

FILED

DEC - 5 2011

**Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia**

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

THOMAS MORE LAW CENTER,
24 Frank Lloyd Wright Drive
PO Box 393
Ann Arbor, Michigan 48106

Plaintiff,

-v.-

U.S. DEPARTMENT OF STATE,
2201 C Street NW
Washington, D.C. 20520

Defendant.

Civil Case No.

COMPLAINT
[Freedom of Information Act]

Case: 1:11-cv-02152
Assigned To : Kollar-Kotelly, Colleen
Assign. Date : 12/5/2011
Description: FOIA/Privacy Act

INTRODUCTION

1. This is an action by the Thomas More Law Center (hereinafter "Plaintiff") pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, seeking to vindicate its right to obtain government records possessed by the U.S. Department of State (hereinafter "State Department") concerning the investigation of civilian deaths arising out of an insurgent attack against United States Marines in Haditha, Iraq on November 19, 2005.

2. The government records sought by Plaintiff are paramount to understanding and assessing the United States government's investigation and subsequent prosecution of Lt. Col. Jeffrey Chessani, USMC, who was the battalion commander of 3rd Battalion, 1st Marines during the insurgent attack. Plaintiff represented Lt. Col. Chessani in the court-martial proceedings arising out of the attack. These proceedings resulted in the dismissal of all criminal charges on the basis of unlawful command influence. Plaintiff also represented Lt. Col. Chessani in a subsequent Board of Inquiry ("BOI"), which was an administrative proceeding brought against him in December 2009, following the dismissal of the criminal charges.

3. The government records sought by Plaintiff would have assisted in the defense of

Lt. Col. Chessani and potentially exonerated him of all wrongdoing. Plaintiff submitted the FOIA request on October 29, 2009.

4. To date, the State Department has failed to produce the requested records. In fact, it has not responded in any substantive manner.

5. Plaintiff, as the requestor, brings this action for a declaration that the State Department violated FOIA and for an order compelling the State Department to expeditiously and fully discharge its obligations under federal law and make available the requested records.

6. As noted by President Obama, who promised the American people a government that was transparent, “The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails.”

JURISDICTION AND VENUE

7. This action arises under the laws of the United States, in particular, 5 U.S.C. § 552. Thus, this court has jurisdiction pursuant to 28 U.S.C. §§ 1331. In addition, this court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B), which states, in relevant part, that “the district court of the United States in the district . . . in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.”

8. Plaintiff’s claims for relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rule 57 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this court.

9. Venue is proper under 28 U.S.C. § 1391(e) because this is the judicial district in which the State Department, an agency of the United States, is located and “a substantial part of

the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated.”

10. Plaintiff’s FOIA request was sent to the State Department on October 29, 2009.
11. The State Department has failed to provide any requested records.
12. Pursuant to FOIA, this cause is ripe for judicial review.

PARTIES

13. Plaintiff Thomas More Law Center is a national, public interest law firm located in Ann Arbor, Michigan. Plaintiff is incorporated under the laws of the State of Michigan, and it is recognized by the Internal Revenue Service as a non-profit, 501(c)(3) organization.

14. The State Department is an agency of the United States, it exists subject to the laws of the United States, and it is headquartered at 2201 C Street, N.W., Washington, DC 20520.

15. The State Department has custody and control of the records that Plaintiff seeks through its FOIA request. Upon information and belief, these records are located within this judicial district.

STATEMENT OF FACTS

16. On October 29, 2009, Plaintiff sent its FOIA request to the State Department, seeking the production of the following records concerning Lt. Col. Jeffrey Chessani and the Haditha incident.

1. The investigative file and all reports, writings, notes, documents, memoranda, emails, or photographs, presented by the Iraqi Government relating to what happened in Haditha, Iraq on the morning of November 19, 2005. This request specifically refers to the complete file that was presented to the United States Government according to the statements made by Wijdan Mikhail Salim, the Iraqi Human Rights Minister. Specifically, Wijdan Mikhail Salim made an on-camera statement that the Iraqi government presented a complete investigative file on what happened in Haditha, Iraq on November 19, 2005, to the United States

Government. Said investigative file is requested in both its original language and the English translation.

