



October 24, 2017

VIA Electronic Delivery

Stephanie Carr
FOIA Contact Acting Deputy Chief Management Officer
Department of Defense
OSD/JS FOIA Requester Service Center
Office of Freedom of Information
1155 Defense Pentagon
Washington, DC 20301-1155
whs.mc-alex.esd.mbx.osd-js-foia-requester-service-center@mail.mil

Re: Freedom of Information Act Records Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. §§ 552 *et seq.*, and the U.S. Department of Defense (“DOD”) FOIA regulations beginning at 32 C.F.R. Part 286, Democracy Forward Foundation makes this request on behalf of VoteVets.org (“VoteVets”), a 501(c)(3) non-profit organization focusing on ensuring that the voices of America’s veterans are included in matters of public policy.

Background

Since President Trump took office, the White House has provided delayed, unclear, and/or contradictory public statements regarding two overseas military incidents that resulted in the deaths of American service members.

October 4, 2017 Niger Operation

In early October, a U.S. convoy was unexpectedly ambushed by suspected ISIS-affiliated militants near the Niger-Mali border, in an area of the world where United States Africa

Command had informed Congress earlier this year that they lacked “dedicated access” for “personnel recovery” due to “inconsistent resourcing of key requirements and capabilities.”¹

Four U.S. soldiers were killed and two were wounded in the attack. A multi-national force of American, Nigerian, and French forces, with the support of an American private aviation contractor, responded to the incident to help drive off the hostile force and rescue the U.S. personnel. One of the American soldiers killed in the incident, Sgt. La David Johnson, was missing for two days before U.S. forces recovered his body.

In the aftermath of the attack, the Trump Administration’s scarce public statements have been contradictory, confusing, and sometimes offensive. For example:

- Senator McCain, when asked if the Trump Administration has been forthcoming about the attack, replied, “of course not” adding, “it may require a subpoena.”²
- Shortly after the attack, a draft statement of condolences by the White House was prepared but never released.³
- President Trump made his first comments about the operation on October 16, over a week after the tragedy occurred.⁴
- When pressed about his outreach to the families of service members involved in the operation, President Trump falsely claimed that his predecessors in the Oval Office had not personally contacted Gold Star families to offer condolences and to express sympathy for their losses.⁵

January 29, 2017 Yemen Operation

On January 29, 2017, American forces engaged in a firefight with al Qaeda militants during an operation in Central Yemen. The firefight resulted in the death of Navy SEAL William “Ryan” Owens, as well as multiple Yemeni civilians, including children.⁶

In the aftermath of the raid, the Trump Administration provided inconsistent and inaccurate information to the public. For example:

¹ www.africom.mil%2Fmedia-room%2Fdocument%2F28720%2Fafricom-2017-posture-statement&usg=AOvVaw3wIZ0BmMJEY6A4u2O04H58.

² <http://www.politico.com/story/2017/10/19/niger-ambush-john-mccain-subpoenas-243951>.

³ <http://www.politico.com/story/2017/10/18/trump-niger-condolence-statement-243917>.

⁴ <http://www.cnn.com/2017/10/20/politics/niger-timeline-white-house-president-donald-trump/index.html>.

⁵ <https://www.whitehouse.gov/the-press-office/2017/10/16/remarks-president-trump-and-senate-majority-leader-mitch-mcconnell-joint>; <http://www.newsweek.com/obama-gold-star-military-families-trump-687596>.

⁶ <https://www.nytimes.com/2017/01/29/world/middleeast/american-commando-killed-in-yemen-in-trumps-first-counterterror-operation.html?smid=tw-share&r=1>; <https://www.nbcnews.com/news/us-news/civilians-including-children-killed-u-s-raid-al-qaeda-yemen-n715706>.

- President Trump called the operation “highly successful,” while Senator John McCain called it a “failure,” implying that the risk of loss of American lives going into the operation was known to be too high.⁷
- News reports, citing anonymous Administration officials, “have produced inconsistent reports about the quality of the intelligence gathered.”⁸
- The only concrete example of seized intelligence which has been released by DOD was later found to have been “already publicly available online and had been since 2007.”⁹

Records Requested

In an effort to understand, and explain to the public, the events that led to the deaths of service members in the military incidents in Niger and Yemen, VoteVets seeks records and deliberations related to DOD and White House communication efforts in the aftermath of the incidents.

The “records” requested below should include, but not be limited to: talking points, press releases, public statements, message guidance, question-and-answer guidance, and any other guidance or discussion on how to respond to inquiries from Congress, the press, or the public. This includes all drafts of such records and any internal or external communications regarding the development and/or distribution of such records.

In making the request, VoteVets asks DOD to protect the privacy of military families. Therefore, VoteVets is explicitly **not seeking the following**: transcripts of calls with Gold Star families; Gold Star family contact information, including e-mail addresses, home or office addresses, and phone-numbers; and content of emails or other correspondence from Gold Star families.

To that end, VoteVets requests that DOD’s Office of the Assistant to the Secretary of Defense for Public Affairs, and Office of the Assistant to the Secretary of Defense for Legislative Affairs produce the following within twenty (20) business days:

1. All records that contain any of the following search terms: Yemen, Yakla; al-Ghayil; Al Bayda; daughter; al-Qaeda; AQAP; al-Dhabab; al Dahab; al-Rimi; Baghdadi; operational plan; OPLAN; operational goal; risk assessment; TSOP; Kushner; Bannon; Flynn; Trump statement; POTUS statement; Obama.

