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9
10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 DENNIS M. BUCKOVETZ, an
13 individual, and LYNNE M. BIRD, an
14 individual

15 Plaintiffs,

16 v.

17 THE DEPARTMENT OF THE NAVY,
18 Defendant.

'21CV640 H KSC

**COMPLAINT FOR
DECLARATORY RELIEF FOR
VIOLATION OF THE FREEDOM
OF INFORMATION ACT, 5 U.S.C.
SECTION 552**

INTRODUCTION

1. Plaintiffs Dennis M. Buckovetz (“Buckovetz”) and Lynne M. Bird (“Bird”) (together with Buckovetz, “Plaintiffs”) bring this action under the Freedom of Information Act, 5 U.S.C. § 552 et seq. (“FOIA”) in light of mounting evidence that certain emails requested by Plaintiffs under FOIA were intentionally deleted or concealed at the direction of the former Commanding General of the Marine Corps Recruit Depot (“MCRD”), San Diego, Major General James W. Bierman, and in response to Buckovetz’s initial FOIA request. These emails implicate Gen. Bierman in a scheme to sell Marine Corps memorabilia using government personnel and financial resources and without official oversight. After a legal objection to Gen. Bierman’s scheme from his Staff Judge Advocate, Gen. Bierman imposed a different arrangement to divert monies intended to support formal quality of life programs to a purpose that enjoyed his strong personal interest. Upon learning of the FOIA request calling for emails underlying these events, it appears Gen. Bierman took actions to conceal or destroy them in order to hide his involvement. Though Gen. Bierman has left MCRD, it appears the concerted effort to hide these emails continues to the present day.

2. Plaintiffs now ask this Court for a declaration that the prior search for the requested emails done by Defendant The Department Of The Navy (“Defendant”) was inadequate because Defendant, through Gen. Bierman, deliberately concealed or destroyed emails that implicated Gen. Bierman in the schemes, upon receipt of a FOIA request and before production.

JURISDICTION AND VENUE

3. The Court has jurisdiction over this action pursuant to FOIA. 5 U.S.C. § 552(a)(4)(B).

4. Venue is proper as both Plaintiffs reside in this district. *Id.*; 28 U.S.C. § 1391(e).

PARTIES

5. Buckovetz is a retired Marine Corps Lieutenant Colonel domiciled in San Diego County, California. Buckovetz served as an infantry officer in ground combat operations during the Vietnam War and has been awarded numerous medals in his 21 years of active duty. Buckovetz subsequently served as the Administrative Director of the Marine Corps Community Services (“MCCS”) at MCRD San Diego.

6. Bird¹ is an individual domiciled in San Diego County, California.

7. Defendant is an agency within the meaning of 5 U.S.C. § 552(f).

FACTUAL BACKGROUND

The Marine Corps Recruit Depot and Marine Corps Community Services

8. MCRD is a Marine Corps military installation charged primarily with the initial training of enlisted recruits living west of the Mississippi River. As part of that mission, MCRD hosts an average of 40 graduation ceremonies per year for recruits who have successfully completed their training. Graduations are typically held on a Friday, with activities for family and friends on the preceding Thursday.

9. MCCS is a non-appropriated fund (“NAF”) government entity within the Department of Defense (“DoD”). MCCS’s purpose is to operate programs that support and enhance the operational readiness, war fighting capabilities, and quality of life for Marines, their families, and military retirees. MCCS funds these programs in part by selling Marine Corps memorabilia at MCRD. Sales during graduation-related activities bring in much of MCCS’ business revenue as proud family members purchase mementos and souvenirs to commemorate the occasion.

10. Challenge coins (“Coins”) are one of MCCS’ most popular retail items. Coins are given to recruits upon their completion of “The Crucible,” a grueling 54-hour field training exercise which is the culmination of the training required to serve

¹ Bird is also Buckovetz’s spouse.

1 in the Marine Corps. MCCR offers Coins and other Marine Corps memorabilia for
2 sale to visiting family and friends of graduating Marines.

3 **Gen. Bierman Takes Command At MCRD In The Summer Of 2013**

4 11. Gen. Bierman took command of MCRD on July 26, 2013. Prior to that
5 date, from July 2011 to July 2013, Gen. Bierman, then a Colonel, had served as the
6 Military Secretary to the Commandant of the Marine Corps, General James F.
7 Amos, acting as a direct advisor to the Commandant of the Marine Corps.

8 12. Gen. Amos, the highest-ranking officer in the Marine Corps, was later
9 found guilty of unlawful command influence for interfering in the court martial of a
10 Marine, Captain James Clement, accused of dereliction of duty for his failure to
11 supervise four Marines accused of urinating on the bodies of Taliban corpses. Gen.
12 Amos' interference was reported to have started in July of 2011, during then-Col.
13 Bierman's service as Gen. Amos' Military Secretary.

14 13. Importantly, Gen. Amos was accused of a concerted effort to withhold
15 evidence requested by Captain Clement's attorney, including email
16 communications. The Marine Corps ultimately chose to dismiss the charges against
17 Captain Clement rather than handing over the emails requested by his counsel. Col.
18 Bierman was promoted to Brigadier General and took command at MCRD San
19 Diego just a few months before this dismissal was announced.

20 **Gen. Bierman Continues the Past Practice of Marines on Duty and in Uniform**
21 **Selling Coins and Other Memorabilia to Graduation Visitors**

22 14. Upon arriving at MCRD Gen. Bierman continued the past practice of
23 having Marines sell Coins and other Marine Corps memorabilia at graduation
24 activities. Revenues, collected in cash only and accumulated off-the-books,
25 approached or exceeded \$100,000 annually. Several Marines close to Gen. Bierman
26 participated in this illicit scheme, including his Chief of Staff ("CoS"), Colonel
27 Michael Lee, and his Commanding Officer ("CO") of the Recruit Training
28 Regiment ("RTR"), Colonel Jim Grunty.

1 15. Gen. Bierman's unauthorized sales of merchandise took sales away
 2 from MCCS, whose revenues understandably suffered due to this improper
 3 competition. The resulting reduction in revenues diminished MCCS' ability to
 4 fulfill its mission and offer quality of life programs and services to Marines and their
 5 families. Marine Corps leadership outside of MCRD began to raise the financial
 6 operating shortfalls with both Gen. Bierman and the MCCS Director Thomas W.
 7 Spencer, a NAF employee and retired Marine Corps Colonel.

8 16. Seeking to restore MCCS' profitability, MCCS Director Spencer raised
 9 with Gen. Bierman and others his objections to the unauthorized sale of
 10 merchandise, on the grounds that this was depleting the revenues MCCS needed to
 11 perform its mission. Nevertheless, Gen. Bierman continued to approve and
 12 encourage the unauthorized sales, regardless of the financial harm to MCCS.

13 17. Meanwhile, Gen. Bierman directed or condoned the expenditure of the
 14 unauthorized Coin sales funds as he saw fit, including holiday parties, unit
 15 gatherings, dinners, and other events hosted at MCRD. Emails and other documents
 16 establish Gen. Bierman's particular focus on the financing of the annual Marine
 17 Corps Birthday Ball hosted by MCRD each November. On information and belief,
 18 Gen. Bierman directed tens of thousands of dollars of the unauthorized funds to be
 19 used in support of the Marine Corps Birthday Ball.

20 **Gen. Bierman Is Advised That Retail Sales by Uniformed On-Duty Marines Is**
 21 **Improper**

22 18. The RTR is the largest command at MCRD and its reason for being.
 23 Col. Gruny took command of the RTR from Col. Lee on July 12, 2015. Col. Gruny
 24 continued Col. Lee's practice of assigning RTR Marines in uniform and on duty to
 25 sell coins and memorabilia to graduation visitors. As Col. Lee had done before him,
 26 Col. Gruny assumed control of the funds generated, and expended or otherwise
 27 distributed the revenues as directed or allowed by Gen. Bierman. In a January 14,
 28

1 2015, email Col. Gruny stated that “without signage and advertising, we made over
2 \$100K/year when we were selling the coins.”

