexes of any responsive records withheld under claim of exemption.

REQUESTED RELIEF

WHEREFORE, Plaintiff prays that this Court:

- a DECLARE that Defendant's refusal to conduct a reasonable search for the requested records violated FOIA;

- b ORDER Defendant to conduct a reasonable search for records responsive to Plaintiff's FOIA request;

- c ORDER Defendant to produce, by such a date as the Court deems appropriate, any and all non-exempt records responsive to Plaintiff's FOIA requests and indexes of any responsive records withheld under claim of exemption;

- d AWARD Plaintiff his costs and reasonable attorneys' fees incurred in this action; and

- e GRANT such other relief as the Court may deem just and proper.

DATED: October 24, 2019

Respectfully Submitted,

/s/ Arin Smith

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