

1:16-cv-00311-RCL KHATCHADOURIAN v. DEFENSE INTELLIGENCE AGENCY et al
 Royce C. Lamberth, presiding
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History

| Doc. No. | Dates | Description |
|--------------------|---|---|
| 18 | <i>Filed & Entered:</i> 08/25/2016 | ☛ Status Report |
| 17 | <i>Filed:</i> 07/05/2016 <i>Entered:</i> 07/06/2016 | ☛ Scheduling Order |
| 16 | <i>Filed & Entered:</i> 06/27/2016 | ☛ Status Report |
| | <i>Filed & Entered:</i> 04/28/2016 | ☛ Set/Reset Deadlines |
| 15 | <i>Filed & Entered:</i> 04/28/2016 | ☛ Order on Motion for Scheduling Order |
| 14 | <i>Filed & Entered:</i> 04/27/2016 <i>Terminated:</i> 04/28/2016 | ☛ Motion for Scheduling Order |
| 13 | <i>Filed & Entered:</i> 04/18/2016 | ☛ Order |
| 12 | <i>Filed & Entered:</i> 04/06/2016 | ☛ Answer to Complaint |
| 11 | <i>Filed & Entered:</i> 03/28/2016 | ☛ Notice of Appearance |
| 10 | <i>Filed & Entered:</i> 03/25/2016 | ☛ Order on Motion for Extension of Time to Answer |
| 9 | <i>Filed & Entered:</i> 03/23/2016 <i>Terminated:</i> 03/25/2016 | ☛ Motion for Extension of Time to File Answer |
| 5 | <i>Filed & Entered:</i> 03/08/2016 | ☛ Summons Returned Executed in FOIA as to U.S. Attorney |
| 6 | <i>Filed & Entered:</i> 03/08/2016 | ☛ Summons Returned Executed as to U.S. Attorney General |
| 7 | <i>Filed & Entered:</i> 03/08/2016 | ☛ Summons Returned Executed as to Federal Defendant |
| 8 | <i>Filed & Entered:</i> 03/08/2016 | ☛ Summons Returned Executed as to Federal Defendant |
| 3 | <i>Filed & Entered:</i> 02/23/2016 | ☛ Summons Issued Electronically as to AUSA |
| 4 | <i>Filed & Entered:</i> 02/23/2016 | ☛ Errata |
| | <i>Filed & Entered:</i> 02/22/2016 | ☛ Case Assigned/Reassigned |
| 1 | <i>Filed & Entered:</i> 02/22/2016 | ☛ Complaint |
| 2 | <i>Filed & Entered:</i> 02/22/2016 | ☛ Notice (Other) |

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

RAFFI KHATCHADOURIAN
1 World Trade Center
New York, NY 10007,

Plaintiff,

v.

DEFENSE INTELLIGENCE AGENCY
200 MacDill Blvd.
Joint Base Anacostia Bolling
Washington, DC 20340-5100

and

DEPARTMENT OF DEFENSE
1400 Defense Pentagon
Washington, DC 20301,

Defendants.

Civil Action No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for declaratory, injunctive, and other appropriate relief by Raffi Khatchadourian (“Plaintiff” or “Khatchadourian”), a staff writer for *The New Yorker*, against the Defense Intelligence Agency (“DIA”) and Department of Defense (“DoD”) (collectively, “Defendants”). Defendants have unlawfully withheld agency records regarding the Information Review Task Force (“IRTF”) that were requested by Plaintiff pursuant to FOIA in February of 2012, as well as agency records regarding the processing of that FOIA request and related administrative appeal. Plaintiff is statutorily entitled to the disclosure of these records and Defendants have

improperly withheld them in violation of the law and with disregard for the public's strong interest in obtaining information about the IRTF and its activities.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this matter and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This Court also has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331.

3. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

PARTIES

4. Plaintiff Raffi Khatchadourian is a reporter who has worked as a staff writer at *The New Yorker* since 2008. For more than a decade, he has covered the federal government, science and technology, and military, diplomatic, intelligence, national security, and legal affairs. He resides in New York and his office is located at 1 World Trade Center New York, New York 10007.

5. Defendant Defense Intelligence Agency ("DIA") is an agency of the federal government within the meaning of 5 U.S.C. § 552(f) and 5 U.S.C. § 702 that has possession, custody, and/or control of the records that Plaintiff seeks.

6. Defendant United States Department of Defense ("DoD") is an agency of the federal government within the meaning of 5 U.S.C. § 552(f) and 5 U.S.C. § 702 that has possession, custody, and/or control of the records that Plaintiff seeks. The DIA is a component of the DoD.

FACTUAL ALLEGATIONS

Introduction and Background on the IRTF

7. Khatchadourian is currently working on an article, to be published by *The New Yorker*, that reports on the Information Review Task Force (“IRTF”), a multi-agency unit created within the Defense Intelligence Agency in 2010 to assess the impact on the United States of the disclosure of certain government records that had been provided to the website WikiLeaks.

8. In May 2010, a United States soldier, PFC Bradley Manning—now Chelsea Manning—(“Manning”) was arrested in Iraq on charges of disclosing classified documents, including State Department cables, battlefield logs from Iraq and Afghanistan, and files related to detainees at Guantanamo Bay, to WikiLeaks. *See* Paul Lewis, *Bradley Manning to request pardon from Obama over 35-year jail sentence*, *The Guardian* (Aug. 21, 2013), *archived at* <http://perma.cc/58JS-JXP2>.

9. On July 28, 2010, then-Secretary of Defense Robert M. Gates directed the Defense Intelligence Agency to establish the IRTF in order “to lead a comprehensive Department of Defense (DoD) review of classified documents posted to the WikiLeaks website.” *Info Memo for Secretary of Defense* (Jul. 29, 2011), attached as Exhibit A.

10. On August 5, 2010, Geoff Morrell, the Defense Department’s press secretary, stated during a public briefing that the Task Force had been convened. Morrell reported that the task force was a “24-hour operation” staffed by about 80 personnel who were reviewing “70-odd thousand documents” and had already accomplished 400 keyword searches. Morrell added that “eventually, once we have done that sort of first triage kind of operation, there will be a painstaking, deliberate, page-by-page, word-by-word evaluation of every single document.”

News Transcript, U.S. Department of Defense (Aug. 5, 2010), *archived at* perma.cc/DUK6-2VGK.

11. On August 16, 2010, Robert M. Gates wrote to Sen. Carl Levin, Chairman of the Armed Services Committee, to explain the mandate of the IRTF, adding: “the review to date has not revealed any sensitive intelligence sources and methods compromised by this disclosure.”

Ltr. from Secretary of Defense Robert M. Gates to Carl Levin, Chairman, Senate Committee on Armed Services (Aug. 16, 2010), *archived at* <https://perma.cc/963Y-BCD3>.

12. On November 30, 2010, Secretary Gates commented publicly about the WikiLeaks disclosures in response to a question at a news briefing. He stated that he believed that the consequences of the disclosures for United States foreign policy were “fairly modest,” and that the reaction to the disclosures had been “significantly overwrought.” Transcript, DoD News Briefing with Secretary Gates and Adm. Mullen from the Pentagon (Nov. 30, 2010), *archived at* perma.cc/STA5-MU5P.

13. The IRTF completed its final assessment on or about July 29, 2011.

Plaintiff’s First FOIA Request and its Irregular Treatment by Defendants

14. On or about February 16, 2012, Khatchadourian, in his role as a staff writer for *The New Yorker*, submitted a FOIA request to the DIA (the “First Request”). A true and correct copy of the First Request is attached to this Complaint as Exhibit B, and is incorporated by reference herein.

15. In the First Request, Khatchadourian requested copies of all records “relevant to the creation, scope, structure, and responsibilities of the Information Review Task Force,” as well as “conclusions, reports or assessments (provisional and/or final) that have been generated by the IRTF” and “Records of all previous FOIA requests for information pertinent to the IRTF.”

16. In order to assist the DIA in conducting a search for responsive records, the First Request included additional information about the records Khatchadourian sought, including the historical nature of the documents, as well as Secretary Gates' public acknowledgments regarding the IRTF.

17. Khatchadourian also requested expedited processing of the First Request. The First Request informed the DIA, among other things, that the requested records "will help the public to understand the current military proceeding now being brought against [Manning]."

18. The First Request also included a request for a fee benefit as a representative of the news media, as well as a request for a fee waiver. The First Request informed DIA that Plaintiff was "primarily engaged in disseminating information," and requested a waiver of all fees.

19. Khatchadourian certified in the First Request that the facts stated therein, including the statements concerning Plaintiff's need for expedited processing, were true and correct to the best of his knowledge and belief.

20. By letter dated February 21, 2012, Alesia Y. Williams ("Williams"), Chief of the FOIA Staff at DIA, acknowledged the First Request and notified Khatchadourian that, while there was a "substantial delay" in processing FOIA requests, the agency would process Plaintiff's request "as soon as possible."

21. Under Defendant DoD's FOIA regulations, "[r]ecords not exempt from disclosure under the Act shall, upon request, be made readily accessible to the public" 32 C.F.R. § 286.4(b). All DoD components, including Defendant DIA, are required to "ensure that procedural matters do not unnecessarily impede a requester from obtaining DoD records promptly." *Id.* at § 286.4(c).

22. The DIA's own FOIA regulations state that "[r]ecords will not be withheld solely because their release might result in criticism of the Department of Defense or this Agency." *Id.* at § 292.3(a)(4).

23. Manning was formally charged by the United States government on February 23, 2012. Jennifer Rizzo, *Bradley Manning charged*, CNN (Feb. 23, 2012), *archived at* perma.cc/7TYD-3X4U.