3 19. Upon becoming the Commanding General of MCRD, Gen. Bierman’s
4 two most prominent subordinates were Col. Lee and Col. Gruny. Both Col. Lee and
5 Col. Gruny were actively involved in the Coin and memorabilia sales by RTR
6 Marines.

7 20. Records obtained in a subsequent FOIA request indicate that, in the
8 spring of 2014, Gen. Bierman was told by his Staff Judge Advocate, Lieutenant
9 Colonel John Ming, that the selling by Marines on duty and in uniform was a
10 problem.

11 **Gen. Bierman Does Not Take Prompt Action to End the Sales**

12 21. The Coin and memorabilia sales by Marines continued from Gen.
13 Bierman’s springtime meeting with LtCol. Ming into October, 2014. Thereafter
14 coin sales were done through the Marine Corps Exchange (“MCX”), the retail
15 component of MCCS San Diego. Gen. Bierman devised an arrangement that 50%
16 of the MCX’s “net profit” from the coin sales be designated for funding of
17 upcoming Birthday Balls.

18 22. In sworn testimony Gen. Bierman stated that “not once...did I ever
19 observe the coin sales” by Marines in uniform during his first 14 months at MCRD.
20 Gen. Bierman also offered reasons why he would not or could not visit the Coins
21 selling area on Thursday afternoons and Friday mornings. But Gen. Bierman
22 conspicuously failed to address Thursday mornings. Interestingly, the record shows
23 that in the first three months after the Coin sales were transferred to the MCX Gen.
24 Bierman twice visited the MCX selling site on graduation Thursday mornings.

25 23. Crucially, the “profit” shared between Gen. Bierman and MCCS was
26 intentionally calculated using only MCCS’ direct expenses, ignoring MCCS’
27 operating costs and quality of life programs. As a result, Gen. Bierman could
28

1 capture a disproportionate share of the revenues for his own uses while MCCS’
 2 general overhead costs and quality of life programs suffered.

3 **Buckovetz Is Carbon-Copied On An Email Demonstrating Gen. Bierman’s**
 4 **Direct Involvement In The Sale of Coins**

5 24. As noted previously, on December 18, 2014 (a graduation Thursday),
 6 Buckovetz was carbon-copied on an email from MCCS Director Spencer to Col.
 7 Lee. The email was the final email in a string of four. Gen. Bierman started the
 8 string with an email to Col. Lee and Director Spencer – subject “Coins” – and
 9 stating, “We sold all one hundred by 0815. I don’t want to ever run
 10 out...Ever...Again!!!!.” Director Spencer assured Col. Lee that, “[t]his will not
 11 happen again.” *Id.* A true and correct copy of this email string is attached hereto as
 12 **Exhibit A.**

13 25. The emails shown in **Exhibit A** establish that Gen. Bierman was an
 14 informed and active participant in the diversion of revenue from MCCS to funding
 15 for the Birthday Ball to be held in November, 2015. Additional emails in
 16 December, 2014, show that Gen. Bierman sought a projection of the total MCX
 17 Coin sales funding support expected for the Birthday Ball to be held in November,
 18 2015, and that in response he was provided with a pro-forma financial statement.
 19 Separate emails show that he received regular reports into January, 2015, on actual
 20 graduation Coins sales.

21 **Buckovetz Files His First FOIA Request On Defendant; MCRD Does Not**
 22 **Produce the Responsive Emails Contained in Exhibit A**

23 26. In an effort to uncover the full scope of Gen. Bierman’s involvement in
 24 the selling of merchandise and subsequent diversion of funds from MCCS, on
 25 January 23, 2015, Buckovetz submitted a FOIA request to MCRD, Request DON-
 26 USMC-2015-002772 (the “2015 FOIA Request”). The 2015 FOIA Request sought
 27 “all email messages dated on or after 1 May 2014 that have any of the following
 28 email addresses: mark.tull@usmc.mil, jim.gruny@usmc.mil,

1 michael.lee@usmc.mil, james.bierman@usmc.mil, thomas.w.spencer@usmc-
 2 mccs.org, and john.ming@usmc.mil on the 'From:', 'To:', 'Cc:' or 'Bcc:' lines
 3 AND contain the word 'coin' or 'coins' on the subject line or within the body of the
 4 message.” A true and correct copy of the 2015 FOIA Request is attached hereto as
 5 **Exhibit B.**

6 27. The 2015 FOIA Request was directed to MCRD. The 2015 FOIA
 7 Request was referred in part to MCCS Headquarters in Quantico, VA and in part to
 8 MCRD Headquarters in San Diego, California. The partial referral was necessary
 9 because MCCS and MCRD use different email servers and domains. The MCRD
 10 uses “.mil” as an email domain whereas MCCS uses “.org.” Each domain
 11 corresponds to a different server, such that “.org” emails are stored separately from
 12 “.mil” emails. Therefore, emails to, from, ccing, or bccing MCCS Director Spencer
 13 using his “.org” email address would reside on MCCS’ server in Quantico. Emails
 14 to, from, ccing, or bccing those with “.mil” email addresses would be stored on the
 15 MCRD server.

16 28. In a March 5, 2015 response signed by Col. Lee as the responsible
 17 official – and notwithstanding that the FOIA coordinator was advised by MCRD's
 18 SJA office that Col. Lee should not participate in the gathering and production of
 19 records – MCRD produced 319 pages of records containing 384 individual
 20 emails. Notably, MCRD’s production did not include **Exhibit A.**

21 **MCCS Director Tom Spencer Is Pushed Out and Replaced Via An Improper**
 22 **Appointment Process**

23 29. As detailed above, Gen. Bierman’s unauthorized sales had a
 24 detrimental impact on MCCS’ revenues, exacerbating MCCS’ financial troubles.
 25 Director Spencer repeatedly objected to these unauthorized sales by on-duty
 26 Marines, and raised the harmful impact of Gen. Bierman’s diversion of funds. Time
 27 and time again, Gen. Bierman did not acknowledge Director Spencer’s concerns.
 28

1 30. During a meeting in late April, 2015, Director Spencer was pressured to
2 resign by Gen. Bierman and Edward Gonzales, the MCRD Director of Human
3 Relations. Ultimately the efforts by Gen. Bierman and Mr. Gonzales succeeded, and
4 Director Spencer resigned.

5 31. In late May, 2015, MCRD hosted a retirement ceremony for Col. Lee,
6 creating the public impression that Col. Lee had retired on the last day of May,
7 2015. Strengthening that impression, on June 1, 2015, Col. Lee was hired as the
8 Executive Director of the MCRD Museum Foundation, a non-profit organization
9 that maintained office space at MCRD and offered volunteer support to the
10 government employees who operate the MCRD Museum. During June and July,
11 2015, in publicity pieces associated with his new employment as the Executive
12 Director, Col. Lee was identified as “Col, USMC, Ret”.

13 32. On May 22, 2015, the MCCA Director position was advertised on
14 USAJobs, the federal government website for listing civil service and NAF job
15 opportunities within federal agencies.

16 33. On July 7, 2015, six applicants for the MCCA Director position were
17 interviewed by a four-person panel. The panel identified three top candidates in
18 order of priority: (1) Mr. Shaun Kelly, (2) retired Marine Corps LtCol. Gregory
19 Bond, and (3) Gen. Bierman’s former CoS, Col. Michael Lee.

