

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

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PHYSICIANS FOR HUMAN RIGHTS,	)	
1156 15th Street NW, Suite 1001	)	Case No.
Washington, DC 20005,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
U.S. DEPARTMENT OF DEFENSE,	)	
1600 Defense Pentagon	)	
Washington, DC 20301-1155	)	

and its components  
Defense Intelligence Agency,  
Building 6000  
Washington, DC 20340-5100

United States Special Operations  
Command,  
7701 Tampa Point Boulevard  
MacDill AFB, FL 33621-5323

and United States Central Command,  
7115 South Boundary Boulevard  
MacDill AFB, FL 33621-5101

Defendants.

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**COMPLAINT FOR INJUNCTIVE RELIEF**

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for injunctive and other appropriate relief and to obtain the disclosure and release of agency records improperly withheld from plaintiff by defendant Department of Defense (“DOD”) and its components Defense Intelligence Agency (“DIA”), United States Special Operations Command (“USSOC”), and United States Central Command (“CENTCOM”).

## **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 subject matter 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 Physicians for Human Rights (“PHR”) is a not-for-profit organization with its principal place of business in Cambridge, Massachusetts. Its mission is to promote health by protecting human rights. It uses scientific methods and clinical medical skills to investigate allegations of human rights violations. PHR has conducted investigations of health and human rights in Iraq and Afghanistan and has worked around the world to expose war crimes. The goals of PHR’s investigations include revealing the truth about human rights abuses, holding perpetrators accountable, demonstrating the scope of rights violations, and advocating an end to abuses. PHR publishes newsletters, reports, and informational materials for the public, many of which are available on its website, [www.physiciansforhumanrights.org](http://www.physiciansforhumanrights.org).

4. DOD is a Department of the Executive Branch of the United States Government and includes component entities DIA, USSOC, and CENTCOM. DOD is an agency within the meaning of 5 U.S.C. § 552(f).

## **Discovery and Investigation of a Mass Grave in Afghanistan**

5. International news stories and investigations from January 2002 to February 2004 reported that the bodies of as many as 2,000 Taliban fighters may lie in a mass grave at Dasht-e-

Leili, Afghanistan. This reported gravesite is approximately 78 miles west of Mazar-I-Sharif near Sheberghan. According to reports, hundreds of Taliban fighters died of asphyxiation at the end of November 2001 when transported in flatbed truck shipping containers from the site of their surrender in Konduz to the prison in Sheberghan. Their bodies were allegedly buried in December 2001.

6. According to reports, U.S. forces were providing security at the Sheberghan prison when some of the container trucks arrived.

7. PHR personnel visited the gravesite in January and February 2002 and documented skeletal remains (some with human tissue still attached, indicating recent burial), shoes, prayer beads, and prayer caps in the graves.

8. The mass graves were first reported in the American media in the *New York Times* in May 2002. A cover story in *Newsweek* magazine in July 2002 described the deaths, the gravesite, and surrounding events. The *Newsweek* article is appended to this complaint as Exhibit A.

9. In its article, *Newsweek* reported that DOD spokesman Lt. Col. Dave Lapan said that CENTCOM had questioned the U.S. forces in Afghanistan concerning the gravesite and the transfer of Taliban prisoners to Sheberghan prison. The article further reported that a senior DOD official said the commander of the U.S. forces had looked into the reports of the deaths.

10. After *Newsweek* released its lengthy report on the graves, State Department spokesman Phillip Reeker said that the U.S. would investigate the circumstances surrounding the gravesite.

11. In August 2002, General Tommy Franks was quoted in an article on cnn.com as calling for an investigation into allegations that hundreds of Taliban prisoners suffocated and were dumped into mass graves after surrendering to US-based forces in November 2001.

12. An August 2002 *New York Times* article reported that at a Pentagon briefing on August 26, 2002, Marine General Peter Pace told reporters that the U.S. military conducted an internal review into what happened at Sheberghan.

### **Plaintiff's FOIA Requests**

13. By letter dated June 21, 2006 to DOD, the U.S. Army, and CENTCOM, among others, plaintiff submitted Freedom of Information Act ("FOIA") requests for all records relating to the existence of a grave in or around Dasht-e-Leili in Afghanistan and records relating to any investigation of or correspondence about this grave or to U.S. military presence at or near the grave.

### **Defendant DOD's Failure to Respond to Plaintiff's Request**

14. By letter dated August 1, 2006, DOD provided an interim response regarding plaintiff's request for a fee waiver. This letter also notified plaintiff of DOD's additional referral of the request to the DIA for review and direct response.

15. By letter dated April 26, 2007, plaintiff sent an appeal to DOD under 5 U.S.C. § 552 because it had received no further information from DOD.

