

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

John Eakin,)	
)	
Plaintiff,)	
)	
)	Civil Case No. 5:16-cv-00972-RCL
v.)	
)	
)	
United States Department of Defense,)	
)	
Defendant.)	
)	

DECLARATION OF JOHN EAKIN

1. My name is John Eakin. I am over the age of eighteen, am competent to make this declaration, and am doing so voluntarily. This declaration is based upon my personal knowledge, or upon information I have obtained in the course of my research.

2. In 2010, I submitted a FOIA request to the U.S. Department of Defense to obtain records connected with the death of a family member. These files are generally known as “X-files” and are a subset of the “Individual Deceased Personnel Files” (IDPF) or “293” files. Upon constructive denial of my request, I subsequently filed suit in the Western District of Texas. *Eakin v. United States Department of Defense, et al*, SA-10-cv-00784-FB-NSN. The government made no claim that these files were exempt from FOIA, but proposed a charge of \$24,000 to reproduce them and denied that they existed in digital form that could be inexpensively reproduced. My suit ultimately centered around the issue of reproduction costs and judgment was entered for the Defendant. Three weeks later the files I had requested were released to the public on the internet without redaction. Many of the released files showed creation dates prior to commencement of my lawsuit.

3. This litigation made me acutely aware of the necessity of precisely defining the records requested including any date or location restrictions and I have tried make subsequent FOIA requests as precise as possible.

4. In about 2012, I became aware that, in addition to already existing files digitized on an as needed basis, (the *ad hoc* files) the Department of Defense proposed to scan the entire archive of Individual Deceased Personnel Files into an electronic format. Ultimately, I found a document titled “Fiscal Year 2013 Budget Estimates” dated February 2012. This document is Exhibit 2 to my Motion for Partial Summary Judgment. On page 12 is a section titled, “Individual Deceased Personnel Files (IDPFs) Project.” This section describes the IDPFs as pertaining to the deaths of American Servicemembers in “WWII and in later wars and conflicts.” All of these files are further described as a single entity, stored and administered as a single unit that were going to be digitized as a single unit consisting of 442,000 files.

5. My impression of these files was that, in addition to files previously digitized on an as needed basis, the files digitized as part of this project would exist as a single entity and I structured my FOIA request to include all of these files without any date or location restrictions. The most basic portion of my FOIA request was: “*Electronic (digital) copies of all World War II era Individual Deceased Personnel Files (IDPF’s) a/k/a 293 files and/or “X-files” which exist in any digital or electronic format.*”

6. To make my request even more explicit, I specified that the requested files included those pertaining to “*digital scanning of U.S. Army Individual Deceased Personnel Files (IDPFs) previously stored at National Archives and Records Administration (NARA) and which were funded by the Defense Personnel Accounting Agency (f/k/a Defense POW/MIA Accounting Office).*”

7. I didn't want my request to be more burdensome than necessary and knew that extracting specific files or a specific date range would be much more burdensome than simply copying them all and structured my request to include all of these files without exception. I also tried to make my request as explicit as possible by specifying "293 files" as I knew from my military service that a "293 file" referred to a military filing system that had been superseded sometime in the late 1950's or early 1960's and therefore provided a date range limitation.

8. The "X-files" are a subset of the Individual Deceased Personnel Files (IDPFs) pertaining to unidentified remains. These were the subject of my 2010 FOIA request and were also produced in the current FOIA request and litigation. These files are grouped into folders according to country and the cemetery or mortuary which processed the remains. These groups each include multiple, sometimes hundreds, of files. These groups include:

- a. Korea – five (5) cemeteries/mortuaries.
- b. Korea – South – eight (8) cemeteries/mortuaries.
- c. Korea – General – one (1) cemeteries/mortuaries.
- d. Korea – North – seven (7) cemeteries/mortuaries.
- e. Japan – twelve (12) cemeteries/mortuaries.