20 34. Both Mr. Kelly and retired LtCol. Bond had prior experience with
21 MCCA. Mr. Kelly was a DoD career employee with a total of 17 years of MCCA
22 service, ten of which had been spent as the Deputy Director of MCCA Hawaii, a
23 significantly larger organization than MCCA MCRD San Diego.

24 35. Similarly, LtCol. Bond had three years of MCCA experience as the
25 MCCA MCRD Director of Marine and Family Programs, the broadest reaching and
26 most prominent component of MCCA MCRD San Diego.

27 36. In stark contrast, Col. Lee did not have any MCCA experience.
28

1 37. The hiring of NAF employees, including a Director of MCCA, is
2 subject to multiple regulations requiring that the most suitable and best qualified
3 candidate receive the position. Further, DoD Instruction 1402.01, paragraph 4.2
4 required that Mr. Kelly receive “full consideration” for the position if the candidate
5 ultimately appointed was “a retired member of the Armed Forces within 180 days of
6 retirement[.]”

7 38. Gen. Bierman did not personally interview any of the candidates.
8 Instead, on November 30, 2015, Gen. Bierman appointed retired Col. Lee as MCCA
9 Director, MCRD San Diego. The manufactured appearance that Col. Lee had
10 retired at the end of May made Monday, November 30th, the 183rd day after his
11 retirement, thereby circumventing DoD Instruction 1402.01, paragraph 4.2 mandate
12 that Mr. Kelly, an eligible and qualified career DoD employee, receive “full
13 consideration.”

14 39. Subsequent emails indicate that Col. Lee’s actual retirement date was
15 August 31, 2015, revealing his May 2015 retirement ceremony as a ruse designed to
16 allow Gen. Bierman to appoint him MCCA Director without considering more
17 qualified candidates.

18 40. The receipt of Mr. Kelly’s application, his DoD career employee status,
19 and his “best applicant” rating by the interview panel solidly introduced the “full
20 consideration” mandate into the hiring process. To avoid the risk of his financial
21 improprieties being brought to light, Gen. Bierman had no choice but to manipulate
22 the process in favor of Col. Lee.

23 41. Gen. Bierman needed a new MCCA Director who had a compelling
24 incentive to remain quiet about past RTR sales, and to continue the ongoing
25 diversion of MCX revenue. As illustrated by Director Spencer’s experience, a
26 knowledgeable and independent MCCA Director, particularly one with Mr. Kelly’s
27 MCCA credentials, could pose a threat to the ongoing diversion of sales revenue
28

1 away from MCCS or raise the alarm about past improper sales by on-duty RTR
2 Marines.

3 42. Col. Lee's abrupt "retirement" at the end of May suggests that Gen.
4 Bierman's intent from the beginning was to give an advantage to Col. Lee.

5 **In Response to the Referral of Buckovetz's 2015 FOIA Request to MCCS**
6 **Headquarters, MCCS Produces Responsive Emails Missing From MCRD's**
7 **Production**

8 43. On November 23, 2015, MCCS Headquarters in Quantico responded to
9 the referral of Buckovetz's 2015 request and produced five emails that had not
10 appeared in MCRD's March 5, 2015, production (the "Five Emails"). A true and
11 correct copy of these emails is attached hereto as **Exhibit C**.

12 44. All Five Emails were to, from, or ccing MCCS' Director Spencer
13 (thomas.w.spencer@usmc-mccs.org), and were therefore located on MCCS' ".org"
14 server. Although all of the Five Emails included individuals whose emails used the
15 ".mil" domain used by MCRD, they had not been produced by MCRD in March.

16 45. The Five Emails included the four-email chain shown in **Exhibit A**.

17 46. The fifth email, authored by Col. Gruny on October 29, 2014, and
18 including Gen. Bierman and Director Spencer as addressees, provided a summary of
19 his efforts in liquidating RTR's supply of coins and other memorabilia items. The
20 final sentence indicated that some residual funds would remain under Col. Gruny's
21 control and would be disposed of over the following months.

22 47. These facts indicate that Gen. Bierman, upon learning of Buckovetz's
23 2015 FOIA Request, deliberately led Defendant to withhold the Five Emails from
24 MCRD's 2015 production, or erase them from the ".mil" server before they could be
25 produced. The only apparent reason why the Five Emails were not deleted from
26 MCCS' ".org" server is because Gen. Bierman or persons acting at his behest could
27 not directly or indirectly access that server, or failed to realize copies existed on that
28 additional server.

1 48. In light of these facts, serious concerns exist that Defendant, through
 2 Gen. Bierman, erased or somehow concealed additional responsive emails that were
 3 located only on the “.mil” server – i.e., those that were only sent to “.mil” email
 4 accounts, and which did not include MCCA Director Spencer’s “.org” address.

5 49. Buckovetz appealed MCRD’s withholding of responsive emails by
 6 letter dated January 2, 2016. Defendant responded by letter dated March 22, 2016.
 7 The response did not address the missing emails. In subsequent litigation Defendant
 8 withdrew its administrative exhaustion argument and “agree[d] that Buckovetz
 9 exhausted administrative remedies with respect to his earlier, identical 2015 FOIA
 10 request.”

11 **Buckovetz Issues A Second FOIA Request, Which Is Denied As Duplicative**

12 50. On September 3, 2018, Buckovetz submitted another FOIA request on
 13 MCRD, Request DON-USMC-2018-011145 (the “2018 FOIA Request”) (together
 14 with the 2015 FOIA Request, the “FOIA Requests”). The 2018 FOIA Request
 15 sought the same records as the 2015 FOIA Request: “all email messages dated on or
 16 after 1 May 2014 that have any of the following email addresses
 17 mark.tull@usmc.mil, michael.lee@usmc.mil, jim.gruny@usmc.mil,
 18 james.bierman@usmc.mil, thomas.w.spencer@usmc-mcca.org, and
 19 john.ming@usmc.mil on the ‘From:’, ‘To:’, ‘Cc:’ or ‘Bcc:’ lines AND contain the
 20 word ‘coin’ or ‘coins’ on the subject line or within the body of the message.” A true
 21 and correct copy of the 2018 FOIA Request is attached hereto as **Exhibit D**.

22 51. Buckovetz submitted the 2018 FOIA Request to allow for a comparison
 23 with the email records provided in response to his 2015 FOIA Request.

24 52. On September 17, 2018, MCRD closed Buckovetz’s 2018 FOIA
 25 Request, stating it was duplicative of his 2015 FOIA Request.

26 53. Buckovetz subsequently exhausted his administrative remedies as to
 27 the 2018 FOIA Request.
 28

**Bird Makes a FOIA Request Duplicating Buckovetz's Requests; MCRD Fails
To Produce Responsive Documents For Eighteen Months**

54. On October 18, 2018, Bird submitted FOIA request DON-USMC-2019-000608 to MCRD seeking the same emails that Buckovetz had requested in 2015 and in 2018. A true and correct copy of Bird's 2018 FOIA Request is attached hereto as **Exhibit E**.

55. On November 16, 2018, Bird received the same 2018 production previously sent to Buckovetz, with Gen. Bierman's name redacted. The five emails in **Exhibit C** were not included.

56. Bird administratively appealed the redaction of Gen. Bierman's name to Defendant's Office of the Judge Advocate General. On March 7, 2019, the Office of the Judge Advocate General granted Bird's appeal, directing MCRD to remove within 20 working days the redactions of Gen. Bierman's name.

57. Bird filed a second administrative appeal on April 16, 2019, but MCRD then claimed this was mooted, representing to the Judge Advocate General that the unredacted emails had purportedly been provided via a secure file transfer website.

