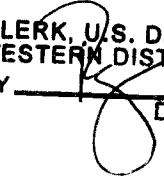


**FILED**

JAN 19 2012

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

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

**JOHN EAKIN,  
Plaintiff,**

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vs.

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

**UNITED STATES DEPARTMENT  
OF DEFENSE, LEON E. PANETTA<sup>1</sup>,  
Secretary of Defense, UNITED STATES  
DEPARTMENT OF THE ARMY,  
JOHN McHUGH, Secretary of the Army  
Defendants**

**PLAINTIFF'S SUPPLEMENTAL INFORMATION TO PLAINTIFF'S OPPOSED  
MOTION TO COMPEL PRODUCTION OR ALLOW DISCOVERY**

The following supplemental information is filed under Federal Rules of Civil Procedure Rule 15(d) to provide the Court with additional evidence supporting Plaintiff's Opposed Motion to Compel Production or Allow Discovery (Document number 37).

On January 16, 2012, Plaintiff received additional documents from the Department of Defense, Joint POW/MIA Accounting Command (JPAC) which are relevant to Plaintiff's Motion to Compel Production which is currently pending before this Court.

These newly received documents were provided in response to a FOIA request filed subsequent to the FOIA requests which are the subject of this litigation. Production of these documents was coordinated by Counsel for Defendants as a courtesy and in the interest of determining the facts of this case.

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

These digital documents were provided by JPAC without assessing duplication charges because digital documents may be reproduced at virtually no cost to the government.

These newly received documents consist of twenty-two (22) digital .pdf files, all of which would have been responsive to Plaintiff's original FOIA requests and which Defendants refused to provide pending Plaintiff's agreement to reimburse the inflated reproduction costs estimated to be \$24,000.00. Review of the file properties show that at least ten, and perhaps more, of these twenty-two files were created prior to Plaintiff's original FOIA requests.

JPAC's transmittal letter states that they have additional digital files responsive to various FOIA requests that will be provided to Plaintiff at some unstated time in the future.

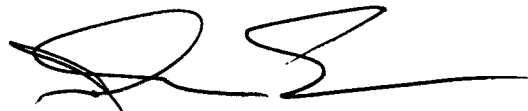
The two groups of responsive files provided by JPAC and Army Human Resources Command in response to Plaintiff's supplemental (though not part of this litigation) FOIA requests, in conjunction with prior testimony by Defendant's witness that digitization of these files is an ongoing project, clearly show that Defendants inflated the cost of reproduction in an obvious attempt to discourage Plaintiff's FOIA request. These files show beyond a doubt that a substantial quantity of the files which are the subject of this litigation currently exist in digital format or will be digitized in the routine course of business and could be reproduced in response to Plaintiff's FOIA request at virtually no cost to the government. This latest document release also confirms that a substantial volume of additional documents are available from this agency.

Additionally, JPAC's FOIA response letter states that these files were released based on a January 13, 1997 Memorandum from the Department of the Army General Counsel recommending that the practice of redacting home addresses of soldiers killed in World War II be discontinued. This memorandum was dated thirteen years prior to the filing of this lawsuit and calls in to question Defendant's good faith in claiming (now withdrawn) that certain files were withheld under FOIA exemption 6b (privacy).

Defendants have claimed (Def answer to 1<sup>st</sup> Amended Complaint paragraph 12) that all responsive digital files have been provided to Plaintiff. This is clearly not true and testimony by Defendant's own expert has shown that digitization of these files is continuing in the routine course of business. (Chambers Decl, Def Ex C, Part III)

It should be noted that JPAC originally claimed that there were no digital documents responsive to these supplemental FOIA requests until being informed that Requester intended to administratively appeal their response and the implied possibility of incorporating these supplemental requests in this litigation. Defendant's disingenuous and evasive responses demonstrate that the true cost of compliance with Plaintiff's FOIA request (and the actual amount of Plaintiff's requested fee waiver) can not be determined without an order of this Court compelling production of all existing digital files responsive to Plaintiff's FOIA request.

Respectfully submitted,



Dated: January 18, 2012


John Bakin, 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 18th day of January, 2012, 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: January 18, 2012



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

**EXHIBIT ONE**

Letter dated 12 December 2011 from JPAC to John Eakin



**JOINT POW/MIA ACCOUNTING COMMAND**  
310 WORCHESTER AVENUE  
JOINT BASE PEARL HARBOR-HICKAM, HI 96853

DCO (ER)  
2011-049/247  
12 December 2011

Mr. John Eakin  
9865 Tower View  
Helotes, Texas 78023

Dear Mr. Eakin,

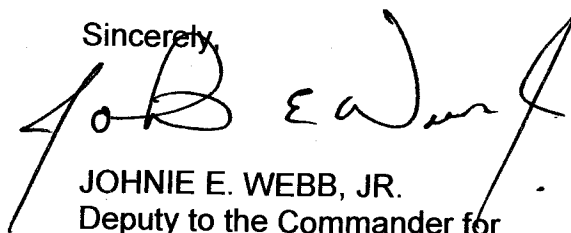
This letter is in response to your September 22, 2011 email requesting information to appeal our response to both of your Freedom of Information Act requests made to the Joint POW/MIA Accounting Command. After further research into the files maintained in JPAC's repository, we have located digitized files in response to your February 10, 2011 FOIA request. We located 21 digitized X-Files; ten (10) of those X-Files are associated with Private Arthur H. Kelder (X-812, X-814, X-815, X-816, X-818, X-820, X-821, X-822, X-823, X-824) and eleven (11) of those X-Files are in response to your request for "All Manila #2" X-Files (X-169, X-1200, X-1203, X-1242, X-1246, X-1275, X-1505, X-2363, X-2364, X-2367, X-2369).

In regards to your second request dated June 27, 2011 for digital copies of all WWII era (1941-1945) Individual Deceased Personnel Files (IDPFs) and X-files in the possession of JPAC which have been digitized into a machine readable format, we have also located digitized files. However, we are working to transfer these files to disks and will be forwarding them to you periodically.

The U.S. Army Human Resources Command has approved the release of these files directly to you. In reference to a Department of The Army, Office of the General Counsel memorandum dated January 13, 1997 recommending that the practice of redacting home addresses of soldiers killed in World War II in IDPFs be discontinued based on the passage of time and the nature of the information sought to be *de minimus*, they are granting the full release of these files. However, please be aware there may be current information in those IDPFs that are protected by Exemption 6 of the Freedom of Information Act, which we will be redacting before releasing to you. Thank you for your patience during this process. All processing fees have been waived.

If there is anything else that I or any member of my staff can do for you, please do not hesitate to contact Mrs. Rachel Phillips, my FOIA Officer at (808) 448-1804 or at [Rachel.Phillips@jpac.pacom.mil](mailto:Rachel.Phillips@jpac.pacom.mil).

Sincerely,

A handwritten signature in black ink, appearing to read "Johnie E. Webb, Jr.", written in a cursive style.

JOHNIE E. WEBB, JR.  
Deputy to the Commander for  
Public Relations and Legislative Affairs

Enclosure