The time period of this request is January 28, 2017 to March 1, 2017.

2. All records that contain any of the following search terms: Niger; Niamey; AFRICOM; golden hour; risk assessment; response time; public statement; Berry Aviation; David Johnson; Trump statement; POTUS statement; White House statement; WH statement.

⁷ https://www.buzzfeed.com/emmaloop/john-mccain-says-the-recent-yemen-raid-was-a-failure?utm_term=.meE1Ap9JR#.icYGXgBkr

⁸ <http://www.politifact.com/truth-o-meter/article/2017/mar/01/what-donald-trump-left-out-about-successful-yemen-/>

⁹ Id.

The time period of this request is October 3, 2017 to November 3, 2017.

In completing this request, please search for records sent or received by the following DOD offices: the Office of the Assistant to the Secretary of Defense for Public Affairs, and the Office of the Assistant to the Secretary of Defense for Legislative Affairs.

Please search for records regardless of format, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical materials. This request includes, without limitation, all correspondence, letters, emails, text messages, calendar entries, facsimiles, telephone messages, voice mail messages, and transcripts, notes, minutes, or audio or video recordings of any meetings, telephone conversations, or discussions. In searching for responsive records, however, please exclude publicly available materials such as news clips that mention otherwise responsive search terms.

FOIA requires agencies to disclose information, with only limited exceptions for information that would harm an interest protected by a specific exemption or where disclosure is prohibited by law. 5 U.S.C. § 552(a)(8)(A). In the event that any of the requested documents cannot be disclosed in their entirety, we request that you release any material that can be reasonably segregated. See 5 U.S.C. § 552(b). Should any documents or portions of documents be withheld, we further request that you state with specificity the description of the document to be withheld and the legal and factual grounds for withholding any documents or portions thereof in an index, as required by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). Should any document include both disclosable and non-disclosable material that cannot reasonably be segregated, we request that you describe what proportion of the information in a document is non-disclosable and how that information is dispersed throughout the document. *Mead Data Cent., Inc. v. U.S. Dep't of Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

If requested records are located in, or originated in, another agency, department, office, installation or bureau, please refer this request or any relevant portion of this request to the appropriate entity.

To the extent that the records are readily reproducible in an electronic format, we would prefer to receive the records in that format. However, if certain records are not available in that format, we are willing to accept the best available copy of each such record.

Please respond to this request in writing within 20 working days as required under 5 U.S.C. § 552(a)(6)(A)(i). If all of the requested documents are not available within that time period, we request that you provide us with all requested documents or portions of documents that are available within that time period. If all relevant records are not produced within that time period, we are entitled to a waiver of fees for searching and duplicating records under 5 U.S.C. § 552(a)(4)(A)(viii)(I).

Request for Fee Waiver

VoteVets.org requests a waiver of document search, review, and duplication fees because the disclosure of the requested records is in the public interest and because disclosure 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 requester.” 5 U.S.C. § 552(a)(4)(A)(iii).

The disclosure of requested records is “likely to contribute significantly to public understanding of the operations or activities of the government” because, as discussed above, news accounts underscore the substantial public interest in the records sought through this request. 5 U.S.C. § 552(a)(4)(A)(iii). Given the ongoing and widespread media attention, the records sought will contribute significantly to public understanding of an issue of profound public importance.

Moreover, VoteVets.org is a nonprofit organization organized under Internal Revenue Code § 501(c)(3) and is dedicated to promoting policy engagement and civic education. As a nonprofit organization, it does not have a commercial interest in the records. The records obtained from this request will be made available to the public at no cost.

If the request for a waiver is denied, we are willing to pay all reasonable fees incurred for searching and duplicating records in responding to this request, up to \$100. If the costs of responding to this request should exceed that amount, please contact us before incurring costs exceeding that amount.

Conclusion

If you need clarification as to the scope of the request, have any questions, or foresee any obstacles to releasing fully the requested records within the 20-day period, please contact Robin Thurston as soon as possible at foia@democracyforward.org or 202-448-9090.

We appreciate your assistance and look forward to your prompt response.

Sincerely,
/s/ Robin Thurston
Democracy Forward Foundation
Counsel for VoteVets.org



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U.S. Army Freedom of Information Office
Casey Building, Suite 150
ATTN: AAHS-RDF
7701 Telegraph Road
Alexandria, VA 22315-3905
usarmy.belvoir.hqda-oaa-ahs.mbx.rmda-foia@mail.mil

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⁶ https://www.nytimes.com/2017/01/29/world/middleeast/american-commando-killed-in-yemen-in-trumps-first-counterterror-operation.html?smid=tw-share&_r=1; <https://www.nbcnews.com/news/us-news/civilians-including-children-killed-u-s-raid-al-qaeda-yemen-n715706>.

⁷ https://www.buzzfeed.com/emmaloop/john-mccain-says-the-recent-yemen-raid-was-a-failure?utm_term=.meE1Ap9JR#.icYGXgBkr.

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