58. However, MCRD made the records available for only two days. Bird did not recognize the shortness of the access window, and when she thereafter attempted to do so, she found they were no longer available. This notably contrasts with Buckovetz's experience with retrieving FOIA responses via the secure file transfer. His records include four responses from HQMC that allowed 10 days for retrieval. And a response from the DoD Office of Inspector General that allowed 14 days.

59. In response, Bird contacted MCRD directly, stating that the responsive records had not been retrieved within the two-day window and requesting that the unredacted records be provided again. MCRD responded that the records were now available on a newly created public reading room website and provided the website

1 address. The records available on the public reading room website still showed the
2 same redactions over Gen. Bierman's name.

3 60. On December 13, 2020, Bird filed her third administrative appeal,
4 explaining that the records available in the public reading room still redacted Gen.
5 Bierman's name. On January 12, 2021, the Office of the Judge Advocate General
6 granted Bird's appeal and again directed MCRD to remove the redactions of Gen.
7 Bierman's name and provide a full or partial response of all reviewed records within
8 20 working days.

9 61. MCRD did not provide any response within 20 days. For months,
10 MCRD delayed producing the records, claiming they were still placing the
11 redactions on the records. Despite repeated inquiries, MCRD has failed to provide
12 the records with the redactions removed, or even an anticipated date for doing so.

13 62. As of the filing of this Complaint, MCRD remains in defiance of the
14 Office of the Judge Advocate General's directive and has yet to produce the records
15 requested with Gen. Bierman's name unredacted.

16 **BUCKOVETZ'S PRIOR FOIA LITIGATION**

17 63. On December 5, 2018, Buckovetz, acting in pro per, filed a Complaint
18 against Defendant, Case 3:18-cv-02736-MDD-KSC, for violation of FOIA.
19 Buckovetz's operative First Amended Complaint alleged two causes of action—that
20 Defendant's search for records in response to the FOIA Requests was inadequate
21 and that Defendant's internal policy regarding the administrative closure of
22 duplicative FOIA requests was improper. A true and correct copy of Buckovetz's
23 First Amended Complaint in Case 3:18-cv-02736-MDD-KSC is attached hereto as
24 **Exhibit F**.

25 64. On January 17, 2020, Buckovetz and Defendant stipulated to the
26 dismissal, without prejudice, of "Buckovetz's claim challenging the adequacy of
27 [Defendant's] search for records in response to Buckovetz's FOIA Requests." A
28 true and correct copy of the parties' stipulation is attached hereto as **Exhibit G**. The

1 District Court dismissed that claim without prejudice on January 21, 2020. A true
 2 and correct copy of the Court's order is attached hereto as **Exhibit H**. This claim is
 3 now being brought by way of the instant action, and is fully preserved.

4 65. Defendant subsequently obtained summary judgment on Buckovetz's
 5 remaining claim regarding Defendant's internal policy regarding the administrative
 6 closure of allegedly duplicative FOIA requests.

7 **FIRST CAUSE OF ACTION—FAILURE TO PRODUCE RESPONSIVE**
 8 **RECORDS; INADEQUATE SEARCH**

9 66. Buckovetz repeats and realleges the above paragraphs as if fully stated
 10 herein.

11 67. Due to the deliberate actions of Major General James W. Bierman and
 12 those working underneath or in conjunction with him, Defendant concealed or
 13 destroyed non-exempt records responsive to Buckovetz's FOIA Requests, in
 14 violation of FOIA, and in response to the FOIA request. See 5 U.S.C. §
 15 552(a)(3)(A).

16 68. Defendant lacked a legal basis for concealing, destroying, and
 17 otherwise withholding such records, in violation of FOIA. See 5 U.S.C. §§
 18 552(a)(3)(A), (6)(A).

19 69. Buckovetz is entitled to his reasonable attorneys' fees and costs under 5
 20 U.S.C. § 552(a)(4)(E).

21 **SECOND CAUSE OF ACTION—FAILURE TO PRODUCE RESPONSIVE**
 22 **RECORDS**

23 70. Bird repeats and realleges the above paragraphs as if fully stated herein.

24 71. Defendant failed to disclose and produce the records responsive to
 25 Bird's FOIA request, in violation of FOIA. See 5 U.S.C. § 552(a)(3)(A).

26 72. Defendant lacked a legal basis for withholding such records, in
 27 violation of FOIA. See 5 U.S.C. §§ 552(a)(3)(A), (6)(A).
 28

73. Bird is entitled to her reasonable attorneys' fees and costs under 5 U.S.C. § 552(a)(4)(E).

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully requests that the Court:

(1) Declare that Defendant violated FOIA by concealing, destroying, and otherwise failing to produce the requested records;

(2) Order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiffs' FOIA requests;

(3) Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiffs' FOIA requests;

(4) Issue a written finding if the circumstances surrounding the withholding of responsive records raise questions about whether agency personnel acted arbitrarily or capriciously;

(5) Grant Plaintiffs an award of attorney's fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and

(6) Grant Plaintiffs such other relief as the Court deems just and proper, including sanctions against Defendant.

Dated: April 13, 2021

SHEPPARD, MULLIN, RICHTER & HAMPTON
LLP

By s/ Travis J. Anderson
TRAVIS J. ANDERSON
T. SEAN MANN-O'HALLORAN

Attorneys for Plaintiffs Dennis M. Buckovetz
and Lynne M. Bird

INDEX OF EXHIBITS

Exhibit A	Email string between MCCA Director Spencer and Col. Lee, dated December 18, 2014
Exhibit B	Dennis M. Buckovetz's 2015 FOIA Request
Exhibit C	November 23, 2015 Production of Emails by MCCA Headquarters in Quantico
Exhibit D	Dennis M. Buckovetz's 2018 FOIA Request
Exhibit E	Lynne M. Bird's 2018 FOIA Request
Exhibit F	Dennis M. Buckovetz's First Amended Complaint in Case 3:18-cv-02736-MDD-KSC, dated January 7, 2020
Exhibit G	Stipulation re Dismissal (Without Prejudice) in Case 3:18-cv-02736-MDD-KSC, dated January 17, 2020
Exhibit F	Dismissal Without Prejudice in Case 3:18-cv-02736-MDD-KSC, dated January 21, 2020

EXHIBIT A

From: Spencer CIV Thomas W
Sent: Thursday, December 18, 2014 12:12 PM
To: Lee Col Michael J
Cc: Buckovetz CIV Dennis M; Burhart CIV Mark; Moore CIV Kristine; Dolloff CIV Bob; Nguyen CIV Anna; Vuong CIV Diana
Subject: RE: Coins

Chief,

We sold 183 company coins today.

That was the entire inventory.

We will reorder soonest (takes 10 days to receive, but we have 2 open weeks pending).

We did resupply the folks at the Theatre from existing supplies (which we were going to sell on the Exchange Mall).

R/

Tom

We simply underestimated the level of interest, as we had been averaging less than 100 coin sales per graduation.

This will not happen again.

Tom Spencer
Director, MCCC MCRD San Diego
(619)725-6441

-----Original Message-----

From: Lee Col Michael J [mailto:michael.lee@usmc.mil]

Sent: Thursday, December 18, 2014 9:03 AM

To: Spencer CIV Thomas W

Subject: RE: Coins

Is this a function of that was all the coin inventory for that Bn/ Co that was remaining or did we just boot it into the grand stands?

-----Original Message-----

From: Spencer CIV Thomas W [mailto:Thomas.W.Spencer@usmc-mccs.org]

Sent: Thursday, December 18, 2014 8:39 AM

To: Lee Col Michael J

Cc: Burhart CIV Mark; Moore CIV Kristine; Dolloff CIV Bob; Nguyen CIV Anna; Vuong CIV Diana

Subject: FW: Coins

Chief,

Well, I guess this answered the mail.

