

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

DECLARATION OF COLONEL DANIEL E. GILBERT

I, Colonel Daniel E. Gilbert, make the following declaration:

1. My name is Daniel E. Gilbert. 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 and information I have obtained in the course and scope of my duties as the Deputy Chief of Staff (DCoS) of the United States Army Human Resources Command (AHRC).
2. I am a Colonel in the United States Army and have served as a commissioned Army officer for the past 22 years. In my current role as the DCoS for AHRC, my principal duties entail assisting the Chief of Staff (CoS), COL Alan G. Kellogg, in supervising and facilitating the day-to-day operations of support personnel assigned to AHRC. My duties include serving as the direct supervisor and rating official (for annual performance evaluation purposes) for certain staff personnel, including Ms. Monique Wey Gilbert, Chief of AHRC's Freedom of Information Act and Privacy Act (FOIA/PA) Office. (Although Ms. Gilbert and I share the same last name, we are not related.)
3. AHRC plans, executes, and supervises traditional and military-specific human resource functions for the total Army force. Due to the impacts of COVID-19, approximately 82% of AHRC's workforce has been teleworking since March 2020. For the immediate future, there is no plan for AHRC to modify its COVID-19 mitigation measures.
4. COL Kellogg and I were made aware of the Court's concerns with the government's review and production of documents to plaintiff John Eakin shortly after this Court's December 3, 2020 order. To ensure compliance with the Court's order, the command took extraordinary steps to ensure the timely processing and review of the remaining Individual Deceased Personnel Files (IDPF) of World War II Service Members with last names beginning with A through L. These steps included weekly updates to the Commanding General and key staff to ensure the deadline would be met.

5. First, COL Kellogg reassigned 44 Army service members and Department of the Army civilian personnel external to FOIA/PA Office from their normal non-FOIA/PA duties to temporarily assist with the review of remaining IDPFs. These 44 personnel, some working full time and some working part time from December 21, 2020 to January 15, 2021, included paralegals and attorneys from the AHRC legal office, supply and logistics personnel, budget and comptroller personnel, G-3 operations personnel, and other members of the AHRC staff.

6. Second, COL Kellogg directed that all 10 regular members of the FOIA/PA Office devote all efforts necessary to meet the Court's directed timeline. In particular, the FOIA/PA Office was directed to focus its efforts on the training and supervision of the reviews conducted by temporarily assigned personnel, as well as conducting a more thorough accounting of remaining IDPFs.

7. Third, COL Kellogg authorized over 675 hours of overtime pay and nearly 150 hours of compensation time for FOIA/PA employees to complete its review in accordance with the Court's timeline. These authorizations resulted in an estimated additional cost of \$44,500 for AHRC. This authorization allowed FOIA/PA professionals the flexibility to work on this case after normal duty hours and on weekends.

8. Finally, COL Kellogg directed an independent accounting of remaining IDPFs by a qualified systems professional external to the FOIA/PA Office. This independent reviewer is a Functional Area 49 Major in the United States Army, who is formally trained and qualified in Operations Research/Systems Analysis (ORSA), and has a Master of Science degree in applied mathematics.¹

9. Due to the extraordinary efforts outlined above, AHRC's FOIA/PA Office was able to complete its review of all A-L WWII IDPFs provided to it by the Defense POW/MIA Accounting Agency (DPAA), the Department of Defense component responsible for digitizing these records. The government delivered 47,400 IDPFs to Mr. Eakin on January 28, 2021 and 171 IDPFs to Mr. Eakin on February 1, 2021.

10. In response to the Court's December 3, 2020 order, COL Kellogg and I also took steps to attempt to identify the root cause of the conflicting information previously provided to the Court by the AHRC FOIA/PA Office. Based on that review, we believe this issue was largely caused by the lack of established protocols or a common understanding between DPAA and the AHRC FOIA/PA Office about how data would be transferred between the two agencies. For example, there was a lack of specificity and uniformity on how files were digitally organized on hard drives; a lack of communication about the inclusion of files known to be extraneous or redundant; and an absence of protocols for validating the number of files sent and received.

¹ "Operations Research Systems Analysts ... serve the Army as organic experts in data science, data analytics, data visualization, and other big data specialties." www.FA49.army.mil. An ORSA officer "introduces quantitative and qualitative analysis to the military's decision-making processes by developing and applying probability models, statistical inference, simulations, optimizations, and economic models." Dept. of the Army Pamphlet 600-3.

11. As a result of this review, AHRC has instituted significant quality assurance and quality control (QA/QC) measures in anticipation of any future large FOIA/PA data reviews. These QA/QC measures include proactive coordination with senior DPAA staff in ensuring appropriate protocols are established and followed in transferring files to AHRC, to include providing a by-name list of IDPFs; procuring necessary computers, hard drives, and other technical equipment to facilitate review by multiple personnel working from remote locations; assigning an ORSA qualified professional to review and validate accounting systems and procedures; and consultation with and coordination among legal advisors and attorneys at AHRC, the Department of the Army, and the Department of Justice prior to any sworn affidavits and other court submissions. I will also receive regular, detailed status updates on the progress of future production efforts.

12. Based on the AHRC FOIA/PA Office's experience in reviewing the A-L WWII IDPFs, an experienced FOIA analyst can review one IDPF every minute, while a lesser experienced analyst can review one IDPF every 1.5 minutes. Allowing an analyst a 10-minute break every hour away from a computer screen over the course of a normal duty day, an experienced FOIA analyst can review 50 IDPFs per hour, and a lesser experienced analyst can review 33 IDPFs per hour. This results in a combined average of approximately 41 IDPFs reviewed every hour, or 1,640 IDPFs in the course of a 40-hour work week.

13. The FOIA/PA review process is also significantly impacted by the reliability of files an analyst receives. The inclusion of redundant and extraneous files inserts a significant variable, which may not be discovered until each file is reviewed. Accordingly, AHRC intends to establish QA/QC measures with sending agencies to enhance the reliability of data transferred to AHRC.

14. AHRC FOIA/PA Office recognizes that it will gain efficiency through improved systems and accountability methods, however, it must still execute an average of 5,000 FOIA/PA record requests annually. Although AHRC has the ability to focus resources and personnel for short durations, it does not have the ability to sustain such levels of funding and additional personnel without significant impacts on its overall human resource mission for the total Army force.

15. The Commanding General of AHRC and his staff recognize the vital importance of FOIA/PA disclosures in earning the trust of the general public. Accordingly, AHRC will take all steps necessary to ensure that the public's statutory right to appropriate information is timely and accurately conveyed.

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

Executed on this 3rd day of February, 2021, at Fort Knox, Kentucky.

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