

EXHIBIT R



April 21, 2020

Via OSD/JS Public Access Link FOIA Request Form

Stephanie Carr, Chief
OSD/JS FOIA Requester Service Center
Office of Freedom of Information
1155 Defense Pentagon
Washington, DC 20301-1155

Dear Ms. Carr:

This letter constitutes a request (“Request”) under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, for records in the possession of the U.S. Department of Defense (DoD), Defense Manpower Data Center (DMDC). **The requested records concern the number of U.S. troops serving in Afghanistan, Iraq, and Syria, which DMDC had publicly reported for years until December 2017.** These figures are critical to (1) gauging the accuracy of the government’s statements about the progress of military operations in the Middle East and South Asia; (2) exercising democratic oversight over core questions of responsibility to the public; (3) holding elected officials accountable to promised troop withdrawals in the region; and (4) keeping servicemembers—and their families—informed of the risks they might face upon assignment. **Withholding this data from the American public undermines democratic accountability for the solemn decision to put troops in harm’s way and erodes public trust in government.**

Requested Records

Requester seeks the following records about troop levels in Afghanistan, Iraq, and Syria:¹

1. Records sufficient to show the number of military and DoD Appropriated Fund (APF) civilian personnel permanently assigned to:
 - a. Afghanistan,
 - b. Iraq, and
 - c. Syria

for the period December 2017 to the most recent available quarter, disaggregated by country and broken down quarterly. DMDC currently releases these figures for other countries in quarterly manpower reports titled “Number of Military and DoD Appropriated Fund (APF)”

¹ As used herein, the term “records” includes any and all communications preserved in electronic or written form including, but not limited to, correspondence, documents, data, videotapes, audio tapes, emails, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes orders, policies, procedures, protocols, reports, rules, technical manuals, technical specifications, training manuals, or studies.

- Civilian Personnel Permanently Assigned By Duty Location and Service/Component” (DRS #103763).
2. Records sufficient to show the number of U.S. Armed Forces personnel on temporary duty or deployed in support of contingency operations (i.e. personnel in-country for short-duration missions, personnel in a temporary duty status, personnel assigned to combat support agencies or deployed in support of contingency operations, and forces assigned to the material recovery element of the Resolute Support Sustainment Brigade) in reported totals in the following countries:
 - a. Afghanistan,
 - b. Iraq, and
 - c. Syriafor the period December 2017 to the most recent available quarter, disaggregated by country and broken down quarterly.
 3. Records sufficient to show the Force Management Level (FML) for:
 - a. Afghanistan,
 - b. Iraq, and
 - c. Syriafor the period August 2017 to the most recent available quarter, disaggregated by and broken down quarterly.

Requester agrees to pay search and duplication fees up to \$100. Requester requests a fee waiver pursuant to 5 U.S.C. § 522(a)(4)(A)(iii) and 32 CFR § 286.12(l) if the fees amount to more than \$100, as **obtaining these records is in the public interest**. The Department of Defense considers these three factors set forth in 32 CFR § 286.12(l)(2)(ii) when determining whether the disclosure is in the public interest:

1. Whether “[d]isclosure of the requested information would shed light on the operations or activities of the government;”
2. Whether “[d]isclosure of the requested information would be likely to contribute significantly to public understanding of those operations or activities;” and
3. Whether disclosure would be “primarily in the commercial interest of the requester.”