BIUGH.

Tom

Tom Spencer

Director, MCCS MCRD San Diego

(619)725-6441

-----Original Message-----

From: Bierman BGen James W [mailto:james.bierman@usmc.mil]

Sent: Thursday, December 18, 2014 8:38 AM

To: Lee Col Michael J; Spencer CIV Thomas W

Subject: Coins

We sold all one hundred by 0815.

I don't want to ever run out... Ever... Again!!!!

SF JWB

EXHIBIT B

1/3/2021

FOIAonline Request Details

DON-USMC-2015-002772 Request Details



Submitted



Evaluation



Assignment



Processing



Closed

Contact Information

Full Name	Mr. Dennis M Buckovetz
Organization	
Email Address	DennisBuckovetz@gmail.com
Phone Number	6194351282
Fax Number	
Mailing Address Location	United States/US Territories
Address Line 1	100 Acacia Way
Address Line 2	
City	Coronado
State/Province	CA
Zip Code/Postal Code	92118

Request Information

Agency	Marine Corps Recruit Depot Western Recruiting Region San Diego
Will Pay Up To	\$200.00
Date Submitted	01/23/2015
Estimated Date of Completion	03/05/2015
Fee Category	
Request Track	Simple
Request Phase	Closed
Final Disposition	Partial Grant/Partial Denial

Description

Description

This request is for the Marine Corps Recruit Depot, San Diego, CA. I request all email messages dated on or after 1 May 2014 that have any of the following email addresses Mark.Tull@usmc.mil, Jim.Gruny@usmc.mil, Michael.Lee@usmc.mil, James.Bierman@usmc.mil, Thomas.W.Spencer@usmc-mccs.org, and John.Ming@usmc.mil on the "From:", "To:", "Cc:", or "Bcc:" lines AND contain the words "coin" or "coins" on the subject line or within the body of the message. For any responsive records not released I request a complete list of the responsive records being withheld, what exemptions are being claimed, and a brief explanation of how the exemption applies to the record withheld and why

1/3/2021

FOIAonline Request Details

discretionary release is not appropriate. Please don't hesitate to contact me at DennisBuckovetz@gmail.com if there are any questions or issues with this request.

Request Expedited Processing

Made Request? No

Request a Fee Waiver

Made Request? Yes

Expedited Justification As provided for in 5 U.S.C. § 552(a)(4)(A)(iii) I request a waiver of all fees associated with this request because the information I seek concerns the operations or activities of the government and will likely contribute to the public's understanding of the use of public funds, which is inherently a subject of significant interest to the public. I have no commercial interest that would be furthered by this requested disclosure.

Supporting Files

Download	Attached File Name	Size (MB)	File Type
<input type="checkbox"/>	MR (1). BUCKOVETZ PARTIAL REFERRAL (1).pdf	0.3269	Adobe PDF Document
<input type="checkbox"/>	MR (3). BUCKOVETZ RESPONSE 20150305 (3).pdf	13.7204	Adobe PDF Document
<input type="checkbox"/>	MR (1). BUCKOVETZ ACKNOWLEDGEMENT AND FEE WAIVER LETTER (1).pdf	0.5441	Adobe PDF Document
<input type="checkbox"/>	FOIA FEE WAIVER-MR (1). BUCKOVETZ (1).pdf	0.7862	Adobe PDF Document
<input type="checkbox"/>	MR (1). BUCKOVETZ FOIA FEE LETTER 20150218 (1).pdf	0.8015	Adobe PDF Document

EXHIBIT C

(b)(6)

From: (b)(6)
Sent: Thursday, December 18, 2014 3:12 PM
To: Lee Col Michael J
Cc: Buckovetz CIV Dennis M; (b)(6)
(b)(6)
Subject: RE: Coins

(b)(6)

We sold 183 company coins today.

That was the entire inventory.

We will reorder soonest (takes 10 days to receive, but we have 2 open weeks pending).

We did resupply the folks at the Theatre from existing supplies (which we were going to sell on the Exchange Mall).

R/

(b)(6)

We simply underestimated the level of interest, as we had been averaging less than 100 coin sales per graduation.

This will not happen again.

(b)(6)

-----Original Message-----

From: Lee Col Michael J [mailto:michael.lee@usmc.mil]

Sent: Thursday, December 18, 2014 9:03 AM

T (b)(6)

Subject: RE: Coins

Is this a function of that was all the coin inventory for that Bn/ Co that was remaining or did we just boot it into the grand stands?

-----Original Message-----

From (b)(6) mailto:(b)(6)@usmc-mccs.org]

Sent: Thursday, December 18, 2014 8:39 AM

To: Lee Col Michael J

Cc: (b)(6)

(b)(6)

Subject: FW: Coins

(b)(6)

Well, I guess this answered the mail.

(b)(6)

(b)(6)

-----Original Message-----

From: Bierman BGen James W [mailto:james.bierman@usmc.mil]

Sent: Thursday, December 18, 2014 8:38 AM

To: Lee Col Michael J; (b)(6)

Subject: Coins

We sold all one hundred by 0815.

I don't want to ever run out... Ever... Again!!!!

SF JWB

(b)(6)

From: (b)(6)
Sent: Friday, October 31, 2014 1:21 PM
To: (b)(6), (b)(7)c
Subject: FW: RTR coins/pins liquidation

(b)(6)

-----Original Message-----

From: (b)(6) mailto:(b)(6)@usmc.mil]
Sent: Wednesday, October 29, 2014 5:22 PM
To: Bierman BGen James W; Lee Col Michael J; (b)(6)
(b)(6) @mcrdmhs.org)
Cc: (b)(6) ull Col Mark M; Nash Col
Christopher B
Subject: RTR coins/pins liquidation

Gentlemen, I want to provide you all a status on where we stand on liquidating our coin and pin inventory. We just sold all of our Company coins, all of our crucible coins (our Company and crucible coins have been our best sellers with the families of new Marines), and half of our 1st, 2d, and 3d BN coins to MCCA at cost for a total of \$7650. I sold half of our 1st, 2d, and 3d BN coins to the Museum foundation for a total of \$1363. I had committed to selling some of our coins to the museum foundation for their resale over a month ago when we got out of the business of being coin salesmen. This is in line with what we have done with them in the past. Neither organization expressed a desire in buying any of our Support BN coins, so I'm still working on how to get rid of those. In addition to coins we have a significant inventory of company and battalion pins. MCCA has declined to purchase these. The Museum Foundation is evaluating whether or not to buy some or all of them, and we have a backup plan to potentially sell them back, at cost, to our former supplier. Our former revenue stream will be completely dry after I liquidate the pins and I anticipate our existing balance of coin funds will be expended by the 3d or 4th quarter of next year.

v/r,

Col Jim Grunty
Commanding Officer
RTR, MCRD San Diego
Offic
Cell (b)(6)
NIPR - jim.grunty@usmc.mil

EXHIBIT D

1/3/2021

FOIAonline Request Details

DON-USMC-2018-011145 Request Details



Contact Information

Full Name	Mr. Dennis M Buckovetz
Organization	
Email Address	DennisBuckovetz@gmail.com
Phone Number	6194351282
Fax Number	
Mailing Address Location	United States/US Territories
Address Line 1	100 Acacia Way
Address Line 2	
City	Coronado
State/Province	CA
Zip Code/Postal Code	92118

Request Information

Agency	Marine Corps Recruit Depot Western Recruiting Region San Diego
Will Pay Up To	\$200.00
Date Submitted	09/03/2018
Estimated Date of Completion	10/02/2018
Fee Category	Other
Request Track	Simple
Request Phase	Closed
Final Disposition	Duplicate Request

Description

Description	I request all email messages dated on or after 1 May 2014 that have any of the following email addresses Mark.Tull@usmc.mil, Jim.Gruny@usmc.mil, Michael.Lee@usmc.mil, James.Bierman@usmc.mil, Thomas.W.Spencer@usmc-mccs.org, and John.Ming@usmc.mil on the "From:", "To:", "Cc:", or "Bcc:" lines AND contain the words "coin" or "coins" on the subject line or within the body of the message.
--------------------	--

Request Expedited Processing

1/3/2021

FOIAonline Request Details

Made Request?

