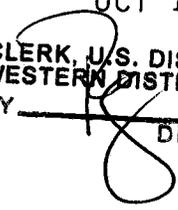


FILED

**FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

OCT 12 2011

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY  DEPUTY CLERK

**JOHN EAKIN,
Plaintiff,**

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§
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vs.

NO. SA-10-CA-784-FB-NSN

**UNITED STATES DEPARTMENT
OF DEFENSE, LEON E. PANETTA¹,
Secretary of Defense, UNITED STATES
DEPARTMENT OF THE ARMY,
JOHN McHUGH, Secretary of the Army
Defendants**

**PLAINTIFF'S OPPOSED MOTION TO STRIKE DEFENDANT'S RESPONSE IN
OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL OR FINAL
SUMMARY JUDGMENT AND DEFENDANT'S CROSS-MOTION FOR
SUMMARY JUDGEMENT AND MOTION FOR SANCTIONS**

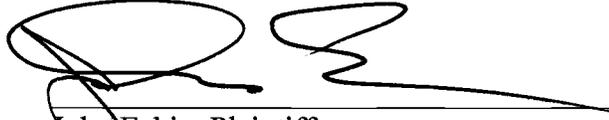
Plaintiff pro se John Eakin respectfully moves this Court, pursuant to Fed. R. Civ. P. 12(f), to strike from the record Defendant's Response in Opposition to Plaintiff's Motion for Partial or Final Summary Judgment and Defendant's Cross-Motion for Summary Judgment and other responses which rely on costs of document duplication on grounds that they present material false statements intended to support an erroneous and insufficient defense.

Plaintiff further respectfully moves this Court, Pursuant to Fed. R. Civ. P. 11 to impose sanctions adequate to effectively deter future such misconduct on the grounds that the factual contentions presented in Defendant's Response in Opposition to Plaintiff's Motion for Partial or Final Summary Judgment and Defendants' Cross-Motion for Summary Judgment and other responses have no evidentiary support, have caused unnecessary delay, and have needlessly increased the cost of litigation.

¹ Leon E. Panetta replaced Robert M. Gates as Secretary of Defense on July 1, 2011.

Respectfully submitted,

Dated: 10/11/11



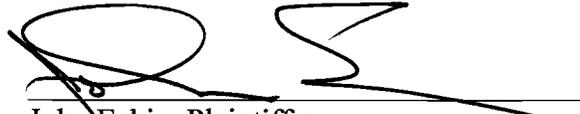
John Eakin, Plaintiff pro se
9865 Tower View, Helotes, TX 78023
210-695-2204 jeakin@airsafety.com

CERTIFICATE OF SERVICE

I, John Eakin, Plaintiff pro se, do hereby certify that on the 11th day of OCTOBER, 2011, a true and correct copy of the foregoing pleading was forwarded to Defendants by First Class Mail at the following address:

Dimitri N. Rocha
Assistant United States Attorney
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216-5597

Dated: 10/11/11



John Eakin, Plaintiff pro se
9865 Tower View Road
Helotes, Texas 78023
210-695-2204
jeakin@airsafety.com

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

JOHN EAKIN,

Plaintiff,

vs.

**UNITED STATES DEPARTMENT
OF DEFENSE, LEON E. PANETTA,
Secretary of Defense, UNITED STATES
DEPARTMENT OF THE ARMY,
JOHN McHUGH, Secretary of the Army
Defendants**

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NO. SA-10-CA-784-FB-NSN

ORDER

On this day, came on for consideration Plaintiff's Motion to Strike Defendant's Response in Opposition to Plaintiff's Motion for Partial or Final Summary Judgment and Defendants' Cross-Motion for Summary Judgment and Motion for Sanctions.

The Court having reviewed said Motion finds that it should be, and hereby is, **GRANTED.**

Defendant's Response in Opposition to Plaintiff's Motion for Partial or Final Summary Judgment and Defendants' Cross-Motion for Summary Judgment and related replies and responses are ordered stricken.

The following sanction is imposed upon Defendants:

Signed this the _____ day of _____, 2011.

