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May 4, 2020

Director, Office of Information Programs and Services
Department of State
Building SA-2
515 22nd Street, NW
Washington, DC 20522-8100

RE: APPEAL of F-2019-08911

To whom it may concern:

My name is Christopher Hickman and I am legal counsel to BuzzFeed News and its reporters Adolfo Flores, Lam Thuy Vo, and Jeremy Singer-Vine. I write to appeal the constructive denial of the above-referenced FOIA request.

The reporters filed the above-referenced request on August 16, 2019. On January 21, 2020, the reporters sought an estimated date of completion, in writing, per 5 USC § 552(a)(7)(B)(ii). On February 24, 2020, the State Department responded, advising the reporters that "It has been determined that the [estimated date of completion] for this request is November 30, 2022."

The State Department did not provide any reasoning behind the estimated date of completion, which is more than three years after the filing date.

FOIA provides direction concerning the time and manner in which agencies must respond to requests.

Specifically, 5 USC § 552 (a)(6)(A)(i)(I) states in relevant part that:

"Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection shall --- determine within **20 days** (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making the request of such determination and the reasons

therefor" and further provides that, "[u]pon any determination by an agency to comply with a request for records, the records shall be made **promptly available** to such person making such request." Id. § 552(a)(6)(C)(i) (emphasis added). The State Department has complied with neither of these requirements here.

First, a "determination" response under 5 U.S.C. § 552(a)(6)(A)(i) must include, among other things: "(1) a statement of what the agency will release and will not release, including a list of the documents that are releasable and withheld; (2) a statement of the reasons for not releasing the withheld records; and (3) a statement notifying the requester of her right to appeal to the head of the agency or seek judicial review of any adverse determination." *Shermco Industries v. Secretary of the United States Air Force*, 452 F. Supp. 306, 317 (N.D.Tex.1978); *Oglesby v. United States Dep't of Army*, 920 F.2d 57, 65 (D.C. Cir. 1990). Your response of February 24, 2020, does not fulfill these criteria, but rather simply states that the estimated date of completion for the request is nearly **two-and-a-half years** from the time of this writing.

A boundaryless promise to deliver an unspecified selection of documents at an unreasonably distant time in the future is not what the statute anticipates; rather, your response reads as a constructive denial of our request. I write to request a reduction of the time frame for delivery of these requested records. Failing that, we intend to fully exercise our statutory rights to challenge this determination through litigation.

For all these reasons, we respectfully request that you reverse the constructive denial, and order the prompt release of all responsive records. Please feel free to contact me by email at Chris.Hickman@BuzzFeed.com or at (917) 721-9534. We reserve all customary rights.

Very sincerely yours,
Christopher Hickman, Esq.