

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

GREG MUTTITT,

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Plaintiff

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v.

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Civil Action No. 1:10-cv-00202 (EGS)

UNITED STATES CENTRAL
COMMAND, *et al.*,

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Defendants.

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**PLAINTIFF’S MEMORANDUM OF POINTS AND AUTHORITIES IN
OPPOSITION TO DEFENDANTS’ PARTIAL MOTION TO DISMISS
PLAINTIFF’S FIRST AMENDED COMPLAINT**

Plaintiff Greg Muttitt (“Plaintiff”) commenced this litigation pursuant to the Freedom of Information Act (“FOIA”) and the Administrative Procedure Act (“APA”) to obtain copies of documents pertaining to the development of Iraqi oil policy from defendants United States Central Command, Department of Defense, Department of State (“DOS”), and Department of the Treasury (“DOT”) and to challenge DOS’ and DOT’s apparent policy or practice of refusing to provide estimated dates of completion to FOIA requesters upon request. Defendants DOS and DOT (collectively “Defendants”) have moved to dismiss all of Plaintiff’s APA claims pursuant to Rules 12(b)(6) and 8 of the Federal Rules of Civil Procedure.

Because Counts 25 and 26 of Plaintiff’s Complaint seek judicial review under both the FOIA and the APA of Defendants’ apparent policy or practice, Defendants Motion is incomplete and cannot support a dismissal of Counts 25 and 26 under Fed. R. Civ. P. 12(b)(6). Plaintiff concedes that the courts in this District are divided in how they approach declaratory relief for FOIA cases in which an ongoing agency policy is challenged. By Defendants’ own admission,

Payne Enters., Inc. v. United States, 837 F.2d 486 (D.C. Cir. 1988), acknowledges the Court's jurisdiction under FOIA to declare a "sufficiently outrageous" ongoing practice to be unlawful even if the agency reversed its position with respect to the FOIA request in question. (*See* Defs.' Mem. Supp. Defs.' Part. Mot. Dismiss Pl.'s First Am. Compl. at 6 n.2.) However, Judge Harris held in *Public Citizen v. Lew*, 127 F.Supp.2d 1 (D.D.C. 2000), that the APA was the proper source of authority for a declaratory judgment that the agencies in question violated the FOIA provision requiring publication of their "major information systems." *Id.* at 7.

Because Defendants have not addressed the merits of Counts 25 and 26 under the FOIA, and have in fact argued that these Counts *may* be reviewed under the FOIA pursuant to *Payne* and its progeny, this Memorandum will only address the arguments made against the application of the APA to these Counts. Defendants attempt to conflate an argument on the *likely* merits of a *Payne*-style review with their arguments for dismissal for failure to state a claim. (*See* Defs.' Mem. Supp. Defs.' Part. Mot. Dismiss Pl.'s First Am. Compl. at 6 n.2 ("The broad, equitable relief established under *Payne*, however, would *likely* be inappropriate in this case.") (emphasis added).) However, the motion before the Court is a Motion to Dismiss based on Fed. R. Civ. P. 12(b)(6) and Fed. R. Civ. P. 8, and arguments regarding the merits of the case, not to mention the *likely* merits of the case, are therefore out of place. Plaintiff maintains that regardless of which statutory authority the Court prefers to invoke, the practical result is a conclusion that the policy or practice alleged in Counts 25 and 26, namely, refusing to properly provide estimated dates of completion upon request as mandated by the FOIA, is definitely capable of judicial review and censure. With that in mind, even a finding that the APA is inapplicable to this case cannot justify complete dismissal of Counts 25 and 26; it can only limit the manner in which those Counts are reviewed.

BACKGROUND

I. Factual and Procedural Background

Plaintiff does not challenge the accuracy of Defendants' characterization of the factual and procedural background of this case. (*Id.* at 2-4.) Rather than burden the Court with an unnecessarily duplicative recitation of the background, this section will simply flesh out the factual record behind these allegations.

A. DOS

On 5 November 2009, 6 November 2009, and 4 December 2009 Plaintiff specifically requested estimated dates on which DOS would complete action on FOIA Request Nos. 200909199, 200907495, 200908517, 200905202, and 200903039. (Compl. ¶ 100).¹ All but the first request included a specific invocation of 5 U.S.C. 552(a)(7)(B)(ii), which states that "Each agency shall . . . establish a phone line or Internet service that provides information about the status of a request to the person making the request . . . , including . . . an estimated date on which the agency will complete action on the request." (*Id.* ¶¶ 100, 102; *see also* Emails from Muttitt to DOS of 11/5/09 and 11/6/09, attached as Ex. D.) Each of these four latter requests also stated that a "mere statement of [the FOIA request's] place in [DOS'] queue will not satisfy th[e] status request." (Emails from Muttitt to DOS of 11/5/09 and 11/6/09.) In three instances, DOS responded to Plaintiff that it "cannot give a definitive timeframe for the processing of a request," but provided indeterminate information about the request's place in its queue. (*Id.* ¶ 101; *see also* Emails from DOS to Muttitt of 11/5/09 and 11/6/09, attached as Ex. E; Letter from Muttitt

¹ The Complaint mistakenly implied that Muttitt requested in writing an estimated date of completion for FOIA Request No. 200909199 as well. Requests for estimated dates for this request were made by telephone, as were DOS' responses. (*See* Letter from Muttitt to DOS of 12/21/09, attached as part of Ex. F.)

to DOS of 12/21/09, attached as part of Ex. F.) In the other two instances, the DOS refused to answer Plaintiff's request. (See Letters from Muttitt to DOS of 11/20/09 and 11/23/09, attached as part of Ex. F.)

B. DOT

On 6 November 2009, Plaintiff specifically requested an estimated date on which DOT would complete action on FOIA Request No. 2009-08-058. (Compl. ¶ 106). This request included a specific invocation of 5 U.S.C. 552(a)(7)(B)(ii), which states that "Each agency shall . . . establish a phone line or Internet service that provides information about the status of a request to the person making the request . . . , including . . . an estimated date on which the agency will complete action on the request." (*Id.* ¶¶ 106, 108; see also Email from Muttitt to DOT of 11/6/09, attached as Ex. G.) The DOT refused to answer Plaintiff's request. (*Id.* ¶ 105.)

II. Standard of Review

Federal Rule of Civil Procedure 12(b)(6) provides a mechanism for testing the legal sufficiency of the factual allegations in a complaint. See *Browning v. Clinton*, 292 F.3d 235, 242 (D.C. Cir. 2002). Under this rule, a court treats the complaint's factual allegations as true and draws all reasonable inferences in plaintiff's favor. See *Harris v. Ladner*, 127 F.3d 1121, 1123 (D.C. Cir. 1997); *Alexis v. District of Columbia*, 44 F. Supp. 2d 331, 336-37 (D.D.C. 1999). "[A] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can provide no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Kowal v. MCI Commc'ns Corp.*, 16 F.3d 1271, 1276 (D.C. Cir. 1994). "Indeed it may appear on the face of the pleadings that a recovery is very remote and unlikely but that is not the test." *Swierkiewicz v. Sorema*, 534 U.S. 506, 515 (2002) (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974)).

ARGUMENT

I. Review Under the APA Is Appropriate Because the FOIA Does Not Provide an Adequate Remedy

Plaintiff concedes the bulk of Defendants' argument with respect to the applicability of the APA in most circumstances. It is well recognized that the APA does not provide additional remedies where adequate remedies are already provided by another statute. *See Bowen v. Massachusetts*, 487 U.S. 879, 903 (1988) ("Congress did not intend the general grant of review in the APA to duplicate existing procedures for review of agency action."); *see also First Nat'l Bank of Scotia v. United States*, 530 F.Supp. 162, 167 (D.D.C. 1982) ("It is . . . well-settled that where Congress has provided an adequate procedure to obtain judicial review of agency action, that statutory provision is the exclusive means of obtaining judicial review in those situations to which it applies.").

