

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

NATIONAL SECURITY COUNSELORS *
1200 South Courthouse Road, Suite 124 *
Arlington, VA 22204, *

Plaintiff, *

v. *

CENTRAL INTELLIGENCE AGENCY *
Washington, DC 20505, *

Civil Action No. 1:11-cv-0442-RMC

and *

DEPARTMENT OF DEFENSE *
1400 Defense Pentagon *
Washington, DC 20301, *

Defendants. *

* * * * *

FIRST AMENDED COMPLAINT

Plaintiff National Security Counselors brings this action against Defendants Central Intelligence Agency and Department of Defense pursuant to the Freedom of Information Act, 5 U.S.C. § 552, *et seq.*, *as amended* (“FOIA”), the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, and the All Writs Act, 28 U.S.C. § 1651.

JURISDICTION

1. This Court has both subject matter jurisdiction over this action and personal jurisdiction over Defendants pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

VENUE

2. Venue is appropriate under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391.

PARTIES

3. Plaintiff National Security Counselors (“NSC”) is a non-profit organization under the laws of the Commonwealth of Virginia and has the ability to disseminate information on a wide scale.

4. Defendant Central Intelligence Agency (“CIA”) is an agency within the meaning of 5 U.S.C. § 552(e), and is in possession and/or control of the records requested by Plaintiff which are the subject of this action.

5. Defendant Department of Defense (“DOD”) is an agency within the meaning of 5 U.S.C. § 552(e), and several of its components, including the Defense Intelligence Agency (“DIA”), are in possession and/or control of the records requested by Plaintiff which are the subject of this action.

FIRST CAUSE OF ACTION

(CIA – CONSTRUCTIVE RECORDS DENIAL – F-2010-01033)

6. NSC repeats and realleges the allegations contained in all paragraphs set forth above.

7. On 23 April 2010, NSC submitted to CIA a FOIA request for all current regulations, policy statements, guidelines, memoranda, training materials, handbooks, manuals, checklists, worksheets, instructions, and similar documents on the topic of Mandatory Declassification Review (“MDR”).

8. On 5 May 2010, CIA acknowledged receipt of this request and assigned it Request No. F-2010-01033.

9. As twenty working days have elapsed without a substantive determination by CIA, NSC has exhausted all required administrative remedies.

10. NSC has a legal right under FOIA to obtain the information it seeks, and there is no legal basis for the denial by CIA of said right.

SECOND CAUSE OF ACTION

(CIA – CONSTRUCTIVE RECORDS DENIAL – F-2011-00396)

11. NSC repeats and realleges the allegations contained in all paragraphs set forth above.

12. On 17 April 1995, President Bill Clinton signed Executive Order (“E.O.”) 12,958 on Classified National Security Information.

13. Section 3.6 of E.O. 12,958 governs MDR procedures.

14. Section 3.6(e) states: “After consultation with affected agencies, the Secretary of Defense shall develop special procedures for the review of cryptologic information; the Director of Central Intelligence shall develop special procedures for the review of information pertaining to intelligence activities (including special activities), or intelligence sources or methods; and the Archivist shall develop special procedures for the review of information accessioned into the National Archives.”

15. On 25 March 2003, President George W. Bush signed E.O. 13,292, amending E.O. 12,958.

16. Section 3.5(e) of E.O. 13,292 is identical to Section 3.6(e) of E.O. 12,958.

17. On 30 November 2010, NSC submitted to CIA a FOIA request for “a copy of the ‘special procedures for the [Mandatory Declassification] review of information pertaining to intelligence activities (including special activities), or intelligence sources or methods’ developed by the Director of Central Intelligence pursuant to Sections 3.6(e) of Executive Order 12,958 and 3.5(e) of Executive Order 13,292.”

18. On 20 December 2010, CIA acknowledged receipt of this request and assigned it Request No. F-2011-00396.

19. By letter dated 27 January 2011, CIA informed NSC that it had completed its search and had not located any records responsive to this request.

20. On 31 January 2011, NSC appealed the adequacy of CIA's search, citing the implausibility of CIA's implication that the Director of Central Intelligence had failed to follow two explicit Presidential directives issued by two separate Presidents for fifteen years.

21. As twenty working days have elapsed without a substantive determination by CIA, NSC has exhausted all required administrative remedies.

22. NSC has a legal right under FOIA to obtain the information it seeks, and there is no legal basis for the denial by CIA of said right.

