

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

NATIONAL SECURITY ARCHIVE)
2130 H Street, N.W., Suite 701)
The Gelman Library, George Washington)
University)
Washington, D.C. 20037,)

Plaintiff,)

v.)

C.A. No. _____

UNITED STATES DEPARTMENT OF)
DEFENSE)
1400 Defense Pentagon,)
Washington, D.C. 20301-1400,)

Defendant.)

COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. Plaintiff National Security Archive seeks injunctive and other appropriate relief for the processing and release of agency records requested by plaintiff from defendant Department of Defense (“DOD”). Specifically, plaintiff seeks disclosure of 95,000 pages of documents created by former Secretary of Defense Donald H. Rumsfeld, commonly known as “the Snowflakes.” Plaintiff requested production of the Snowflakes on February 15, 2011 and has made several subsequent requests since then. Despite the passage of time, defendant’s assurances that it would work toward producing the Snowflakes, and plaintiff’s patience, DOD has yet to produce a single document in response to plaintiff’s February 15, 2011 FOIA request.

Jurisdiction and Venue

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

Parties

3. Plaintiff National Security Archive, founded in 1985, is an independent non-governmental research institute and library. The Archive was established to promote research and public education on the U.S. governmental and national security decision-making process. The Archive collects, analyzes and publishes documents acquired through the Freedom of Information Act in order to promote and encourage openness in government accountability. The Archive serves as a repository of government records on a wide range of topics pertaining to national security, intelligence, and the foreign & economic policies of the United States. The Archive won the 1999 George Polk Award, one of U.S. journalism's most prestigious prizes, for – in the words of the citation – “piercing the self-serving veils of government secrecy, guiding journalists in the search for the truth and informing us all.” It also was awarded the 2005 Emmy Award for outstanding achievement in news and documentary research. The Archive is a representative of the news media as defined in 5 U.S.C. § 552(a)(4)(a)(ii).

4. Defendant Department of Defense is a Department of the Executive Branch of the United States Government and is an agency within the meaning of 5 U.S.C. § 552 (f)(1).

Donald Rumsfeld's Snowflakes

5. Throughout his tenure as Secretary of Defense from 2001 to 2006, Donald H. Rumsfeld disseminated a series of internal memos, commonly known as “the Snowflakes.”

6. Former Secretary Rumsfeld generated approximately 20 to 60 Snowflakes per day on a broad range of issues in which DOD was involved, ranging from the North Korean and Iranian nuclear programs to the Guantanamo Bay detention facility.¹

7. The Snowflakes vary in form. Some are lengthy policy memoranda while others are short declarations. In general, the Snowflakes were dictated into a handheld tape-recorder and transcribed by an assistant.

8. In early 2011, former Secretary Rumsfeld released his autobiography, *Known and Unknown: A Memoir*. He published some of the Snowflakes therein, alongside a promise to provide others on his personal website.²

9. Most of the Snowflakes are unclassified and marked “for official use only.”³ Several classified Snowflakes have been published either in full, after being declassified, or in partially redacted form.

10. The Archive is in possession of a fraction of the Snowflakes that either were made public by former Secretary Rumsfeld, were part of a 19-document public leak, or were part of a

¹ Donald H. Rumsfeld, *North Korea and Iran's Nuclear Programs (2006)* (<http://library.rumsfeld.com/doclib/sp/4040/2006-10-04%20Re%20North%20Korean%20and%20Irans%20Nuclear%20Programs.pdf>). *See also*, Donald H. Rumsfeld, *Report on Iraq Army (2006)* (<http://library.rumsfeld.com/doclib/sp/4040/2006-10-04%20Re%20North%20Korean%20and%20Irans%20Nuclear%20Programs.pdf>). *See also*, Donald H. Rumsfeld, *Question about U.S. Muslim Leaders to GTMO (2005)* (<http://library.rumsfeld.com/doclib/sp/4103/2005-07-18%20Re%20Question%20about%20US%20Muslim%20Leaders%20to%20GTMO.pdf>).

² Donald Rumsfeld, *About the 2001-06 Snowflakes*, *The Rumsfeld Papers*, <http://papers.rumsfeld.com/library/page/200106-snowflakes> (last visited Mar 1, 2017); *see also*, Donald Rumsfeld, *2005-2006 Snowflakes*, *The Rumsfeld Papers*, http://papers.rumsfeld.com/library/library_catalog.asp?name=20052006-snowflakes&id=15&page=2 (Last visited Mar 1, 2017) (containing 522 recorded Snowflakes).

