

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

Civil Action No.

Speaking Truth To Power,

Plaintiff,

v.

United States Air Force Global Strike Command,

Defendant,

COMPLAINT

1. This is a lawsuit seeking the release of records related to an interagency training event scheduled to have taken place at or near Malmstrom Air Force Base (“Malmstrom AFB”) on April 22-23, 2009.
2. This action is brought under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, seeking injunctive and other appropriate relief, the immediate processing and release of records sought by Plaintiff Speaking Truth to Power (“STTP”) from Defendant United States Air Force Global Strike Command (“GSC”).
3. The Request, dated January 20, 2014, sought release of records related to the execution of an interagency nuclear weapon recovery exercise (“Exercise”) which was scheduled to be conducted at Malmstrom AFB on April 22-23, 2009, and which is presumed to have taken place on those dates. In addition, the Request sought any documents which related to any After Action Reviews (“AARs”) conducted upon completion of the Exercise, and

also sought a comprehensive list of all state and federal agencies and entities which had participated in the Exercise.

4. The Request was directed to the 341st Missile Wing of the 20th Air Force, a subordinate component of Defendant GSC and located at Malmstrom AFB in Great Falls, Montana.
5. Described in more detail below, the 341st Missile Wing indicated in a series of letters beginning on January 29, 2014 that the Request was received on January 28, 2014 and had been assigned the identifier 2014-02101-F.
6. Defendant GSC has not directly dispatched any correspondence related to the Request.
7. To date, no records responsive to Plaintiff's Request have been released by GSC or subordinate components.

Jurisdiction and Venue

8. This Court has subject matter jurisdiction and personal jurisdiction over this action pursuant to 5 U.S.C. §552(a)(4)(B), (a)(6)(E)(iii), 28 U.S.C. §1331, and 5 U.S.C. §§ 701-706.
9. Venue is premised on the place of business of Speaking Truth to Power (STTP) in this district under 5 U.S.C. § 552(a)(4)(B).

Parties

10. Plaintiff STTP is a public policy research and information organization. STTP, in conjunction with Global Zero and the Center for Arms Control and Non-Proliferation, will make this information freely available to thousands of citizens through varied publications and across several websites including; www.speakingtruthtopower.org,

<http://armscontrolcenter.org> and www.globalzero.org. Obtaining information about governmental activity, analyzing that information, and widely publishing and disseminating it to the press and the public is a critical component of STTP's work.

11. Defendant GSC is one of ten (10) Major Commands of the United States Air Force. GSC is a governmental agency within the meaning of 5 U.S.C. § 552(f)(1).

Factual Background

12. On December 20, 1993, DoD released Directive 5230.16 ("Directive"), under the subject heading "Nuclear Accident and Incident Public Affairs (PA) Guidance." The stated purpose of the Directive was to "update DoD policy, responsibilities, and procedures for the prompt release of information to the public in the interest of public safety, and to prevent public alarm in the event of accidents or significant incidents involving nuclear weapons or nuclear components, radioactive material, nuclear weapon launch or transport vehicles (when a nuclear weapon is aboard), or nuclear reactors under DoD control."
13. The Directive contained descriptions and definitions of flagwords for use in identifying various events to which the Directive would apply. "Empty Quiver" was among the flagwords identified in the Directive.
14. On April 15, 2009, the 341st Missile Wing Plans and Programs Office published a web-based article on the Malmstrom AFB homepage, titled "Interagency Nuclear Weapon Recovery Exercise to Take Place."
<http://www.malmstrom.af.mil/news/story.asp?id=123144564>.

15. In the April 15, 2009 article, the 341st Missile Wing Plans and Programs Office describes, in considerable detail, an exercise which will simulate “how to respond to and eventually recover a lost, stolen, or seized nuclear asset.”
16. The type of simulated incident described in the April 15, 2009 article is described in the article as an “Empty Quiver” incident.
17. The management, accountability, and security of nuclear weapons located at Malmstrom AFB comprise the primary mission of the 341st Missile Wing; the Exercise, as described, necessarily requires the cooperation and/or involvement of the 341st Missile Wing.
18. On January 20, 2014, STTP submitted a FOIA request to the 341st Missile Wing as follows:
 - “1. Any records pertaining to the Exercise presumed to have been conducted on April 22-23, 2008, including but not limited to:
 - a. The simulated events which were included in the Exercise;
 - b. The responses that each of the simulated events were intended to produce;
 - c. The responses that each of the simulated events did produce;
 - d. A comprehensive timeline of all events which were simulated;
 - e. A comprehensive timeline of all responses to simulated events.
 2. Any records pertaining to formal and informal AARs which were conducted after the Exercise had been completed, including but not limited to:
 - a. Perceived areas of improvement identified by those who had participated in the Exercise;

- b. Perceived areas of improvement identified by those who had observed the Exercise;
- c. Courses of action which were proposed by participants and intended to address perceived deficiencies in agency performance;
- d. Courses of action which were proposed by observers and intended to address perceived deficiencies in agency performance;
- e. Any simulated emergencies which were not adequately addressed by responding participants;
- f. Any other assessments of agency success/failure and Exercise completion.

- 3. A comprehensive list of all state and federal agencies and entities which had participated in the Exercise.

19. In a letter dated January 29, 2014, [Freedom of Information Act Officer] John Marsh (“Marsh”) indicated that the Request was received by the 341st Missile Wing on January 28, 2014 and assigned case number 2014-02101-F.

20. In the first of two letters dated February 7, 2014, Marsh restated that the Request was received by [the 341st Missile Wing FOIA Office]; claimed that, prior to processing [STTP’s] Request, [STTP] “must confirm a willingness to pay for accessible search and duplication cost in excess of the first two hours and first one hundred pages”; stated that “[the 341st Missile Wing] will take no further action on [STTP’s] request until receipt of [STTP’s] written agreement to pay; and stated that, without a reply from STTP by February 24, 2014, [the 341st Missile Wing] “will close [STTP’s] case file.”

21. In the second of two letters dated February 7, 2014, Marsh wrote that "computer and hard copy searches were conducted and no records were found," in apparent disregard for the conditions imposed in the first letter dated February 7, 2014.
22. To date, no records responsive to Plaintiff's Request have been released by GSC or subordinate components.

Causes of Action

23. Defendants' failure to provide the requested documents violates the FOIA, 5 U.S.C. § 552 et al.

Prayer for Relief

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Order Defendant immediately produces all records responsive to the Request of January 20, 2014;
- B. Enjoin Defendant from charging Plaintiff search, review, or duplication fees for the processing of the Request;
- C. Award Plaintiff their costs and reasonable attorney's fees incurred in this action; and
- D. Grant such other relief as the Court deem just and proper.

Dated: March 9, 2014

By:  _____

Jules Zacher, Esq.
1601 Walnut Street #707
Philadelphia, PA 19102
215-988-0160
Attorney for Plaintiff