NANCY STEIN NOWAK
UNITED STATES MAGISTRATE JUDGE

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

JOHN EAKIN,	§	
Plaintiff,	§	
	§	
vs.	§	NO. SA-10-CA-784-FB-NSN
	§	
UNITED STATES DEPARTMENT	§	
OF DEFENSE, LEON E. PANETTA,	§	
Secretary of Defense, UNITED STATES	§	
DEPARTMENT OF THE ARMY,	§	
JOHN McHUGH, Secretary of the Army	§	
Defendants	§	

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
PLAINTIFF'S OPPOSED MOTION TO STRIKE DEFENDANT'S RESPONSE IN
OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL OR FINAL
SUMMARY JUDGMENT AND DEFENDANT'S CROSS-MOTION FOR
SUMMARY JUDGEMENT AND MOTION FOR SANCTIONS**

A. Introduction

This action stems from the failure of defendants US Department of Defense (DoD) and US Department of the Army (Army) to comply with the provisions of the Freedom of Information Act by their refusal to provide the requested documents within the statutory time limits; their calculation of fees; and their refusal to grant plaintiff's application for a waiver of fees.

Most recently, Plaintiff came in to possession of a substantial quantity of digital documents not previously acknowledged by Defendants. The existence of these documents show that Defendants improperly denied Plaintiff's request for waiver of fees and inflated fees in order to discourage Plaintiff's request for documents under FOIA.

Counsel for Defendants was notified of the withheld documents via letter dated August 16, 2011 and email dated September 22, 2011. Plaintiff and Counsel for

Defendants have discussed the situation, yet no explanation for the discrepancies has been forthcoming from Defendants. Since the withholding of these documents moots the parties' respective Motions for Summary Judgment which are now ripe for consideration by this Court, Plaintiff is compelled to inform the Court of the situation before the Court needlessly expends time considering the pending Motions for Summary Judgment. *See* Exhibits 1A and 1B.

B. Summary of this Litigation.

This is a FOIA lawsuit which seeks to obtain certain records concerning World War II American Servicemembers who died while prisoners of war and whose remains were declared to be non-recoverable.

Defendant's only claim that any portion of the requested documents were exempt from release under FOIA has been resolved and withdrawn by Defendants.

Defendant claims the requested records comprise approximately 165,000 (hardcopy) pages and would cost \$24,000 to reproduce in the requested digital format. In the course of this litigation, Defendant further objected to reproduction of the requested documents on the grounds that doing so would be burdensome.

Plaintiff requested the duplication fees be waived on the grounds that doing so would be in the public interest and/or that he met the requirements to be considered a representative of the news media.

Both parties filed Motions for Summary Judgment currently pending before this Court.

Plaintiff now states to the court that he has in his possession a substantial quantity of responsive documents that have been withheld by Defendants and were not considered

in calculation of the estimated costs of duplication. Plaintiff further states that he has good reason to believe that there are an additional unknown quantity of still unacknowledged documents. Consequently, the number of documents to be reproduced by scanning (if any) is substantially less than stated by Defendants and therefore the actual cost is significantly less than stated by Defendant. Without a reasonably precise estimate of the quantity of documents and cost of reproduction Plaintiff can not effectively argue for the requested waiver of fees. Nor can this Court make an informed judgment on the merits of either parties case. Further, FOIA fees may not be inflated to discourage requests for documents.

C. Remaining Disputed Issues.

1. Defendant's refusal to (1) grant Plaintiff's request for a waiver of fees as release of the requested documents is in the public interest; or, (2) acknowledge Plaintiff's status as a representative of the news media which would preclude collection of fees because Defendant has failed to comply with the time limits mandated by 5 U.S.C. § (a)(4)(A)(viii).

2. Defendant's incorrect calculation of fees and other deficiencies in denial of Plaintiff's request.

D. Newly Discovered Documents

On June 27, 2011, subsequent to the filing by both parties of Motions for Summary Judgment, and responses and replies thereto, Plaintiff filed new FOIA requests with the Department of Defense (DoD), U.S. Army Human Resources Command (Army HRC) and the DoD Joint Prisoners of War/Missing in Action Accounting Command

(JPAC). These newly filed FOIA requests were in no way connected with this litigation other than some of the requested documents were common.