In fact, Plaintiff does not dispute any of Defendants' characterization of the cases in which the FOIA was held to provide just such an alternative remedy. (Defs.' Mem. Supp. Defs.' Part. Mot. Dismiss Pl.'s First Am. Compl. at 5-6.) In each of the cases cited by Defendants, the remedy sought under the APA was in effect the same as the remedy sought under the FOIA. Adverse fee waiver decisions are properly reviewed under the FOIA, as are denials of news media status, denials of expedited processing, and all denials of access to records. *See, e.g., Feinman v. FBI*, No. 09-2047 (ESH), slip op. at 10 (D.D.C. May 26, 2010) (APA claim was that agency improperly withheld records by refusing to process FOIA request without a privacy waiver, proof of death, or similar documents); *Kenney v. U.S. Dep't of Justice*, 603 F.Supp.2d 184, 190 (D.D.C. 2009) (APA claim was that agency improperly withheld records); *Phys. Comm. for Responsible Med. v. Dep't of Health & Human Servs.*, 480 F.Supp.2d 119 (D.D.C. 2007)

(APA claim was that agency improperly denied a public interest fee waiver); *Thomas v. Fed. Aviation Admin.*, No. 05-2391, 2007 WL 219988 at *2 (D.D.C. Jan. 25, 2007) (finding that the APA did not apply because “[t]he essence of [p]laintiff’s claims . . . is that federal agencies improperly [withheld] documents requested by him”). However, Defendants take one step too far when they attempt to imply that the FOIA provides an alternative remedy in *all* cases. As Judge Collyer distinguished, “an APA claim is precluded *where a remedy under FOIA is available.*” *People for the Ethical Treatment of Animals v. USDA*, No. 06-930, 2007 WL 1720136 at *7 (D.D.C. Jun. 11, 2007). Simply put, there are portions of the FOIA that mandate agency action but provide no private cause of action, and because a remedy under the FOIA is not available, an APA claim is not precluded.

As recognized by Defendants, *Public Citizen v. Lew* addressed one such provision. *See* 127 F.Supp.2d 1. This lawsuit addressed the FOIA provision 5 U.S.C. § 552(g), which mandated that “[t]he head of each agency shall prepare and make publicly available upon request, reference material or a guide for requesting records of information from the agency, . . . including . . . (1) an index of all major information systems of the agency; (2) a description of major information and record locator systems maintained by the agency; and (3) a handbook for obtaining various types and categories of public information from the agency” 5 U.S.C. § 552(g). Despite the traditional preclusion that the FOIA provides in APA cases, the court held that it had jurisdiction to “review[] defendants’ compliance with the FOIA and [Paperwork Reduction Act] provisions under the [APA], which empowers the Court to ‘hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.’” *Public Citizen*, 127 F.Supp.2d at 7 (citations omitted).

In *Public Citizen*, the court realized that the court's ability to order an agency to turn over documents does not rectify all possible violations of the FOIA.

Contrary to Defendants' assertion, the instant case addresses an analogous provision. Defendants argue that if an agency does not comply with the FOIA and provide a requester with an estimated date of completion for his/her request, the requester can always sue to obtain the documents in court. However, Defendants miss the fact that once the litigation commences, the estimated date of completion is moot in a textbook case of "capable of repetition yet evading review," as the relief provided under the FOIA is not "of the same genre." See *Garcia v. Vilsack*, 563 F.3d 519, 522 (D.C. Cir. 2009). Nowhere in the FOIA can one find a means to compel an agency to provide a requester with an estimated date of completion. If Defendants' interpretation of the FOIA were to prevail, agencies would be free to blithely ignore the statutory requirement that they provide estimated dates of completion, secure in the belief that no requester would ever be able to make them do it; the worst a requester could do is force them to process the request more quickly by filing suit, which was exactly what requesters could do *prior* to these amendments. Defendants' construction of the FOIA statute renders the "estimated date of completion" amendment, and in fact all of § 552(a)(7), "insignificant, if not wholly superfluous." *Duncan v. Walker*, 533 U.S. 167, 167 (2001). Such a reading violates one of the central canons of statutory construction: "This Court's duty to give effect, where possible, to every word of a statute makes the Court reluctant to treat statutory terms as surplusage." *Id.* (citing *United States v. Menasche*, 348 U.S. 528, 538-539 (1955)). That the words of the statute in question were specifically placed there by an amending statute makes it even more evident that Congress intended this language to change the way agencies implemented the FOIA. It is just this type of void that the APA was designed to fill.

II. Even If Review Under the APA Is Inappropriate, *Payne* Provides for Relief Under the FOIA

Both parties recognize the broad equitable powers established by *Payne*. By Defendants' own argument, *Payne* provides a possible authority for the Court to review these agency actions. Logically, then, a finding by the Court that the APA is not applicable to the actions in question (refusing to provide estimated dates of completion) does not automatically render Counts 25 and 26 invalid. These counts were specifically phrased as originating under *both* the APA *and* the FOIA, and removing the APA from them results only in transforming them into traditional *Payne*-style causes of action, not dismissing them.

Defendants' attempts to argue that *Payne* is inapplicable because "nowhere does plaintiff suggest that these incidents amounted to an unlawful pattern or regular procedure" (Defs.' Mem. Supp. Defs.' Part. Mot. Dismiss Pl.'s First Am. Compl. at 6 n.2.) is based on their misguided semantic argument that Counts 25 and 26 did not meet the pleading standard of *Ashcroft v. Iqbal*, 129 S.Ct. 1937 (2009). This argument is addressed in the next Section; however, even if the Court finds that Counts 25 and 26 did not meet the *Iqbal* standard, the question of whether or not the agencies' actions were "sufficiently outrageous" to warrant *Payne*-style declaratory or injunctive relief is not a matter to be decided at this stage. Very rarely do requesters ever know of an agency's activities behind the scenes of a request until the agency files its first declaration in litigation, and requiring requesters to specifically plead outrageous behavior with particularity before ever seeing an agency declaration would practically neutralize any declaratory or injunctive possibilities. Such a restriction is the polar opposite of "broad equitable powers" and cannot be read into *Payne*.

III. Plaintiff Sufficiently Alleged an Improper Pattern or Practice of Refusing to Provide Requesters with Estimated Dates of Completion

Defendants' argument that Plaintiff did not satisfy the pleading standard established by *Iqbal* is an overly semantic analysis of Plaintiff's reasonable attempt to address the acknowledged disparity in the law regarding the applicable source of authority for review of these types of actions. Defendants seize upon Plaintiff's use of the word "if" and twist it to imply that Plaintiff "fails to allege any concrete regulation, policy statement, or guideline that constitutes an abuse of discretion under the FOIA." (*See* Defs.' Mem. Supp. Defs.' Part. Mot. Dismiss Pl.'s First Am. Compl. at 10-11.) On the contrary, Plaintiff's First Amended Complaint, taken as a whole, clearly alleges that it appears that these actions are part of an agency pattern or practice. The Prayer for Relief, which Defendants appear to have disregarded in their rush to argue that no agency policy was implicated, specifically asks the Court to "Declare and find that any DOS or DOT regulations, guidelines, or policy statements that authorize the refusal to provide a requester with an estimated date of completion of a FOIA request constitutes an unreasonable interpretation of the statutory obligations imposed by the FOIA; [and] Order DOS and DOT to provide estimated dates of completion upon request in its future processing of FOIA requests and *to amend its regulations, guidelines, and policy statements* accordingly." (First Am. Compl. at 16 (emphasis added).) Plaintiff admits that he is aware of no specific regulations, guidelines, or policy statements that authorize this activity. However, the evidence strongly suggests that these actions were not the solitary actions of rogue FOIA analysts, but instead the result of a standard pattern or practice. Plaintiff's only sin in this regard was that he attempted to construct his already-verbose Complaint in a more efficient and conscientious manner than Defendants care for, and in doing so combined four possible counts into two. A more reasonable

interpretation of Counts 25 and 26 would separate the APA and FOIA aspects, such that the following basic counts were enunciated:

Count 25-F: If these actions were the result of individual DOS FOIA analysts operating without official sanction, then *Payne* and the FOIA apply;

Count 25-A: If these actions were the result of a DOS pattern or practice, then the APA applies;

Count 26-F: If this action was the result of an individual DOT FOIA analyst operating without official sanction, then *Payne* and the FOIA apply;

Count 26-A: If this action was the result of a DOT pattern or practice, then the APA applies.

This reading is the only reading that gives the prayer for relief any logical meaning, and Defendants' semantic arguments result in a disjointed Complaint in which the prayer for relief has no relationship to the allegations. For this reason, the Court should find that Plaintiff's First Amended Complaint meets the *Iqbal* pleading standard.

IV. The Evidence Suggests an Agency Pattern or Practice

While Plaintiff maintains that the merits of whether or not the agency activity was indicative of a pattern or practice is not yet ripe for discussion, as a brief aside it should be noted that, contrary to Defendants' implication that this behavior is limited "only to Mr. Muttitt's specific experiences with the State and Treasury Departments, and nowhere does plaintiff suggest that these incidents amounted to an unlawful pattern or regular procedure" (Defs.' Mem. Supp. Defs.' Part. Mot. Dismiss Pl.'s First Am. Compl. at 6 n.2.), the evidence indicates that at least DOS' refusal to provide estimated dates of completion is the result of a specific practice of the DOS FOIA office. Four other requesters submitted similar requests for estimated dates of

completion to the DOS FOIA office, each one specifically citing the relevant statutory language, and four times DOS responded that it could or would not provide estimated dates of completion. (See Ravnitzky Decl., attached as Ex. A; McClanahan Decl., attached as Ex. B; Moss Decl., attached as Ex. C.) Plaintiff sincerely hopes that this evidence will put to rest the Defendants' posturing that nothing suggests that these actions are anything but an isolated incident suffered by Plaintiff alone. Defendants have provided no sworn declarations or comparable evidence one way or the other, and so Plaintiff must be allowed to address this question of fact through appropriate discovery.