24. In or around February 2012, Defendant DIA sent an undated letter to Khatchadourian notifying him that his request was had been assigned to the "Complex Track" and that it was number 97 of 177 requests within the "Awaiting Tasking Queue." A true and correct copy of that letter is attached as Exhibit C, and is incorporated by reference herein.

25. DoD's FOIA regulations authorize its components to establish "multitrack" queues for processing requests, but each such queue must be organized to process requests on a "first-in, first-out" basis. 32 C.F.R. § 286.4(d)(2). The DIA is required by its own regulations to generally process FOIA requests and administrative appeals "in order of receipt." *Id.* at § 292.4(h)(2); § 292.7(c).

26. Under the DIA's FOIA regulations, it must ordinarily make a determination regarding the "availability, releasability, and cost" concerning a FOIA request within 10 working days of the date on which a written request is received. 32 C.F.R. § 292.4(h)(1). An extension of no more than 10 working days may be invoked by the DIA in "unusual circumstances." *Id.*

27. No further communications were received by Khatchadourian from Defendants regarding the First Request for approximately 18 months. During that time period, pretrial motions and proceedings continued in Manning's court martial.

28. On May 20, 2013, Khatchadourian wrote to the DIA via email to inquire as to the status of the First Request.

29. On May 23, 2013, having received no response to his May 20, 2013 letter, Khatchadourian called Rhonda Wilkins, a FOIA officer at the DIA, and requested *inter alia*, an estimated completion date. Ms. Wilkins told him that the First Request was with an analyst for subject matter review, but did not provide an estimated date of completion.

30. On or about June 3, 2013, Manning's court-martial trial began.

31. On June 24, 2013, Khatchadourian sent a letter to Defendant DIA via email requesting a status update as to the First Request. In that letter he noted that the request concerned records that had contemporary news relevance that would be lost if the DIA failed to process his request. Khatchadourian did not receive a response.

32. On or about June 27, 2013, Khatchadourian phoned Defendant DIA to inquire if the email of June 24 was received, and if so if it had been correctly filed. He reached Sharon Caballero, whom Plaintiff is informed and believes is a representative of the DIA's FOIA office. She explained that she could not access his case folder at that time.

33. On or about June 28, 2013, Sharon Caballero left Khatchadourian a voicemail to confirm receipt of his June 24 correspondence, and to inform him that her manager had someone looking at "the case so they can make a determination" and that they would contact him at a later unspecified date to provide an estimated time of completion of the request.

34. No one contacted Khatchadourian with a status update regarding the First Request.

35. On or about July 30, 2013, Manning's court-martial trial concluded.

36. On August 20, 2013, Khatchadourian again wrote to the DIA regarding the status of the First Request via email, once again requesting an estimated time of completion. A true and correct copy of this email is included in the email chain attached as Exhibit D, and is incorporated by reference herein.

37. The same day Khatchadourian received an email from an unidentified individual writing from the DIA's FOIA email address notifying him that the First Request was being processed and that it was number 589 of 870 requests to be processed. A true and correct copy of this email is included in the email chain attached as Exhibit D, and is incorporated by reference herein. An estimated date of completion was not provided.

38. On August 20, 2013, Khatchadourian responded to that email, copying Williams. In his response, Khatchadourian expressed his surprise that the First Request had somehow moved backward 492 spots in the queue from number 97 to number 589. Khatchadourian asked Williams to explain how or why that had occurred, and to identify the legal authority that permitted the DIA to move a request backward in the processing queue. A true and correct copy of this email is included in the email chain attached as Exhibit D, and is incorporated by reference herein.

39. Later that day, Khatchadourian received a response email from an unidentified person writing from the DIA's FOIA email address stating that the First Request had been "assigned to an analyst" and was "being processed." A true and correct copy of this email is included in the email chain attached as Exhibit D, and is incorporated by reference herein.

40. Still on August 20, 2013, Khatchadourian responded to the DIA, asking for an estimated completion date for the First Request and inquiring as to whether any already-processed portions of the First Request could be released. A true and correct copy of this email

is included in the email chain attached as Exhibit D, and is incorporated by reference herein. Defendants did not respond or provide an estimated date of completion.

41. On or about August 21, 2013, Manning was sentenced.

42. On September 3, 2013, Khatchadourian again wrote to Williams and the DIA via email requesting a status update as to the First Request, and reiterating his request for an estimated date of completion for that request. A true and correct copy of this email is included in the email chain attached as Exhibit D, and is incorporated by reference herein.

43. Williams responded to Khatchadourian's September 3, 2013 letter that same day, notifying him that the case was on her desk for final review and that a response to the request "should go out that week."

Defendants' Response to the First Request and Plaintiff's Administrative Appeal

44. The DIA responded to the First Request by letter dated September 12, 2013. The letter attached a limited set of records and notified Khatchadourian that DIA was withholding other records. A true and correct copy of the DIA's response is attached as Exhibit E, and is incorporated by reference herein.

45. The DIA's response was issued approximately 395 working days after the First Request was submitted, and approximately 15 working days after Manning's sentencing.

46. In the DIA's response to the First Request, Williams stated that the DIA had located six documents, totaling 140 pages, that were responsive, and that there were no previous FOIA requests for the same material.

47. Williams also stated that she had determined that "some portions of three documents (127 pages)" were exempt from disclosure pursuant to Exemptions 1, 3, 5 and 6 of FOIA. *Id.*

48. Williams also stated that she had determined that one document (8 pages) would be withheld in full pursuant to Exemptions 1, 3, 5 and 6 of FOIA. *Id.*

49. Williams finally stated that DIA was releasing two documents (5 pages) in full. *Id.*

50. Notwithstanding the assertions in the DIA's letter, only 46 pages of records, some partially redacted, were released to Plaintiff in response to the First Request.

51. On information and belief, the DIA withheld numerous pages from a least one document that was produced to Khatchadourian, without clear or specified legal justification.

52. On November 12, 2013, Khatchadourian timely filed an administrative appeal regarding the DIA's response to the First Request (the "Appeal").

53. Among other things, the Appeal stated Khatchadourian's concerns that the processing of the First Request, submitted in February of 2012, had been "improperly delayed to prevent the responsive materials from being released during the court martial of Bradley Manning, which concluded in June 2013 with his conviction on multiple charges. There was an obvious public/news interest in release of the materials before that time."

54. The Appeal asserted that the DIA had failed to conduct an adequate search for responsive records, pointing out, among other things, the improbability that "a military Task Force of more than a hundred people, operating 24 hours a day, seven days a week, for months . . . generated only six documents, and 140 pages of paperwork."

55. The Appeal also challenged as improper the DIA's withholdings of responsive agency records both in whole and in part pursuant to its claimed exemptions.

56. First, Khatchadourian appealed the DIA's determination that "some portions of three documents (127 pages)" were exempt from disclosure pursuant to Exemptions 1, 3, 5 and 6

of FOIA. Since DIA only produced 46 pages in response to the First Request, DIA's determination regarding the applicability of any exemptions to the 127 pages to which it referred remains unclear and unjustified.

57. Second, Khatchadourian appealed the DIA's invocation of Exemption 1 of FOIA to justify redacting unclassified paragraphs of the *Final Report of Defense Information Review Task Force*, a record produced only in part to Plaintiff in response to the First Request.

58. Third, Khatchadourian appealed the DIA's failure to produce segregable, non-exempt information responsive to the First Request.

59. On or about November 15, 2013, Williams acknowledged receipt of the Appeal by an undated letter and notified Khatchadourian that, while there was a "substantial delay" in processing FOIA requests, the DIA would process Plaintiff's "request" [sic] as soon as possible.

60. Having received no response from Defendants regarding the Appeal, on December 11, 2013, Khatchadourian sought the assistance of the Office of Government Information Services at the National Archives and Records Administration ("OGIS").

61. On December 18, 2013, Corinna Zarek ("Zarek"), an attorney-advisor at OGIS, informed Khatchadourian via email that the DIA had sent the First Request "back to the program office for them to re-search and re-review their efforts and then it will go to the FOIA appeals team to review from there." Zarek reported that DIA had approximately 100 appeals in its queue and estimated that it would take up to a year to respond to the Appeal.

62. On July 31, 2014, Khatchadourian wrote to Williams and the DIA FOIA office via email to inquire as to the status of his Appeal and to request an estimated date of completion.

63. Defendants did not respond to that July 31, 2014 inquiry.

64. On August 12, 2014, Khatchadourian wrote to Williams and the DIA FOIA office again to inquire as to the status of the Appeal and to request an estimated date of completion. In his email, Khatchadourian noted that the Appeal had been pending for more than six months.

65. Khatchadourian received an automated out of office email from Williams that same day. Defendants did not otherwise respond to Khatchadourian's August 12, 2014 inquiry.

66. On or about September 3, 2014, Khatchadourian again contacted OGIS for assistance regarding the Appeal.

67. On September 4, 2014, Khatchadourian wrote to Kirsten B. Mitchell ("Mitchell"), a facilitator at OGIS, requesting assistance. She offered to contact DIA regarding the Appeal.

68. Khatchadourian followed up with Mitchell on two occasions via email—on September 11, 2014 and on September 17, 2014. In neither instance did he receive a response.

69. On September 17, 2014, Khatchadourian again wrote to Williams and the DIA FOIA office to inquire as to the status of the Appeal and to request an estimated date of completion.

70. That same day Williams responded to Khatchadourian via email, stating: "I have personally your appeal [sic] for a status. We were able to locate a number of documents responsive to requester. [. . .] As of the beginning of September, your request was #84 of 116 in our queue. You should receive a status memo from DIA in late October with any updates to the status." A true and correct copy of this email is attached as Exhibit F, and is incorporated by reference herein.