These newly filed FOIA requests were for all Individual Deceased Personnel Files (IDPF) and for similar files pertaining to unidentified human remains known as X-files *that currently exist in digital format*. In other words, this new request encompassed the documents (and many others) which are the subject of this litigation and which had already been digitized by scanning. *See Exhibits 2A, 2B, 2C*

On July 12, 2011, Plaintiff was notified by Army HRC that they were releasing all such files in their custody. Over a several week period, Plaintiff received eleven CD-ROM disks containing approximately 3,600 X-files and nineteen CD-ROM disks containing approximately 1,730 IDPF files. All files were in the common .PDF file format as used by this Court. *See Exhibit 3.*

Duplication of these digital files did not meet the minimum threshold for and no reimbursement was required of Plaintiff by Army HRC.

Analysis and review of the newly obtained documents is ongoing. To date, Plaintiff has determined that:

1. At least 97 of the IDPF files would have been responsive to Plaintiff's original FOIA request which is the subject of this litigation. However, the file creation dates on these files are all subsequent to Plaintiff's original request and there is no way to determine exactly when they were digitized.

2. At least 868 of the X-files would have been responsive to Plaintiff's original FOIA request which is the subject of this litigation. Further, these

files were dated more than one year prior to Plaintiff's original request so they were responsive, but withheld by Defendants.

3. There exists substantial evidence of the existence of additional digital documents responsive to the FOIA request which is the subject of this litigation, but still withheld by Defendants.

E. Defendants Misconduct

Plaintiff believes the newly obtained X-files constitute at least twenty-five to thirty percent of the total X-files responsive to the FOIA request which is the subject of this litigation. Further, there is good reason to believe there are a substantial quantity of additional responsive files in existence and that digitization efforts are ongoing. Obviously, the original duplication cost of \$24,000 is substantially overstated in light of these newly discovered files.

Testimony by Dr. Chambers that scanning of these files began prior to Plaintiff's FOIA request and is an ongoing project indicates that Defendant DoD was aware of the existence of these files yet they have been deliberately withheld from Plaintiff and this Court. *See* Chambers decl, document 25-3 and excerpts in Eakin decl attached.

Plaintiff believes that his Motion for Summary Judgment and Defendant's Cross-Motion for Summary Judgment, currently pending before this court, are essentially now moot with regard to the fee waiver issue. Defendants can not calculate the cost of reproduction without a reasonably precise estimate of the number of pages to be duplicated and cannot comply with the requirement of 5 U.S.C. § 552(a)(4)(i) to determine if a fee should be assessed, reduced and/or waived. Without a reasonably precise estimate of the cost of duplication of the requested documents Plaintiff is unfairly

disadvantaged in this litigation and this Court is unable to effectively evaluate the arguments presented by either party.

Inflation of FOIA fees to deny access is prohibited. In *National Treasury Employees Union v. Griffin*, (“NTEU”) 811 F.2d 644 (D.C. Cir. 1987), the D.C. Circuit wrote that it would be “highly improper” for an agency to inflate the fees requested “with a view in effectively denying access.” *Id* at 650. The D.C. Circuit further stated that “the 1974 amendments to FOIA adding the language on fee waivers and reasonable standard charges were clearly aimed at preventing agencies from using high fees to discourage requests.” *Id*; S. Rep. No. 93-864, at 11-12 (1974).

Defendants calculation of estimated duplication costs to fulfill this request are clearly erroneous and serve simply to discourage requester in violation of its own regulations.

Fee assessment. Fees may not be used to discourage requesters, and to this end, FOIA fees are limited to standard charges for direct document search, review (in the case of commercial requesters) and duplication.

32 CFR § 518.19(e)

Plaintiff has shown that Defendant has withheld a substantial quantity of responsive records which are already digitized and for which the cost of duplication is mere pennies (the price of a blank CD-ROM disk) or less if electronically transmitted as requested by Plaintiff.

Yet, Defendant disregards these already digitized records in an attempt to discourage Plaintiff by concocting an estimated cost of \$24,000 for scanning 165,000 pages at \$0.15 per page when the actual cost to copy the same volume of digital files to CD/DVD should be less than \$100.00.

Whether the withholding of documents is accidental or deliberate, the effect is to discourage document requests under the FOIA. *See* 5 U.S.C. § 552(a)(4)(A)(ii); *Hall v. CIA*, No. 04-0814, 2006 WL 197462, at 3 & n.4 (D.D.C. Jan. 25, 2006); S. Rep. No. 93-1200, 93rd Cong., 2nd Sess., October 1, 1974 at 8.