V. These Actions Are “Final Agency Actions” and Have “Legal Consequences”

Finally, Defendants argue that even if Plaintiff sufficiently alleged the existence of an agency pattern or practice in terms of *Iqbal*, this pattern or practice is not a “final agency action” according to 5 U.S.C. § 704. As Defendants indicated, to be considered final, agency action must “mark the ‘consummation’ of the agency’s decisionmaking process,” and “be one by which ‘rights or obligations have been determined,’ or from which ‘legal consequences will flow.’” *Bennett v. Spear*, 520 U.S. 154, 178 (1997). These actions clearly satisfy this test. By Defendants’ own argument, the decision not to provide an estimated date of completion cannot be appealed; a requester’s only recourse is to sue for the release of the documents. If a decision cannot be appealed, it is “final.” It marks “the ‘consummation’ of the agency’s decisionmaking process” with respect to the requester’s request for an estimated date of completion. It is a final decision regarding the obligations of the agency to provide estimated dates of completion. The legal consequences of this action are the only matter in dispute in this case; this case will determine if an agency can refuse to obey the relevant FOIA amendment and suffer no

consequences. Therefore, the Court should find that the alleged actions meet the requirements of 5 U.S.C. § 704.

CONCLUSION

For the reasons discussed above, the Court should deny Defendants' Motion and order the immediate commencement of discovery to elucidate the policies and practices of the DOS and DOT with respect to 5 U.S.C. § 552(a)(7)(B)(ii).

Date: June 16, 2010

Respectfully submitted,

_____/s/_____
Kelly B. McClanahan, Esq.
DC Bar #984704
National Security Counselors
1200 South Courthouse Road
Suite 124
Arlington, VA 22204
301-728-5908
240-681-2189 fax
Kel@NationalSecurityLaw.org

Attorney for Plaintiff

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GREG MUTTITT,

Plaintiff

v.

UNITED STATES CENTRAL
COMMAND, *et al.*,

Defendants.

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Civil Action No. 1:10-cv-00202 (EGS)

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DECLARATION OF MICHAEL RAVNITZKY

I, MICHAEL RAVNITZKY, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am a person over eighteen (18) years of age and competent to testify. I make this Declaration on personal knowledge and in support of Plaintiff's Opposition to Defendants' Partial Motion To Dismiss Plaintiff's First Amended Complaint (filed June 16, 2010).
2. I have filed several FOIA requests with Defendant Department of State ("DOS").
3. DOS is currently processing several FOIA requests submitted by me.
4. On 7 June 2010, I sent an email to FOIAStatus@state.gov, the only point of contact available for the DOS FOIA office, requesting that DOS provide me with estimated dates of completion for all my open FOIA requests. This email specifically cited the relevant statutory language from 5 U.S.C. § 552(a)(7)(b)(ii). *See* Att. 1.
5. On 8 June 2010, I received an email response from DOS, which provided brief statements regarding the status of my requests but ultimately stated, "We cannot give a definite timeframe on the completion date, but please be advised that the appropriate offices processing

the above cases have been notified of your interest and concerns. Information concerning the individual cases will be provided as it becomes available.” *See* Att. 2.

I do solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true to the best of my knowledge.

Date: June 16, 2010

A solid black rectangular redaction box covering the signature of Michael Ravnitzky.

Michael Ravnitzky

EXHIBIT A
Attachment 1

Kel McClanahan

From: "Michael Ravnitzky" <mikerav@[REDACTED]>
To: "Kel McClanahan" <kel@nationalsecuritylaw.org>
Sent: Monday, June 07, 2010 1:24 PM
S Sent to State Dept

[REDACTED]
Silver Spring, MD 20902
[mikerav@\[REDACTED\]](mailto:mikerav@[REDACTED])

June 7, 2010

FOIA Public Liaison

Office of Information Programs and Services
A/GIS/IPS/RL
Department of State, SA-2
Washington, DC 20522-8100

Dear Sir or Madam:

Can you please provide me with an anticipated completion date for each of my pending FOIA requests, pursuant to 5 USC 552 7(b)(ii)?

Thank you very much.

Michael Ravnitzky

EXHIBIT A
Attachment 2

Kel McClanahan

From: <mikerav@[REDACTED]>
To: <kel@nationalsecuritylaw.org>
Sent: Tuesday, June 08, 2010 5:29 PM
Subject: Fwd: RE: FOIA status inquiry

Jun 8, 2010 04:13:04 PM, FOIAStatus@state.gov wrote:

Mr. Ravnitzky,

This is in reference to your e-mail dated June 7, 2010 inquiring about the status of your pending requests. Our records indicate that the following cases are still pending in our system:

200704335 - One document has been referred to Dept. of Justice for concurrence.

200804336 - One NSA document is still under review.

200805524 - Documents located are being prepared for review.

200805526 - Documents located are being prepared for review.

200805527 - Search for documents is still pending.

200904398 - Documents located are still under review.

201001020 - Search for documents initiated on 6/2/10.

201002595 - Documents located are being prepared for review.

201002837 - New case being prepared for assignment.

We cannot give a definite timeframe on the completion date, but please be advised that the appropriate offices processing the above cases have been notified of your interest and concerns. Information concerning the individual cases will be provided as it becomes available.

If you have any questions regarding the status of the above cases, please contact the FOIA Requester Service Center (FRSC) at 202-261-8484.

Thank you for your patience during this process.

Charlotte W. Duckett

-----Original Message-----

From: Michael Ravnitzky [mailto:mikerav@[REDACTED]]

Sent: Monday, June 07, 2010 2:19 PM

To: FOIA Status

Subject: FOIA status inquiry

[REDACTED]
Silver Spring, MD 20902

mikerav@[REDACTED]

June 7, 2010

Office of Information Programs and Services
A/GIS/IPS/RL
Department of State, SA-2
Washington, DC 20522-8100

Dear Sir or Madam:

Can you please provide me with an anticipated completion date for each of my pending FOIA requests, pursuant to 5 USC 552 7(b)(ii)?

Thank you very much. I greatly appreciate it.

Sincerely,

Michael Ravnitzky

6/16/2010

EXHIBIT B

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

GREG MUTTITT,

Plaintiff

v.

UNITED STATES CENTRAL
COMMAND, *et al.*,

Defendants.

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Civil Action No. 1:10-cv-00202 (EGS)

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DECLARATION OF KELLY MCCLANAHAN, ESQ.

I, KELLY MCCLANAHAN, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am a person over eighteen (18) years of age and competent to testify. I make this Declaration on personal knowledge and in support of Plaintiff’s Opposition to Defendants’ Partial Motion To Dismiss Plaintiff’s First Amended Complaint (filed June 16, 2010).

2. In addition to representing Plaintiff in this action, I am the Executive Director of National Security Counselors (“NSC”), a Washington, DC-based non-profit organization that has filed several FOIA requests with Defendant Department of State (“DOS”). As part of my duties, I generally act as the primary point of contact for NSC FOIA requests.

3. DOS is currently processing several FOIA requests submitted by NSC.

4. On 2 June 2010, I spoke on the telephone with Rosemary White, a senior DOS FOIA official, regarding NSC request #200908718, which was submitted on 16 October 2009, and for which, according to Ms. White, all records have been received by the FOIA office, have been reviewed by a FOIA analyst, and are currently “going through the clearance process before [they] can be mailed to [NSC].” *See* Att. 1. In this conversation, I specifically asked Ms. White

to provide NSC with an estimated date of completion for this request, citing the relevant statutory language from 5 U.S.C. § 552(a)(7)(b)(ii).

5. On 3 June 2010, Ms. White sent an email to NSC stating, “Regarding your request for the estimated date of completion for case number 200908718, unfortunately, we are unable to provide you with a completion date for your request. As a general matter, information access requests are processed in the order in which they are received within the track that the case is assigned. This case was the 8,718th request we received in 2009, and we are still processing cases from previous years. For more information on the timeframe for processing FOIA requests, please see the Department’s FOIA Annual Report FY2009.” *Id.*

6. Steven Aftergood, Director of the Project on Government Secrecy (“PGS”) at the Federation of American Scientists (“FAS”), has authorized me to use copies of emails he sent to DOS as evidence in this case as well, because he is currently out of the country and cannot provide a signed declaration to authenticate them by the filing deadline for this Opposition. *See* Att. 4.

