

EXHIBIT G

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Chairman, Appeals Review Panel
c/o Information and Privacy Coordinator/Appeals Officer
U.S. Department of State
A/GIS/IPS/PP, SA-2
Washington, DC 20522-8100

July 19, 2018

Via U.S. Mail

RE: FREEDOM OF INFORMATION ACT APPEALS

Case Control Numbers F-2017-17860 and F-2017-17811

Dear FOIA Appeals Officer,

I represent 100Reporters, a nonprofit news organization, and its former reporter Douglas Gillison in connection with two requests for records they submitted to the Department of State (“State Department”) under the federal Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. This letter constitutes an administrative appeal under FOIA on behalf of 100Reporters and Mr. Gillison to the Chairman of the Appeals Review Panel regarding the failure of the State Department to respond to Mr. Gillison and 100Reporters’ FOIA requests.

I. Factual and Procedural History

On December 15, 2017, I submitted, on behalf of Mr. Gillison and 100Reporters, two FOIA requests to the State Department via facsimile. Both of the requests, which are discussed separately in more detail below, sought documents related to the nomination and vetting of foreign individuals for U.S. training or assistance under various statutes that prohibit the State Department and Department of Defense (“DoD”) from providing training or

other assistance to foreign security services that have committed gross violations of human rights, and are commonly referred to, collectively, as the Leahy Law.

Specifically, the Foreign Assistance Act of 1961 prohibits foreign security services from receiving U.S. assistance if the State Department has “credible information” that the unit has committed a gross violation of human rights. 22 U.S.C. § 2378d. In addition, 10 U.S.C. § 362 imposes an identical prohibition upon assistance provided by the DoD. In fiscal years 2015 and 2014, recurring provisions to annual defense appropriations prohibited DoD from providing training or other assistance to foreign security services that have committed gross violations of human rights. *See Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235 § 8059(a), 128 Stat. 2130, 2267 (2014); Consolidated Appropriations Act, 2014, Pub. L. No. 113-76 § 8057, 128 Stat. 5, 119 (2014).*¹

The first FOIA request I submitted on behalf of Mr. Gillison and 100Reporters (the “First Request”) sought the following records:

- Copies of all guides, manuals, instructions or directions pertaining to the vetting of foreign military and security personnel and/or units under statutes commonly known as the Leahy Laws provided by the Bureau of Democracy, Human Rights and Labor at the U.S. Department of State (“State Department”) to State Department staff and/or to U.S. embassies, consulates, missions, or other foreign posts from January 1, 2014 to the date on which processing of this request commences; and
- The “Report on Government Police Training and Equipping Programs” submitted to Congress pursuant to §1235(c) of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 and copies of all “Reports on Government

¹ In fiscal year 2013 and prior years, recurring provisions to annual defense appropriations prohibited DoD from supporting any training program for foreign security services that have committed gross violations of human rights. *See, e.g., Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-6 § 8057, 127 Stat. 198, 311 (2013).*

Police Training and Equipping Programs” submitted to Congress in subsequent fiscal years.

A true and correct copy of the First Request is attached as Exhibit A. By letter dated December 27, 2017, the State Department’s Office of Information Programs & Services confirmed receipt of the First Request on December 15, 2017 and assigned it Case Control Number F-2017-17860. A true and correct copy of this acknowledgment letter is attached as Exhibit B.

As of the date of the filing of this administrative appeal, neither I nor my clients have received any further communications from the State Department regarding the First Request since the December 27, 2017 acknowledgment letter.

The second request I submitted on behalf of Mr. Gillison and 100Reporters (the “Second Request”) sought the following records from January 1, 2014 to the date on which processing of the Second Request commenced.

