

W. GORDON KAUPP, SBN 226141  
KAUPP & FEINBERG, LLP  
One Sansome Street, 35th Floor  
San Francisco, California 94104  
Telephone: (415) 896-4588  
Facsimile: (415) 294-9127  
E-Mail: gordon@kaupffeinberg.com

COLLEEN FLYNN, SBN 234281  
3435 Wilshire Blvd., Suite 2910  
Los Angeles, CA 90010  
Telephone: (213) 252-9444  
Facsimile: (213) 252-0091  
E-Mail: cflynnlaw@yahoo.com

Attorneys for Plaintiff  
KEVIN POULSEN

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KEVIN POULSEN,

Plaintiff,

vs.

OFFICE OF THE DIRECTOR OF NATIONAL  
INTELLIGENCE

Defendant.

CASE NO.

**COMPLAINT FOR  
INJUNCTIVE RELIEF**

Plaintiff KEVIN POULSEN, by and through his attorneys, brings this action under the Freedom of Information Act ("FOIA"), 5 § U.S.C. 552, for injunctive and other appropriate relief, seeking the immediate processing and release of agency records that he requested from Defendant the OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE ("ODNI").

**INTRODUCTION**

1. Plaintiff submitted a FOIA request ("the Request") to the ODNI requesting the release of the Inspector General of the Intelligence Community Semiannual Reports for five reporting periods. The Request also sought fee limitation on the basis of Plaintiff's status as a representative of the news media,

1 and asked for a fee waiver.

2 2. The request was submitted via e-mail on February 13, 2018. On February 15, 2018, Plaintiff  
3 sent a second e-mail asking Defendant to confirm receipt of the Request. Receiving no reply, Plaintiff  
4 sent a duplicate copy of the Request via United States Postal Service Priority Mail, which was received  
5 by defendant on February 20, 2018.

6 3. Although more than a month has elapsed since the Request was filed, Defendant has not  
7 released the requested records. Indeed, the Defendant has not responded to the Request in any way, nor  
8 as has it ruled on the fee limitation and fee waiver requests.

9 4. Plaintiff now respectfully requests that this Court order the Defendants to immediately  
10 process and release all records responsive to the Request and to enjoin the Defendants from charging  
11 Plaintiff fees for processing the Request.

#### 12 **JURISDICTION AND VENUE**

13 5. This Court has both subject matter jurisdiction of the FOIA claim and personal jurisdiction  
14 over the parties under 5 U.S.C. § 552(a)(4)(B), (a)(6)(E)(iii). This Court also has jurisdiction over this  
15 action under 28 U.S.C. § 1331 and 5 U.S.C. §§ 701 – 706.

16 6. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B) because Plaintiff resides in this  
17 district.

#### 18 **INTRADISTRICT ASSIGNMENT**

19 7. This action shall be assigned to the United States District Court sitting in San Francisco or  
20 Oakland, California. See, Civil L.R. 3-2(d).

#### 21 **PARTIES**

22 8. Plaintiff KEVIN POULSEN is a journalist and contributing editor at the Daily Beast. The  
23 Daily Beast publishes articles online. Plaintiff works and resides in San Francisco, California.

24 9. Defendant ODNI is an agency of the United States government within the meaning of 5  
25 U.S.C. § 552(f)(1). The Inspector General of the Intelligence Community is within the ODNI.

#### 26 **FACTUAL ALLEGATIONS**

27 10. The Inspector General of the Intelligence Community, which operates within ODNI, is  
28 obligated by statute to prepare a report on its activities “not later than January 31 and July 31 of each

year,” and to produce an unclassified version of that report “as appropriate.” See, 50 U.S.C. § 403-3h-(k)(1)(A). The ODNI’s public web site currently hosts the unclassified versions of the semiannual reports for the six reporting periods since the Inspector General of the Intelligence Community was created in 2011. The five missing reports are the subject of Plaintiff’s FOIA requests.

11. On February 13, 2018, Plaintiff submitted a FOIA Request requesting the release of five reports produced by Inspector General of the Intelligence Community. The Request was submitted to the e-mail address of the designated FOIA office of the ODNI.

