

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

Civil Action No.

Speaking Truth To Power,

Plaintiff,

v.

United States National Nuclear Security Administration,

Defendant,

COMPLAINT

1. This is a lawsuit seeking the release of records of events which have been identified as “Broken Arrow” incidents in accordance with United States Department of Defense Manual 3150.08 or subsequently issued manuals or directives.
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 National Nuclear Security Administration (“NNSA”).
3. The Request, dated January 13, 2014, sought release of records of Broken Arrow incidents occurring after September 19, 1980; Broken Arrow incidents which had occurred earlier than September 19, 1980 and were omitted from a Department of Defense document titled “Narrative Summaries of Accidents Involving U.S. Nuclear

Weapons; and events involving nuclear armaments which were initially issued an identifier other than "Broken Arrow," and subsequently re-identified as Broken Arrow incidents.

4. The Request was directed to NNSA and several nonparty agencies.
5. Explained in more detail below, Defendant NNSA indicated in an electronic mail transmission dated February 12, 2014 that "[NNSA] received [STTP's] request in our office on January 22, 2014."
6. To date, no records responsive to Plaintiff's request have been released by NNSA.

Jurisdiction and Venue

7. 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.
8. 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

9. 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.

10. Defendant NNSA is a separately organized agency within the U.S. Department of Energy, responsible for the management and security of the nation's nuclear weapons, nuclear nonproliferation, and naval reactor programs. NNSA is a governmental agency within the meaning of 5 U.S.C. § 552(f)(1).

Factual Background

11. 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."
12. The Directive contained descriptions and definitions of flagwords for use in identifying various events to which the Directive would apply. "Broken Arrow" was among the flagwords identified in the Directive.
13. On January 13, 2014, STTP submitted a FOIA request as follows:
 - "1. Any records pertaining to Broken Arrow incidents occurring after September 19, 1980, including but not limited to:

- a. Causes and immediate responses to the Broken Arrow incidents, who made the immediate decisions, and who acted out the immediate actions;
 - b. What the launch status of the nuclear armaments was when each Broken Arrow incident occurred;
 - c. Any degradation of the safeguards against accidental launch during the Broken Arrow incident, if applicable;
 - d. Any post-incident inspections of armament systems which were aimed at preventing similar occurrences;
 - e. Any physical measures taken to prevent similar occurrences;
 - f. Any relevant protocols and rules which were in place at the time of the incident and which were violated.
2. Any records pertaining to Broken Arrow incidents which had occurred earlier than September 19, 1980 and had been omitted or are otherwise missing from the Department of Defense document titled "Narrative Summaries of Accidents Involving U.S. Nuclear Weapons," including but not limited to:
- a. Causes and immediate responses to the Broken Arrow incidents, who made the immediate decisions, and who acted out the immediate actions;
 - b. What the launch status of the nuclear armaments was when each Broken Arrow incident occurred;

- c. Any degradation of the safeguards against accidental launch during the Broken Arrow incident, if applicable;
 - d. Any post-incident inspections of armament systems which were aimed at preventing similar occurrences;
 - e. Any physical measures taken to prevent similar occurrences;
 - f. Any relevant protocols and rules which were in place at the time of the incident and which were violated.
3. Any records pertaining to events which involved nuclear armaments, were first identified as something other than a Broken Arrow incident, and were then subsequently identified as a Broken Arrow incident, including but not limited to:
- a. Causes and immediate responses to the Broken Arrow incidents, who made the immediate decisions, and who acted out the immediate actions;
 - b. What the launch status of the nuclear armaments was when each Broken Arrow incident occurred;
 - c. Any degradation of the safeguards against accidental launch during the Broken Arrow incident, if applicable;
 - d. Any post-incident inspections of armament systems which were aimed at preventing similar occurrences;
 - e. Any physical measures taken to prevent similar occurrences;
 - f. Any relevant protocols and rules which were in place at the time of the incident and which were violated.”

14. In a letter dated February 6, 2014, [NNSA Information Management Program Specialist] Roberto Marquez wrote that the January 13, 2014 Request issued by STTP had been received by NNSA on January 22, 2014.
15. The letter from NNSA dated February 6, 2014 contained a denial of expedited processing, notice that STTP's request for fee waiver will be considered after total costs exceed fifteen (\$15) dollars, and a claim that "'unusual circumstances' as defined in the Open Government Act of 2007" exist because there is "a need to search for or collect records from facilities geographically separated from [the NNSA Office of the General Counsel].
16. To date, no records responsive to STTP's Request has been received from NNSA.

Causes of Action

17. 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 produce all records responsive to the Request of January 13, 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 10, 2014

By:  _____

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