G. Defendants Selectively Withheld Information

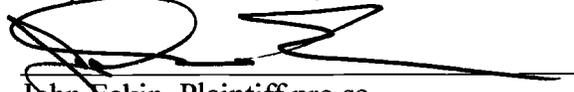
Selective disclosure exhibited by the government is offensive to the purposes underlying the FOIA and intolerable as a matter of policy. Preferential treatment of persons or interest groups fosters precisely the distrust of government that the FOIA was intended to obviate. *North Dakota ex rel. Olson v. Andrus*, 581 F.2d 177, 182 (8th Cir. 1978)

CONCLUSION

Therefore, Plaintiff requests this Court to strike Defendant's Response in Opposition to Plaintiff's Motion for Partial or Final Summary Judgment and Defendants' Cross-Motion for Summary Judgment and all associated responses which relate in any way to duplication fees; to sanction Defendant in a manner so as to deter future misconduct; and, to provide other relief as the court finds appropriate.

Dated: 10/11/11

Respectfully submitted,



John Eakin, Plaintiff pro se
9865 Tower View, Helotes, TX 78023
210-695-2204 jeakin@airsafety.com

4. On July 12, 2011, I was notified by Army HRC that they were releasing all such files in their custody. Over a several week period, I received eleven CD-ROM disks containing approximately 3,600 X-files and nineteen CD-ROM disks containing approximately 1,730 IDPF files. All files were in the common .PDF file format as used by this Court. *See Exhibit 3.*

5. Duplication of these digital files did not meet the minimum threshold for and no reimbursement was required of Plaintiff by Army HRC.

6. Analysis and review of the newly obtained documents is ongoing. To date, I have determined that:

a. At least 97 of the IDPF files would have been responsive to my original FOIA request which is the subject of this litigation. However, the file creation dates on these files are all subsequent to that original request and there is no way to determine exactly when they were digitized.

b. At least 868 of the X-files would have been responsive to Plaintiff's original FOIA request which is the subject of this litigation. Further, these files were dated more than one year prior to that original request so they were responsive, but withheld.

7. I believe that the newly obtained X-files constitute at least twenty-five to thirty percent of the total X-files responsive to the original FOIA request which is the subject of this litigation. I consider this to be a very significant change in the cost of reproduction of the requested documents.

8. Further, there is good reason to believe there are a substantial quantity of additional responsive files in existence and that digitization efforts are ongoing.

a. The Declaration of Cynthia Chambers explained that scanning of X-files was an ongoing project.

9. Until FY 2010, DPMO's WWII research involved making black and white copies of IDPFs and historical documents. When DPMO's Research & Analysis WWII directorate (DPMO WWII) acquired portable scanning equipment in 2010, the historians began using that equipment to digitize those IDPFs DPMO WWII has four portable color scanners with a large scanning bed suitable for scanning IDPFs and X-Files to required preservation standards. In addition the IDPFs used for families summaries and research, DPMO WWII began scanning the X-Files

12. In early 2010, DPMO decided to scan this material before any more damage occurred or additional files become lost or misplaced.... To date, this project has consumed 2.98 Terabytes of disk space....

15. Scanning a file can take anywhere from five minutes to more than a day. DPMO's Research and Analysis Directorate has one employee devoted totally to the scanning project at hand, and each member of the Directorate's WW-II Division is expected to spend at least two hours per week scanning the X-files....

16. To date, 23 of 125 of the X-File collection has been scanned; this includes 5 boxes from the Philippines....

25. As part of the expanded effort and recognizing the fragile condition of the WWII records in particular, all DPMO WWII researchers are also required to make a color scan at archival standards at no less than 300 pixels per inch/dots per inch resolution of any Individual Deceased Personnel File of the missing that they are using to conduct research....

26. DPMO WWII is also engaged in a project to scan the available and discrete set of files known as the X-Files. Phase one has been ongoing for a year and consists of carefully preparing the files for scanning by removing all fasteners and staples using special implements to avoid damaging the documents.... If our current workload, available personnel and equipment remain at their present levels, this phase will be finished in approximately three years.