2. All records, reports, writings, notes, documents, memoranda, emails, or other statements relating to the response of the United States Government to the investigative file presented to it by the Iraqi Government relating to the November 19, 2005, incident that occurred in Haditha, Iraq.

17. As noted in the FOIA request, during a televised documentary on the Haditha incident, Wijdan Mikhail Salim, the Iraqi Human Rights Minister at the time, made an on-camera statement confirming the existence of the requested investigative file and that the file was in the possession of the United States government. Upon information and belief, the investigatory file is in the possession, custody, and control of the State Department.

18. To date, Plaintiff has not received any information from the State Department that unusual circumstances exist for extending the time limit by which to respond to the FOIA request. Moreover, the State Department has not requested more time to complete the request nor has it ever specified a date by which the request would be completed.

19. Having had ample time to comply with FOIA, the State Department has still not provided a substantive response to the FOIA request.

20. FOIA allows twenty days from the date of the request for the government to produce the requested information. 5 U.S.C. § 552(a)(6)(A)(i).

21. The government may make one request to extend the twenty day time period upon demonstrating an unusual circumstance. 5 U.S.C. § 552(a)(6)(B)(i).

22. Even if the government demonstrates an unusual circumstance, the time period to fulfill the FOIA request should not be extended further than ten days. 5 U.S.C. § 552(a)(6)(B)(i).

23. The information sought by Plaintiff under FOIA, which statutorily allows twenty days for the government to respond to the request, has been withheld for more than two years as

of the date of the filing of this Complaint.

24. The State Department has failed to respond in a timely manner.

25. Plaintiff has exhausted its administrative remedies.

26. Plaintiff holds a statutory right to the records.

27. Due to the government's failure to adequately respond to Plaintiff's FOIA request well beyond the statutory time limitations, the FOIA request is constructively denied, necessitating judicial review. 5 U.S.C. § 552(a)(6)(C).

28. Plaintiff is being irreparably harmed by reason of the State Department's unlawful withholding of the requested records, and Plaintiff will continue to be irreparably harmed unless the State Department is compelled to conform its conduct to the requirements of the law.

CLAIM FOR RELIEF

(Violation of FOIA, 5 U.S.C. § 552)

29. Plaintiff hereby incorporates by reference all stated paragraphs.

30. Plaintiff seeks the disclosure of, and access to, the records contained within the FOIA request.

31. The State Department was required to satisfy the FOIA request pursuant to the time limitations under FOIA, but to date has failed to do so.

32. The State Department is unlawfully withholding records requested by Plaintiff pursuant to 5 U.S.C. § 552.

PRAYER FOR RELIEF

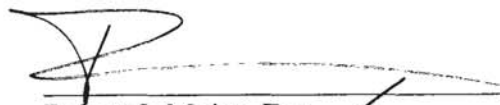
WHEREFORE, Plaintiff requests that this court:

A) declare that the State Department's constructive denial of the FOIA request was unlawful;

- B) order the State Department to conduct searches for any and all records responsive to Plaintiff's FOIA request and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA request;
- C) order the State Department to produce, by a date certain, the records contained within Plaintiff's FOIA request;
- D) order the State Department to produce a *Vaughn* index of any and all responsive records if the State Department withholds any or all records claiming an exemption;
- E) enjoin the State Department from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA request;
- F) grant a waiver of fees as required by 5 U.S.C. § 552(a)(4)(A)(viii);
- G) award Plaintiff attorneys' fees and any other litigation costs reasonably incurred in this action as provided in 5 U.S.C. § 552(a)(4)(E); and
- H) grant such other and further relief as this court may deem just and proper.

Respectfully submitted,

THOMAS MORE LAW CENTER



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