

and disseminates its findings and any records it receives to the American public to inform them about “what their government is up to.”

4. Defendant is an agency of the United States government. Defendant has possession, custody, and control of records to which Plaintiff seeks access. Defendant is headquartered at 1400 Defense Pentagon, Washington, DC 20301.

STATEMENT OF FACTS

5. On May 21, 2018, Plaintiff submitted a FOIA request to Defendant seeking the following:

1. Any and all lists of American prisoners of war/missing in action ("POWs/MIAs") provided to North Vietnam as part of the Paris Peace Accords process seeking the return of those prisoners.
2. All materials used to brief President Nixon in 1973 about remaining American POWs/MIAs in North Vietnam and Laos.

6. On May 22, 2018, Plaintiff submitted a second FOIA request to Defendant seeking the following:

1. All live sighting reports of American POWs in Vietnam and Laos from January 27, 1973 to the present.
2. All data and reports derived from data collected from the program known as PAVE SPIKE from January 27, 1973 to the present.
3. All satellite photographs of possible or suspected rescue symbols seen in the territories of Vietnam and/or Laos from January 27, 1973 to the present.
4. All electronic messages containing individual code numbers issued to US airmen transmitted from the ground in Vietnam and/or Laos from January 27, 1973 to the present.

7. By letters dated June 8, 2018, Defendant confirmed receipt of Plaintiff's requests on May 31, 2018 and June 1, 2018 and advised Plaintiff that it had assigned the requests case numbers 18-F-1094 and 18-F-1095. Defendant also asserted that it would not be able to respond to the requests within FOIA's statutory time period due to "unusual circumstances."

8. As of the date of this Complaint, Defendant has failed to: (i) produce the requested records or demonstrate the records are lawfully exempt from disclosure; (ii) notify Plaintiff of the scope of any responsive records Defendant intends to produce or withhold and the reasons for any withholdings; or (iii) inform Plaintiff it may appeal any adequately specific, adverse determination.

COUNT I
(Violation of FOIA, 5 U.S.C. § 552)

9. Plaintiff realleges paragraphs 1 through 8 as if fully stated herein.

10. Defendant is violating FOIA by failing to search for and produce all records responsive to Plaintiff's FOIA requests or demonstrate that the requested records are lawfully exempt from production.

11. Plaintiff is being irreparably harmed by reason of Defendant's violation of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to comply with FOIA.

12. Because Defendant failed to determine whether to comply with Plaintiff's requests within the time period required by FOIA, Plaintiff is deemed to have exhausted its administrative appeal remedies. 5 U.S.C. § 552(a)(6)(C)(i).

WHEREFORE, Plaintiff respectfully requests that the Court: (1) order Defendant to search for any and all records responsive to Plaintiff's FOIA requests and demonstrate that it employed search methods reasonably calculated to uncover all records responsive to the

requests; (2) order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA requests and a *Vaughn* indices of any responsive records withheld under claim of exemption; (3) enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA requests; (4) grant Plaintiff an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and (5) grant Plaintiff such other relief as the Court deems just and proper.

Dated: October 1, 2018

Respectfully submitted,

/s/ Eric W. Lee
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