No

Request a Fee Waiver

Made Request?

No

Supporting Files

Download**Attached File Name****Size (MB)****File Type**No attachments have been added.

EXHIBIT E

DON-USMC-2019-000608 Request Details



Contact Information

Full Name	Ms. Lynne M Bird
Organization	
Email Address	LynneMBird@gmail.com
Phone Number	6194351282
Fax Number	
Mailing Address Location	United States/US Territories
Address Line 1	100 Acacia Way
Address Line 2	
City	Coronado
State/Province	CA
Zip Code/Postal Code	92118

Request Information

Agency	Marine Corps Recruit Depot Western Recruiting Region San Diego
Will Pay Up To	\$200.00
Date Submitted	10/19/2018
Estimated Date of Completion	11/27/2018
Fee Category	N/A
Request Track	Simple
Request Phase	Closed
Final Disposition	Partial Grant/Partial Denial

Description

Description	I request all email messages dated on or after 1 May 2014 and through 3 February 2015 that have any of the following email addresses Mark.Tull@usmc.mil, Jim.Gruny@usmc.mil, Michael.Lee@usmc.mil, James.Bierman@usmc.mil, Thomas.W.Spencer@usmc-mccs.org, and John.Ming@usmc.mil on the "From:", "To:", "Cc:", or "Bcc:" lines AND contain the words "coin" or "coins" on the subject line or within the body of the message.
--------------------	--

Request Expedited Processing

Made Request? No

Request a Fee Waiver

Made Request? No

Supporting Files

Download	Attached File Name	Size (MB)	File Type
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No attachments have been added.

EXHIBIT F

1 Dennis M. Buckovetz
2 100 Acacia Way
3 Coronado, CA 92118
4 (619)435-1282
5 Email: DennisBuckovetz@gmail.com
6
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13 **UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**
15
16
17
18
19
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21

22 NAME OF PLAINTIFF

Case No.: 18-cv-2736-MDD-KSC

23 Dennis M. Buckovetz, *Pro Se*

FIRST AMENDED COMPLAINT

24 vs.

**FREEDOM OF INFORMATION
ACT JUDICIAL REVIEW –
REQUEST FOR DECLARATORY
AND INJUNCTIVE RELIEF**

25 NAME OF DEFENDANT

26 U.S. Department of the Navy
27
28

1. This complaint relates to the Freedom of Information Act (FOIA), 5
U.S.C. § 552. I am seeking judicial review of the U.S. Department of the Navy
(DON/Navy) action withholding agency records properly requested and lawfully
available under FOIA.

2. The United States District Court, Southern District of California, is a proper venue for this case per 5 U.S.C. § 552(a)(4)(B) because I reside in this district. The records are situated in this district.

3. Dennis M. Buckovetz, a person.

5. FOIA requires covered federal Executive Branch agencies to provide to "any person" agency records properly requested, except to the extent that such records (or portions thereof) are protected from disclosure by one or more of the nine exemptions or one of three special law enforcement exclusions. 5 U.S.C. § 552

6. In early 2015 I submitted FOIA request DON-USMC-2015-002772 to the Marine Corps Recruit Depot (MCRD) San Diego, a subordinate element of the DON, for all emails dated during a certain period that contained the words "coin" or "coins". Exhibit A Responsive emails were provided.

7. On September 3, 2018, I submitted a separate FOIA request DON-USMC-2018-011145 for the same emails. Exhibit B This 2018 request was

1 declared administratively closed because it was a duplicate of the 2015 request.

2 Exhibit C

3
4 8. I appealed. Exhibit D On appeal the administrative closure was
5 affirmed, citing Section 11n of Secretary of the Navy Instruction (SECNAVINST)
6 5720.42F, titled "The Department of the Navy FOIA Program". Section 11n lists
7 10 reasons for not complying with a FOIA request. Number eight on that list is for
8 duplicative requests from the same requestor. Exhibit E
9

10
11 9. My 2018 FOIA request was initiated as a result of irrefutable evidence
12 that some responsive email records were withheld, either improperly or
13 mistakenly, from the response to my 2015 request. So the 2018 request was done
14 to allow for a comparison with the email records provided in 2015.
15

16
17 10. The Court's analysis in *Sikes v. United States Dep't of the Navy*, 896
18 F.3d 1227 (11th Cir. 2018) concludes that there is no basis within FOIA for not
19 fulfilling duplicate FOIA requests. ".....FOIA itself contains nothing that would
20 allow an agency to withhold records simply because it has previously given them
21 to the requester." *Id*, pg 10 "Moreover, to allow an agency to deny a FOIA
22 request merely because it seeks records previously received would permit the
23 agency to base its FOIA decision on considerations that the Supreme Court has
24 forbidden." *Id*, pg 12
25
26
27
28

1 11. My 2018 FOIA request fits the case-specific facts of *Sikes* in that my
2 2018 request was an independent request and the Navy did not provide any
3 responsive records in reply.
4

5 12. Per Secretary of the Navy Instruction (SECNAVINST) 5720.42F, the
6 Department of the Navy FOIA Program, duplicate requests have been identified
7 and reported in the Navy's annual FOIA report to the DOJ since 1999. In *Sikes* the
8 Navy made the claim that responding to repeat requests would allow for
9 harassment by vexatious requests, but offered no evidence in support of that
10 proposition. *Id* at note 5
11
12
13

14 CAUSE OF ACTION

15 13. DON/Navy improperly withheld records properly requested under
16 FOIA.
17

18 REQUESTED RELIEF

19 14. Declare the Navy's duplicate request policy as stated in SECNAVINST
20 5720.42F to be unlawful.
21

22 15. Order the Navy to cease complying with the provisions of
23 SECNAVINST 5720.42F that authorize the administrative closure of duplicate
24 requests.
25

26 16. Order the Navy to disclose the records requested in DON-USMC-2018-
27 011145 in their entireties and make copies available to me.
28

1 17. Order the Navy to recover or reconstitute any responsive email records
2 that were deleted from the usmc.mil email accounts identified in my 2015 and
3 2018 Requests.
4

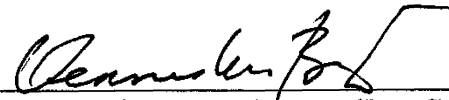
5 18. Award me attorney fees and reasonable costs incurred in this action.
6

7 19. Issue a written finding if the circumstances surrounding the
8 withholding of responsive records raise questions about whether agency personnel
9 acted arbitrarily or capriciously.
10

11 20. Grant such other relief as the Court may deem just and proper.
12

13 Dated: December 11, 2019
14

15 Respectfully submitted,
16

17 
18

19 Dennis M. Buckovetz (*Pro Se*)
20
21
22

23 **LIST OF EXHIBITS**

24 **A through E**

25 (pp. 1 – 8)