71. By letter dated October 22, 2014, approximately 344 days after Plaintiff submitted the Appeal, Khatchadourian received a status update from DIA notifying him that the Appeal had been placed in DIA's "Complex Track." The DIA further notified Khatchadourian

that the Appeal was within the “Awaiting Response Queue; number 32 of 49.” A true and correct copy of this email is attached as Exhibit G, and is incorporated by reference herein.

72. On May 15, 2015, Khatchadourian again wrote to Williams and the DIA FOIA office to inquire as to the status of the Appeal and to request an estimated date of completion.

73. Defendants did not respond to that May 15, 2015 inquiry.

74. On May 27, 2015, Khatchadourian again wrote to Williams and the DIA FOIA office, as well as to Mitchell at OGIS, to inquire as to the status of the Appeal and to request an estimated date of completion. Once again, Defendants did not respond.

75. By letter dated October 23, 2015, DIA sent a letter to Khatchadourian stating that his Appeal was still being processed.

76. Per the DIA’s regulations, an administrative appeal must generally be processed within 20 working days, with the possibility of an extension of no more than 10 working days in “unusual circumstances.” 32 C.F.R. § 292.7(c).

77. As of the date of this Complaint, it has been approximately one thousand four hundred and sixty-seven (1,467) days since Khatchadourian’s First Request was filed and approximately eight hundred and thirty-two (832) days since the Appeal was filed. No further communications from Defendants regarding the First Request or the Appeal have been received by Khatchadourian.

Plaintiff’s Second FOIA Request

78. On October 20, 2015, Khatchadourian, in his role as a staff writer for *The New Yorker*, submitted a second FOIA request to Defendants (the “Second Request”). A true and correct copy of the Second Request is attached as Exhibit H, and is incorporated by reference herein.

79. The Second Request asked for certain categories of records concerning the First Request and the Appeal, specifically:

- All processing notes regarding request number FOIA-0147-2012. This FOIA request was submitted to the Defense Intelligence Agency on February 16, 2012;
- All processing notes regarding administrative appeal number APP-0008-2014. This FOIA appeal was submitted to the Defense Intelligence Agency on November 12, 2013;
- All records of communications, including but not limited to emails, regarding request number FOIA- 0147-2012 and/or appeal number APP-0008-2014.

80. In the Second Request, Khatchadourian included a request for a fee benefit as a representative of the news media, as well as a request for a fee waiver.

81. As of the date of this Complaint, Khatchadourian has not received any response or communication from Defendants concerning the Second Request.

82. As of the filing of this Complaint, it has been approximately eighty-three (83) working days since the Second Request was submitted.

CAUSES OF ACTION

Count I

Violation of FOIA for Failure to Comply with Statutory Deadlines

83. Plaintiff repeats and re-alleges the foregoing paragraphs.

84. Defendants are agencies subject to FOIA.

85. By the First Request and Second Request (collectively, the “Requests”), Plaintiff properly asked for records within the possession, custody and/or control of Defendants.

86. Defendants failed to make a determination with respect to the Requests within the 20 working day deadline required by FOIA. 5 U.S.C. § 556(a)(6)(A).

87. Plaintiff has and/or is deemed to have exhausted applicable administrative remedies with respect to the Requests. 5 U.S.C. § 552(a)(6)(A)(ii); *id.* § 552(a)(6)(C)(i).

Count II

Violation of FOIA for Wrongful Withholding of Agency Records

88. Plaintiff repeats and re-alleges the foregoing paragraphs.

89. Defendants are agencies subject to FOIA.

90. Through the Requests, Plaintiff properly asked for records within the possession, custody and/or control of Defendants.

91. Defendants have improperly withheld records responsive to the Requests in violation of FOIA. 5 U.S.C. § 552(a)(3)(A).

92. Plaintiff has and/or is deemed to have exhausted applicable administrative remedies with respect to the Requests. 5 U.S.C. § 552(a)(6)(A)(ii); *id.* § 552(a)(6)(C)(i).

Count III

Violation of FOIA for Actions of Defendants' Personnel in Processing Plaintiff's Requests

93. Plaintiff repeats and re-alleges the foregoing paragraphs.

94. Defendants are agencies subject to FOIA.

95. Through the Requests, Plaintiff properly asked for records within the possession, custody and/or control of Defendants.

96. Defendants have not only improperly withheld agency records responsive to Plaintiff's Requests, but the circumstances surrounding Defendants' withholdings raise questions

as to whether agency personnel acted arbitrarily or capriciously with respect to those withholdings. 5 U.S.C. § 552(a)(4)(F)(i).

Count IV

Violation of FOIA for Failure to Conduct a Reasonable Search

97. Plaintiff repeats and re-alleges the foregoing paragraphs.

98. Defendants are agencies subject to FOIA.

99. Through the Requests, Plaintiff properly asked for records within the possession, custody and/or control of Defendants.

100. Defendants failed to conduct a proper or sufficient search for records responsive to the Requests.

101. Defendants' failure to conduct a proper or sufficient search in response to the Requests violates their obligations under FOIA. 5 U.S.C. § 552(a)(3).

102. Plaintiff has and/or is deemed to have exhausted the applicable administrative remedies with respect to the Requests. 5 U.S.C. § 552(a)(6)(A)(ii); *id.* § 552(a)(6)(C)(i).

Count V

Violation of FOIA for Failure to Segregate and Produce Non-Exempt Material

103. Plaintiff repeats and re-alleges the foregoing paragraphs.

104. Defendants are agencies subject to FOIA.

105. Through the Requests, Plaintiff properly asked for records within the possession, custody and/or control of Defendants.

106. Defendants failed to segregate and produce non-exempt material in response to the Requests.

107. Defendants' failure to segregate and produce non-exempt material in response to the Requests violates their obligations under FOIA. 5 U.S.C. § 552(b).

108. Plaintiff has and/or is deemed to have exhausted the applicable administrative remedies with respect to the Requests. 5 U.S.C. § 552(a)(6)(A)(ii); *id.* § 552(a)(6)(C)(i).

Count VI

Violation of FOIA for Failure to Make a Determination with Respect to Administrative Appeals

109. Plaintiff repeats and re-alleges the foregoing paragraphs.

110. Defendants are agencies subject to FOIA.

111. Defendants failed to make a determination with regard to Plaintiff's Appeal regarding his First Request.

112. Defendants' failure to make a timely determination with respect to the Appeal violates their obligations under FOIA. 5 U.S.C. § 552(6)(A)(ii).

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests this Court:

- (1) order Defendants to conduct a reasonable search for all records responsive to Plaintiff's First and Second Requests, and to immediately disclose all non-exempt records responsive to the Requests in their entirety, as well as all non-exempt portions of responsive records;
- (2) issue a declaration that Plaintiff is entitled to disclosure of the records responsive to the First Request and Second Request;
- (3) enjoin Defendants from continuing to withhold any and all non-exempt records or portions thereof responsive to Plaintiff's First and Second Requests;

- (4) issue a declaration that the circumstances surrounding the withholding of records from Plaintiff raise questions as to whether agency personnel acted arbitrarily or capriciously with respect to Defendants' withholding of records pursuant to 5 U.S.C. § 552(a)(4)(F)(i);
- (5) award Plaintiff reasonable attorney's fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E);
- (6) grant such other relief as the Court may deem just and proper.

Dated: February 22, 2016

Respectfully submitted,

/s/ Katie Townsend
Katie Townsend
DC Bar No. 1026115
ktownsend@rcfp.org
THE REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
1156 15th St. NW, Suite 1250
Washington, DC 20005
Phone: (202) 795-9300
Facsimile: (202) 795-9310
Email: ktownsend@rcfp.org

Counsel of record for Plaintiff
Raffi Khatchadourian

Bruce D. Brown
DC Bar No. 457317
bbrown@rcfp.org
Adam A. Marshall*
DC Bar No. 1029423
amarshall@rcfp.org
Hannah Bloch-Wehba*
hblochwehba@rcfp.org
THE REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
1156 15th St. NW, Suite 1250
Washington, DC 20005

Phone: (202) 795-9300
Facsimile: (202) 795-9310

Of counsel for Plaintiff
Raffi Khatchadourian

*Applications to practice in the District of Columbia or before this are Court pending; practicing under the supervision of Plaintiff's counsel of record

EXHIBIT A

~~SECRET//NOFORN~~



DEFENSE INTELLIGENCE AGENCY

WASHINGTON, D.C. 20340-5100

INFO MEMO



~~S~~11-1421/CE

JUL 29 2011

FOR: SECRETARY OF DEFENSE

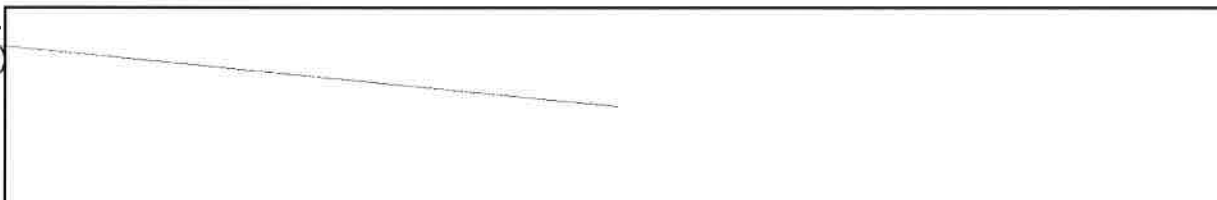
THRU: UNDER SECRETARY OF DEFENSE FOR INTELLIGENCE

FROM: Ronald L. Burgess, Jr., Lieutenant General, USA, Director, Defense Intelligence Agency

SUBJECT: (U) Information Review Task Force Final Report

(U//~~FOUO~~) On July 28, 2010, the Secretary of Defense directed the Defense Intelligence Agency to establish an Information Review Task Force (IRTF) to lead a comprehensive Department of Defense (DoD) review of classified documents posted to the WikiLeaks website. The IRTF completed its assessment and prepared a final report capturing the overarching impact on DoD equities from this compromise of classified information. The enclosed IRTF final report is the culmination of an interagency effort that identified the full range of compromised records and ensured the whole of Government was prepared for subsequent releases of Government information.

