

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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| THE NEW YORK TIMES COMPANY | | : | |
| and CHARLIE SAVAGE, | | : | |
| | | : | |
| | Plaintiffs, | : | |
| | | : | |
| | - against - | : | <u>COMPLAINT</u> |
| | | : | |
| DEPARTMENT OF DEFENSE | | : | |
| | | : | |
| | Defendant. | : | |
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Plaintiffs THE NEW YORK TIMES COMPANY and CHARLIE SAVAGE, by their undersigned attorney, allege for their Complaint:

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to obtain an order for the production of agency records from Defendant Department of Defense (“DOD”) in response to a FOIA request properly made by Plaintiffs.

2. The FOIA request at issue in this action seeks the Trump Administration’s rules governing the use of lethal force abroad, known as the “Principles, Standards, and Procedures,” or “PSP.” These rules replace the Obama Administration’s policies governing the use of lethal force abroad, known as the “Presidential Policy Guidance,” or “PPG.”

PARTIES

3. Plaintiff The New York Times Company publishes *The New York Times* newspaper and www.nytimes.com. The New York Times Company is headquartered in this judicial district at 620 Eighth Avenue, New York, New York, 10018.

4. Plaintiff Charlie Savage is a reporter for *The New York Times* and an employee of The New York Times Company.

5. Defendant DOD is an agency of the federal government that has possession and control of the records that Plaintiffs seek.

JURISDICTION AND VENUE

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

7. Venue is premised on the place of business of Plaintiffs and is proper in this district under 5 U.S.C. § 552(a)(4)(B).

8. Defendant DOD has failed to meet the statutory deadline set by FOIA. *See* 5 U.S.C. § 552(a)(6)(A)-(B). Plaintiffs are therefore deemed to have exhausted all administrative remedies, pursuant to 5 U.S.C. § 552(a)(6)(C).

FACTS

9. On October 27, 2017, Plaintiffs submitted a FOIA request to DOD (Ref. No. 18-F-0157) seeking “access to (and declassification review of, if necessary) the document (including any annexes or appendices) in which President Trump laid out a revised set of principles, standards, and procedures for counterterrorism kill-or-capture operations, replacing the Obama-era ‘Presidential Policy Guidance’ rules.”

10. On November 2, 2017, DOD acknowledged receipt of the request and stated that it would not be able to process the documents within the 20-day statutory deadline.

11. On November 14, 2017, Plaintiffs appealed the constructive denial of its request.

12. DOD has failed to respond to Plaintiffs’ initial FOIA request or subsequent administrative appeal within the statutory time frame required under FOIA.

COUNT

13. Plaintiffs repeat, reallege, and reincorporate the allegations in the foregoing paragraphs as though fully set forth herein.

14. Defendant DOD is subject to FOIA and must therefore release in response to a FOIA request any disclosable records in its possession at the time of the request and provide a lawful reason for withholding any materials as to which it is claiming an exemption.

15. DOD has failed to meet the statutory deadline set by FOIA. *See* 5 U.S.C. § 552(a)(6)(A)-(B). Accordingly, Plaintiffs are deemed to have exhausted their administrative remedies under FOIA.

16. DOD has no lawful basis for declining to release the records requested by Plaintiffs under FOIA.

17. Accordingly, Plaintiffs are entitled to an order compelling DOD to produce records responsive to their FOIA request.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

18. Declare that the documents sought by their FOIA request, as described in the foregoing paragraphs, are public under 5 U.S.C. § 552 and must be disclosed;

19. Order DOD to provide the requested documents to Plaintiffs within 20 business days of the Court's order;

20. Award Plaintiffs the costs of this proceeding, including reasonable attorneys' fees, as expressly permitted by FOIA; and

21. Grant Plaintiffs such other and further relief as this Court deems just and proper.

Dated: New York, NY
January 26, 2018

_____/s/_____
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