7. DOS is currently processing several FOIA requests submitted by PGS. *See* Att. 2.

8. On 8 June 2010, Mr. Aftergood sent an email to FOIAStatus@state.gov requesting that DOS provide PGS with estimated dates of completion for all open PGS FOIA requests. This email specifically cited the relevant statutory language from 5 U.S.C. § 552(a)(7)(b)(ii). *See* Att. 2.

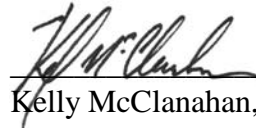
9. On 11 June 2010, Mr. Aftergood sent a second email to FOIAStatus@state.gov requesting confirmation that DOS received the 8 June 2010 email message. *See* Att. 3.

10. PGS has received no response via email from DOS to these requests for estimated dates of completion. *See* Att. 5. As of 11 June 2010, PGS had received no response via U.S.

Postal Service to these requests. *Id.* As of 13 June 2010, PGS had received no response via telephone to these requests. *Id.*

I do solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true to the best of my knowledge.

Date: June 16, 2010



Kelly McClanahan, Esq.

EXHIBIT B
Attachment 1

Kel McClanahan

From: "FOIA Status" <FOIAStatus@state.gov>
To: <kel@nationalsecuritylaw.org>
Sent: Thursday, June 03, 2010 3:13 PM
Subject: FOIA Cases 200908718 and 201001570
Mr. McClanahan,

[REDACTED]

[REDACTED]

[REDACTED]

Regarding your request for the estimated date of completion for case number 200908718, unfortunately, we are unable to provide you with a completion date for your request. As a general matter, information access requests are processed in the order in which they are received within the track that the case is assigned. This case was the 8,718th request we received in 2009, and we are still processing cases from previous years. For more information on the timeframe for processing FOIA requests, please see the Department's [FOIA Annual Report FY2009](#).

As I shared with you during our conversation yesterday, the search and review processes for case number 200908718 are completed. The package is now going through the clearance process before it can be mailed to you. I notified the case processing division of your continued interest in your case.

Please contact us if you have additional questions or concerns.

Sincerely,
Rosemary White
U.S. Department of State
FOIA Requester Service Center
Phone: 202-261-8484
Fax: 202-261-8582
E-mail: FOIAstatus@state.gov

EXHIBIT B
Attachment 2

[REDACTED]

From: "Steven Aftergood" <saftergood@[REDACTED]>
To: <FOIAStatus@state.gov>
Sent: Tuesday, June 08, 2010 3:16 PM
Subject: request for status update
Can you please provide an estimated date of completion (as per 5 USC 552(a)(7)(b)(ii)) for currently pending FOIA requests submitted by me, including this one--

Case Number 200802125, dated April 15, 2008

Thank you.

Steven Aftergood
Project on Government Secrecy
Federation of American Scientists
1725 DeSales Street NW, Suite 600
Washington, DC 20036

email: [saftergood@\[REDACTED\]](mailto:saftergood@[REDACTED])
voice: (202)454-[REDACTED]
web: www.fas.org/sgp

EXHIBIT B
Attachment 3

[REDACTED]

From: "Steven Aftergood" <saftergood@[REDACTED]>
To: <FOIAStatus@state.gov>
Sent: Friday, June 11, 2010 4:04 PM
Subject: request for status update (2)
Can you confirm that the request below was received?

----- Forwarded message -----
From: **Steven Aftergood** <[saftergood@\[REDACTED\]](mailto:saftergood@[REDACTED])>
Date: Tue, Jun 8, 2010 at 3:16 PM
Subject: request for status update
To: FOIAStatus@state.gov

Can you please provide an estimated date of completion (as per 5 USC 552(a)(7)(b)(ii)) for currently pending FOIA requests submitted by me, including this one--

Case Number 200802125, dated April 15, 2008

Thank you.

Steven Aftergood
Project on Government Secrecy
Federation of American Scientists
1725 DeSales Street NW, Suite 600
Washington, DC 20036

email: [saftergood@\[REDACTED\]](mailto:saftergood@[REDACTED])
voice: (202)454-[REDACTED]
web: www.fas.org/sqp

EXHIBIT B
Attachment 4

Kel McClanahan

From: "Steven Aftergood" <saftergood@[REDACTED]>
To: "Kel McClanahan, Esq." <kel@nationalsecuritylaw.org>
Sent: Tuesday, June 15, 2010 9:19 PM
Subject: Re: request for status update (2)
Yes, you have my permission to use the forwarded emails as exhibits.

On Tue, Jun 15, 2010 at 7:54 PM, Kel McClanahan, Esq.

<kel@nationalsecuritylaw.org> wrote:

Oh. OK, I'll try and make do without it. Just to confirm, I DO have your permission to use the emails you forwarded to me as exhibits, right?

This electronic mail (email) transmission is meant solely for the person(s) to whom it is addressed. It contains confidential information that may also be legally privileged. Any copying, dissemination or distribution of the contents of this email by anyone other than the addressee or his or her agent for such purposes is strictly prohibited. If you have received this email in error, please notify me immediately by telephone or email and purge the original and all copies thereof. Thank you.

Kel McClanahan, Esq.
Executive Director
National Security Counselors

"As a general rule, the most successful man in life is the man who has the best information."

Benjamin Disraeli, 1880

"Quis custodiet ipsos custodes?" ("Who watches the watchers?")
Juvenal, Satire VI

----- Original Message -----

From: Steven Aftergood
To: Kel McClanahan, Esq.
Sent: Tuesday, June 15, 2010 7:27 PM
Subject: Re: request for status update (2)

I am on travel in Mexico, without access to a scanner or fax machine. So I won't be able to do this. Sorry about that.

On Tue, Jun 15, 2010 at 5:11 PM, Kel McClanahan, Esq.

<kel@nationalsecuritylaw.org> wrote:

Filing deadline is now tomorrow. Please use the attached document, which reflects the new filing date. Thanks

[REDACTED]

EXHIBIT B
Attachment 5

Kel McClanahan

From: "Steven Aftergood" <saftergood@[REDACTED]>
To: <kel@nationalsecuritylaw.org>
Sent: Wednesday, June 16, 2010 5:02 PM
Subject: Re: Confirmation

As of this writing, I have still not received an email response from the State Department to my requests for an estimated date of completion. Two caveats: I have not been able to check hardcopy postal mail since Friday, June 11, and I have not been able to check telephone responses since Sunday, June 13.

[REDACTED]

--

Steven Aftergood
Project on Government Secrecy
Federation of American Scientists
1725 DeSales Street NW, Suite 600
Washington, DC 20036

email: [saftergood@\[REDACTED\]](mailto:saftergood@[REDACTED])
voice: (202)454-[REDACTED]

EXHIBIT C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GREG MUTTITT,

Plaintiff

v.

UNITED STATES CENTRAL
COMMAND, *et al.*,

Defendants.

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*
*
*
*

Civil Action No. 1:10-cv-00202 (EGS)

* * * * *

DECLARATION OF BRADLEY P. MOSS, ESQ.

I, BRADLEY P. MOSS, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am a person over eighteen (18) years of age and competent to testify. I make this Declaration on personal knowledge and in support of Plaintiff’s Opposition to Defendants’ Partial Motion To Dismiss Plaintiff’s First Amended Complaint (filed June 16, 2010).

2. I am the Deputy Executive Director of the James Madison Project (“JMP”), a Washington, DC-based non-profit organization that has filed several FOIA requests with Defendant Department of State (“DOS”). As part of my duties, I generally act as the primary point of contact for JMP FOIA requests.

3. DOS is currently processing several FOIA requests submitted by JMP.

4. On 12 March 2010, I sent a letter via facsimile to the DOS FOIA office requesting that DOS provide JMP with estimated dates of completion for two open JMP FOIA requests. This letter specifically cited the relevant statutory language from 5 U.S.C. § 552(a)(7)(b)(ii). *See* Att. 1.

5. On 8 June 2010, I sent an e-mail to FOIAStatus@state.gov, the only other known point of contact available for the DOS FOIA office, requesting estimated dates of completion for the same two open JMP requests. *See* Att. 2.

6. On 10 June 2010, I sent a second e-mail to FOIAStatus@state.gov requesting a response to my 8 June 2010 e-mail. *See* Att. 3.

7. On 16 June 2010, I spoke on the telephone with Rosemary White, a senior DOS FOIA official, regarding the earlier requests for estimated dates of completion. Ms. White instructed me to forward her the previous e-mails by way of Candace Boston in the Office of Government Information Services. I immediately forwarded the most recent email to Ms. Boston. *See* Att. 4.