(b)(1), 1.4
(a), 1.4 (c)



Enclosure:

(U) Final Report of the Department of Defense Information Review Task Force, June 15, 2011, (Document is ~~SECRET//NOFORN~~), 1 cy

cc:

- Chairman of the Joint Chiefs of Staff
- Under Secretary of Defense for Policy
- Commander, United States Africa Command
- Commander, United States Central Command
- Commander, United States European Command
- Commander, United States Northern Command
- Commander, United States Pacific Command
- Commander, United States Southern Command
- Commander, United States Special Operations Command
- Office of the Secretary of Defense - General Counsel

(b)(3):10
USC 424

(U) Prepared by:



Derived from: Multiple Sources
Declassify on: 20300014

~~SECRET//NOFORN~~

EXHIBIT B

THE
NEW YORKER
4 TIMES SQUARE
NEW YORK, N.Y. 10036-7441



16 February 2012

Raffi Khatchadourian
Staff Writer
The New Yorker
4 Times Square, 20th Floor
New York, NY 10036
Tel: 212 286 5833
Email: raffi@newyorker.com

Defense Intelligence Agency
ATTN: DAN-1A (FOIA)
200 MacDill Blvd
Washington, DC 20340-5100

Re: Freedom of Information Act Request: Information Review Task Force

This is an Expedited Freedom of Information Act (FOIA) request for the following items:

- 1) Any documents relevant to the creation, scope, structure, and responsibilities of the Information Review Task Force (IRTF, formerly TF 725). The IRTF was created on or about 29 July 2010, to conduct damage assessments of US materials provided to, or suspected to have been provided to, WikiLeaks;
- 2) Any conclusions, reports, or assessments (provisional and/or final) that have been generated by the IRTF.
- 3) Records of all previous FOIA requests for information pertinent to the IRTF.

The IRTF is not a secret organization. Shortly after its creation, its existence was discussed openly by multiple Department of Defense (DoD) Components—in official documentation and by chief public affairs officer Col. David Lapan.¹ The Wall Street Journal reported that “Brig. Gen. Robert Carr of the Defense Intelligence Agency” was tasked with leading the IRTF.² Basic information about the IRTF’s structure—

¹ <http://www.thedailybeast.com/articles/2010/09/12/pentagons-wikileaks-war-room-readies-for-new-document-dump.html>,

² http://online.wsj.com/article/SB10001424052702304741404575564613428879600.html?mod=rss_whats_news_us,



the amount of people working for the task force, its base—have also been released. On 16 August 2010, Defense Secretary Robert Gates wrote to the Senate Armed Services describing his decision to establish the IRTF, and he summarized the conclusions of its “initial review.” That letter is in the public domain.

The documents that we are requesting are historical in nature. (The task force was established to anticipate leaks, which have since been released.) Some of the documents are administrative. And much of the material at issue is not classified. The primary focus of the IRTF was US government material that PFC Bradley Manning allegedly turned over to WikiLeaks. Recently, during PFC Manning’s Article 32 hearing (16 December 2011, Forte Meade), Special Agent Tony Graham indicated that the so-called “Collateral Murder” video was not classified. More than ten thousand files in the so-called “Iraq War Logs” were also not classified, and over 130,000 State Department cables in the so-called “Cablegate” leak were labeled unclassified. That Secretary Gates was able to publicly summarize an IRTF “initial review” indicates that the review contains material of an unclassified nature.

In the event that access to any of the requested records is denied, please note: The FOIA provides that even when portions of a requested file are exempted from release the remainder must still be released. As a 2008 DoD instruction notes, “A classified document containing unclassified information may not be denied in total under Exemption 1.”³ We therefore request that we be provided with all non-exempt portions that are reasonably segregable. We further request that you describe the deleted material in detail and specify the statutory basis for the denial, as well as your reasons for believing that the alleged statutory justification applies in this instance. Please separately state your reasons for not invoking your discretionary powers to release the requested documents in the public interest. Such statements will be helpful in deciding whether to appeal an adverse determination, and in formulating arguments in case an appeal is taken.

Please provide expedited processing of this request, which concerns a matter of urgency. The public has a need for this information, which describes how the military took steps to anticipate unauthorized disclosures on an unprecedented scale, and will contribute significantly to public understanding of the function and efficacy of the government. The material will help the public to understand the current military proceeding now being brought against PFC Bradley Manning.

This request is not meant to be exclusive of records that, though not specifically requested, have a reasonable relationship to the subject matter of this request.

³ Also, see DoD FOIA Program (DoD 5400.7-R), which states: “Although portions of some records may be denied, the remaining reasonably segregable portions must be released to the requester when it reasonably can be assumed that a skillful and knowledgeable person could not reconstruct the excised information.”

EXHIBIT C



DEFENSE INTELLIGENCE AGENCY

WASHINGTON, D.C. 20340-5100



U-12-4500/DAN-1A (FOIA)

Mr. Raffi Khatchadourian
The New Yorker
4 Time Square
New York, NY 10036

Dear Mr. Khatchadourian:

This is a status update on your Freedom of Information Act (FOIA) request, case number FOIA-0147-2012, received in this office on February 17, 2012. Your request was determined to fall within our Complex Track for FOIA processing. This simply means that your request involved a large amount of records, or that the records requested require significant review within this agency or consultations with other government agencies. Please be assured that our office is committed to processing your request as soon as possible as DIA continues its efforts to eliminate the large backlog of pending FOIA requests.

Because your request falls within the Complex Track and has been pending for a period of time greater than the statutory allowance, this office has determined that it may be helpful for us to provide greater explanation concerning the status of your request. This office sorts backlogged requests into three functional queues for management purposes. These three queues are explained further below:

Awaiting Tasking Queue: includes requests that must be tasked within the agency for subject matter experts (SME) search and/or review of the responsive records.

Awaiting Response Queue: includes requests that have been tasked and are awaiting response or requests which have been referred to other government agencies for review of their equities.

Ready to Work Queue: includes requests, which all responses have been received and awaiting processing of final response to the requester.

Your request is currently in the Awaiting Tasking Queue; #97 of 177. Our current administrative workload is 1,112 open FOIA requests.

We solicit your patience and understanding and assure you, we will process your request as soon as possible. If you have any questions, please contact the FOIA Requester Service Center, at (301) 394-5587 and reference your case number.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alesia Y. Williams".

Alesia Y. Williams
Chief, Freedom of Information Act Staff

EXHIBIT D

Tuesday, September 3, 2013 3:37:29 PM Eastern Daylight Time

Subject: FW: New Yorker magazine request FOIA-0147-2012
Date: Tuesday, September 3, 2013 3:37:03 PM Eastern Daylight Time
From: Khatchadourian, Raffi
To: Alesia.Williams@dodiis.mil
CC: foia@dodiis.mil

Dear Ms. Williams,

I am writing to follow up on the email below, which is itself a follow up of previous emails dating back to May. We are now in September. The two-point request below pertinent to our FOIA case (FOIA-0147-2012) is so simple, and we have a legal right to make the request and get an answer. I'm really confused as to why it has been so hard to provide us with a reply.

I am a big believer in the FOIA process, and when journalists ask me for advice about it I always tell them that they should not assume it is an adversarial one. I have always been happy to work with the FOIA officer or liaison, so that neither side is getting frustrated or is wasting time. On the whole, I have had good experiences with this approach. However, in this case, our request appears to be running into confusing impediments, and getting a straightforward, legally mandated answer to an inquiry appears to be beyond our reach.

I realize that your office is processing many complex requests, and perhaps it is even understaffed, so getting back to every requester can be hard, let alone responding in a prompt fashion. Nevertheless, our request is not any request. It is *our* request, and it is important to us, and if we can't get an answer to the straightforward inquiry below, then we will be forced to go to the next level in this process, much as I'd prefer not to, since that it will only create more paperwork and more hassle for everyone involved.

Sincerely,
Raffi

From: <Khatchadourian>, Raffi Khatchadourian <Raffi@newyorker.com>
Date: Tuesday, August 20, 2013 2:47 PM
To: FOIA <foia@dodiis.mil>
Cc: "Alesia.Williams@dodiis.mil" <Alesia.Williams@dodiis.mil>
Subject: Re: New Yorker magazine request FOIA-0147-2012

To Whom It May Concern:

Thank you. I appreciate the clarification. The key question in our letters from May 2013 and from June 2013 and from today — they are all basically the same -- are about the estimated time of completion. This is the information that we have been trying to learn in calls, emails, and letters these past several months, and that 5 USC § 552 (a)(7)(ii) states that we have a right to learn. That statute states that each government agency handling a FOIA request shall provide "an estimated date on which the agency will complete action on the request." I'm trying to find out what the estimated completion date is, now that it is out of the queue and currently being processed. Specifically, can you:

1. please let us know what the estimated completion date is for the entirety of our request (FOIA-0147-2012), and,
2. please let us know if there are already processed portions of the request that can be sent immediately while the rest of it is under review.

Many thanks in advance.

Sincerely,
Raffi

From: FOIA <foia@dodiis.mil>
Date: Tuesday, August 20, 2013 2:19 PM
To: Raffi Khatchadourian <Raffi@newyorker.com>
Subject: RE: New Yorker magazine request FOIA-0147-2012

Your request has been assigned to an analyst and is currently being processed; please accept our apologies for the confusion.

