

responses and disseminates its findings and the requested records to the American public to inform them about “what their government is up to.”

4. Defendant U.S. Department of Defense (“Defendant”) is an agency of the United States government headquartered at 1400 Defense Pentagon, Washington, DC 20301-1400. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. On August 28, 2024, Plaintiff submitted a FOIA request by e-mail (USARMY.WESTPOINT.ID-TRAINING.MBX.FOIA-PA@MAIL.MIL) to the United States Military Academy at West Point, a component of Defendant, seeking access to the following public records:

1. All documents related to the renaming of and/or elimination of West Point’s “Office of Diversity, Inclusion and Equal Opportunity” (ODIEO).

2. All documents related to the creation of West Point’s “Office of Engagement and Retention.”

3. All emails related to the matters addressed in Bullets 1 and 2 sent to and from the following USMA officials: Superintendent LTG Steve Gilland, Dean BG Shane Reeves, Commandant BG R.J. Garcia, and Chief Diversity Officer Lisa Benitez.

6. As of the date of this Complaint, Defendant has (i) failed to acknowledge Plaintiff’s request; (ii) produce the requested records or demonstrate that the requested records are lawfully exempt from production; (iii) notify Plaintiff of the scope of any responsive records it intends to produce or withhold and the reasons for any withholdings; or (iv) inform Plaintiff that it may appeal any adequately specific, adverse determination.

COUNT I **(Violation of FOIA, 5 U.S.C. § 552)**

7. Plaintiff realleges paragraphs 1 through 6 as if fully stated herein.

8. Defendant is in violation of FOIA.

9. Plaintiff is being irreparably harmed by Defendant's violation of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to comply with it.

10. To trigger FOIA's administrative exhaustion requirement, Defendant was required to make a final determination on Plaintiff's request by September 27, 2024 at the latest. Because Defendant failed to make a final determination on Plaintiff's FOIA request within the time limits set by FOIA, Plaintiff is deemed to have exhausted its administrative appeal remedies.

WHEREFORE, Plaintiff respectfully requests that the Court: (1) order Defendant to conduct searches for any and all records responsive to Plaintiff's FOIA request and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA request; (2) order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA request and *Vaughn* indices of any responsive records withheld under claim of exemption; (3) enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA request; (4) grant Plaintiff an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and (5) grant Plaintiff such other relief as the Court deems just and proper.

Dated: October 17, 2024

Respectfully submitted,

/s/ James F. Peterson
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