

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

4. Defendant U.S. Department of Defense 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 September 25, 2019, Plaintiff submitted a FOIA request to Defendant, by certified mail, seeking the following:

1. **All calendar entries of Director James Baker of the Office of Net Assessment.**
2. **All records of communications between ONA Director James Baker and reporter David Ignatius.**

The time frame for the requested records was “May 2015 through the present.”

6. By letter dated October 2, 2019, Defendant acknowledged receiving Plaintiff’s request on October 1, 2019 and advised Plaintiff that the request had been assigned case number 20-F-0006. Defendant also invoked FOIA’s 10-day extension of time provision, citing “unusual circumstances” that prevented it from responding within FOIA’s 20-day time period.

7. 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)

8. Plaintiff realleges paragraphs 1 through 7 as if fully stated herein.

9. Defendant is violation of FOIA.

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

11. To trigger FOIA's administrative exhaustion requirement, Defendant was required to make a final determination on Plaintiff's request by November 14, 2019 at the latest.

12. Because Defendant failed to determine whether to comply with Plaintiff's request within the time period required by FOIA, Plaintiff is deemed to have exhausted its administrative appeal remedies.

WHEREFORE, Plaintiff respectfully requests the Court: (1) order Defendant to search 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 the request; (2) order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's request and a Vaughn index 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 request; (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: November 26, 2019

Respectfully submitted,

/s/ Paul J. Orfanedes

Paul J. Orfanedes

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