8. On 16 June 2010, Ms. White sent an e-mail to JMP stating, "Unfortunately, we are unable to provide you with a specific completion date for your requests. The timeframe depends on the following factors: where the records are kept; how much material must be reviewed; the sensitivity of the material; any coordination with other offices, bureaus, posts, agencies, and governments; and how many requests were received before your request. As a general matter, information access requests are processed in the order in which they are received within the track that the case is assigned." *See* Att. 5.

I do solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true to the best of my knowledge.

Date: June 16, 2010



Bradley P. Moss, Esq.

EXHIBIT C
Attachment 1

Brad Moss

From: send@mail.efax.com
Sent: Friday, March 12, 2010 3:35 PM
To: bradpmoss@[REDACTED]
Subject: Successful transmission to 12022618579. Re: Status Update



Dear Bradley P. Moss,

Re: Status Update

The 2 page fax you sent through eFax.com to 12022618579 was successfully transmitted at 2010-03-12 20:35:17 (GMT).

The length of transmission was 86 seconds.

The receiving machine's fax ID: 2022618579.

Best Regards,

If you need additional assistance, please visit our online help center at <http://www.efax.com/help/>. Thank you for using the eFax service.

eFax.com

Customer Service

Online Help: <http://www.efax.com/help/>
Tel: 323-817-3205 (US) or 0870 711 2211 (UK)
Email: help@mail.efax.com

eVoice
A Radically Better Phone Number™
From the makers of eFax®

6 Month Free Trial

The James Madison Project
1380 Monroe Street, N.W.
Unit 269
Washington, D.C. 20010

(202) 498-0011
(202) 330-5610 fax

E-Mail: FOIA@JamesMadisonProject.org
<http://www.JamesMadisonProject.org>

12 March 2010

Margaret P. Grafeld
Director, Office of IRM Programs and Services, SA-2
Department of State
5th Floor
Washington, D.C. 20522-6001

Re: FOIA Requests #200803323; 200803348

Dear Ms. Grafeld:

5 U.S.C. § 552(a)(7) states, in pertinent part,

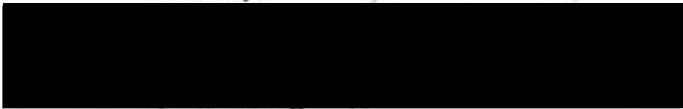
Each agency shall . . . provide[] information about the status of a request to the person making the request . . . , including . . . an estimated date on which the agency will complete action on the request.

Pursuant to this statute, I hereby formally request that the Department of State provide me with a written estimated date on which the agency will complete action on each of the FOIA requests listed above. A mere statement of a request's place in your queue will not satisfy this status request. Similarly, a statement that the agency has a significant backlog of requests and cannot provide an estimated date of completion will not satisfy this status request. Only "an estimated *date* on which the agency will complete action on the request" will satisfy this status request and the agency's statutory responsibility. For requests that are currently under appellate review, I request that the agency provide me with an estimated date on which the agency will complete the appellate review.

If you choose not to comply with this request, you are directed to provide specific reasons that the Department of State is not required to comply with the statutory requirement set forth in 5 U.S.C. § 552(a)(7).

Thank you for your prompt attention to this request.

Sincerely,



Bradley P. Moss
Deputy Executive Director

EXHIBIT C
Attachment 2

Brad Moss

From: Bradley P. Moss, Esq. [brad@[REDACTED]]
Sent: Tuesday, June 08, 2010 12:23 AM
To: 'FOIA Status'
Cc: 'Mark S. Zaid'
Subject: estimated date of completion
Attachments: State Status Report 3.12.10-SIGNED.pdf
Attn: FOIA Officer

The attached was submitted via facsimile to your office on March 12, 2010. It requested an estimated date of completion to be provided for the two pending FOIA requests identified in the letter. To date, no response has been received.

Pursuant to 5 U.S.C. 552(a)(7), I am reaffirming the request for an estimated date of completion for both FOIA Request Nos. 200803323 and 200803348.

Regards,

Brad Moss

This electronic mail (e-mail) transmission is meant solely for the person(s) to whom it is addressed. It contains confidential information that may also be legally privileged. Any copying, dissemination or distribution of the contents of this e-mail by anyone other than the addressee or his or her agent for such purposes is strictly prohibited. If you have received this e-mail in error, please notify me immediately by telephone or e-mail and purge the original and all copies thereof. Thank you.

Bradley Prescott Moss, Esq.
Deputy Executive Director
James Madison Project
1380 Monroe Street, NW, Unit 269
Washington, DC 20010
C: (202) 907-[REDACTED]
F: (202) 558-4432

6/15/2010

EXHIBIT C
Attachment 3

Brad Moss

From: Bradley P. Moss, Esq. [brad@[REDACTED]]
Sent: Thursday, June 10, 2010 5:49 PM
To: 'FOIA Status'
Cc: 'Mark S. Zaid'; 'Ilana@[REDACTED]'; 'Candace Boston'
Subject: RE: estimated date of completion
[Attn: FOIA Officer](#)

I sent the e-mail below requesting an estimated date of completion on the two identified FOIA requests. To date, I have not received a response. Please advise promptly.

Regards,

Brad Moss

From: Bradley P. Moss, Esq. [mailto:brad@[REDACTED]]
Sent: Tuesday, June 08, 2010 12:23 AM
To: 'FOIA Status'
Cc: 'Mark S. Zaid'
Subject: estimated date of completion

Attn: FOIA Officer

The attached was submitted via facsimile to your office on March 12, 2010. It requested an estimated date of completion to be provided for the two pending FOIA requests identified in the letter. To date, no response has been received.

Pursuant to 5 U.S.C. 552(a)(7), I am reaffirming the request for an estimated date of completion for both FOIA Request Nos. 200803323 and 200803348.

Regards,

Brad Moss

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Bradley Prescott Moss, Esq.
Deputy Executive Director
James Madison Project
1380 Monroe Street, NW, Unit 269
Washington, DC 20010
C: (202) 907-[REDACTED]
F: (202) 558-4432

6/15/2010

EXHIBIT C
Attachment 4

Brad Moss

From: Bradley P. Moss, Esq. [brad@[REDACTED]]
Sent: Wednesday, June 16, 2010 4:37 PM
To: 'Candace Boston'
Cc: 'Mark S. Zaid'
Subject: FW: estimated date of completion

Candace,

This is the correspondence referenced pertaining to the two other FOIA requests we have at State regarding which we have not received any response concerning estimated dates of completion. Both e-mails sent are included in the thread.

Brad

From: Bradley P. Moss, Esq. [mailto:brad@[REDACTED]]
Sent: Thursday, June 10, 2010 5:49 PM
To: 'FOIA Status'
Cc: 'Mark S. Zaid'; 'Ilana@[REDACTED]'; 'Candace Boston'
Subject: RE: estimated date of completion

Attn: FOIA Officer

I sent the e-mail below requesting an estimated date of completion on the two identified FOIA requests. To date, I have not received a response. Please advise promptly.

Regards,

Brad Moss

From: Bradley P. Moss, Esq. [mailto:brad@[REDACTED]]
Sent: Tuesday, June 08, 2010 12:23 AM
To: 'FOIA Status'
Cc: 'Mark S. Zaid'
Subject: estimated date of completion

Attn: FOIA Officer

The attached was submitted via facsimile to your office on March 12, 2010. It requested an estimated date of completion to be provided for the two pending FOIA requests identified in the letter. To date, no response has been received.

Pursuant to 5 U.S.C. 552(a)(7), I am reaffirming the request for an estimated date of completion for both FOIA Request Nos. 200803323 and 200803348.

Regards,

Brad Moss

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6/16/2010

notify me immediately by telephone or e-mail and purge the original and all copies thereof. Thank you.


Bradley Prescott Moss, Esq.
Deputy Executive Director
James Madison Project
1380 Monroe Street, NW, Unit 269
Washington, DC 20010
C: (202) 907-
F: (202) 558-4432

EXHIBIT C
Attachment 5

Brad Moss

From: FOIA Status [FOIAStatus@state.gov]
Sent: Wednesday, June 16, 2010 5:16 PM
To: Bradley P. Moss, Esq.
Cc: Mark S. Zaid; Ilana@[REDACTED] Candace Boston
Subject: RE: estimated date of completion
 Brad,

I apologize for our delay in responding to your question regarding the estimated date of completion.

Unfortunately, we are unable to provide you with a specific completion date for your requests. The timeframe depends on the following factors: where the records are kept; how much material must be reviewed; the sensitivity of the material; any coordination with other offices, bureaus, posts, agencies, and governments; and how many requests were received before your request. As a general matter, information access requests are processed in the order in which they are received within the track that the case is assigned.

Based on the data in our annual report, cases take on average a year to complete. As I discussed with you earlier this afternoon some cases may be completed more quickly and others may take longer. For more information on the timeframe for processing FOIA requests, please see the Department's [FOIA Annual Report FY2009](#) on www.foia.state.gov.

