

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

**FILED**

JAN 23 2012

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

JOHN EAKIN, )

Plaintiff, )

vs. )

CIVIL ACTION NO. SA-10-CA-784-FB

UNITED STATES DEPARTMENT )

OF DEFENSE; ROBERT M. GATES, )

Secretary of Defense; UNITED STATES )

DEPARTMENT OF THE ARMY; and )

JOHN McHUGH, Secretary of the Army, )

Defendants. )

**JUDGMENT**

The Court considered the Judgment to be entered in the above-styled and numbered cause. Pursuant to the Order Accepting Report and Recommendation of the United States Magistrate Judge signed this date,

IT IS ORDERED, ADJUDGED and DECREED that the Report and Recommendation (docket no. 35) of the United States Magistrate Judge is ACCEPTED pursuant to 28 U.S.C. § 636(b)(1) such that this Court finds:

- \* The government properly denied plaintiff's requests for fee waivers and expedited processing. For this reason and to this extent, the government's motion for summary judgment (docket no. 25) is GRANTED and plaintiff's motion for summary judgment (docket no. 19) is DENIED.
- \* To the extent the government relied on unreasonableness as a basis for summary judgment, this argument is DISMISSED as outside the administrative record.
- \* Plaintiff's motion to strike Mr. Chambers' affidavit (docket no. 26) is GRANTED because it supports the government's unreasonableness argument.

- \* Plaintiff's motion to strike the government's response (docket no. 30) is DENIED because the response is responsive to plaintiff's arguments. The Court declines, however, to consider the portion of the government's response which addresses unreasonableness because, as found above, that portion of the government's argument is outside the administrative record.
- \* To the extent plaintiff seeks summary judgment regarding the government's calculation of fees, it is not necessary to consider whether the government's initial estimate was correct because plaintiff asked for the records in electronic form and the estimate addressed the cost of paper copies.
- \* To the extent plaintiff sought review of the government's reliance on the privacy exemption, (docket no. 19 at 20-22), the government has since determined the exemption does not apply and produced responsive information. The argument is therefore moot.
- \* Because the individual officers are not proper parties to a lawsuit under the FOIA, Robert M. Gates, Secretary of the Department of Defense and John McHugh, Secretary of the Army, are DISMISSED as defendants.

Final Judgment is therefore ENTERED in favor of the Department of Defense and the Department of the Army.

IT IS FINALLY ORDERED, ADJUDGED and DECREED that the above-styled and numbered cause is DISMISSED WITH PREJUDICE. Motions pending with the Court, if any, are Dismissed as Moot.

It is so ORDERED.

SIGNED 23 day of January, 2012.

  
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FRED BIERY  
CHIEF UNITED STATES DISTRICT JUDGE