This request satisfies all three factors, as **disclosure of the requested records would inform the American public of some of the most fundamental facts about the decision to send U.S. soldiers into harm’s way—an understanding that is essential to continuing public oversight of democratically elected officials and the national security and foreign policies they adopt.**

First, the requested records would “shed light on the operations or activities of the government.” 32 CFR § 286.12(l)(2)(i). The requested records concern the Department of Defense, a cabinet-level agency of the federal government. DoD “operations” or “activities” include the stationing and deployment of U.S. military and civilian personnel abroad, including in areas with ongoing operations such as Afghanistan, Iraq, and Syria. Through DMDC,² the Department of Defense has released data on the number of active duty military and civilian

² Before DMDC began reporting this data, other DoD entities published these troop numbers for a number of years.

personnel by geographic location on a quarterly basis for decades.³ At times, DoD also has released troop counts under Force Management Level for Afghanistan, Iraq, and Syria.⁴ The subject of the request therefore has a “direct and clear” connection with “identifiable operations or activities of the Federal Government.” 32 CFR § 286.12(l)(2)(i).

Second, disclosure of the requested information would “contribute significantly to public understanding of government operations or activities.” 32 CFR § 286.12(l)(2)(ii). The Department of Defense has generally released quarterly DMDC reports on the number of personnel located in countries with ongoing military operations, including Afghanistan, Iraq, and Syria, since the commencement of such operations. The Pentagon has previously recognized the importance of making troop numbers publicly available. During Summer 2017, Pentagon officials announced then-Secretary of Defense Jim Mattis’s commitment to “transparency in [DoD’s] public reporting procedures,” which included a revised, more comprehensive accounting system for the number of troops serving abroad.⁵ Yet starting in the December 2017 DMDC quarterly report, DoD abruptly redacted the numbers of U.S. military and civilian personnel serving in Afghanistan, Iraq, and Syria. Since then, FML figures for these countries have also not been readily available.⁶ Withholding this data significantly undermines democratic accountability for decisions to send U.S. troops overseas and erodes public trust in the operations of our government.

Disclosure of the requested DMDC figures would be “meaningfully informative about government operations or activities.” 32 CFR § 286.12(l)(2)(ii)(A). Until November 2017, the data had been an important public source of information about the U.S. military presence in key combat zones, providing the public with information about Operation Enduring Freedom, Operation Iraqi Freedom, and Operation Inherent Resolve. Given the extended duration of these operations, publicly available information about the scope of the U.S. military presence and commitment to these regions is crucial. For both the media and public at large, DMDC data serves as an official, specific, and consistent source of information on U.S. personnel counts in Afghanistan, Iraq, and Syria. Particularly in light of President Trump’s pledge to withdraw troops from the Middle East and South Asia, the data is key to public transparency and accountability concerning U.S. military activities. The withholding of these figures has reduced public understanding of the U.S. military presence abroad and denied the public the ability to have an informed debate on this critical topic.

³ The Department of Defense has previously released data on U.S. troop levels by country as part of the report *Worldwide Manpower Distribution By Geographical Area* and later through the DMDC website. Decades of historical reports are available on the DMDC website, with the earliest report from 1950. See *DoD Personnel, Workforce Reports & Publications*, DEF. MANPOWER DATA CENTER, https://www.dmdc.osd.mil/appj/dwp/dwp_reports.jsp.

⁴ Tara Copp, *26,000 US Troops Total in Iraq, Afghanistan and Syria, DoD Reports*, Military Times (Nov. 27, 2017), <https://www.militarytimes.com/news/your-military/2017/11/27/26000-us-troops-total-in-iraq-afghanistan-and-syria-dod-reports/>.

⁵ Nancy Youseff, *U.S. Acknowledges More Troops Are in Afghanistan*, WALL ST. J. (Aug. 30, 2017, 7:17 PM), <https://www.wsj.com/articles/u-s-acknowledges-more-troops-are-in-afghanistan-1504135052>.

⁶ HEIDI M. PETERS, CONG. RESEARCH SERV., R44116, DEPARTMENT OF DEFENSE CONTRACTOR AND TROOP LEVELS IN AFGHANISTAN AND IRAQ: 2007-2018 (2019), <https://fas.org/sgp/crs/natsec/R44116.pdf>.