Excerpts from Declaration of Dr. Cynthia A. Chambers, Deputy Director of Research and Analysis, World War II Division, Defense Prisoner of War/Missing Personnel Office (DPMO), dated 6 May 2011

Document 25-3, in support of Defendant's Cross-Motion for Summary Judgment

b. All components of the POW/MIA accounting community have been directed by the Office of the Secretary of Defense to digitally scan all information on

missing persons (which includes the requested records) for government use and at government expense. *See* Exhibit 4.

9. I am aware of nothing to indicate Counsel for Defendants was aware of these withholdings and I make no assertion to that effect.

10. Considering the obvious effort expended by Army HRC in providing these newly discovered files, I believe they have acted in good faith and have no additional responsive documents. Army HRC should be commended for timely and forthrightly responding to my subsequent FOIA request.

11. Based on multiple telephone conversations and emails exchanged between myself and Army HRC personnel in coordinating the duplication and delivery of these files from Army HRC. My impression is that few, if any, of these newly provided documents were created by Army HRC and that they were created by some other agency or command and were accessed by Army HRC over a common data network. The sudden date cutoff of what until then appears to have been a regular flow of new documents would be consistent with additional documents which have simply not yet been uploaded to the database or network and are not currently available to Army HRC.

12. Obviously, the original duplication cost of \$24,000 is substantially overstated in light of these newly discovered files and continuing efforts to digitize these files.

13. Without a reasonably precise estimate of the quantity of documents and cost of reproduction, I can not effectively argue for, nor can the Court grant, the requested waiver of fees.

14. The attached Exhibits are incorporated in support of this declaration.

I hereby certify under penalty of perjury that the foregoing is true and correct.

Executed this 11th day of OCTOBER 2011



John Eakin, Plaintiff pro se
9865 Tower View Road
Helotes, Texas 78023
210-695-2204
jeakin@airsafety.com

John J. Eakin
9865 Tower View
Helotes, Texas 78023
Telephone 210-695-2204 - Fax 210-695-2301
Email - jeakin@airsafety.com

August 16, 2011

Mr. Dimitri Rocha, Assistant U.S. Attorney
U.S. Attorney's Office
601 N.W. Loop 410, Suite 600
San Antonio, TX 78216

RE: Civil Filing SA-10-CA-0784-FB-NSN

Dear Mr. Rocha;

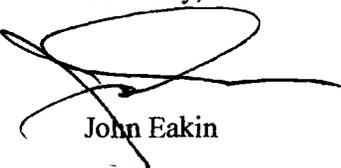
I have recently become aware that a very significant percentage of the documents requested in this lawsuit already exist in digital format and, contrary to the original denial letter, may be duplicated at minimal expense.

While we have raised the issue of adequacy of the defendants' document search and calculation of duplication costs in our motion for summary judgment, the actual number of digitized files is far beyond what we imagined or what was described in defendant's declarations.

While I have no indication of any deliberate misrepresentation, I believe both of us would benefit from knowing exactly how many responsive documents exist in digital format at DPMO, JPAC and each Service Casualty Office and what their future plans are for digitization of these records.

Please let me know if you would like to handle this informally or if I should ask the court for leave to conduct limited discovery. Either way, I believe we should ask the court to hold our respective motions for summary judgment in abeyance pending receipt of this information.

Sincerely;



John Eakin

Suit

To: "Rocha, Dimitri (USATXW)" <Dimitri.Rocha@usdoj.gov>
Subject: Eakin v. DoD
Cc: "Swain, Denise (USATXW)" <Denise.Swain@usdoj.gov>, "Otto, Anabell (USATXW)" <Anabell.Otto@usdoj.gov>
Bcc: jeakin@airsafety.com

Mr. Rocha,

It was good visiting with you yesterday and I appreciate your cooperation in determining what materials already exist in digital format and the true cost of duplication.

On June 27, 2011, I submitted a new FOIA request to DPMO, JPAC and Army HRC for all digitized WWII IDPFs and X-files, worldwide.

Out of the roughly 1600 IDPFs I received from Army HRC, there were 97 that I found would have been responsive to the original request except that the file creation date was subsequent to the date of my request. However, we know from the declarations, my prior transactions, and the DoD policy memo that IDPFs were routinely being scanned in the various components of the POW/MIA community prior to this date.