16. By letter dated August 6, 2007, DOD sent another an interim response to plaintiff's FOIA request. This letter noted that the DOD was conducting a search for additional documents and enclosed six documents deemed responsive to the FOIA request. These

documents included a draft of a letter from the Office of the Deputy Secretary of Defense to PHR, articles and letters from PHR's website, a *Washington Post* article written by the executive director of PHR, and various constituent letters to Members of Congress regarding the Afghanistan gravesite. None of these documents relates to any DOD investigation into the reports of a mass gravesite in Afghanistan.

17. To date, DOD has not provided the records requested by plaintiff in its FOIA request nor has DOD informed plaintiff of the outcome of the appeal, notwithstanding the FOIA's requirement of an agency response within twenty (20) working days of the appeal sent on April 26, 2007.

18. PHR has exhausted the applicable administrative remedies with respect to its FOIA request to DOD.

19. Defendant DOD has improperly withheld the requested records from PHR.

#### **DIA's Failure to Respond to Plaintiff's Request**

20. On or before August 1, 2006, DOD referred plaintiff's FOIA request to DIA.

21. Plaintiff did not receive acknowledgment or communication from DIA, and plaintiff sent an appeal under 5 U.S.C. § 552 to DIA by letter on May 30, 2007.

22. On November 15, 2007, plaintiff, through counsel, checked the status of the appeal by phone, and DIA stated that plaintiff would have a response by the end of the month. No response followed.

23. To date, DIA has not provided the records requested by plaintiff in its FOIA request nor has DIA informed plaintiff of the outcome of the appeal, notwithstanding the FOIA's

requirement of an agency response within twenty (20) working days of the appeal sent on May 30, 2007.

24. PHR has exhausted the applicable administrative remedies with respect to its FOIA request to DIA.

25. Defendant DIA has improperly withheld the requested records from PHR.

### **USSOC's Failure to Respond to Plaintiff's Request**

26. By letter dated March 15, 2007, USSOC stated that the Department of Army referred plaintiff's request to U.S. Army Special Operations Command (USASOC), that USASOC referred the request to USSOC, and that USSOC did not find any responsive records.

27. By letter dated April 26, 2007, plaintiff appealed this decision under 5 U.S.C. § 552.

28. On November 30, 2007, plaintiff, through counsel, checked the status of the appeal by phone, and USSOC confirmed that the appeal was being processed.

29. To date, USSOC has not provided the records requested by plaintiff in its FOIA request nor has USSOC informed plaintiff of the outcome of the appeal, notwithstanding the FOIA's requirement of an agency response within twenty (20) working days of the appeal sent on April 26, 2007.

30. PHR has exhausted the applicable administrative remedies with respect to its FOIA request to USSOC.

31. Defendant USSOC has improperly withheld the requested records from PHR.

### **CENTCOM's Failure to Respond to Plaintiff's Request**

32. By letter dated August 1, 2006, CENTCOM confirmed receipt of plaintiff's FOIA request.

33. Because plaintiff received no further response to its FOIA request, plaintiff sent an appeal under 5 U.S.C. § 552 to CENTCOM by letter dated April 26, 2007.

34. On November 30, 2007, plaintiff, through counsel, checked the status of the appeal by phone, and CENTCOM confirmed that it was processing the appeal.

35. To date, CENTCOM has not provided the records requested by plaintiff in its FOIA request nor has CENTCOM informed plaintiff of the outcome of the appeal, notwithstanding the FOIA's requirement of an agency response within twenty (20) working days of the appeal sent on April 26, 2007.

36. PHR has exhausted the applicable administrative remedies with respect to its FOIA request to CENTCOM.

37. Defendant CENTCOM has improperly withheld the requested records from PHR.

### **Count I: Against Defendants DOD, DIA, USSOC, and CENTCOM For Injunctive and Other Relief Under the Freedom of Information Act**

38. PHR hereby incorporates by reference paragraphs 1 – 37 above.

39. 5 U.S.C. § 552(a)(3)(A) requires an agency to make records promptly available to any person upon request for reasonably identified records. 5 U.S.C. § 552(a)(4)(B) precludes the improper withholding of requested agency records.

40. 32 C.F.R. § 286.24 (2008) states that final determinations on appeals should be made within twenty (20) working days after receipt and allows ten (10) additional days if unusual circumstances are present.

41. As alleged in paragraphs 1 – 37 above, defendants DOD, DIA, USSOC, and CENTCOM have improperly withheld records from PHR relating to the mass grave in Dasht-e-Leili and have failed to timely respond to PHR's FOIA request appeals.

42. PHR has been harmed by defendants' actions as, among other things, it cannot, without the requested records, complete its investigation of, and report to the public concerning, possible human rights violations at Dasht-e-Leili.

#### **Requested Relief**

WHEREFORE, plaintiff prays that this Court:

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



ROPES & GRAY LLP

Dated: February 19, 2008

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