THIRD CAUSE OF ACTION

(DOD – CONSTRUCTIVE RECORDS DENIAL – 0125-2011)

23. NSC repeats and realleges the allegations contained in all paragraphs set forth above.

24. On 13 December 2010, NSC submitted to DIA, a DOD component, a FOIA request for all records responsive to FOIA Request No. 0981-1997, a request submitted originally in 1997 by another requester for reports and meeting minutes of the DIA Scientific Advisory Committee from 1965.

25. On 3 January 2011, DIA acknowledged receipt of this request and assigned it Request No. 0125-2011.

26. As thirty working days have elapsed without a substantive determination by DIA, NSC has exhausted all required administrative remedies.

27. NSC has a legal right under FOIA to obtain the information it seeks, and there is no legal basis for the denial by DOD of said right.

FOURTH CAUSE OF ACTION

(DOD – CONSTRUCTIVE RECORDS DENIAL – 0121-2011)

28. NSC repeats and realleges the allegations contained in all paragraphs set forth above.

29. On 8 December 2010, Michael Ravnitzky, the original requester of FOIA Request No. 0981-1997, informed NSC that DIA had informed him that his request was referred to twelve (12) other government agencies or components, and that seven (7) had responded to DIA. However, DIA refused to provide Mr. Ravnitzky with the identity of the twelve other government agencies or components.

30. On 13 December 2010, NSC submitted to DIA, a DOD component, a FOIA request for all records pertaining to the administrative processing of FOIA Request No. 0981-1997, including all inter- and intra-agency correspondence (including emails and referral memos); all notes, comments, remarks, etc. made by DIA employees or contractors; and all notes, comments, remarks, etc. made by other government agency employees or contractors.

31. This FOIA request included the following language:

This request is not just for the DIA administrative processing records, but also for all administrative processing records in the custody of the twelve government agencies to which the DIA referred Req. #0981-1997 in whole or in part. Because the DIA will not release the identities of those twelve agencies to the original requester, I cannot file this request with them directly; therefore, please forward this request to the relevant twelve

agencies (along with whatever information they will need to identify their respective records) for direct response to NSC.

32. On 3 January 2011, DIA acknowledged receipt of this request and assigned it Request No. 0121-2011.

33. NSC does not know how many of the twelve other government agencies or components are DOD components. Nonetheless, this Count is limited to only DIA and the DOD components to which DIA originally referred FOIA Request No. 0981-1997. NSC is not pursuing the administrative processing records of non-DOD agencies at this time.

34. Because DIA retains exclusive knowledge of the identities of any other DOD components to which it referred FOIA Request No. 0981-1997, NSC has no other reasonable means at its disposal to request responsive administrative processing records from these components besides directing DIA to forward the request appropriately.

35. DOD regulations require that all DOD components shall refer FOIA requests to any other DOD components which are likely to have responsive records. DOD components that receive referred requests are required to answer them in accordance with the time limits established by FOIA.

36. Upon information and belief, the DIA FOIA office followed DOD regulations and referred FOIA Request No. 0121-2011 to all of the DOD components to which it referred FOIA Request No. 0981-1997, since those components would clearly have records responsive to the portion of the request regarding the administrative processing records of all government agencies to which DIA originally referred FOIA Request No. 0981-1997.

37. NSC has provided DIA with a reasonable time period to both process this request and to forward this request to all other DOD components to which it referred FOIA Request No. 0981-1997.

38. No other DOD component has sent any correspondence to NSC regarding this request.

39. As more than six months have elapsed without a substantive determination by any DOD component, NSC has exhausted all required administrative remedies.

40. NSC has a legal right under FOIA to obtain the information it seeks, and there is no legal basis for the denial by DOD of said right.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff National Security Counselors prays that this Court:

- (1) Order the Central Intelligence Agency and Department of Defense to disclose the requested records in their entirety and make copies promptly available to it;
- (2) Order preliminary and permanent injunctive and/or declaratory relief as may be appropriate;
- (3) Award reasonable costs and attorneys' fees as provided in 5 U.S.C. § 552(a)(4)(E), 28 U.S.C. § 2412(d), or any other applicable law;
- (4) Expedite this action in every way pursuant to 28 U.S.C. § 1657(a); and
- (5) Grant such other relief as the Court may deem just and proper.

Date: June 27, 2011

Respectfully submitted,

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