HRC also provided me around 3,000 X-files. Of these, I have found 868 fully responsive files and we're still counting. The file creation dates on these files, conversely, stop in May 2009 (more than a year prior to our Sep 2010 request which is the subject of the litigation). It seems unlikely that they suddenly stopped digitizing these files and, in fact, Dr. Chambers stated that it was an ongoing project. Again, one has to suspect that there are more digitized files somewhere. I would also point out that these X-files came neatly organized by cemetery and there was little need to review the files to determine responsiveness.

HRC promptly responded to my request and obviously expended a great deal of effort. I greatly appreciate their assistance and have no reason to think they have not provided everything they have. DPMO, on the other hand, has not responded, but we know from Dr. Chambers that they have an ongoing program to digitize files. JPAC in the past has provided me with evasive responses to my inquiries which were directly contradicted by information provided by other agencies. At the very least, we know from the declarations that JPAC has a substantial quantity of IDPFs and X-files on permanent loan and they have been directed to digitize the material as they work with it so it is difficult to believe they have no digital copies.

There may be an innocent explanation for some of these discrepancies in that there is a common database shared by DPMO, JPAC and the Service Casualty Offices and perhaps there has been an assumption that some other office is responsible for accounting for the requested documents. Even if this is true, it appears that additional documents are not being loaded in to this database as they are created. At worst, these discrepancies create the appearance that the cost of duplication was overstated in order to discourage the FOIA request.

I suggest that at least DPMO, JPAC and the SCO's be tasked to provide an inventory of potentially responsive files they have access to and what format they are in. It would probably be useful to also obtain a description of any databases or networks which may access responsive documents and what each agencies' plans are for future digitization of these files.

Suit

At some point we need to advise the court that the original FOIA response is suspect and that the dollar value of the fee waiver is going to change very significantly. I'll leave it to you to determine when we need to do this, based on when you expect the agencies to respond.

Best,

John

John Eakin
9865 Tower View, Helotes, Texas 78023
210-695-2204 - Toll-Free 877-AIRSAFETY (877-247-7233)
jeakin@airsafety.com - BataanMissing.com

"I will never leave a fallen comrade."
From US Army Soldiers Creed

John J. Eakin
9865 Tower View
Helotes, Texas 78023
Telephone: 210-695-2204
Email: jeakin@airsafety.com

June 27, 2011

1 PAGE VIA EMAIL TO erin.chidester@us.army.mil

FOIA Officer
U.S. Army Human Resources Command
ATTN: AHRC-FOI
1600 Spearhead Division Avenue, DEPT 103
Fort Knox, Kentucky 40121

RE: Freedom of Information Request

Dear Sir or Madam;

Under the provisions of the Freedom of Information Act, I request digital copies of all WWII era (1941-1945) Individual Deceased Personnel Files (IDPFs) and X-files in the possession of your command which have been digitized in to a machine readable format.

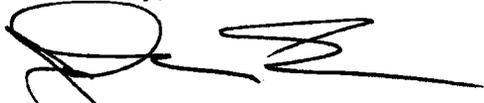
I agree to promptly pay all charges incurred by this request. Please notify me in advance if the expected fees will exceed \$350. I state that I have no unpaid FOIA or other government fees and the requested documents should be provided without delay incurred by advance payment.

I request that the requested digital files transmitted to me via internet file transfer protocol (ftp). If ftp delivery is impossible, next day delivery of CD/DVD disks to the above address is acceptable.

Should delivery of the requested documents take longer than the allowable maximum prescribed by 5 USC 552, I request interim responses at time periods not more than the maximum time provided by law.

I request that I be contacted via email (jeakin@airsafety.com) or via telephone (210-695-2204) if clarification or discussion is required. Please acknowledge receipt of this request by providing a FOIA tracking number to this email address.

Sincerely;



John Eakin

John J. Eakin
9865 Tower View
Helotes, Texas 78023
Telephone: 210-695-2204
Email: jeakin@airsafety.com

June 27, 2011

1 PAGE VIA FAX TO 703-696-4506

Office of Freedom of Information
1155 Defense Pentagon
Washington, DC 20301-1155

RE: Freedom of Information Request

Dear Sir or Madam;

Under the provisions of the Freedom of Information Act, I request digital copies of all WWII era (1941-1945) Individual Deceased Personnel Files (IDPFs) and X-files in the possession of the Defense Prisoner of War / Missing Personnel Office (DPMO) which have been digitized in to a machine readable format.