12. The Request seeks the following records:

1. Office of the Inspector General of the Intelligence Community Semiannual Report, April 2014 – September 2014
2. Office of the Inspector General of the Intelligence Community Semiannual Report, October 2014 – March 2015
3. Office of the Inspector General of the Intelligence Community Semiannual Report, October 2015 – March 2016
4. Office of the Inspector General of the Intelligence Community Semiannual Report, April 2016 – September 2016; and
5. Office of the Inspector General of the Intelligence Community Semiannual Report, October 2016 – March 2017

13. Plaintiff sought a waiver of search and review fees on the ground that he qualifies as a “representative of the news media” and because the records are not sought for commercial use. See, 5 U.S.C. § 552(a)(4)(A)(ii)(II). Plaintiff also sought a fee waiver including waiver of duplication fees under 28 C.F.R. § 16.10(k)(1) - it is “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requestor.”

14. On February 15, 2018, Plaintiff sent a second e-mail to the designated FOIA office of the ODNI asking Defendant to confirm receipt of the Request.

15. Receiving no reply to either e-mail, Plaintiff sent a duplicate copy of the Request via United States Postal Service Priority Mail on February 16, 2018. Postal records indicate the Request was received by Defendant on February 20, 2018.

16. To date, no response has been received by the Plaintiff from the ODNI. The Plaintiff has constructively exhausted all required administrative remedies.

**CAUSES OF ACTION**

**First Cause of Action**

**Violation of the FOIA**

**Failure to Make the Records Requested Promptly Available to Plaintiff**

17. Plaintiff repeats and realleges each and every paragraph as if fully set forth herein.

18. Defendant's failure to make the records sought promptly available violates the FOIA, 5 U.S.C. § 552(a)(3)(A), and the corresponding agency regulations.

**Second Cause of Action**

**Violation of the FOIA**

**Failure to Timely Respond to Plaintiff's Request**

19. Plaintiff repeats and realleges each and every paragraph as if fully set forth herein.

20. Defendant's failure to timely respond to the Request violates the FOIA, 5 U.S.C. § 552(a)(6)(A), and the corresponding agency regulations.

**Third Cause of Action**

**Violation of the FOIA**

**Failure to Make a Reasonable Effort to Search for Records**

21. Plaintiff repeats and realleges each and every paragraph as if fully set forth herein.

22. Defendant's failure to make a reasonable effort to search for records responsive to the Request violates the FOIA, 5 U.S.C. § 552(a)(3)(C), and the corresponding agency regulations.

**Fourth Cause of Action**

**Violation of the FOIA**

**Failure to Limit Processing Fees**

23. Plaintiff repeats and realleges each and every paragraph as if fully set forth herein.

24. Defendant failed to grant Plaintiff's request for limitation of processing fees in violation of the FOIA, 5 U.S.C. § 552(a)(4)(A)(ii)(II), and the corresponding regulations.

**Fifth Cause of Action**

**Violation of the FOIA**

**Failure to Waive Processing Fees**

25. Plaintiff repeats and realleges each and every paragraph as if fully set forth herein.

26. Defendant failed to grant Plaintiff's request for a waiver of processing fees in violation of the FOIA, 5 U.S.C. § 552(a)(4)(A)(iii), and the corresponding agency regulations.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that this Court:

1. Order Defendant ODNI to respond to Plaintiff's Request and make a determination concerning the Request;
2. Order Defendant to immediately conduct a thorough search for the requested documents;
3. Order Defendant to make the records requested promptly available to Plaintiff;
4. Enjoin the Defendants from charging Plaintiff fees for processing the Request.
5. Award Plaintiff costs and reasonable attorney fees incurred in this action; and
6. Grant such other relief as the Court may deem just and proper.

Dated: San Francisco, California  
March 26, 2018

**KAUPP & FEINBERG, LLP**

/s/ W. Gordon Kaupp  
By: W. Gordon Kaupp, Esq.  
Attorney for Plaintiff  
KEVIN POULSEN