We appreciate your patience.

DIA, FOIA Document Review & Analysis Branch
301.394.5587
301.394.5356 (Fax)
FOIA@dodiis.mil

From: Khatchadourian, Raffi [<mailto:Raffi@newyorker.com>]
Sent: Tuesday, August 20, 2013 12:16 PM
To: FOIA
Cc: Williams, Alesia Y.
Subject: Re: New Yorker magazine request FOIA-0147-2012

Dear Ms. Williams,

Many thanks for your response. However, I am confused about what you have written to me below. On 17 February 2012, you sent me a status update indicating that we were #97 in the queue, out of 177 cases. That was more than a year ago. When I checked in again, on 23 May 2013, in a phone call with Rhonda Wilkins at 3:29 pm, she told me that the request was no longer in the tasking queue, but in fact "with an analyst for subject matter expert review." No one we have subsequently talked to at DIA FOIA has indicated to us otherwise. Ms. Wilkins told us she did not have information about how long the review would take, but we never imagined in our follow up requests for an update that our case would fall back into the queue — to a slot that was behind where it apparently was more than a year ago! Please explain how this has happened, and the legal provisions in the FOIA statute that permit a case to move backward in the queue in this fashion.

Sincerely,
Raffi

From: FOIA <foia@dodiis.mil>
Date: Tuesday, August 20, 2013 11:57 AM
To: Raffi Khatchadourian <Raffi@newyorker.com>
Cc: "Williams, Alesia Y." <Alesia.Williams@dodiis.mil>
Subject: RE: New Yorker magazine request FOIA-0147-2012

Your request is currently in queue; number 589 of 870 cases to be processed. Please be assured that the

DIA is actively working on your request, and is committed to processing your request as soon as possible. We appreciate your patience.

DIA, FOIA Document Review & Analysis Branch
301.394.5587
301.394.5356 (Fax)
FOIA@dodiis.mil

From: Khatchadourian, Raffi [<mailto:Raffi@newyorker.com>]
Sent: Tuesday, August 20, 2013 11:39 AM
To: FOIA; foia@dia.mil
Cc: Williams, Alesia Y.; margaret.bestrain@dia.mil
Subject: New Yorker magazine request FOIA-0147-2012

Dear Ms. Williams,

I am writing to follow up on a request for a status update on FOIA 0147-2012 that we filed two months ago, which in turn was a follow up for an identical request for a status update that we made in May of this year. We just want to get a sense of where we are in the process, and what kind of time frame we can expect for completion. Please see the attached PDF for our official request for this information, along with some additional detail, and please include it in our file with the rest of our correspondence. We realize this is a complex request — that it has been put in the Complex Track—but the status update that we are asking for should not be too difficult to produce. If there is any information that we can further provide to hasten this process, please do let us know.

Sincerely,
Raffi

++++++
Raffi Khatchadourian
The New Yorker
4 Times Square, 20th Floor
New York, NY 10036
Tel: 212 286 5833

EXHIBIT E



DEFENSE INTELLIGENCE AGENCY

WASHINGTON, D.C. 20340-5100



SEP 12 2013

U-13-1,518/FAC2A1 (FOIA)

Mr. Raffi Khatchadourian
The New Yorker
4 Times Square, 20th Floor
New York, NY 10036

Dear Mr. Khatchadourian:

This responds to your Freedom of Information Act (FOIA) request, dated February 16, 2012, that you submitted to the Defense Intelligence Agency (DIA) for documents *relevant to the creation, scope, structure, and responsibilities of the Information Review Task Force (IRTF); any conclusions, reports, or assessments (provisional or final) generated by the IRTF; and records of all previous FOIA requests for information pertinent to the IRTF*. I apologize for the delay in responding to your request. DIA continues its efforts to eliminate the large backlog of pending FOIA requests. In order to properly respond, it was necessary consult with multiple offices within the agency.

In response to items one and two of your FOIA request, a search of DIA's systems of records located six documents (140 pages) responsive to your request. In response to item three of your request, this is the first request received by this Agency.

Upon review, I have determined that some portions of three documents (127 pages) must be withheld in part from disclosure pursuant to the FOIA. The withheld portions are exempt from release pursuant to Exemptions 1, 3, 5 and 6 of the FOIA, 5 U.S.C. § 552(b)(1), (b)(3), (b)(5) and (b)(6). Exemption 1 applies to information properly classified under the criteria of Executive Order 13,526. Exemption 3 applies to information specifically exempted by a statute establishing particular criteria for withholding. The applicable statutes are 10 U.S.C. § 424 and 50 U.S.C. § 403-1(i). Statute 10 U.S.C. § 424 protects the identity of DIA employees, the organizational structure of the agency, and any function of DIA. Statute 50 U.S.C. § 403-1(i) protects intelligence sources and methods. Exemption 5 applies to inter-agency or intra-agency information which would not be available by law to a party other than an agency in litigation with the agency. Exemption 6 applies to information which if released would constitute an unwarranted invasion of the personal privacy of other individuals.

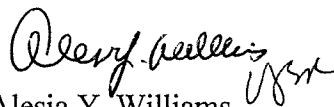
Further, I have determined that one of the responsive documents (8 pages) must be withheld in full pursuant to the FOIA. These withheld documents are exempt from release pursuant to Exemptions 1, 3, 5 and 6 of the FOIA, 5 U.S.C. § 552(b)(1), (b)(3), (b)(5) and (b)(6).

Finally, I have determined that the remaining two documents (5 pages) are appropriate for release in full. DIA has not withheld any reasonably segregable non-exempt portions of the records.

If you are not satisfied with my response to your request, you may exercise your right to file an administrative appeal by writing to the address below and referring to case number FOIA-0147-2012. Your appeal must be postmarked no later than 60 days after the date of this letter.

Defense Intelligence Agency
ATTN: FAC2A1 (FOIA)
200 MacDill Blvd
Washington, D.C. 20340-5100

Sincerely,



Alesia Y. Williams
Chief, Freedom of Information Act Staff

Enclosures: a/s

EXHIBIT F

Wednesday, September 17, 2014 2:14:14 PM Eastern Daylight Time

Subject: RE: The New Yorker APP 0008-2014
Date: Wednesday, September 17, 2014 2:08:38 PM Eastern Daylight Time
From: Williams, Alesia Y.
To: Khatchadourian, Raffi, FOIA
CC: kirsten.mitchell@nara.gov, Evitt, Brentin V.

Good Afternoon Mr. Khatchadourian,

My apologies for this Agency not providing you a response. I have personally your appeal for a status. We were able to locate a number of documents responsive to requester. The documents are being tasked to the appropriate offices for review. Due to the large amount of documents, it will take some time for the appropriate offices to review for release determination. As of the beginning of September, your request was #84 of 116 in our queue. You should review a status memo from DIA in late October with any updates to the status.

Again, my apologizes for not responding.

Alesia Y. Williams
Chief, FOIA and Declassification Services Office
Defense Intelligence Agency
(301) 394-5188
(301) 394-5356 (fax)

From: Khatchadourian, Raffi [mailto:Raffi@newyorker.com]
Sent: Wednesday, September 17, 2014 1:50 PM
To: FOIA
Cc: Williams, Alesia Y.; kirsten.mitchell@nara.gov
Subject: FW: The New Yorker APP 0008-2014

To Whom It May Concern,

We are trying to get an update on our FOIA appeal. The email below (dated July), and others like it, have generated zero response. I would like to direct your attention to this Web site posted by the FOIA Ombudsman, and titled "How to Invite a FOIA Lawsuit": <http://blogs.archives.gov/foiablog/2012/02/03/how-to-invite-a-foia-lawsuit/>

The most basic legal obligations of a FOIA officer to a requester are listed by the Ombudsman. The reasons for common "litigation invitations" include 1) "Failing to talk to a requester." And: 2) "Failing to give a requestor an estimated date of completion" And, finally: 3) "Failing to work with OGIS in good faith."

We have tried to get a basic, basic update on our appeal by directly writing to FOIA/DIA. We have tried to get an update via OGIS. Our appeal is nearly a year in processing, and it is not unreasonable to try to determine where things stand. This is just a fundamental inquiry about where we are in the roster, what stage of evaluation the appeal is in! We can only say one reliable thing about the process so far: any inquiry we make, no matter the circumstance or channel, produces none of the relevant legally mandated information.

Raffi Khatchadourian

The New Yorker
4 Times Square, 20th Floor
New York, NY 10036

EXHIBIT G



DEFENSE INTELLIGENCE AGENCY

WASHINGTON, D.C. 20340-5100



U-14-4500/FAC2A1 (FOIA)

Mr. Raffi Khatchadourian
The New Yorker
4 Times Square, 10th Floor
New York, NY 10036

OCT 22 2014

Dear Mr. Khatchadourian:

This is a status update on your Appeal request, case number APP-0008-2014, received in this office on November 15, 2013. Your Appeal request was determined to fall within our Complex Track for Appeal processing. This simply means that your Appeal request involved a large amount of records, or that the records requested require significant review within this agency or consultations with other government agencies. Please be assured that our office is committed to processing your Appeal request as soon as possible.

Because your Appeal request falls within the Complex Track and has been pending for a period of time greater than the statutory allowance, this office has determined that it may be helpful for us to provide greater explanation concerning the status of your Appeal request. This office sorts backlogged requests into three functional queues for management purposes. These three queues are explained further below:

Awaiting Tasking Queue: includes requests that must be tasked within the agency for subject matter experts (SME) search and/or review of the responsive records.

Awaiting Response Queue: includes requests that have been tasked and are awaiting response or requests which have been referred to other government agencies for review of their equities.

