

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

CENTER FOR PUBLIC INTEGRITY  
910 17<sup>th</sup> Street, N.W., 7<sup>th</sup> Floor  
Washington, DC 20006-2606,

Plaintiff,

v.

Civil Action No. 19-3265

U.S. DEPARTMENT OF DEFENSE  
1600 Pentagon 3E788  
Washington, DC 20301-1600,

and

OFFICE OF MANAGEMENT AND BUDGET  
725 17th Street, N.W.  
Washington, DC 20503,

Defendants.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiff, the Center for Public Integrity, brings this action for declaratory and injunctive relief, alleging as follows:

**Nature of Action**

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, as amended, to compel the production of certain agency records.

**Jurisdiction and Venue**

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B), 28 U.S.C. § 1331, and 28 U.S.C. § 2201(a).

3. Venue lies in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391.

### **Parties**

4. Plaintiff, Center for Public Integrity, is a District of Columbia corporation, a tax-exempt public charity and a nonprofit, nonpartisan, non-advocacy, independent journalism organization based in Washington, D.C. Public Integrity's mission is "[t]o serve democracy by revealing abuses of power, corruption and betrayal of public trust by powerful public and private institutions, using the tools of investigative journalism." "About The Center for Public Integrity," <http://www.publicintegrity.org/about>. Plaintiff is the requester of the withheld records.

5. Defendant U.S. Department of Defense ("DoD"), is an agency of the United States. Defendant DoD has possession of and control over records that Plaintiff seeks.

6. Defendant Office of Management and Budget ("OMB"), is an agency of the United States. Defendant OMB has possession of and control over records that Plaintiff seeks.

### **Plaintiff's Freedom of Information Request to DoD**

7. On September 25, 2019, Plaintiff requested from Defendant DoD:

All records reflecting any communication between Defense Department acting comptroller Elaine McCusker or other officials within the comptroller's office and employees or officials of the Office of Management and Budget concerning the Ukraine Security Assistance Initiative, including but not limited to letters, emails, memoranda, reports, appointment calendars, and telephone call logs, and dated between April 2019 and the date you process this request. These should include any and all communications pertinent to apportionment requests related to the funds for this initiative during this period

[and]

All records reflecting any communication between Defense Department acting comptroller Elaine McCusker or other officials within the comptroller's office and Secretary of Defense Mark Esper or Deputy Secretary of Defense David Norquist concerning the Ukraine Security Assistance Initiative, including but not limited to letters, emails, memoranda, reports, appointment calendars, and telephone call logs, and dated between April 2019 and the date you process this request. These should include any and all communications pertinent to apportionment requests related to the funds for this initiative during this period.

Plaintiff requested expedited processing for this request. Plaintiff sent the request to the FOIA offices for the Offices of the Secretary of Defense and Joint Staff, which assigned it tracking number 19-F-1934, and for the Defense Finance and Accounting Service. A full copy of the request is filed as Exhibit A.

8. Plaintiff has not received from Defendant DoD records responsive to Plaintiff's request nor a determination on Plaintiff's request.

9. Plaintiff has not received from Defendant DoD a determination on Plaintiff's request for expedited processing.

10. More than twenty working days have passed since Defendant DoD received Plaintiff's request. Plaintiff has therefore exhausted all applicable administrative remedies.

11. Plaintiff has a statutory right to the withheld records, and there is no legal basis for Defendant DoD's failure to make them available to Plaintiff.

**Plaintiff's Freedom of Information Request to OMB**

12. On September 30, 2019, Plaintiff requested from Defendant OMB:

All records reflecting any communication between officials and employees of the Office of Management and Budget and the office of Defense Department acting comptroller Elaine McCusker or other officials within the comptroller's concerning the Ukraine Security Assistance Initiative, including but not limited to letters, emails, memoranda, reports, appointment calendars, and telephone call logs, and dated between April 2019 and the date you process this request. These should include any and all communications pertinent to apportionment requests related to the funds for this initiative during this period.

Plaintiff requested expedited processing for this request. OMB assigned tracking number 2019-496 to this request. A full copy of the request is filed as Exhibit B.

13. Plaintiff has not received from Defendant OMB records responsive to Plaintiff's request nor a determination on Plaintiff's request.

14. Plaintiff has not received from Defendant OMB a determination on Plaintiff's request for expedited processing.

15. More than twenty working days have passed since Defendant OMB received Plaintiff's request. Plaintiff has therefore exhausted all applicable administrative remedies.

16. Plaintiff has a statutory right to the withheld records, and there is no legal basis for Defendant OMB's failure to make them available to Plaintiff.

**Demand for Relief**

WHEREFORE, Plaintiff requests that this Court:

1. Declare that Defendants' failure to disclose the records requested by Plaintiff is unlawful;
2. Order Defendants to process Plaintiff's FOIA requests on an expedited basis;
3. Order Defendants to make the requested records available to Plaintiff;
4. Award Plaintiff its costs and reasonable attorneys' fees in this action; and
5. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

\_\_\_\_\_  
/S/

Peter Newbatt Smith  
D.C. Bar #458244  
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