I hope to have more information to share with you next week about our plans regarding the estimated completion date.

Sincerely,
 Rosemary White

U.S. Department of State
 FOIA Requester Service Center
 Phone: 202-261-8484
 Fax: 202-261-8582
 E-mail: FOIAstatus@state.gov

From: Bradley P. Moss, Esq. [mailto:brad@[REDACTED]]
Sent: Thursday, June 10, 2010 5:49 PM
To: FOIA Status
Cc: 'Mark S. Zaid'; Ilana@[REDACTED] 'Candace Boston'
Subject: RE: estimated date of completion

[Attn: FOIA Officer](#)

I sent the e-mail below requesting an estimated date of completion on the two identified FOIA requests. To date, I have not received a response. Please advise promptly.

Regards,

[Brad Moss](#)

From: Bradley P. Moss, Esq. [mailto:brad@[REDACTED]]
Sent: Tuesday, June 08, 2010 12:23 AM
To: 'FOIA Status'
Cc: 'Mark S. Zaid'
Subject: estimated date of completion

Attn: FOIA Officer

The attached was submitted via facsimile to your office on March 12, 2010. It requested an estimated date of completion to be provided for the two pending FOIA requests identified in the letter. To date, no response has been received.

Pursuant to 5 U.S.C. 552(a)(7), I am reaffirming the request for an estimated date of completion for both FOIA Request Nos. 200803323 and 200803348.

Regards,

[Brad Moss](#)

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Bradley Prescott Moss, Esq.
 Deputy Executive Director
 James Madison Project
 1380 Monroe Street, NW, Unit 269
 Washington, DC 20004-0010
 C: (202) 907-4444
 F: (202) 558-4444

6/16/2010

EXHIBIT D

From: Iraq Research [mailto:]
Sent: Thursday, November 05, 2009 8:16 AM
To: FOIA Status
Subject: Target date for FOIA expedited request

Dear Sir / Madam,

An expedited Freedom of Information request was submitted by Greg Muttitt on 15/08/09. For your convenience the wording of that request can be found below, although please refer to the original document for the full case.

It has now been approximately 60 working days since the date of the initial request, which far exceeds the 10 day response deadline required for expedited requests.

Pursuant to 5 U.S.C. 552(a)(7)(B)(ii), I therefore formally request that you provide me with an estimated date on which you will complete action on this request. A mere statement of its place in your queue will not satisfy this status request.

Sincerely,

Sophie Roumat, for Greg Muttitt.

Freedom of Information Act expedited request: February 2007 Iraq cables

Pursuant to the Freedom of Information Act (5 U.S.C. 552), I hereby request that copies be provided to me, via your expedited handling procedure, of:

All cable traffic to and from the U.S. Embassy in Baghdad, dated between February 6 and February 28, 2007, on the subject of the Iraq oil law.

In order to help you locate this information, please note:

- The law is also sometimes known as the hydrocarbon law, the petroleum law, or the oil and gas law. It may also be referred to as a bill rather than a law.
- During February 2007, there was growing Iraqi public criticism of the law, including at conferences held in Basra on February 6, and in Amman on February 17.

- Passage of the law was one of the benchmarks articulated in President Bush's New Way Forward, on January 10, 2007, and became a major focus of diplomacy, technical assistance and capacity building in Iraq.
- Achieving this policy was the primary priority of Ambassador Zalmay Khalilzad, during this period. He met with Kurdish leaders Masoud Barzani and Jalal Talabani at Dukan in Sulaimaniya province, Iraq, on February 24, 2007.
- The Iraqi cabinet approved the text of the oil law on February 26, 2007.

from Iraq Research [REDACTED]
to FOIAStatus@state.gov
date Thu, Nov 5, 2009 at 2:13 PM
subject Target date for FOIA expedited request

Dear Sir / Madam,

An expedited Freedom of Information request was submitted by Greg Muttitt on 04/10/09. For your convenience the wording of that request can be found below, although please refer to the original document for the full case.

It has now been 25 working days since the request was submitted. The FOIA states that a determination is required within 10 days of an expedited request.

Pursuant to 5 U.S.C. 552(a)(7)(B)(ii), I therefore formally request that you provide me with an estimated date on which you will complete action on this request. A mere statement of its place in your queue will not satisfy this status request.

Sincerely,

Sophie Roumat, for Greg Muttitt.

Freedom of Information Act expedited request: Meghan O'Sullivan

Pursuant to the Freedom of Information Act (5 U.S.C. 552), I hereby request that copies be provided to me, via your expedited handling procedure, of:

- Hide quoted text -

All releasable documents relating to the work of Meghan O'Sullivan in Iraq, between June 1, 2007 and October 1, 2007.

During that time, Dr. O'Sullivan was Presidential Envoy to Iraq; the primary purpose of her work was to press Iraqi politicians to achieve a set of 'benchmarks', which had been set out by the President and by Congress. Foremost among those benchmarks was passage of an oil (hydrocarbon) law to govern the management of the Iraqi oil sector, the text of which had been approved by the Iraqi cabinet in February 2007.

Please search the records of the U.S. Embassy in Baghdad, the Iraq Desk within the Office of Near Eastern Affairs, and the Office of the Secretary of State.

Specifically, please send me:

- Cable traffic to and from the Embassy in Baghdad, which refers to Dr. O'Sullivan's work.
- Emails to and from Dr. O'Sullivan.
- Policy papers, briefings and reports authored by Dr. O'Sullivan.
- Minutes of meeting attended by Dr. O'Sullivan.

[REDACTED]
to FOIAStatus@state.gov

date Fri, Nov 6, 2009 at 6:34 PM

subject Target dates for other three requests

Dear Sir/Madam,

I am writing as assistant to Greg Muttitt.

The following three FOIA requests, two of which are expedited requests, were submitted by Mr. Muttitt between 150 and 26 working days ago. The FOIA specifies that a response ought to be sent within 20 days and that a request for expedited processing should be determined within 10 days.

Pursuant to 5 U.S.C. 552(a)(7)(B)(ii), I therefore formally request that you provide me with an estimated date on which you will complete action on each request. A mere statement of their place in your queue will not satisfy this status request.

For your convenience the wording of each request can be found below, although please refer to the original documents for the full cases.

Sincerely,

Sophie Roumat, on behalf of Greg Muttitt.

1) Freedom of Information Act expedited request, submitted 19/06/09 (ref. 200905202): Iraq oil law

Pursuant to the Freedom of Information Act (5 U.S.C. 552), I hereby request that copies be provided to me, via your expedited handling procedure, of:

All cable traffic to and from the US Embassy in Baghdad, dated between 20 May 2006 and 15 June 2006, on the subject of the Iraq oil law.

In order to help you locate this information, please note:

- The law is also sometimes known as the hydrocarbon law, the petroleum law, or the oil and gas law. It may also be referred to as a bill rather than a law.
- In early 2006, consultant Ronald N. Jonkers of BearingPoint Inc was appointed, under a State Department-requested USAID contract, as adviser to the Oil Ministry on drafting the oil law, based in the Embassy in Baghdad.¹
- The new Iraqi Oil Minister, Hussein (or Husayn) Shahrstani announced on 23 May 2006 that he intended to see a law passed to determine the conditions for international

companies to invest in the oil sector. Shortly afterwards, he commissioned Tariq Shafiq, Farouk Qasim and Thamer Ghadban to draft the law.

(NB: An appeal against denial of expedited handling and denial of fee waiver was submitted 15/08/09. As of yet, no progress appears to have been made on this.)

2) Freedom of Information Act expedited request, submitted 13/04/09 (ref. 2009-03039): Iraq oil contracts advice

Pursuant to the Freedom of Information Act (5 U.S.C. 552), I hereby request that copies be provided to me of:

Documents relating to advice by U.S. officials to the Iraq Ministry of Oil, on the subject of contracts with international oil companies, between September 1, 2007, and December 31, 2008.

To help you to identify this information, please see Andrew E. Kramer's article in the New York Times on June 30, 2008, describing the role of the advisers, and indicating that the Department of State took the lead. The article is available at http://www.nytimes.com/2008/06/30/world/middleeast/30contract.html?_r=1

Following the collapse of the proposed hydrocarbon law in September 2007, the Ministry of Oil began considering signing oilfield development contracts in the absence of the law. Initially, the plans focused on no-bid, short-term (1-2 years) technical service contracts, referred to in the Times article; later the Ministry began to consider tendered, long-term (20 years) risk contracts (misleadingly also referred to as service contracts), and eventually dropped the short-term contracts. I require information relating to both types of contracts.