Furthermore, there is no information in the public domain that is “either the same or a substantially identical form” as the requested figures. CFR § 286.12(l)(2)(ii)(A). Denial of a fee waiver on the ground that requested materials are already in the public domain is reserved for cases when those records are “easily accessible and available to everyone.”⁷ As the Congressional Research Service notes, “in late 2017, the DoD stopped reporting the number of U.S. military personnel deployed in support of operations in Afghanistan, Iraq, and Syria as part of its quarterly manpower reports and in other official releases.”⁸ Other public sources of information concerning the number of military and civilian personnel located abroad, such as media estimates or the occasional statement from DoD spokespeople, are deeply irregular, inadequate, and incomplete.⁹

Disclosure of the requested information would also “contribute to the understanding of a reasonably broad audience of persons interested in the subject.” 32 CFR § 286.12(l)(2)(ii)(B). The requested DMDC data is of interest to a broader audience than the individual requester. **Transparency on troop levels is critical for public oversight and understanding of U.S. decision making on questions of national security and foreign policy.**¹⁰ The American public, and servicemembers and their families, should be able to know the number of American soldiers who are being placed in harm’s way. In addition to the longstanding public interest in the number of U.S. troops located in active combat zones, media coverage demonstrates that there is significant public concern over discrepancies and inconsistencies in the reporting of troop levels.¹¹ Members of Congress have expressed concern over the withholding of DMDC figures for Afghanistan, Iraq, and Syria, noting that the data has provided Congress with an “accurate and transparent accounting of deployed U.S. forces . . . to make better-informed decisions regarding equipment and personnel necessary to maximize U.S. force protection in combat zones.”¹² Media coverage of the DoD redaction of DMDC figures relating to Afghanistan, Iraq, and Syria is indicative of the public interest in this information.¹³

⁷ *Durham v. U.S. Dep’t of Justice*, 829 F. Supp. 428, 434-35 (D.D.C. 1993).

⁸ Peters, *supra* note 6.

⁹ Alexa Liautaud, *How Many Troops Are Serving in America’s Legacy Wars? We Still Don’t Really Know.*, NBC NEWS (Nov. 10, 2019, 3:10 PM), <https://www.nbcnews.com/news/us-news/how-many-troops-are-serving-america-s-legacy-wars-we-n1079531>.

¹⁰ John M. Donnelly, *Analysis: Why Won’t Trump Discuss Troop Numbers?*, ROLL CALL (Aug. 23, 2017, 11:21 AM), <https://www.rollcall.com/news/politics/analysis-wont-trump-discuss-troop-numbers>.

¹¹ See W.J. Hennigan, *Trump Administration Stops Disclosing Troop Deployments in Iraq and Syria*, L.A. TIMES (Mar. 30, 2017, 2:30 PM), <https://www.latimes.com/politics/la-na-trump-deployment-20170330-story.html>; Wesley Morgan, *Pentagon’s Concealment of Total Troops in War Zones Under Fire*, POLITICO (Aug. 26, 2017, 7:19 AM), <https://www.politico.com/story/2017/08/26/mattis-trump-troop-numbers-war-zone-242055>; Loren DeJonge Schulman & Alice Friend, *The Pentagon’s Transparency Problem*, FOREIGN AFF. (May 2, 2018), <https://www.foreignaffairs.com/articles/united-states/2018-05-02/pentagons-transparency-problem>; *see also* Liautaud, *supra* note 9; David Welna, *Pentagon Questioned Over Blackout On War Zone Troop Numbers*, NPR (July 3, 2018, 5:02 AM), <https://www.npr.org/2018/07/03/625544265/pentagon-questioned-over-war-zone-numbers-blackout>.

¹² Letter from Representative Stephen F. Lynch, Ranking Member, U.S. House Comm. on Oversight & Gov’t Reform, et al., to James Mattis, Sec’y, Dep’t of Def. (May 10, 2018), <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2018-05-10.%20Lynch,%20Welch,%20DeSaulnier,%20Gomez%20&%20EEC%20to%20Mattis%20re.%20Defense%20Manpower%20Data%20Center.pdf>.