Ready to Work Queue: includes requests, which all responses have been received and awaiting processing of final response to the requester.

Your Appeal request is currently in the "Awaiting Response" Queue; number 32 of 49. Our current administrative workload is 81 open Appeal requests.

We solicit your patience and understanding and assure you, we will process your Appeal request as soon as possible. If you have any questions, please contact the FOIA Requester Service Center, at (301) 394-5587 and reference your case number.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alesia Y. Williams".

Alesia Y. Williams
Chief, FOIA and Declassification Services Office

EXHIBIT H

From: <Khatchadourian>, Raffi Khatchadourian <Raffi@newyorker.com>

Date: Tuesday, October 20, 2015 at 3:23 PM

To: "FOIA@dodis.mil" <FOIA@dodis.mil>

Subject: FOIA Request: The New Yorker

To Whom It May Concern:

This is a Freedom of Information Act (FOIA) request for the following:

1. All processing notes regarding request number FOIA-0147-2012. This FOIA request was submitted to the Defense Intelligence Agency on February 16, 2012;
2. All processing notes regarding administrative appeal number APP-0008-2014. This FOIA appeal was submitted to the Defense Intelligence Agency on November 12, 2013;
3. All records of communications, including but not limited to emails, regarding request number FOIA-0147-2012 and/or appeal number APP-0008-2014.

These records will provide insight into the Freedom of Information Act process in two ways that serve the public interest. They will illuminate the FOIA process at DIA generally, and also shed light on a specific request (and appeal) for public records that has not been resolved in years.

This May, our most recent inquiry to DIA for basic information about APP-0008-2014 — information that the agency is legally obligated to provide — was met with silence. Silence was the modus operandi for DIA on several occasions during our attempt to obtain information about the responsive records. Our appeal notes other irregularities that appear to be troubling.

This request is not meant to be exclusive or records that, though no specifically requested, have a reasonable relationship to the subject matter of this request.

As a journalist with The New Yorker magazine, and as a member of the news media, we are requesting a waiver of all fees, and are requesting that the information be provided to us in electronic format.

Sincerely,
Raffi Khatchadourian

CIVIL COVER SHEET

JS-44 (Rev. 7/13 DC)

| | |
|---|--|
| <p>I. (a) PLAINTIFFS Raffi Khatchadourian</p> <p>(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>88888</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Katie Townsend The Reporters Committee for Freedom of the Press 1156 15th St. NW, Suite 1250 Washington, DC 20005</p> | <p>DEFENDANTS Defense Intelligence Agency, Department of Defense</p> <p>COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____ (IN U.S. PLAINTIFF CASES ONLY)</p> <p><small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small></p> <p>ATTORNEYS (IF KNOWN)</p> |
|---|--|

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|--|---|-------------------------|---|-------------------------|-------------------------|------------|------------|-----------------------|-------------------------|-------------------------|---|-------------------------|-------------------------|--------------------------|-------------------------|-------------------------|---|-------------------------|-------------------------|---|-------------------------|-------------------------|----------------|-------------------------|-------------------------|
| <p>II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)</p> <p><input type="radio"/> 1 U.S. Government Plaintiff <input type="radio"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input checked="" type="radio"/> 2 U.S. Government Defendant <input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)</p> | <p>III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) FOR DIVERSITY CASES ONLY!</p> <table style="width:100%; border: none;"> <tr> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DFT</td> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DFT</td> </tr> <tr> <td>Citizen of this State</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="radio"/> 4</td> <td style="text-align: center;"><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="radio"/> 5</td> <td style="text-align: center;"><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="radio"/> 6</td> <td style="text-align: center;"><input type="radio"/> 6</td> </tr> </table> | | PTF | DFT | | PTF | DFT | Citizen of this State | <input type="radio"/> 1 | <input type="radio"/> 1 | Incorporated or Principal Place of Business in This State | <input type="radio"/> 4 | <input type="radio"/> 4 | Citizen of Another State | <input type="radio"/> 2 | <input type="radio"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="radio"/> 5 | <input type="radio"/> 5 | Citizen or Subject of a Foreign Country | <input type="radio"/> 3 | <input type="radio"/> 3 | Foreign Nation | <input type="radio"/> 6 | <input type="radio"/> 6 |
| | PTF | DFT | | PTF | DFT | | | | | | | | | | | | | | | | | | | | |
| Citizen of this State | <input type="radio"/> 1 | <input type="radio"/> 1 | Incorporated or Principal Place of Business in This State | <input type="radio"/> 4 | <input type="radio"/> 4 | | | | | | | | | | | | | | | | | | | | |
| Citizen of Another State | <input type="radio"/> 2 | <input type="radio"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="radio"/> 5 | <input type="radio"/> 5 | | | | | | | | | | | | | | | | | | | | |
| Citizen or Subject of a Foreign Country | <input type="radio"/> 3 | <input type="radio"/> 3 | Foreign Nation | <input type="radio"/> 6 | <input type="radio"/> 6 | | | | | | | | | | | | | | | | | | | | |

IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

| | | | |
|--|---|---|---|
| <p><input type="radio"/> A. Antitrust</p> <p><input type="checkbox"/> 410 Antitrust</p> | <p><input type="radio"/> B. Personal Injury/Malpractice</p> <p><input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Medical Malpractice <input type="checkbox"/> 365 Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Product Liability</p> | <p><input type="radio"/> C. Administrative Agency Review</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><u>Social Security</u> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))</p> <p><u>Other Statutes</u> <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)</p> | <p><input type="radio"/> D. Temporary Restraining Order/Preliminary Injunction</p> <p>Any nature of suit from any category may be selected for this category of case assignment.</p> <p>*(If Antitrust, then A governs)*</p> |
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| <p><input type="radio"/> E. General Civil (Other)</p> <p><u>Real Property</u> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property</p> <p><u>Personal Property</u> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability</p> | <p>OR</p> | <p><input type="radio"/> F. Pro Se General Civil</p> <p><u>Bankruptcy</u> <input type="checkbox"/> 422 Appeal 27 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p><u>Prisoner Petitions</u> <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions <input type="checkbox"/> 560 Civil Detainee – Conditions of Confinement</p> <p><u>Property Rights</u> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark</p> <p><u>Federal Tax Suits</u> <input type="checkbox"/> 870 Taxes (US plaintiff or defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609</p> |
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| <p><u>Forfeiture/Penalty</u> <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other</p> <p><u>Other Statutes</u> <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 430 Banks & Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organization</p> | <p><input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)</p> |
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| <input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee | <input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)* | <input checked="" type="radio"/> I. FOIA/Privacy Act <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)* | <input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans) |
| <input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | <input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education | <input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran’s Benefits <input type="checkbox"/> 160 Stockholder’s Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | <input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act) |

V. ORIGIN
 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multi-district Litigation
 7 Appeal to District Judge from Mag. Judge

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
 5 U.S.C. § 552, Violations of the Freedom of Information Act

| | | | |
|-------------------------------------|--|---|--|
| VII. REQUESTED IN COMPLAINT | CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/> | DEMAND \$ _____ | JURY DEMAND: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> |
| VIII. RELATED CASE(S) IF ANY | (See instruction) | YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> | If yes, please complete related case form |

| | |
|---------------|----------------------------------|
| DATE: 2/22/16 | SIGNATURE OF ATTORNEY OF RECORD: |
|---------------|----------------------------------|

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk’s Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

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

Raffi Khatchadourian

Plaintiff

v.

Defense Intelligence Agency
and Department of Defense

Defendant

)
)
)
)
)
)
)
)
)
)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

DEFENSE INTELLIGENCE AGENCY
200 MacDill Blvd.
Joint Base Anacostia Bolling
Washington, DC 20340-5100

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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

Raffi Khatchadourian

Plaintiff

v.

Defense Intelligence Agency
and Department of Defense

Defendant

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)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

DEPARTMENT OF DEFENSE
1400 Defense Pentagon
Washington, DC 20301

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify):* _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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

| | | | |
|------------------------------|-------------|---|-------------------------------------|
| <hr/> | |) | |
| RAFFI KHATCHADOURIAN, | |) | |
| | |) | |
| | Plaintiff, |) | |
| v. | |) | Civil Action No. 1:16-cv-0311 (RCL) |
| | |) | |
| DEFENSE INTELLIGENCE AGENCY, | |) | |
| <i>et al.</i> , | |) | |
| | Defendants. |) | |
| <hr/> | |) | |

DEFENDANTS’ ANSWER TO PLAINTIFF’S COMPLAINT

Defendants Department of Defense (“DOD”) and Defense Intelligence Agency (“DIA”) (collectively “Defendants”) hereby answer the complaint (Dkt. No. 1) in the following numbered paragraphs, which correspond to the complaint’s numbered paragraphs.

1. Defendants admit only that Plaintiff, Raffi Khatchadourian’s, complaint sets forth allegations under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and seeks declaratory, injunctive and various other relief. Defendants lack knowledge or information sufficient to form a belief as to the truth of Plaintiff’s role at The New Yorker. The remainder of this paragraph is a legal conclusion to which no answer is required. To the extent a response is deemed required, the allegations are denied.

2. This paragraph is a legal conclusion to which no answer is required.

3. This paragraph is a legal conclusion to which no answer is required.

4. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

5. This paragraph is a legal conclusion to which no answer is required. To the extent an answer is deemed required, Defendants admit that DIA is an agency.

6. This paragraph is a legal conclusion to which no answer is required. To the extent an answer is deemed required, Defendants admit only that DOD is an agency.

7. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

8. The allegations in this paragraph do not set forth a claim for relief or aver facts in support of a claim to which an answer is required.