- All records consisting of, containing, or reflecting the names and any other identifying information of foreign individuals and/or units vetted by State Department personnel for U.S. training or assistance;
- All entries in the State Department’s International Vetting and Security Tracking System, also known as INVEST, in any other similarly dedicated throughput/workflow management and knowledge management systems used to process, document, track, or otherwise record the vetting foreign individuals and/or units for U.S. training or assistance, and all records these systems may contain;
- Message traffic, cables and emails, or record-keeping copies, in which State Department personnel or others U.S. government personnel nominate specific foreign individuals and/or units for U.S. training or other assistance;
- Message traffic, cables and emails, or record-keeping copies, in which State Department personnel consider or discuss specific foreign individuals and/or units who have been nominated for U.S. training or other assistance;
- Message traffic, cables and emails, or record-keeping copies, in which States Department personnel communicate a final determination of a foreign

individual's and/or unit's eligibility for U.S. training or other assistance under the Leahy Laws.

- All documents in which the process of vetting specific units or individuals for their eligibility to receive United States training or assistance under the Leahy Laws is discussed; [and]
- Decision memoranda in which the process of vetting specific units or individuals for their eligibility to receive United States training or assistance under the Leahy Laws is discussed and/or decisions to allow or deny assistance are discussed or recorded[.]

A true and correct copy of the second request is attached as Exhibit C. On December 20, 2017, I called the FOIA Requester Service Center to confirm receipt of both requests.

The FOIA officer I spoke to informed me that only the First Request had been received.

Accordingly, on January 2, 2018, I resubmitted the Second Request via facsimile. On

January 10, 2018, I called the FOIA Requester Service Center to confirm receipt of the

second request. The FOIA officer I spoke to informed me that the Second Request had

been received and was assigned Case Control Number F-2017-17811.

On February 27, 2018, Dr. Louis Segesvary, a FOIA Litigation and Appeals Reviewer with the Department of State, called me and asked if Mr. Gillison and 100Reporters would be willing to narrow the scope of the Second Request. I responded that I would consult with Mr. Gillison and 100Reporters about the request to narrow the scope of the Second Request. I asked Dr. Segesvary if the State Department would consider making a rolling release of records to Mr. Gillison and 100Reporters in response to the Second Request. Dr. Segesvary responded that the State Department does not provide rolling releases of records in response to FOIA requests. A true and correct copy of an email I sent to Dr. Segesvary on February 27, 2018, summarizing our phone call,

and his response on February 28, 2018, confirming receipt of my email, is attached as Exhibit D.

In February and March of 2018, Dr. Segesvary and I continued to discuss the ways in which the scope of the Second Request could be narrowed by telephone and over email. Eventually, on March 19, 2018, I informed Dr. Segesvary by email that Mr. Gillison and 100Reporters were willing to narrow the scope of the Second Request to responsive records from the State Department's International Vetting Security Tracking ("INVEST") system from January 1, 2017 to present and limited to the following countries: Iraq, Afghanistan, Egypt, Mexico, Colombia, Philippines, Cambodia, and Bangladesh. Dr. Segesvary responded, "This now is a significant and acceptable reduction in scope, one which we very much appreciate. We will proceed accordingly." True and correct copies of my March 19, 2018 email to Dr. Segesvary and his response are attached, collectively, as Exhibit E. By letter dated March 19, 2018, the State Department acknowledged receipt of the Second Request on December 15, 2017 and confirmed that it was assigned Case Control Number F-2017-17811. A true and correct copy of this acknowledgment letter is attached hereto as Exhibit F.

On March 26, 2018, I emailed the FOIA Requester Service Center at FOIAstatus@state.gov to request an estimated date of completion for the Second Request. On May 10, 2018, I received an email from Katrina Wood of the State Department that stated that the Second Request "remains in process," that "there is presently a delay in the completion of FOIA and Privacy Act requests" and that "[t]here is no more information to provide at this time." A true and correct copy of Ms. Wood's email is attached hereto as Exhibit G.

As of the date of the filing of this administrative appeal neither I nor my clients have received any further communications regarding the Second Request since Ms. Wood's May 10, 2018 email.