³ Robin Wright, *From the Desk of Donald Rumsfeld . . .*, *Washington Post*, November 1, 2007, <http://www.washingtonpost.com/wp-dyn/content/article/2007/10/31/AR2007103103095.html> (last visited Mar 3, 2017).

six-document production related to the Archive's 2009 FOIA request for specific memoranda. These Snowflakes total approximately 2300 pages – a small fraction of the 95,000 pages of Snowflakes created by former Secretary Rumsfeld while he was in office.

**Plaintiff's FOIA Requests and DOD's Failure
to Respond in a Timely Manner**

11. In 2009, the Archive made a formal request for certain of former Secretary Rumsfeld's memoranda along with other related documents. This request was partially fulfilled, with DOD producing 19 of 50 requested documents.

12. Former Secretary Rumsfeld's autobiography, *Known and Unknown: A Memoir*, was published on February 8, 2011. The memoir includes excerpts from former Secretary Rumsfeld's Snowflakes that were released to him by DOD.

13. In addition to these excerpts, former Secretary Rumsfeld promised to release a small collection of certain Snowflakes on his personal website.⁴ Upon review of this collection, the Archive discovered that former Secretary Rumsfeld received these documents from the DOD, ahead of the Archive's properly filed FOIA requests for related documents.

14. On February 15, 2011, the Archive made a formal FOIA request via email to DOD for certain documents provided to former Secretary Rumsfeld including, but not limited to, the Snowflakes.

15. Over the next few months, the Archive and Paul Jacobsmeyer, Chief of DOD's Freedom of Information Division, exchanged emails, had phone calls, and held in-person meetings at which the parties discussed DOD's production of the Snowflakes, along with several other pending FOIA requests.

⁴ Donald H. Rumsfeld, *The Rumsfeld Papers* (2006) (<http://papers.rumsfeld.com/>).

16. In a May 24, 2011 email to the Archive, Mr. Jacobsmeyer estimated that the Snowflakes totaled 95,000 pages.

17. On June 2, 2011, the Archive reiterated that obtaining the release of the Snowflakes was its goal. Mr. Jacobsmeyer responded, indicating that his office was amenable to producing them.

18. At an October 30, 2013 meeting between DOD and the Archive, Mr. Jacobsmeyer indicated that releasing the Snowflakes was proving to be more difficult than previously anticipated.

19. In February of 2014, the Archive wrote yet another email to DOD inquiring about the status of the Snowflakes' release. DOD promptly responded that it hoped to make an interim response in the near future. No such response occurred.

20. On December 6, 2016, representatives from DOD visited the Archive and proposed, yet again, an interim release of the Snowflakes. Approximately one month later, DOD sent emails to the Archive indicating a desire to release a "narrow[ed]... down" production of certain documents which would "target the major portions of the corpus to meet the Archive's interests."⁵ DOD did not, however, propose a reasonable schedule for production.

21. The Archive understands the volume of FOIA requests that Mr. Jacobsmeyer's office is charged with handling. It thus has made every reasonable attempt to work with the office to achieve the release of the Snowflakes.

22. To this day, the Archive has not received a single page of the Snowflakes from its February 2011 request.

⁵ E-mail from Paul Jacobsmeyer, Chief of FOID, Department of Defense, to Nate Jones, Director of the FOIA Project for the National Security Archive. (Jan. 19, 2017, 1:52 PM EST) (on file with recipient).

CAUSE OF ACTION

**Violation of the Freedom of Information Act for
Wrongful Withholding of Agency Records**

23. Plaintiff repeats and realleges paragraphs 1-22.

24. Defendant DOD has wrongfully withheld agency records requested by plaintiff.

25. Plaintiff has exhausted the applicable administrative remedies with respect to Defendant DOD's wrongful withholding of the requested records.

26. Plaintiff is entitled to injunctive relief with respect to the release and disclosure of the requested records.

Requested Relief

WHEREFORE, Plaintiff prays that this Court:

- A. order defendant DOD to promptly disclose the requested records in their entirety and make copies available to plaintiff;
- B. provide for expeditious proceedings in this action;
- C. award plaintiff costs and reasonable fees incurred in this action; and
- D. grant such other relief as the Court may deem just and proper.

Respectfully Submitted,

SKADDEN ARPS SLATE MEAGHER & FLOM
LLP



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