Specifically, please provide the following types of documents:

- The names[1], status[2], and job titles of U.S. advisers working in the Ministry of Oil;
- Work plans, objectives and terms of reference for those advisers;
- Progress reports on the work by the advisers;
- Memoranda, advice, policy analysis, recommendations, briefing papers and reports, authored by those advisers and submitted either to the Iraq Ministry of Oil or to other staff of the U.S. government (including the Embassy in Baghdad);
- Template contracts or contractual clauses recommended by the advisers;
- Comments by U.S. officials, advisers and consultants on draft contracts;
- Minutes of (internal and external) meetings attended by the advisers.

[1] subject to security restrictions

[2] permanent employee, temporary employee (with dates of employment) or consultant (with name of contractor company)

3) Freedom of Information Act request, submitted 14/06/09: *Hard Lessons* references

(NB: On 15/06/09, Mr. Muttitt submitted a Freedom of Information request to SIGIR, which was then referred in part to the State Department. A notification of that referral was sent to us on 20/07/09. For your convenience the wording of part of that request can be found below, with the component referred to the State department in bold.)

Pursuant to the Freedom of Information Act (5 U.S.C. 552), I hereby request that copies be provided to me of the documents listed below, which are referenced in SIGIR's *Hard Lessons* report. As suggested by your website, I first contacted your Public Affairs team, who emailed me on 8 June to recommend that I submit a formal FOIA request. The documents fall into three categories: a) interviews by SIGIR; b) written submissions to SIGIR; and c) other referenced documents.

1) Negroponte and Casey, joint mission statement, "A Plan for the Year Ahead:

Transition to Self-Reliance," February 7, 2005.

2) "U.S. Government Position on Political/Security Principles and Priorities for Iraq Reconstruction," Cable 061748Z APR 05, SECSTATE 6360.

3) IRMO Action Memorandum, "Recommended Solutions to Relieve the Ministry of Oil

from Hampering Budgetary, Spending, and Procurement Constraints," July 29, 2006.

4) Dan Bisbee, Baghdad PRT, "Baghdad Governance," 3rd ed., April 2007.

5) Patrick F. Kennedy, "American Embassy Baghdad: Organization and Staffing Report," May 23, 2007.

6) ITAO, "ITAO Manning Document," January 25, 2008.

Preferred format

For the interviews, I would prefer to receive transcripts. If you do not have transcripts, I would be happy with audio recordings. Where practical, I would prefer to receive the information in electronic format – preferably by email. If sent by email, please break up the information such that no single email exceeds 15 megabytes in size.

1 See Congressional Research Service report, <http://www.fas.org/sgp/crs/mideast/RL34064.pdf> page 24.

fromIraq Research [REDACTED]
toTuckerSJ@state.gov
dateThu, Nov 5, 2009 at 1:53 PM
subjectTarget date for FOIA expedited request ref: 2009-03039
mailed-bygooglemail.com

Dear Ms Tucker,

A Freedom of Information request (ref: 2009-03039) was submitted by Greg Muttitt on 13/04/09. For your convenience the wording of that request can be found below, although please refer to the original document for the full case. Expedited processing of the request was subsequently sought on 12/06/09.

It has now been over 150 working days since the date of the initial request, and approximately 105 days since the request for expedited handling, which far exceeds the 10 day response deadline required for expedited requests.

Pursuant to 5 U.S.C. 552(a)(7)(B)(ii), I therefore formally request that you provide me with an estimated date on which you will complete action on this request. A mere statement of its place in your queue will not satisfy this status request.

Sincerely,

Sophie Roumat, for Greg Muttitt.

Freedom of Information Act expedited request ref: 2009-03039 : Iraq oil contracts advice

Pursuant to the Freedom of Information Act (5 U.S.C. 552), I hereby request that copies be provided to me of:

Documents relating to advice by U.S. officials to the Iraq Ministry of Oil, on the subject of contracts with international oil companies, between September 1, 2007, and December 31, 2008.

To help you to identify this information, please see Andrew E. Kramer's article in the New York Times on June 30, 2008, describing the role of the advisers, and indicating that the Department of State took the lead. The article is available at http://www.nytimes.com/2008/06/30/world/middleeast/30contract.html?_r=1

Following the collapse of the proposed hydrocarbon law in September 2007, the Ministry of Oil began considering signing oilfield development contracts in the absence

of the law. Initially, the plans focused on no-bid, short-term (1-2 years) technical service contracts, referred to in the Times article; later the Ministry began to consider tendered, long-term (20 years) risk contracts (misleadingly also referred to as service contracts), and eventually dropped the short-term contracts. I require information relating to both types of contracts.

Specifically, please provide the following types of documents:

- The names[1], status[2], and job titles of U.S. advisers working in the Ministry of Oil;
- Work plans, objectives and terms of reference for those advisers;
- Progress reports on the work by the advisers;
- Memoranda, advice, policy analysis, recommendations, briefing papers and reports, authored by those advisers and submitted either to the Iraq Ministry of Oil or to other staff of the U.S. government (including the Embassy in Baghdad);
- Template contracts or contractual clauses recommended by the advisers;
- Comments by U.S. officials, advisers and consultants on draft contracts;
- Minutes of (internal and external) meetings attended by the advisers.

[1] subject to security restrictions

[2] permanent employee, temporary employee (with dates of employment) or consultant (with name of contractor company)

EXHIBIT E

from FOIA Status FOIAStatus@state.gov

to Iraq Research <

date Thu, Nov 5, 2009 at 10:34 PM

subject RE: Target date for FOIA expedited request - 200907495

Ms. Roumat,

The Requester Communications Branch sent a letter acknowledging this request last week, please let me know if you would like me to send a copy of the letter to you. This request has been assigned case number 200907495. Also, it has been assigned to the appropriate branch in the Statutory Compliance and Research Division. Unfortunately, we cannot give a definitive timeframe for the processing of a request. The timeframe depends on a variety of factors: where the records are kept; how much material must be reviewed; the sensitivity of the material; any coordination with other offices, bureaus, posts, agencies, and governments; and how many requests were received before your request. We are required to process cases in a first-in, first-out order within the track that the case is assigned. This request was the 7495th request we received this year and we are processing cases from previous years. If you are interested in learning more about our processing times, please visit our website www.foia.state.gov and select the document "[FOIA Annual Report for 2008](#)" under the "Learn More" heading.

I hope this was helpful. Please contact us if you have any other questions.

Thank you,

Rosemary

[U.S. Department of State](#)

[FOIA Requester Service Center](#)

Phone: 202-261-8484

Fax: 202-261-8582

E-mail: FOIAStatus@state.gov

from FOIA Status FOIAStatus@state.gov
toIraaq Research [REDACTED]
dateThu, Nov 5, 2009 at 10:34 PM
subjectRE: Target date for FOIA expedited request – 200908517
mailed-bystate.gov

Ms. Roumat,

The Requester Communications Branch also sent a letter acknowledging this request last week as well, please let me know if you would like me to send a copy of the letter to you. This request has been assigned case number 200908517. It has been assigned to the appropriate branch in the Statutory Compliance and Research Division. Unfortunately, we cannot give a definitive timeframe for the processing of a request. The timeframe depends on a variety of factors: where the records are kept; how much material must be reviewed; the sensitivity of the material; any coordination with other offices, bureaus, posts, agencies, and governments; and how many requests were received before your request. We are required to process cases in a first-in, first-out order within the track that the case is assigned. This request was the 8517th request we received this year and we are processing cases from previous years. If you are interested in learning more about our processing times, please visit our website www.foia.state.gov and select the document "FOIA Annual Report for 2008" under the "Learn More" heading.

I hope this was helpful. Please contact us if you have any other questions.

Thank you,

Rosemary

U.S. Department of State

FOIA Requester Service Center

Phone: 202-261-8484

Fax: 202-261-8582

E-mail: FOIAstatus@state.gov

EXHIBIT F

GREG MUTTITT

BY EMAIL

Bushnell's Cottage
2 Main Street
Forest Hill
Oxfordshire OX33 1DZ
United Kingdom.



December 21, 2009

Dear Sir/Madam,

FOIA appeal 2009-09199

I am writing in respect of expedited request 2009-09199, which I submitted to the US State Department on 11/11/09. This request remains outstanding, despite being submitted 26 working days ago.

Under the terms of the Freedom of Information Act, 5 U.S.C. § 552(a)(6), I hereby formally appeal the State Department's constructive denial of my FOIA request and its constructive denial of my request for expedited processing, as evidenced by its failure to provide a substantive response within the statutorily-mandated time frame.

The Freedom of Information Act, 5 U.S.C. § 552(a)(6)(A)(i), specifies that agencies must give a determination of whether they will provide the information within 20 working days of a request, while 5 U.S.C. § 552(a)(6)(E)(ii)(I) states that agencies must determine whether to grant expedited processing within 10 working days. The requirement to adhere to these deadlines is reaffirmed in 22 *C.F.R.* § 171.12 .