26 A My 2015 FOIA request DON-USMC-2015-002772 (Page 1)

27 B My 2018 FOIA request DON-USMC-2018-011145 (Page 2)
28

1 C Response dated September 17, 2018, to my FOIA request DON-
2 USMC-2018-011145 w/o enclosures (Pages 3 - 4)

3 D My September 18, 2018, appeal DON-NAVY-2018-011612 (Page 5)

4 E Navy's October 4, 2018, reply to my appeal (Pages 6 - 8)
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Submitted	Evaluation	Assignment	Processing	Closed
<p>Tracking Number: DON-USMC-2015-002772 Requester: Mr. Dennis M. Buckovetz Organization: N/A Requester HAS ACCOUNT: Yes Email Address: dennisbuckovetz@gmail.com Phone Number: 619-435-1282 Fax Number: N/A Address: 100 Acacia Way City: Coronado State/Province: CA Zip Code/Postal Code: 92118</p>				
<p>Submitted Date: 01/23/2015 Last Assigned Date: 02/03/2015 Fee Limit: \$200.00 Request Track: Simple Due Date: N/A Assigned To: Marine Corps Recruit Depot Western Recruiting Region Last Assigned By: David P. Foley (Marine Corps Recruiting Command)</p>				

Submission Details**Request Handling**

Requester Info Available to the Public:	Request Perfected: No
Request Track: Simple	Appellate Authority: N/A
Fee Category:	Acknowledgement Sent Date:
Fee Waiver Requested: Yes	Unusual Circumstances?: No
Fee Waiver Status: Pending Decision	5 Day Notifications: No
Expedited Processing Requested:	Litigation: No
Expedited Processing Status: N/A	

Request Description

Short Description: N/A		
<p>This request is for the Marine Corps Recruit Depot, San Diego, CA.</p> <p>I request all email messages dated on or after 1 May 2014 that have any of the following email addresses Mark.Tull@usmc.mil, Jim.Grany@usmc.mil, Michael.Lee@usmc.mil, James.Bierman@usmc.mil, Thomas.W.Spencer@usmc.mil, and John.Ming@usmc.mil on the "From:", "To:", "Cc:", or "Bcc:" lines AND contain the words "coin" or "coins" on the subject line or within the body of the message.</p> <p>For any responsive records not released I request a complete list of the responsive records being withheld, what exemptions are being claimed, and a brief explanation of how the exemption applies to the record withheld and why discretionary release is not appropriate.</p> <p>Please don't hesitate to contact me at DennisBuckovetz@gmail.com if there are any questions or issues with this request.</p>		
Description Available to the Public:	Has Description Been Modified?	01/20/00

Additional Information

Case #: N/A
Name of Local Command: N/A
Contract/SOI #: N/A

A
I

DON-USMC-2018-011145 Request Details

☐ Submitted
 ☐ Evaluation
 ☐ Assignment
 ☐ Processing
 ☐ Closed

Contact Information

Full Name Mr. Dennis M Buckovetz
Organization
Email Address DennisBuckovetz@gmail.com
Phone Number 6194351282
Fax Number
Mailing Address Location United States/US Territories
Address Line 1 100 Acacia Way
Address Line 2
City Coronado
State/Province CA
Zip Code/Postal Code 92118

Request Information

Agency Marine Corps Recruit Depot Western Recruiting Region San Diego
Will Pay Up To \$200.00
Date Submitted 09/03/2018
Estimated Date of Completion 10/02/2018
Fee Category Other
Request Track Simple
Request Phase Closed
Final Disposition Duplicate Request

Description

Description I request all email messages dated on or after 1 May 2014 that have any of the following email addresses Mark.Tull@usmc.mil, Jim.Gruny@usmc.mil, Michael.Lee@usmc.mil, James.Bierman@usmc.mil, Thomas.W.Spencer@usmc-mccs.org, and John.Ming@usmc.mil on the "From:", "To:", "Cc:", or "Bcc:" lines AND contain the words "coin" or "coins" on the subject line or within the body of the message.



UNITED STATES MARINE CORPS
MARINE CORPS RECRUIT DEPOT/WESTERN RECRUITING REGION
1600 HENDERSON AVENUE SUITE 23F
SAN DIEGO, CALIFORNIA 92140-5001

5720

15

SEP 17 2018

Mr. Dennis Buckovetz
100 Acacia Way
Coronado, CA 92014

Dear Mr. Buckovetz:

This letter acknowledges and responds to your September 3, 2018, Freedom of Information Act (FOIA), request seeking all email messages dated on or after 1 May 2014 that have any of the following email addresses Mark.Tull@usmc.mil, Jim.Gruny@usmc.mil, Michael.Lee@usmc.mil, James.Bierman@usmc.mil, Thomas.W.Spencer@usmc-mccs.org, and John.Ming@usmc.mil on the "From:", "To:", "Cc:", or "Bcc:" lines AND contain the words "coin" or "coins" on the subject line or within the body of the message. Your request was received by this office on September 4, 2018 and it is controlled under file number DON-USMC-2018-011145.

Responsive records under file number DON-USMC-2015-002772, enclosure (1) were sent on March 22, 2015, which included a partial referral under file number DON-USMC-2015-003491 enclosure (2) on February 18, 2015. In light of our previous responses, we consider the current request to be a duplicate and will administratively close it.

In view of the above, you may consider this to be an adverse determination that may be appealed. Since you have an account created in FOIAonline website, you may submit an appeal directly within the web-based system. To do this, you would log in to your account, retrieve your original request, and then click on the "Create Appeal" tab in the left-hand column. The basic information from your request will be duplicated for you, and then you can type in the basis of your appeal. If you prefer to use regular mail, you may submit an appeal to the Judge Advocate General of the Navy (Code 14), 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, DC 20374-5066. Your appeal, if any, must be postmarked within 90 calendar days from the date of this letter and should include a copy of your initial request, a copy of this letter, and a statement indicating why you believe your appeal should be granted. I recommend that your appeal and its envelope both bear the notation, "Freedom of Information Act Appeal".


C
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You also have the right to seek assistance and/or dispute resolution services from the Marine Corps FOIA Public Liaison, Ms. Sally Hughes, at hmcfoia@usmc.mil or (703) 614-4008, and/or the Department of the Navy FOIA Public Liaison, Mr. Christopher Julka, at christopher.a.julka@navy.mil or (703) 697-0031. You may also contact the Office of Government Information Services (OGIS) for assistance and/or dispute resolution at ogis.enara.gov or 1-877-684-6448. For more information online about services provided by OGIS, please visit their website at <https://ogis.archives.gov>.

There are no fees for this request. I am the official responsible for this determination.

Should you have questions about this action, please contact Ms. Cynthia Christopher at (619) 524-8737, via email cynthia.christopher@usmc.mil, or fax at (619) 524-8766. Please reference the file number.

Sincerely,


J. RUSSO
Colonel, U.S. Marine Corps
Chief of Staff

Enclosures

- (1) Copy of FOIA request DON-USMC-2015-002271
- (2) Copy of FOIA referral DON-USMC-2015-003493
- (3) Copy of email traffic dtd September 6, 2018.

C
4

DON-NAVY-2018-011612 Appeal Details

Submitted Evaluation Assignment Processing Closed

Contact Information

Full Name Mr. Dennis M Buckovetz
Organization
Email Address DennisBuckovetz@gmail.com
Phone Number 6194351282
Fax Number
Mailing Address Location United States/US Territories
Address Line 1 100 Acacia Way
Address Line 2
City Coronado
State/Province CA
Zip Code/Postal Code 92118

Appeal Information

Agency OJAG - 14
Will Pay Up To \$0.00
Date Submitted 09/18/2018
Estimated Date of Completion TBD
Fee Category Other
Request Track
Request Phase Assignment
Final Disposition Affirmed on Appeal

Basis for Appeal**Basis for Appeal**

My request DON-USMC-2018-011145 is meant to duplicate my request DON-USMC-2015-002772 submitted to Marine Corps Recruit Depot, San Diego in 2015. My claim in this appeal is that the responsive records requested by DON-USMC-2018-011145 are being improperly withheld. Attachment 1, Thomas W. Sikes v. United States Department of the Navy, applies. My request DON-USMC-2018-011145 is not meant to duplicate the

05



DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
1322 PATTERSON AVENUE SE SUITE 3000
WASHINGTON NAVY YARD DC 20374

IN REPLY REFER TO:

5720

Ser 14/002

October 4, 2018

Mr. Dennis Buckovetz
100 Acacia Way
Coronado, CA 92118
Email to: dennisbuckovetz@gmail.com

SUBJECT: FREEDOM OF INFORMATION ACT (FOIA) REQUEST DON-USMC-2018-011145; FOIA APPEAL DON-NAVY-2018-011612

This letter responds to your FOIA appeal received in our office on September 18, 2018. You appeal a determination by Marine Corps Recruit Depot/Western Recruiting Region (MCRD/WRR), that your underlying FOIA request, DON-USMC-2018-011145, is duplicative of a prior FOIA request you submitted in 2015, DON-USMC-2015-002772.

