



4. Defendant DOD is an agency of the United States. DOD has possession and control over the records plaintiff seeks.

### **STATEMENT OF FACTS**

5. On September 26, 2017, Public Citizen submitted a FOIA request to DOD's Office of the Secretary of Defense and Joint Staff FOIA Requester Service Center. In that request, Public Citizen sought:

1. All records reflecting communications to or from the Department of Defense from or to the White House concerning the use of military personnel or military equipment in parades in the District of Columbia or New York City; and
2. All records reflecting communications to or from the Department of Defense from or to the National Park Service concerning the use of military personnel or military equipment in parades in the District of Columbia or New York City.

6. The FOIA request specified that it sought records created or received by DOD between July 14, 2017, and the date of processing the request.

7. By letter dated September 29, 2017, DOD acknowledged receipt of the request and stated that the request had been assigned case number 17-F-1637. DOD stated that it was "currently processing" the request and would be tasking Public Affairs, a component of the Office of the Secretary of Defense (OSD), to search for responsive records.

8. Although the request sought all responsive documents between July 14, 2017, and the date on which the request was processed, and although the acknowledgment letter indicated that the agency had not yet started searching for responsive records, the acknowledgement letter stated that the timeframe for the request was "7/14/2017 to 09/26/2017."

9. DOD's acknowledgement letter stated that the agency would "not be able to respond within the FOIA's 20-day statutory time period" because there were "unusual circumstances which impact our ability to quickly process your request." The letter did not state the date on which the agency would be able to make a determination. The letter stated that the request had been placed in the agency's "complex processing queue and is being worked based on the order in which the request was received."

10. DOD's letter stated that, if Public Citizen had any questions, it should contact Christine Dickinson, the Action Officer assigned to the request.

11. On February 8, 2018, Rick Claypool of Public Citizen called the agency to inquire about the status of the request.

12. Later that day, Mr. Claypool received an email from Ms. Dickinson stating that the "request has been tasked out to the appropriate OSD component to conduct a search for responsive records" and that "the component has been asked to provide an estimated date of completion to this office." Ms. Dickinson's email stated that Mr. Claypool would be contacted once the FOIA office had that information.

13. On February 13, 2018, Mr. Claypool emailed Ms. Dickinson to follow up. Mr. Claypool asked if Ms. Dickinson could provide an update on the request and whether she could tell him how soon he could expect to receive an estimated date of completion.

14. Later on February 13, 2018, Ms. Dickinson responded to Mr. Claypool's email. Ms. Dickinson's email stated again that she had "reached out to the office conducting the search for your FOIA request for an estimated completion date" and that she would provide that date to Public Citizen once she heard from the agency with an estimated completion date.

15. Public Citizen has received no further correspondence from DOD concerning its FOIA request.

16. Under 5 U.S.C. § 552(a)(6)(A)(i), DOD had 20 working days to respond to Public Citizen's FOIA request. More than 20 working days have passed since Public Citizen submitted its September 26, 2017, request, and Public Citizen has not received a determination from DOD concerning its request or any records in response to its request.

17. Public Citizen has exhausted its administrative remedies under FOIA. *See* 5 U.S.C. § 552(a)(6)(C)(i).

### **CLAIM FOR RELIEF**

18. Public Citizen has a statutory right under FOIA to the records it seeks, and there is no legal basis for DOD's failure to disclose them.

### **PRAYER FOR RELIEF**

WHEREFORE, plaintiff requests that this Court:

- A) Declare that defendant's failure to disclose the records requested by plaintiff is unlawful;
- B) Order defendant to make the records responsive to plaintiff's FOIA request available to plaintiff without charge;
- C) Award plaintiff its costs and reasonable attorneys' fees pursuant to 5 U.S.C. § 552(a)(4)(E); and
- D) Grant such other and further relief as this Court may deem just and proper.

Respectfully submitted,

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