It should be noted that the State Department has not given written notice of a need for extension, nor indicated the existence of any "unusual circumstances" (5 U.S.C.(a)(6)(B)).

A chronology of correspondence for the case is set out below; please also refer to the full request, included.

Expedited request: Vice President Iraq visits

11/11/09: Request submitted by fax

11/11/09: I send an email asking for confirmation of receipt, to which the requester center responds

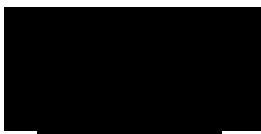
04/12/09: My assistant, Sophie Roumat, telephones seeking an estimated date of completion. She is told that a target date cannot be given but that the task should take 'a couple more weeks at the most'

12/12/09: Ms. Roumat telephones again inquiring about the status of the request. She is told that the search has just commenced

I trust that we will receive a response to this appeal within the statutory 20 day deadline. I regret that I will be initiating court action should you fail to do so.

Sincerely,

Greg Muttitt.



GREG MUTTITT

BY EMAIL

Bushnell's Cottage
2 Main Street
Forest Hill
Oxfordshire OX33 1DZ
United Kingdom.



November 23, 2009

Dear Sir/Madam,

FOIA appeal: 2009-05202

I am writing in respect of expedited request 200905202, which I submitted to the US State Department on 06/19/09. This request remains outstanding, despite being submitted 107 working days ago. In addition, my appeal against denial of expedited processing has still not been decided, despite being submitted 68 working days ago.

Under the terms of the Freedom of Information Act, 5 U.S.C. § 552(a)(6), I hereby formally appeal the State Department's constructive denial of my FOIA request, as evidenced by its failure to provide a substantive response within the statutorily-mandated time frame.

The Freedom of Information Act, 5 U.S.C. § 552(a)(6)(A)(i), specifies that agencies must give a determination of whether they will provide the information within 20 working days of a request. The requirement to adhere to this deadline is reaffirmed in State Department Regulations 22 *C.F.R.* § 171.12.

5 U.S.C. § 552(a)(6)(E)(ii)(II) states that appeals against denials of expedited processing must also be handled expeditiously. Regulation 22 *C.F.R.* § 171.50 states that such appeals must be determined within 10 days.

It should be noted that the State Department has not given written notice of a need for extension, nor indicated the existence of any "unusual circumstances" (5 U.S.C.(a)(6)(B)).

A chronology of correspondence for the case is set out below; please refer to the full request, attached, and other relevant correspondence.

Expedited request 200905202 : Iraqi oil law

06/19/09: Request submitted by fax

07/31/09: Patrick Scholl acknowledges receipt and denies request for expedited processing

08/15/09: Appeal submitted against denial of expedited handling

08/17/09: Candace acknowledges receipt of appeal and says that she has passed it onto the Requester Communications Branch, who should respond soon.

09/03/09: Email from Charlotte W. Duckett, following telephone call asking about status – states

that Requester Communications should respond soon

09/30/09: Telephoned Rosemary, who agreed to check status and get back to me. She does not.

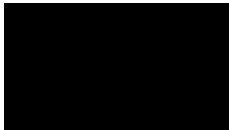
10/07/09: Telephoned Rosemary, who again agrees to check status and get back to me. She does not.

11/06/09: Status inquiry sent by email by my assistant, Ms. Roumat. Still awaiting response.

I trust that we will receive a response to this appeal within the statutory 20 day deadline. I regret that I will be initiating court action should you fail to do so.

Sincerely,

Greg Muttitt.



GREG MUTTITT

BY EMAIL

Bushnell's Cottage
2 Main Street
Forest Hill
Oxfordshire OX33 1DZ
United Kingdom.



November 20, 2009

Dear Sir/Madam,

FOIA appeal 2009-03039

I am writing in respect of expedited request 2009-03039, which I submitted to the US State Department on 04/13/09. This request remains outstanding, despite being submitted 152 working days ago.

Under the terms of the Freedom of Information Act, 5 U.S.C. § 552(a)(6), I hereby formally appeal the State Department's constructive denial of my FOIA request and its constructive denial of my request for expedited processing, as evidenced by its failure to provide a substantive response within the statutorily-mandated time frame.

The Freedom of Information Act, 5 U.S.C. § 552(a)(6)(A)(i), specifies that agencies must give a determination of whether they will provide the information within 20 working days of a request, while 5 U.S.C. § 552(a)(6)(E)(ii)(I) states that agencies must determine whether to grant expedited processing within 10 working days. The requirement to adhere to these deadlines is reaffirmed in 22 C.F.R. § 171.12.

Please note that I sent my request for expedited handling only after I realised the un-expedited request would take considerable time. (22 C.F.R. § 171.12(b) provides that "A request for expedited processing may be made at the time of the initial request for records or at any later time" [emphasis added]). I sent it to Ms. Tucker, my case officer, with a note asking her to let me know if she was the wrong person to send it to. An automated receipt told me she had read my request for expedited handling, but she never replied.

It should be further noted that the State Department has not given written notice of a need for an extension, nor indicated the existence of any "unusual circumstances" (5 U.S.C.(a)(6)(B)).

A chronology of correspondence for the case is set out below; please refer to the full request and other relevant correspondence, enclosed.

Expedited request 2009-03039: Iraq oil contracts advice

04/13/09: Request sent by fax. Request for an estimated date of response included in that letter.

04/22/09: Telephone call to Rosemary – can't give any estimate of time required, but likely to be 6-12 months

06/10/09: Email sent to me by Susie Tucker, asking me to provide my physical address again (she did not say why she needed it – it was in my original letter)

06/10/09: Address emailed to Ms. Tucker

06/12/09: Application for expedited processing, sent by email to Ms. Tucker

07/06/09: Automated 'Read' receipt received from Ms. Tucker, but no actual response

11/05/09: Status request sent by email by my assistant, Sophie Roumat. Still awaiting response.

I trust that we will receive a response to this appeal within the statutory 20 day deadline. I regret that I will be initiating court action should you fail to do so.

Sincerely,

Greg Muttitt.

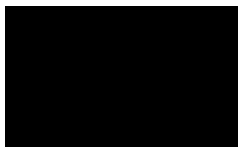


EXHIBIT G

fromIraq Research [REDACTED]
toHugh.Gilmore@do.treas.gov
dateFri, Nov 6, 2009 at 3:33 PM
subjectTarget date for FOIA request
mailed-bygooglemail.com

Dear Mr. Gilmore,

I am writing as assistant to Greg Muttitt. Mr. Muttitt submitted Freedom of Information request ref. 2009-08-058 on 15/08/09. For your convenience the wording of that request can be found below, although please refer to the original document for the full case.

It has now been approximately 60 working days since the date of the initial request, which far exceeds the 20 day response deadline as specified in the FOIA.

Pursuant to 5 U.S.C. 552(a)(7)(B)(ii), I therefore formally request that you provide me with an estimated date on which you will complete action on this request. A mere statement of its place in your queue will not satisfy this status request.

Sincerely,

Sophie Roumat, on behalf of Greg Muttitt.

FOIA request: International Compact for Iraq

Pursuant to the Freedom of Information Act (5 U.S.C. 552), I hereby request that copies of be provided to me of:

All releasable documents (and portions thereof), on the subject of oil and gas, and related to the Preparatory Meeting of the International Compact for Iraq, which took place in Abu Dhabi, on September 10, 2006.

Specifically, please include the following, insofar as they relate to oil and gas (hydrocarbons):

Notes of the meetings;

- Reports of the working groups, prepared for the meetings;
- Presentations to the meetings;
- Other documents circulated or presented at or for the meetings;
- Government briefings for the meetings;

- Reports on the outcomes of the meetings, and back-to-office reports.

The International Compact for Iraq was initiated on June 16, 2006 at meetings at the United Nations,¹ following President Bush's meeting with the Iraqi government on June 13. President Bush tasked Deputy Treasury Secretary Robert Kimmitt to lead U.S. involvement in the Compact.²

Oil and energy constituted one of the foci of the Compact. One of the six principal goals of the Compact was "To develop an energy sector that meets Iraq's energy needs and maximizes the benefits of Iraq's hydrocarbons for all Iraqis". Another subgoal, under the heading of Public Resource Management, was to "Establish a transparent single petroleum account and an equitable petroleum revenue sharing framework".

The Abu Dhabi meeting was the first substantive preparatory meeting for the Compact. Amongst other things, at that meeting, policies related to production sharing agreements, the form of contract which is highly controversial in Iraq, were announced.

1 <http://www.iraqcompact.org/en/press/16-jun-06%20UN%20SUPPORT%20IN%20LAUNCH%20OF%20INTERNATIONAL%20COMPACT.pdf>

2 <http://georgewbush-whitehouse.archives.gov/news/releases/2006/06/20060613-4.html>