

# EXHIBIT 3

**From:** Moore, Ashley  
**Sent:** Wednesday, April 01, 2020 5:13 PM  
**To:** 'whs.mc-alex.esd.mbx.osd-js-foia-requester-service-center@mail.mil'  
**Cc:** Ringger, Devin Charles; Gonsalves, Davis  
**Subject:** Follow up to Previously Submitted FOIA Requests  
**Attachments:** JOINT CHIEFS.zip; Joint Chiefs Follow Up to Previously Submitted FOIAs.pdf

To Whom It May Concern,

Please find attached a letter from Willkie Farr & Gallagher LLP regarding FOIA requests that had been previously submitted to your agency. The relevant FOIA requests are attached as well for your reference. Please direct any correspondence or questions you may have to Devin Ringger at either 202-303-1463 or [dringger@willkie.com](mailto:dringger@willkie.com).

Best,  
Ashley

**Ashley A. Moore**  
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# WILLKIE FARR & GALLAGHER<sup>LLP</sup>

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April 1, 2020

## EMAIL

OSD/JS FOIA Requester Service Center  
Freedom of Information Division  
1155 Defense Pentagon  
Washington, DC 20301-1155

Re: March 2, 2020 Freedom of Information Act (“FOIA”) Requests

To Whom It May Concern,

We write to request a written determination on our March 2, 2020 FOIA requests to your office. These requests were made in accordance with the FOIA Guidelines and are deemed to have been received by your office on the next business day, March 3, 2020. A copy of our initial requests are attached for your reference.

Under the FOIA Guidelines, within 20 working days (or 30 working days had this agency provided a timely written notice setting forth any “unusual circumstances”<sup>1</sup> for such extension) of receiving a FOIA request, an agency must process that request and make a “determination.” 29 CFR § 2201.6(a); 5 U.S.C. § 552(a)(6)(A)(i). A “determination” does not require actual production of the records, but “must be more than just an initial statement that the agency will generally comply with a FOIA request and will produce non-exempt documents and claim exemptions in the future.” *Id.* The statute specifically mandates that the agency must, at a minimum: (i) gather and review requested documents; (ii) determine and communicate the scope of the documents it intends to produce and withhold, along with the reasons for withholding any documents; and (iii) inform the requester that it can appeal whatever portion of the “determination” is adverse. *See Spannaus v. DOJ*, 824 F.2d 52, 59 n. 7 (D.C.Cir.1987); *Citizens for Responsibility and Ethics in Washington v. Federal Election Com’n*, 711 F.3d 180 (D.C. Cir. 2013).

Since constructive receipt of our March 2 requests, your office has not provided Willkie Farr & Gallagher with a determination as defined by the FOIA Guidelines that was required by March 31, 2020, the date marking 20 working days after the receipt of our FOIA requests. We thus consider the agency to be in

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<sup>1</sup> As defined in the Freedom of Information Act, “unusual circumstances” means, “but only to the extent reasonably necessary to the proper processing of the particular requests— (I) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; (II) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or (III) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.” 5 U.S.C. § 552(a)(6)(B)(iii).

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violation of its obligations under FOIA and respectfully request that your office issue a determination promptly. Please let us know if we can provide any additional information to help process these requests. We are also happy to schedule a time to discuss these requests in more detail. To discuss, please contact my associate, Devin Ringger, at (202) 303-1463 or via email at [dringger@willkie.com](mailto:dringger@willkie.com). Thank you for your prompt attention to this matter.

Sincerely,

/s/ Michael J. Gottlieb  
Willkie Farr & Gallagher