II. Argument

The State Department has unlawfully failed to make a determination with respect to Mr. Gillison and 100Reporters' requests within the statutory time limit.

Under FOIA, an agency is required to make a "determination" with regard to a request within twenty business days of its receipt. 5 U.S.C. § 552(a)(6)(A)(i). To satisfy this requirement, the agency "must at least: (i) gather and review the documents; (ii) determine and communicate the scope of the documents it intends to produce and withhold, and the reasons for withholding any documents; and (iii) inform the requester that it can appeal whatever portion of the 'determination' is adverse." *Citizens for Responsibility & Ethics in Wash. v. FEC*, 711 F.3d 180, 188 (D.C. Cir. 2013) ("CREW"). FOIA allows an agency to extend the date by which it may make a determination by no more than "ten working days" in "unusual circumstances," 5 U.S.C. § 552(a)(6)(B)(i), including "the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein," *id.* § 552(a)(6)(B)(iii)(III).

In this case, the State Department has failed to make a "determination" concerning Mr. Gillison and 100Reporters' requests within twenty business days, or within thirty business days, assuming *arguendo* that the requests involve "unusual circumstances" as defined by FOIA. The State Department confirmed, by letter, receipt of the First and Second Requests on December 15, 2017. *See* Exhibits B and F.

Accordingly, the State Department received both requests 216 days ago, as of the date of this administrative appeal. In addition, the State Department received Mr. Gillison and 100Reporters' consent to narrow the scope of the Second Request on March 19, 2018, which was 122 days ago, as of the date of this administrative appeal. The State Department has clearly violated FOIA's statutory deadline. *See* 5 U.S.C. § 552(a)(6)(A)(i); *id.* § 552(a)(6)(B)(i); *id.* § 552(a)(6)(B)(iii)(III).

The State Department has not communicated the scope of the documents it intends to produce and withhold, communicated any reasons for the withholding of any documents, or produced *any* documents in response to the First and Second Requests. Accordingly, the State Department is in violation of its statutory duties under FOIA. *See* 5 U.S.C. § 552(a)(6)(A)(i); *id.* § 552(a)(6)(B)(i); *id.* § 552(a)(6)(B)(iii)(III); *CREW*, 711 F.3d at 188.

III. Mr. Gillison and 100Reporters' Requests for a Fee Benefit and Fee Waiver

The State Department has classified Mr. Gillison and 100Reporters as representatives of the news media and agreed to charge them only for the cost of duplicating the records produced, after the first 100 pages. *See* Exhibits B and F. However, the State Department has deferred its determination of whether Mr. Gillison and 100Reporters are eligible for a fee waiver. *See id.* Mr. Gillison and 100 Reporters reiterate their request for a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) for the reasons stated in the First and Second Requests and incorporated by reference herein.

IV. Conclusion

By failing to provide a determination with respect to Mr. Gillison and 100Reporters' requests within the statutory deadline, the State Department is in violation

of its obligations under FOIA. Mr. Gillison and 100Reporters respectfully request that you direct the Office of Information Programs & Services to make a determination with respect to Mr. Gillison and 100Reporters' requests as soon as possible, but in any case no more than twenty business days from the date this administrative appeal is acted upon. Since the State Department has already had the First and Second Requests for over seven months, this should not be difficult to comply with.

If you have any questions regarding this appeal, please do not hesitate to contact me at (202) 795-9315 or by email at cvogus@rcfp.org. I look forward to your determination with respect to this appeal within twenty business days, as provided by FOIA. 5 U.S.C. § 552(a)(6)(A)(ii).

Sincerely

A handwritten signature in black ink that reads "Caitlin Vogus". The signature is written in a cursive, flowing style.

Caitlin Vogus
Reporters Committee for Freedom of the
Press

CC: Douglas Gillison
Diana Schemo, 100Reporters