

United States District Court
Western District of Texas
San Antonio Division

John Eakin,
Plaintiff,

v.

United States Department of Defense,
Defendant.

No. SA-16-CV-00972-RCL

DECLARATION OF MONIQUE WEY GILBERT

My name is Monique Wey Gilbert. I am the Chief of the Army Human Resources Command (AHRC)-Freedom of Information Act (FOIA)/Privacy Act (PA) Office. As subject matter experts, our office is assisting the Defense POW/MIA Accounting Agency (DPAA) by reviewing the World War II Individual Deceased Personnel Files (IDPFs) to ensure the files do not include any information protected by the Privacy Act.

1. I have served as Chief of the AHRC-FOIA/PA Office since May 2015. Before serving as Chief, I served for approximately nine years as a FOIA Action Officer, processing many types of FOIA requests to include requests related to living and deceased servicemen and servicewomen.

2. I am familiar with the Department of the Army's procedures for responding to FOIA requests. I provide technical and administrative supervision and direction to a group of FOIA specialists in processing FOIA requests and assist with FOIA/PA litigation matters, and I am personally familiar with the processing of FOIA/PA responses, including, at times, by directly reviewing for adequacy and compliance with federal laws and regulations.

3. The statements in this Declaration are made on the basis of my personal knowledge of the internal operations of this office and agency and information acquired by me in the course of the performance of my official duties.

4. I am familiar with the procedures followed by the Department of the Army in responding to requests for information pursuant to the provisions of FOIA, and with the requests made by the Plaintiff in the above-captioned matter.

5. The AHRC-FOIA/PA Office has nine Action Officer positions and one Chief position. Unfortunately, there has been turnover in the Action Officer positions from 2017 to present. The AHRC-FOIA/PA Office has taken 4 hiring actions during this time-frame. Vacancies take roughly 3 to 5 months to fill and then all new hires require approximately 2 months of training before they are capable of independently working on projects.

6. As an example of our employee turnover, one action officer left in April 2019. This individual had been assigned and was familiar with the process for reviewing files related to Plaintiff's request. I was able to complete the hiring action for that individual's replacement in August 2019. That newly hired individual left in November 2019. The hiring action to replace that individual was finalized in February 2020 but due to COVID-19 and travel restrictions, I was unable to fully on-board that individual until August 2020. Another action officer assigned to this project left in July 2019 and I was not able to onboard a new action officer until September 2019.

7. Our Office is responsible for processing over 5,000 FOIA and Privacy Act record requests annually. All FOIA requests are handled on a first-in, first-out basis, except those where exceptional need or urgency is shown. At the time of this declaration, the Office had 50 pending FOIA requests. This number changes daily because the office receives multiple new requests on a near daily basis. Some of these requests are for thousands of records with hundreds of thousands of pages to review and redact, if necessary.

8. This office is also assisting with three large litigation cases for Army personnel records. The litigation cases include a DPAA litigation case, the 3M litigation case and the Iraqi War Fund case. I have assigned two (2) Action Officers based on their current workload to process records for these other litigation cases. The assigned Action Officers need to review these personnel records and apply redactions while processing these records.

9. In addition to processing FOIA/PA requests, the AHRC-FOIA/PA Office serves as the records custodian for Military Personnel Files relating to the following: active duty military, military personnel matters, physical disability determinations, other military personnel administrative records, records relating to military casualty and memorialization activities, heraldic activities, voting, records relating to identification cards, naturalization, citizenship and investigations. Many of these responsibilities, including responding to FOIA/PA requests, are subject to statutory deadlines. Our office consistently seeks additional resources to address its heavy workload.

10. With regard to this FOIA request, the review process is a multi-step process. On or about November 18, 2016, our Office received the hard drives containing approximately 280,000 IDPF's from the DPAA that had been digitized as part of a digitization contract. These files were not in a searchable PDF format. Each individual IDPF can contain one or two pages, or as many as hundreds of pages. Because of the large amount of data contained on these hard drives, 4.2 terabytes of information, our Office was required to run security scans and build a separate drive to contain this information, which took approximately six weeks. Another one and one-half weeks were required to download all of the files to a shared drive so FOIA Action Officers could work on the request, and two weeks for the Action Officers to obtain the necessary security permissions.

