

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JOHN EAKIN,

Plaintiff,

v.

UNITED STATES DEPARTMENT
OF DEFENSE,

Defendant.

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No. SA-16-CV-972-RCL

SECOND DECLARATION OF COLONEL DANIEL E. GILBERT

I, Daniel E. Gilbert, Deputy Chief of Staff (DCoS), Army Human Resources Command (AHRC), make the following declaration pursuant to 28 U.S.C. § 1746.

1. I am over the age of eighteen, am competent to make this declaration, and am doing so voluntarily. I have personal knowledge of all the facts and statements contained herein.

2. I am a Colonel in the United States Army and have served as a commissioned Army officer for the past 23 years. In my current role as the DCoS for AHRC, my principal duties entail assisting the Chief of Staff (CoS) in supervising and facilitating the day-to-day operations of support staff assigned to AHRC. AHRC plans, executes, and supervises traditional and military-specific human resource functions for the total Army force. The AHRC Commanding General, MG Thomas Drew, is my second-level supervisor.

3. My duties as DCoS for AHRC include serving as the direct supervisor for the AHRC Freedom of Information Act and Privacy Act (FOIA/PA) Office. In that role, I am familiar with the AHRC FOIA/PA Office's capabilities and procedures for processing FOIA/PA requests. I am also familiar with the FOIA requests at issue in this litigation.

4. The AHRC FOIA/PA Office generally receives between 5,000 and 6,000 FOIA/PA requests each year. In the first six months of this fiscal year, AHRC received 2,435 FOIA requests. Some of these requests represent a few pages of responsive documents, but many seek voluminous records, including large litigation matters related, but not limited to, the 3M earplug lawsuits. All carry various statutory and regulatory release timelines.

5. 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 are subject to statutory deadlines.

6. Notwithstanding these other responsibilities, MG Drew has directed that AHRC and its FOIA/PA Office prioritize meeting their obligations under FOIA and the Court's orders in this litigation while still managing all human resources activities for approximately 1,000,000 Army soldiers. MG Drew has remained proactively involved in this project and I have updated him bi-weekly on our progress thus far.

7. Since my involvement in this matter, AHRC has put in place a rigorous quality control process for the review and production of the Individual Deceased Personnel Files (IDPFs) at issue in this litigation. This process entails the proactive coordination with senior Defense POW/MIA Accounting Agency (DPAA) staff in ensuring the established protocols are followed. We have attained the necessary technical support to accurately and efficiently analyze the IDPFs. This technical support has allowed the FOIA/PA Office to continue to review documents either remotely or in person.

We also assigned an Army-qualified database management professional to review and validate accounting systems and procedures. Furthermore, the legal advisors at AHRC have coordinated with Department of the Army and the Department of Justice routinely regarding the production of IDPFs. I have received regular and detailed status updates on the efficiency of these implemented processes.

8. At the direction of MG Drew, I also recently oversaw the establishment of a dedicated taskforce of personnel to provide direct support to the mission of the AHRC FOIA/PA Office. AHRC assigned a dedicated field grade officer (as previously mentioned), who specializes in database management, to this taskforce to help the AHRC FOIA/PA Office manage the large quantity of data associated with Plaintiff's FOIA requests. Further, The Judge Advocate General of the Army (TJAG) directed the assignment of a dedicated legal advisor solely to assisting the AHRC FOIA/PA Office with these requests.

9. Since March 2021, the FOIA/PA Office has completed 66,391 supplementary reviews of IDPFs with a 100% file accuracy rate and produced a complete and fully auditable master list of files. This rapid review was made possible by the additional resources and streamlined processes described above, which were being put into place as the reviews were occurring. AHRC also authorized more than 410 additional hours of overtime to complete these supplementary reviews.

10. As of the date of this declaration, AHRC has received 164,260 World War II IDPFs for letters M-Z from the DPAA. In anticipation of a future requirement to produce the M-Z files, AHRC proactively began the time-intensive task of preparing these files for review and release. As of the date of this declaration the AHRC FOIA/PA Office has completed review of 5,854 M-Z IDPFs.

11. Consistent with MG Drew's direction to prioritize this matter, the AHRC FOIA/PA Office has determined that it can consistently allocate five to six of its ten FOIA reviewers per week to the review of M-Z IDPFs. Each of these reviewers will be directed to dedicate two hours per workday to this project. This commitment of 50 to 60 hours per week dedicated to this matter will allow AHRC to respond to Plaintiff's FOIA requests as quickly as possible without jeopardizing its ability to meet its other obligations.

12. AHRC FOIA/PA Office reviewers can analyze between 33 IDPFs to 50 IDPFs per hour. Based on the commitment of 50 to 60 hours per week described above, AHRC estimates that it can complete between 6,600 and 12,000 IDPFs per month. Assuming the AHRC FOIA/PA Office is able to process an average of 10,000 files per month, it will take sixteen-and-one-half (16½) months to complete Plaintiff's request for M-Z IDPFs. This estimate presumes no change in the number of available FOIA reviewers or the amount of time available to them to review the IDPFs.

13. The estimate provided above also does not take into account the varying quality and quantity of the pages in the individual IDPFs subject to review. For example, based on the AHRC FOIA/PA Office's experience reviewing the A-L IDPFs, we anticipate that some files will contain redundant, extraneous, or nonresponsive material. Unfortunately, this impacts the analysis of how quickly, accurately, and effectively the FOIA analysts can perform his or her review of the record.

14. Because many factors impacting AHRC's review of the IDPFs are not known at this time, the AHRC FOIA/PA Office intends to make available such information as may be ordered by the Court to assess the progress of this project as it proceeds.

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

Executed on this 8th day of April, 2022, at Fort Knox, Kentucky.

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COL Daniel Gilbert