I agree to promptly pay all charges incurred by this request. Please notify me in advance if the expected fees will exceed \$350. I state that I have no unpaid FOIA or other government fees and the requested documents should be provided without delay incurred by advance payment.

I request that the requested digital files transmitted to me via internet file transfer protocol (ftp). If ftp delivery is impossible, next day delivery of CD/DVD disks to the above address is acceptable.

Should delivery of the requested documents take longer than the allowable maximum prescribed by 5 USC 552, I request interim responses at time periods not more than the maximum time provided by law.

I request that I be contacted via email (jeakin@airsafety.com) or via telephone (210-695-2204) if clarification or discussion is required. Please acknowledge receipt of this request by providing a FOIA tracking number to this email address.

Sincerely;



John Eakin

John J. Eakin
9865 Tower View
Helotes, Texas 78023
Telephone: 210-695-2204
Email: jeakin@airsafety.com

June 27, 2011

1 PAGE VIA EMAIL TO: <Rachel.Phillips@jpac.pacom.mil>,
<jpacexternalrelationsall@jpac.pacom.mil>

Freedom of Information Officer
Joint POW/MIA Accounting Command
310 Worchester Avenue, Bldg. 45
Joint Base Pearl Harbor-Hickam, Hawaii 96853-5530

RE: Freedom of Information Request

Dear Sir or Madam;

Under the provisions of the Freedom of Information Act, I request digital copies of all WWII era (1941-1945) Individual Deceased Personnel Files (IDPFs) and X-files in the possession of your command which have been digitized in to a machine readable format.

I agree to promptly pay all charges incurred by this request. Please notify me in advance if the expected fees will exceed \$350. I state that I have no unpaid FOIA or other government fees and the requested documents should be provided without delay incurred by advance payment.

I request that the requested digital files transmitted to me via internet file transfer protocol (ftp). If ftp delivery is impossible, next day delivery of CD/DVD disks to the above address is acceptable.

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I request that I be contacted via email (jeakin@airsafety.com) or via telephone (210-695-2204) if clarification or discussion is required. Please acknowledge receipt of this request by providing a FOIA tracking number to this email address.

Sincerely;



John Eakin



DEPARTMENT OF THE ARMY
U.S. ARMY HUMAN RESOURCES COMMAND
1600 SPEARHEAD DIVISION AVENUE DEPT# 103
FORT KNOX, KY 40122-5100

July 12, 2011

Freedom of Information Act

John J. Eakin
9865 Tower View
Helotes TX 78023
jeakin@airsafety.com

Dear Mr. Eakin:

This is in response to your Freedom of Information Act (FOIA) request seeking World War II-era (WWII) Individual Deceased Personnel Files (IDPF) "...in the possession of your command which have been digitized in to a machine readable format." We have assigned FOIA Number 11-9997 for our tracking purposes.

The WWII IDPFs you seek will be released to you in full, meaning we will not redact or withhold any records or information. This letter constitutes our formal release determination as required within 20 business days per the FOIA, 5 USC §552.

Because of the scope of your request, it may take up to several weeks to process and finalize the release of the IDPFs to you. The records you seek are numerous and as such, are not maintained on a single computer server for a simple download. We will release CD-ROMs to you which contain the records, on a rolling basis and via regular U.S. Mail. The CD-ROMs will contain the records in Adobe® "pdf" format. You may download a free copy of Adobe Reader® from their Internet website.

Also, we have determined your request to fall into the FOIA fee category of "All Others," which affords you the first two hours of search time and the first 100 pages at no cost. In this instance of electronic delivery to you, and in consideration of your declared intent to make the WWII IDPFs freely available to the general public on the Internet, there will be no fees assessed.

Please be assured the delivery of records to you will be finalized as soon as possible using all available resources. If you have any questions please contact our office at (502) 613-4400. Please refer to request tracking number 11-9997 when inquiring about the status of your request.

Sincerely,

A handwritten signature in black ink, appearing to read "P. A. Robinson".