¹³ Welna, *supra* note 11; *see also* Liautaud, *supra* note 9.

Requester's "expertise in the subject area . . . [and] ability and intention to effectively convey information to the public" increases the prospect that the requested information would be likely to contribute to the understanding of a broad audience. 32 CFR § 286.12(l)(2)(ii)(B). Project on Government oversight regularly publishes original analyses and news articles on the most important defense and national security questions facing the United States today. POGO regularly covers Department of Defense policy and transparency issues.

Founded in 1981, POGO is an independent nonprofit that investigates and exposes corruption and other misconduct in order to achieve a more honest, open, and accountable federal government. As such, POGO closely observes the activities of federal agencies, Congress, the federal courts, and government contractors. POGO made its mark by examining Pentagon waste and fraud, spotlighting overspending on toilet seats, coffee makers, and spare parts. Over the years, POGO has built up considerable expertise—and international prominence—in the areas of government spending, contracting, transparency, and accountability.

POGO provides a valuable public service by taking an independent look at how the government spends taxpayer dollars and what can be done to make the system more effective, efficient, accountable, and honest. POGO will likely release a publication regarding the decision to remove troop numbers from the public's view. All POGO publications include government reports, documents, and other resources to allow the public to better understand how the federal government operates.

POGO has established a niche in informing the general public, either through its own publications and web site or through media outlets, about the activities of the Department of Defense. POGO has offered testimony and public comments on this issue, urging Congress and agencies to increase transparency across government.

Upon receiving the requested records, Requester intends to publish them in their original form alongside supporting analysis that gives context to the records, enabling a wide audience to understand the importance and meaning of the records.

Finally, disclosure of this information is not in POGO's commercial interest. The Project On Government Oversight is a 501(c)(3) charitable organization. Requester is a non-profit organization and is supported by institutional and individual donors. Requester does not seek the requested materials to further any commercial, trade, or profit interest, but solely for a public purpose: to provide the public with information about DoD's criteria for calculating and determining official military and civilian personnel counts in Afghanistan, Iraq, and Syria. Materials disclosed as a result of this FOIA request will be used to develop publicly accessible content.

Pursuant to applicable regulations and statute, Requester expects the determination of this request for documents within twenty (20) days. *See* 5 U.S.C. § 552(a)(6)(A)(i). If this request is denied in whole or in part, we ask that you justify all deletions by reference to specific exemptions to FOIA. Requester expects the release of all separable portions of otherwise exempt material. Requester reserves the right to appeal a decision to withhold any information or to deny a waiver of fees.

Request for Expedited Processing:

POGO's request clearly meets the requirements for expedited processing according to 32 C.F.R. § 286.8 (e)(1)(i)(B) ("The information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged government activity"). As described at length above, the public has an urgent right to understand the number of military personnel deployed in these countries, why this information is being withheld from the American public, and there is significant public concern and media attention to these issues. See id. § 286.8 (d)(3) (explaining that a requester under section (e)(1)(i)(B) must show "a particular urgency to inform the public", and the "existence of numerous articles published on a given subject can be helpful in establishing the requirement" that there is urgency to inform). Further, as discussed, POGO, a member of the news media, disseminates information on the most important defense and national security questions facing the United States today, and routinely covers DoD policy and transparency issues. See id. § 286.8 (d)(3) (requester's "primary professional activity or occupation" must be "information dissemination"). For these reasons, POGO asks the Office of the Secretary of Defense to grant our request for expedited processing. We certify these statements to be true and correct.

Please furnish all applicable records to:

Jason Paladino

jpaladino@pogo.org

The Project On Government Oversight

1100 G Street, NW, Suite 500

Washington, DC 20005

Thank you for your assistance and prompt attention to this matter.

Sincerely,



Jason Paladino

National Security Investigative Reporter

Center for Defense Information

The Project On Government Oversight