11. Initially, I assigned three FOIA Action Officers to the IDPF review. These three action officers were given access to the shared drive. Based on our workload, I assigned each action officer to work on review of the IDPFs for one hour per day, five days per week. This one hour per day, five days per week does not take into consideration annual leave, sick leave and holidays.

12. IDPFs created decades ago are marked for release. However, recently created materials, including FOIA requests, correspondence, and medical information, to include information on the DNA of related individuals, is being removed. For instance, in a recent review, a FOIA action officer found family travel orders with included financial information, home address, and other PII for a servicemember interred in 1999.

13. There is no easy way to do this review. Our Office does not have the current technological capability to create PII identifiers to scan the shared drive for PII. It has been the consistent practice of our Office to always conduct a manual review of individual files to screen them for PII. Further, it is my opinion that release of any files from our Office without a manual review would risk the possible disclosure of PII.

14. The action officer that has been conducting FOIA reviews for approximately 10 years estimated that it takes 30 seconds to 1 minute to review each file, if there is no document purges or redactions to be made. In her most recent review, it took her approximately 100 hours to review 6,000 records.

15. In accordance with the Court's August 2, 2017 Order, our Office has produced the following to Mr. Eakin:

Date	Size (Approximate)		File Count	Folders
10/1/2017	712	GB	49,938	945
10/1/2017	108	GB	9,182	750
12/1/2017	104	GB	9,489	758
5/17/2018	288	GB	18,259	495
11/26/2018	327	GB	3,883	348
5/30/2019	514	GB	28,835	699
12/1/2019	379	GB	15,978	150
5/18/2020	16	GB	1,225	11
	2,448	GB	136,789	4,156
	2.44	TB		

16. On June 5, 2019, the Court ordered the United States to produce documents as searchable PDFs going forward. Our office did not have the IDPFs in a searchable PDF format but continued to review the documents already downloaded on our servers in an effort to provide Mr. Eakin with a production in December 2019.

17. The DoD is working diligently to develop solutions to alleviate the current rate of review caused by COVID-19. The FOIA office recently installed five (5) virtual drives that can accommodate 1.5 TB of data each. The virtual drives will allow more than one reviewer to access

the files. Personnel are working to upload the files that have been converted into searchable PDFs, in 1.5 TB batches, to the virtual hard drives. Once the files are uploaded to the virtual drives, barring any unforeseen circumstances, the FOIA office intends to assign four (4) reviewers to review the files for two hours each day for five (5) days per week. The FOIA office estimates there are 54,009 A-L IDPFs left to review. If four (4) action officers are now able to review the files, pending no additional employee turnover, 100 hours of review could yield review of 24,000 IDPFs. If the four action officers can review these IDPFs 20 hours per week at four weeks per month, times 12 months, the AHRC FOIA/PA office estimates that it will take an additional 5 months to complete the review of the A-L files. My previous affidavit indicated there were 218,466 of the A-L IDPFs left to review, but this number included some of the M-Z IDPFs that have been transmitted to our office from DPAA.

18. This office would likely be responsible for conducting the FOIA review of the M-L IDPFs. As with the A-L IDPFs, our Office would need to run security scans and build a separate drive to contain this information. In a non-COVID environment, this process took approximately six weeks. At least another one and one-half weeks would likely be required to download all of the files to a shared drive so FOIA Action Officers could work on the requests, especially if we are still in a telework posture. As with the A-L IDPFs, it would also take time for the Action Officers to obtain the necessary security permissions.

19. Given our current workload and the fact that our office is still reviewing the A-L IDPFs, I cannot dedicate any additional action officers to simultaneously review the M-Z files. I can dedicate four (4) action officers, two hours each day for five (5) days per week to review these files once the A-L file review has been completed.

I declare under the penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Executed on this 30th day of November 2020.

/s/ Monique Wey Gilbert
Monique Wey Gilbert
Chief, AHRC FOIA/PA Office