Peter A. Robinson
Chief, Freedom of Information
and Privacy Act Office



**OFFICE OF THE UNDER SECRETARY OF DEFENSE
2000 DEFENSE PENTAGON
WASHINGTON, DC 20301-2000**

JUN 23 2010

POLICY

**MEMORANDUM FOR UNDER SECRETARY OF THE ARMY
UNDER SECRETARY OF THE NAVY
UNDER SECRETARY OF THE AIR FORCE
ASSISTANT SECRETARY OF DEFENSE (HEALTH
AFFAIRS)
DIRECTOR, JOINT STAFF**

**SUBJECT: Policy on Information Access, Transparency, and Sharing in Support of
Personnel Accounting and Personnel Recovery**

Recovering missing persons in current conflicts and accounting for those still missing from past wars both depend upon our ability to share information across agency boundaries. The FY2010 National Defense Authorization Act (NDAA) contains several provisions that underscore the need to manage information in a collaborative and transparent manner. This policy memo affirms the critical role of information sharing in complying with the FY2010 NDAA and articulates the way ahead for the POW/MIA accounting and personnel recovery community.

Specifically, four elements of the FY2010 NDAA highlight the need for this policy. First, it directs the Secretary of Defense to implement a comprehensive, coordinated, integrated, and fully resourced program to account for persons missing from past conflicts. Second, the formal inclusion of WWII as a proactive mission area has significantly expanded the number of cases requiring action. Third, the requirement to establish a personnel file for individuals missing from past conflicts means the information collected by separate agencies must be accessible to all. Fourth, the statutory requirement to be capable of 200 identifications per year by 2015 demands process improvements in order to increase efficiency and achieve this new goal.

Given the distances separating the accounting community agencies, better information sharing is critical to our future success. The agencies responsible for the POW/MIA accounting mission, as defined by the FY2010 NDAA, include the Defense Prisoner of War/Missing Personnel Office (DPMO), the Joint POW/MIA Accounting Command, the Armed Forces DNA Identification Laboratory, the Life Sciences Equipment Laboratory, the casualty and mortuary affairs offices, and other DoD elements designated by the Secretary of Defense. In addition, this policy applies to the personnel recovery agencies including the Joint Staff, combatant commands, services, and the Joint Personnel Recovery Agency.



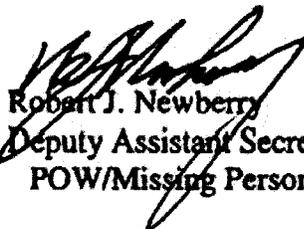
Accordingly, individual organizations of the POW/MIA accounting and personnel recovery community will ensure that analysts, historians, investigators, excavation teams, recovery forces, scientists, planners, staff officers, and decision makers across the community have access to information in a fully transparent and collaborative environment. DPMO will develop a case management system to provide an information sharing platform for cases spanning the mission continuum from personnel recovery in ongoing conflicts to historical accounting. In order for this system to succeed, all organizations in the POW/MIA accounting and personnel recovery community will establish a program to scan and digitize existing information on missing persons that is currently available only in hard copy. These files will be uploaded to digital files accessible to all members of the accounting community. Resource shortfalls should be coordinated with DPMO to ensure OSD-level advocacy for valid funding requirements.

This policy memo is not limited to the mandated creation of personnel files for missing personnel but also is intended to foster open exchanges between individual researchers and analysts through formal venues such as case coordination meetings. DPMO will closely coordinate with the community to monitor the efficacy of information management procedures and systems in order to effect continuous process improvement.

As required by law, these information sharing systems will incorporate appropriate security requirements to protect classified and personal information. These systems will also include appropriate precautions so material cannot be altered or changed other than by the originator or with the originator's permission.

Better information management procedures will improve case management efficiency and increase effectiveness throughout the POW/MIA accounting and personnel recovery community. We will work together to create a culture of accessibility, transparency, and sharing of information.

This policy memo has been fully coordinated with the Joint Staff, services, and principal OSD staff offices. DPMO will coordinate with the Department's Director of Administration and Management to incorporate this policy into the next revision of the applicable DoD Directives. We will address implementation of this policy via separate correspondence to the POW/MIA accounting and personnel recovery community.



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