9. The allegations in this paragraph do not set forth a claim for relief or aver facts in support of a claim to which an answer is required.

10. The allegations in this paragraph do not set forth a claim for relief or aver facts in support of a claim to which an answer is required.

11. The allegations in this paragraph do not set forth a claim for relief or aver facts in support of a claim to which an answer is required.

12. The allegations in this paragraph do not set forth a claim for relief or aver facts in support of a claim to which an answer is required.

13. The allegations in this paragraph do not set forth a claim for relief or aver facts in support of a claim to which an answer is required.

14. Defendants admit that DIA received a FOIA request from Plaintiff dated February 16, 2012, which is accurately represented by corrected Exhibit B, Dkt. No. 4-1. The Court is respectfully referred to the document for a complete and accurate statement of its content. Defendants, however, lack knowledge or information sufficient to form a belief as to the truth of Plaintiff's role at The New Yorker.

15. Defendants admit that DIA received a FOIA request from Plaintiff dated February 16, 2012, which is accurately represented by corrected Exhibit B. The Court is respectfully referred to the document for a complete and accurate statement of its content.

16. With respect to the first clause of this sentence, Defendants lack knowledge or information sufficient to form a belief as to the truth of this allegation. With respect to the second clause of this sentence, Defendants admit that DIA received a FOIA request from Plaintiff dated February 16, 2012, which is accurately represented by corrected Exhibit B. The Court is respectfully referred to the document for a complete and accurate statement of its content.

17. Defendants admit that DIA received a FOIA request from Plaintiff dated February 16, 2012, which is accurately represented by corrected Exhibit B. The Court is respectfully referred to the document for a complete and accurate statement of its content. Defendants admit that Plaintiff requested that this request be expedited.

18. Defendants admit that DIA received a FOIA request from Plaintiff dated February 16, 2012, which is accurately represented by corrected Exhibit B. The Court is respectfully referred to the document for a complete and accurate statement of its content. Defendants admit that Plaintiff requested a fee waiver.

19. Defendants admit that DIA received a FOIA request from Plaintiff dated February 16, 2012, which is accurately represented by corrected Exhibit B. The Court is respectfully referred to the document for a complete and accurate statement of its content.

20. Defendants admit that DIA sent a letter to Plaintiff dated February 21, 2012. Defendants respectfully refer the Court to the letter for a complete and accurate statement of its contents.

21. This paragraph is a legal conclusion to which no answer is required.

22. This paragraph is a legal conclusion to which no answer is required.

23. The allegations in this paragraph do not set forth a claim for relief or aver facts in support of a claim to which an answer is required.

24. Defendants admit that DIA sent a letter in response to Plaintiff's FOIA request, which is accurately represented by Exhibit C. This letter was undated, and as such Defendants lack knowledge or information sufficient to form a belief as to the date of this letter. Defendants respectfully refer the Court to the letter for a complete and accurate statement of its content.

25. This paragraph is a legal conclusion to which no answer is required.

26. This paragraph is a legal conclusion to which no answer is required.

27. After a reasonable review of the records of the DIA FOIA office, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence this paragraph. As to the second sentence of this paragraph, the allegations therein do not set forth a claim for relief or aver facts in support of a claim to which an answer is required.

28. After a reasonable review of records in the DIA FOIA office, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

29. Defendants admit that DIA's records reflect that Rhonda Wilkins, who was employed by the DIA FOIA office, received a telephone call from Plaintiff on May 23, 2013. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

30. The allegations in this paragraph do not set forth a claim for relief or aver facts in support of a claim to which an answer is required.

31. Defendants admit that DIA received an email from Plaintiff dated June 24, 2013. Defendants respectfully refer the Court to the email for a complete and accurate statement of its content. After a reasonable review of records in the DIA FOIA office, Defendants lack knowledge or information sufficient to form a belief as to whether Plaintiff received a response

32. After a reasonable review of records in the DIA FOIA office, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

33. After a reasonable review of records in the DIA FOIA office, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

34. Denied.

35. The allegations in this paragraph do not set forth a claim for relief or aver facts in support of a claim to which an answer is required.

36. Defendants admit that DIA and Plaintiff exchanged several emails dated August 20, 2013, which are accurately represented by Exhibit D. Defendants respectfully refer the Court to the emails for a complete and accurate statement of their contents.

37. Defendants admit that DIA and Plaintiff exchanged several emails dated August 20, 2013, which are accurately represented by Exhibit D. Defendants respectfully refer the Court to the emails for a complete and accurate statement of their contents.

38. Defendants admit that DIA and Plaintiff exchanged several emails dated August 20, 2013, which are accurately represented by Exhibit D. Defendants respectfully refer the Court to the emails for a complete and accurate statement of their contents.

39. Defendants admit that DIA and Plaintiff exchanged several emails dated August 20, 2013, which are accurately represented by Exhibit D. Defendants respectfully refer the Court to the emails for a complete and accurate statement of their contents.

40. Defendants admit that DIA and Plaintiff exchanged several emails dated August 20, 2013, which are accurately represented by Exhibit D. Defendants respectfully refer the Court to the emails for a complete and accurate statement of their contents.

41. The allegations in this paragraph do not set forth a claim for relief or aver facts in support of a claim to which an answer is required.

42. Defendants admit DIA received an email from Plaintiff dated September 3, 2013, which is accurately represented by Exhibit D. Defendants respectfully refer the Court to the email for a complete and accurate statement of its content.

43. After a reasonable review of records in the DIA FOIA office, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

44. Defendants admit DIA sent a letter to Plaintiff dated September 12, 2013 in response to his FOIA request, which is accurately represented by Exhibit E. Defendants respectfully refer the Court to the letter for a complete and accurate statement of its content.

45. Defendants admit only that DIA sent a letter to Plaintiff dated September 12, 2013 in response to his FOIA request dated 16 February 2012.

46. Defendants admit DIA sent a letter to Plaintiff dated September 12, 2013 in response to his FOIA request, which is accurately represented by Exhibit E. Defendants respectfully refer the Court to the letter for a complete and accurate statement of its content.

47. Defendants admit DIA sent a letter to Plaintiff dated September 12, 2013 in response to his FOIA request, which is accurately represented by Exhibit E. Defendants respectfully refer the Court to the letter for a complete and accurate statement of its content.

48. Defendants admit DIA sent a letter to Plaintiff dated September 12, 2013 in response to his FOIA request, which is accurately represented by Exhibit E. Defendants respectfully refer the Court to the letter for a complete and accurate statement of its content.

49. Defendants admit DIA sent a letter to Plaintiff dated September 12, 2013 in response to his FOIA request, which is accurately represented by Exhibit E. Defendants respectfully refer the Court to the letter for a complete and accurate statement of its content.

50. After a reasonable review of records in the DIA's FOIA office, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

51. This paragraph is a legal conclusion to which no answer is required. To the extent that a response is required, Defendants deny that Plaintiff is entitled to any relief.

52. Defendants admit DIA received a letter dated November 12, 2013 from Plaintiff appealing its September 12, 2013 response to Plaintiff's FOIA request dated February 16, 2012. Defendants respectfully refer the Court to the letter for a complete and accurate statement of its contents.

53. Defendants admit DIA received a letter dated November 12, 2013 from Plaintiff appealing its September 12, 2013 response to Plaintiff's FOIA request dated February 16, 2012. Defendants respectfully refer the Court to the letter for a complete and accurate statement of its contents.

54. Defendants admit DIA received a letter dated November 12, 2013 from Plaintiff appealing its September 12, 2013 response to Plaintiff's FOIA request dated 16 February 2012. Defendants respectfully refer the Court to the letter for a complete and accurate statement of its contents.

55. Defendants admit DIA received a letter dated November 12, 2013 from Plaintiff appealing its September 12, 2013 response to Plaintiff's FOIA request dated February 16, 2012. Defendants respectfully refer the Court to the letter for a complete and accurate statement of its contents.

56. Defendants admit DIA received a letter dated November 12, 2013 from Plaintiff appealing its September 12, 2013 response to Plaintiff's FOIA request dated February 16, 2012. Defendants respectfully refer the Court to the letter for a complete and accurate statement of its contents.

57. Defendants admit DIA received a letter dated November 12, 2013 from Plaintiff appealing its September 12, 2013 response to Plaintiff's FOIA request dated February 16, 2012. Defendants respectfully refer the Court to the letter for a complete and accurate statement of its contents.

58. Defendants admit DIA received a letter dated November 12, 2013 from Plaintiff appealing its September 12, 2013 response to Plaintiff's FOIA request dated February 16, 2012. Defendants respectfully refer the Court to the letter for a complete and accurate statement of its contents.

59. Defendants admit DIA it sent an undated letter to Plaintiff in response to his FOIA appeal dated November 12, 2013. Defendant lacks knowledge or information sufficient to

form a belief as to the date of this letter. Defendants respectfully refer the Court to the letter for a complete and accurate statement of its contents.

60. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

61. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

62. Defendants admit that DIA received an email dated July 31, 2014 from Plaintiff. Defendants respectfully refer the Court to the email for a complete and accurate statement of its contents.

63. After a reasonable review of records in the DIA FOIA office, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

64. Defendants admit that DIA received an email dated August 12, 2014 from Plaintiff. Defendants respectfully refer the Court to the email for a complete and accurate statement of its contents.

65. After a reasonable review of records in the DIA FOIA office, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in these paragraphs.

66. After a reasonable review of records in the DIA FOIA office, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

67. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

68. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

69. Defendants admit that DIA received an email from Plaintiff dated September 17, 2014, which is accurately represented by Exhibit F. Defendants respectfully refer the Court to the email for a complete and accurate statement of its content.