The contents of these files show that some of these cemeteries/mortuaries processed remains from the period 1940-1945; some from the period 1950-1953, and, some may have processed remains for the entire period of 1940 to 1953. This further shows that files on remains processed during the Korean Conflict fall within the group of World War II era files.

9. In addition to the Korean Conflict files contained in the X-files subset of the IDPFs, the A-L files produced by Defendant have included Korean Conflict files and files containing only a charge-out or transfer form. However, the M-Z files have included only a

minimal number of Korean Conflict and charge-out/transfer files. The missing file contents have not been produced separately.

10. I have attached Exhibits 3A and 3B as exemplar file transfer forms from the following two files produced to me by Defendant:

Ex 3A - Exemplar file transfer form extracted from file named:
TIERHEIMER_AUGUST_39249918_IDPF_Complete_147813-txt

Ex 3B - Exemplar file transfer form extracted from file named:
KEITH_EDWARD_17252699_IDPF_Complete_446439-txt

The missing contents of this file have not been produced separately.

11. I have attached Exhibit 3C as an exemplar of a charge-out form:

Ex 3C - Exemplar charge out form extracted from file named:
Neuville_BE_X-5153

The missing contents of these files have not been produced separately.

12. I have attached Exhibits 4A and 4B as exemplars of files produced by Defendant and which pertain to the deaths of American Servicemen who died in Korea in 1951 and which Defendant would now consider to be non-responsive. These files are mis-labeled as WWII and show that Defendant's redaction process is unreliable.

Exhibit 4A is a single page extracted from the IDPF of PATTON_ROBERT_E_-_RA-15424152_IDPF_COMPLETE_118432_**WWII**_UNK_85-txt.pdf. [emphasis added]

While this file is labeled as a WWII file, it actually pertains to an American Serviceman who was killed in Korea in 1951 and show that Defendant's redaction process is unreliable.

Exhibit 4B is a single page extracted from the IDPF named:

THOMAS_ROBERT_HERBERT_-_US-45028833_IDPF_COMPLETE_452590_WWII_UNK_56-0903d5e182977c71.pdf. [emphasis added]

While this file is labeled as a WWII file, it actually pertains to an American Serviceman who was killed in Korea in 1951 and show that Defendant's redaction process is unreliable.

13. Based on my observations and assurances by Defendant's Counsel, I believe that:
 - a. Defendant has produced all of the A-L files including those they would later consider non-responsive as Korean Conflict and/or charge-out/file transfer forms.
 - b. Defendant has produced all of the M-Z files except those they consider non-responsive as Korean Conflict and/or charge-out/file transfer forms.
 - c. Defendant is withholding a substantial volume of files they consider to be non-responsive to my request.
 - d. Defendant appears be selectively providing files to Army Human Resources Command and thereby bypassing the various controls implemented in response to this Courts' concerns.

14. I have found multiple files produced by Defendant that are of a type which Defendant has claimed to be withholding. This shows that Defendant's file review process is unreliable and is likely to be withholding responsive files.

15. Defendant has foreclosed future public access to this complete digital archive of IDPFs by transferring the hardcopy original records to the National Archives where they are individually offered for sale and therefore exempt from FOIA. (5 U.S.C. § 552(a)(1)) Nor, has Defendant made these files available for public inspection in an electronic format. (5 U.S.C. § 552 (a)(2)) even though they are required to do so as they have become the subject of

subsequent requests for substantially the same records (5 U.S.C. § 552 (a)(2)(D)(ii)(I) or because they have been requested 3 or more times. (5 U.S.C. § 552 (a)(2)(D)(ii)(II))

16. Contrary to Defendant’s assertion that the WWII era does not include the Korean Conflict, footnote 2 to my Motion for Summary Judgment shows that the U.S. Naval History and Heritage Command, a component of the Department of Defense, states that, “The conflict in Korea began before the end of World War II”

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

Executed on this 28th day of August, 2023

/s/ John Eakin

John Eakin, Plaintiff *pro se*