70. Defendants admit that DIA sent Plaintiff an email dated September 17, 2014, which is accurately represented by Exhibit F. Defendants respectfully refer the Court to the email for a complete and accurate statement of its content.

71. Defendants admit that DIA sent a letter to Plaintiff dated October 22, 2014, which is accurately represented by Exhibit G. Defendants respectfully refer the Court to the letter for a complete and accurate statement of its content.

72. After a reasonable review of records in the DIA FOIA office, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

73. After a reasonable review of records in the DIA FOIA office, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

74. After a reasonable review of records in the DIA FOIA office, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

75. After a reasonable review of records in the DIA FOIA office, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

76. This paragraph is a legal conclusion to which no answer is required.

77. With regard the first sentence of this paragraph, defendants admit only that DIA received a FOIA request from Plaintiff dated February 16, 2012 and that it received a letter dated November 12, 2013 from Plaintiff appealing Defendant's September 12, 2013 response to that FOIA request. With respect to the second sentence of this paragraph, after a reasonable review of records in the DIA FOIA office, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation.

78. Defendants admit that DIA received a FOIA request from Plaintiff via email dated October 20, 2015, which is accurately represented by Exhibit H. Defendant lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's role at The New Yorker.

79. Defendants admit that DIA received a FOIA request from Plaintiff via email dated October 20, 2015, which is accurately represented by Exhibit H. Defendants respectfully refer the Court to the FOIA request for a complete and accurate statement of its content.

80. Defendants admit that DIA received a FOIA request from Plaintiff via email dated October 20, 2015, which is accurately represented by Exhibit H. Defendants respectfully refer the Court to the FOIA request for a complete and accurate statement of its content. Defendants admit that Plaintiff requested a fee waiver for this request.

81. After a reasonable review of records in the DIA FOIA office, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

82. Defendants admit only that DIA received a FOIA request from Plaintiff via email dated October 20, 2015.

83. Defendants repeat and incorporate their answers to the forgoing paragraphs.

84. This paragraph is a legal conclusion to which no answer is required. To the extent a response is deemed required, Defendants admit that DOD and DIA are agencies subject to FOIA.

85. This paragraph is a legal conclusion to which no answer is required.

86. This paragraph is a legal conclusion to which no answer is required.

87. This paragraph is a legal conclusion to which no answer is required.

88. Defendants repeat and incorporate their answers to the forgoing paragraphs.

89. This paragraph is a legal conclusion to which no answer is required. To the extent a response is deemed required, Defendants admit that DOD and DIA are agencies subject to FOIA.

90. This paragraph is a legal conclusion to which no answer is required.

91. This paragraph is a legal conclusion to which no answer is required. To the extent a response is deemed required, the allegations are denied.

92. This paragraph is a legal conclusion to which no answer is required.

93. This paragraph is a legal conclusion to which no answer is required.

94. Defendants repeat and incorporate their answers to the forgoing paragraphs.

95. This paragraph is a legal conclusion to which no answer is required. To the extent a response is deemed required, Defendants admit that DOD and DIA are agencies subject to FOIA.

96. This paragraph contains legal conclusions to which no answer is required. To the extent a response is deemed required, the allegations are denied.

97. Defendants repeat and incorporate their answers to the forgoing paragraphs.

98. This paragraph is a legal conclusion to which no answer is required. To the extent a response is deemed required, Defendants admit that DOD and DIA are agencies subject to FOIA.

99. This paragraph is a legal conclusion to which no answer is required.

100. This paragraph is a legal conclusion to which no answer is required. To the extent a response is deemed required, the allegations are denied.

101. This paragraph is a legal conclusion to which no answer is required. To the extent a response is deemed required, the allegations are denied.

102. This paragraph is a legal conclusion to which no answer is required.

103. Defendants repeat and incorporate their answers to the forgoing paragraphs.

104. This paragraph is a legal conclusion to which no answer is required. To the extent a response is deemed required, Defendants admit that DOD and DIA are agencies subject to FOIA.

105. This paragraph is a legal conclusion to which no answer is required.

106. This paragraph is a legal conclusion to which no answer is required. To the extent a response is deemed required, the allegations are denied.

107. This paragraph is a legal conclusion to which no answer is required. To the extent a response is deemed required, the allegations are denied.

108. This paragraph is a legal conclusion to which no answer is required.

109. Defendants repeat and incorporate their answers to the forgoing paragraphs.

110. This paragraph is a legal conclusion to which no answer is required. To the extent a response is deemed required, Defendants admit that DOD and DIA are agencies subject to FOIA.

111. This paragraph is a legal conclusion to which no answer is required.

112. This paragraph is a legal conclusion to which no answer is required. To the extent a response is deemed required, Defendants admit that DOD and DIA are agencies subject to FOIA.

The remainder of the complaint constitutes Plaintiff's request for relief to which no answer is required. To the extent a response is deemed required, Defendants deny that Plaintiff is entitled to any relief.

All remaining allegations not expressly responded to are hereby denied.

Dated: April 6, 2016

Respectfully submitted,

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

CHANNING D. PHILLIPS
United States Attorney

MARCIA BERMAN
Assistant Branch Director

/s/ Robin Thurston
Robin Thurston
Trial Attorney (Illinois Bar)
United States Department of Justice
Civil Division, Federal Programs Branch
Tel.: (202) 616-8188
Fax: (202) 616-8470
Email: robin.f.thurston@usdoj.gov
Mailing Address:
Post Office Box 883
Washington, D.C. 20044
Courier Address:
20 Massachusetts Avenue N.W.
Washington, D.C. 20001
Counsel for Defendant

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

| | | |
|------------------------------|---|-------------------------------------|
| _____ |) | |
| RAFFI KHATCHADOURIAN, |) | |
| |) | |
| Plaintiff, |) | |
| v. |) | Civil Action No. 1:16-cv-0311 (RCL) |
| |) | |
| DEFENSE INTELLIGENCE AGENCY, |) | |
| <i>et. al,</i> |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

**JOINT STATUS REPORT AND
MOTION TO ENTER PROPOSED SCHEDULING ORDER**

Plaintiff, Raffi Khatchadourian, and Defendants, Defense Intelligence Agency and Department of Defense, hereby submit this joint status report and motion to enter a proposed scheduling order. Plaintiff filed a complaint related to two requests under the Freedom of Information Act (“FOIA”) on February 22, 2016, and Defendants filed their answer on April 6, 2016. On July 15, 2016, the Court entered a scheduling order setting the following deadlines:

- Defendants shall continue their rolling production of documents in response to the FOIA requests that are the subject of this litigation, and shall make productions by July 18, August 17, and August 31, 2016.
- Defendants have agreed to make a good faith effort to complete production of documents in this matter by August 31, 2016.
- Following Defendants’ August 17, 2016 production, the parties shall meet and confer, and by August 31, 2016 shall file a joint status report regarding whether Defendants’ production is complete or whether one final production in the month of September 2016 will be necessary, and proposing a subsequent proposed schedule.

ECF No. 17.

Defendants made productions on July 18 and August 17 and have made a good faith effort to complete production by August 31, as required by the scheduling order. The parties have since met and conferred, and Defendants have indicated that two more production dates in the month of September 2016 will be necessary. The parties therefore now propose the following agreed-upon schedule:

Defendants shall continue to make rolling productions, and shall make such productions by the following dates: August 31, September 16, and September 30, 2016. Defendants will complete production of documents in this matter by September 30, 2016. The parties will meet and confer following the September 30, 2016 production, and by October 14 will file a joint status report proposing a schedule for further proceedings in this matter. The parties agree that this proposed schedule is reasonable and respectfully request that the Court enter the attached proposed scheduling order.

Dated: August 25, 2016

Respectfully submitted,

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

CHANNING D. PHILLIPS
Acting United States Attorney

MARCIA BERMAN
Assistant Branch Director

/s/ Spencer E. Amdur
SPENCER E. AMDUR (PA Bar 322007)
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue NW
Washington, D.C. 20530
Telephone: (202) 616-7420
Facsimile: (202) 616-8470

Spencer.Amdur@usdoj.gov

/s/ Samuel M. Singer

SAMUEL M. SINGER (D.C. Bar 1014022)

Trial Attorney

United States Department of Justice

Civil Division, Federal Programs Branch

20 Massachusetts Ave, NW

Washington, D.C. 20530

Telephone: (202) 616-8014

Fax: (202) 616-8470

/s/ Katie Townsend

KATIE TOWNSEND (D.C. Bar 1026115)

THE REPORTERS COMMITTEE FOR

FREEDOM OF THE PRESS

1156 15th St. NW, Suite 1250

Washington, DC 20005

Telephone: (202) 795-9300

Facsimile: (202) 795-9310

ktownsend@rcfp.org

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

| | | |
|------------------------------|---|-------------------------------------|
| _____ |) | |
| RAFFI KHATCHADOURIAN, |) | |
| |) | |
| Plaintiff, |) | |
| v. |) | Civil Action No. 1:16-cv-0311 (RCL) |
| |) | |
| DEFENSE INTELLIGENCE AGENCY, |) | |
| <i>et. al,</i> |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

[PROPOSED] SCHEDULING ORDER

Upon consideration of the parties’ August 25, 2016 Joint Status Report and Motion to Enter Proposed Scheduling Order, it is hereby ORDERED that the deadlines in this matter shall be as follows:

- Defendants shall continue to make rolling productions, and shall make such productions by the following dates: August 31, September 16, and September 30, 2016.
- Defendants will complete production of documents in this matter by September 30, 2016.
- The parties will meet and confer following the September 30, 2016 production, and by October 14, 2016 will file a joint status report proposing a schedule for further proceedings in this matter.

SO ORDERED.

DATE: _____

The Honorable Royce C. Lamberth
United States District Judge