Your appeal is a request for a final agency determination under the FOIA. For the reasons set forth below, I must deny your appeal.

Your current FOIA request, submitted on September 3, 2018, requests "... all email messages dated on or after 1 May 2014 that have any of the following email addresses Mark.Tull@usmc.mil, Jim.Gruny@usmc.mil, Michael.Lee@usmc.mil, James.Bierman@usmc.mil, Thomas.W.Spencer@usmc-mccs.org, and John.Ming@usmc.mil on the 'From:', 'To:', 'CC:', or 'BCC:' lines AND contain the words 'coin' or 'coins' on the subject line or within the body of the message." Your previous FOIA request, submitted on January 23, 2015, requests the same information using identical language. Furthermore, you state in your current FOIA appeal that "my request DON-USMC-2018-011145 is meant to duplicate my request DON-USMC-2015-002772."

Section 6.3b(8) of Department of Defense Manual 5400.07 defines a duplicative request as "when the FOIA requester asks for the same information requested in a prior request." Section 11n of Secretary of the Navy Instruction (SECNAVINST) 5720.42F states there are ten reasons for not complying with a FOIA request; number eight on that list is for duplicative requests. SECNAVINST 5720.42F further authorizes a duplicative request finding "when a request is duplicative of another request which has already been completed or currently in process from the same requester." Your current request is for

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5730

Ser 14/000

October 4, 2018

"... all emails dated on or after 1 May 2014." In an email to the MCRD/WRR FOIA Coordinator on September 6, 2018, you clarified that your request was meant to cover the period of May 1, 2014 to February 3, 2015. Your previous request also asked for "... all emails dated on or after 1 May 2014", and on March 22, 2015, you were sent documents responsive to that request. Thus, your current request covers the same time period as your previous request and "asks for the same information requested in a prior request" which "has already been completed." Additionally, you stated that your current request is meant to duplicate your previous request.

Any agency faced with a duplicative FOIA request must reassess any previous withholding decisions made within the scope of the duplicative request. Yet, withholding decisions are often the most labor-intensive and complicated aspect of an agency's FOIA response efforts. Thus, after agency employees have already processed a FOIA request and made withholding decisions, requiring the same or yet another agency employee to plow the same ground all over again, while a backlog of requesters remain waiting for attention, is not an efficient use of agency resources. Allowing duplicative requests would potentially allow a small group of FOIA requesters to hold an agency's resources hostage with a constant barrage of FOIA spam in the form of duplicative requests, compelling de novo reassessment of the same withholding decisions *ad infinitum*. Agency resources are not unlimited, and thus allowing requesters to monopolize scarce agency resources in this way-through filing duplicative requests where the records are static-would also disserve the purposes of the FOIA because every minute spent giving de novo reassessment to a duplicative request is a minute not spent processing new requests and disclosing new, previously undisclosed records. *Toensing v. United States*, 890 F. Supp. 2d 121, 140 (D.D.C. 2012).

You have cited *Sikes v. United States Dep't of the Navy*, 896 F.3d 1227 (11th Cir. 2018) as precedent for requiring this agency to allow duplicate FOIA requests. Please be advised that this case is legally binding precedent only within the 11th Circuit. Neither you nor the records in this case are located within that Circuit. Both DoD and Navy FOIA regulations on duplicate FOIA requests disagree with the holding of that case. I am located in the District of Columbia, a location that is the same as the *Toensing* case. I am opting to follow the precedent of that case rather than the *Sikes* case.

For all these reasons, I concur with MCRD/WRR's determination that your current request is duplicative of your previous request, and your appeal is therefore denied.

As the Department of the Navy's designated adjudication official for this FOIA appeal, I am responsible for the denial of this appeal. You may seek judicial review of this decision by filing a complaint in an appropriate U.S. District Court. My office represents the U.S. government and is therefore unable to assist you in this process.

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Ser 14/002

October 4, 2018

If you would like to seek dispute resolution services, you have the right to contact the Marine Corps FOIA public liaison, Ms. Sally Hughes, at hqmcfoia@usmc.mil or (703) 614-4008, or the Department of the Navy's FOIA public liaison, Mr. Chris Julka, at christopher.a.julka@navy.mil or (703) 697-0031.

If you have further questions or concerns for my office, my point of contact is Major James McKeon, who may be reached at james.mckeon@navy.mil or (202) 685-4596.

Sincerely,



G. E. LATTIN

Director

General Litigation Division

Copy to:
MCRD/WRR
HQM (ARSF)
DON CIO

E
B

EXHIBIT G

1 ROBERT S. BREWER, JR.
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2 Katherine L. Parker
Assistant U.S. Attorney
3 California Bar No. 222629
Office of the U.S. Attorney
4 880 Front Street, Room 6293
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5 Tel: (619) 546-7634
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6 Email: Katherine.parker@usdoj.gov

7 Attorneys for the United States

8
9
10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**
12

13
14
15 DENNIS M. BUCKOVETZ,

16 Plaintiff,

17 v.

18 UNITED STATES DEPARTMENT OF
19 THE NAVY,

20 Defendant.

Case No.: 18-cv-02736-MDD

JOINT MOTION FOR PARTIAL
DISMISSAL

21
22 The parties to this action jointly request an order dismissing without prejudice
23 Plaintiff's claim challenging the adequacy of the Navy's search for records in response to
24 Plaintiff's FOIA requests. Plaintiff has informed counsel for Defendant that he seeks to
25 limit the scope of this case to his legal challenge to the Navy's duplicate FOIA request
26 policy, and that he wishes to dismiss, **without prejudice**, his challenge to the adequacy of
27 the Navy's search for records. The Navy does not object to this request, and therefore in
28 order to clarify the issues prior to summary judgment briefing, the parties jointly move to

1 dismiss, without prejudice, Plaintiff's challenge to the adequacy of the Navy's records
2 searches. Following the partial dismissal, the only potentially applicable requests for relief
3 are those set forth in paragraphs 14, 15, 18, and 20 of Plaintiff's First Amended Complaint.
4 Each party shall bear its own costs and fees associated with the dismissed claims.

5
6 Defendant will submit a proposed order granting this joint motion.

7
8 DATED: January 17, 2020

Respectfully submitted,

9 ROBERT S. BREWER, JR.
10 United States Attorney

11 s/ Katherine L. Parker
12 Katherine L. Parker
13 Assistant U.S. Attorney
14 Attorneys for Defendant

15 s/ Dennis Buckovetz
16 Plaintiff (with permission)

17 Pursuant to Section 2(f)(4) of the Electronic Case Filing Administrative Policies
18 and Procedures Manual of the United States District Court for the Southern District of
19 California, I hereby certify that the content of this document is acceptable to Dennis
20 Buckovetz, and that I have obtained his authorization to affix his electronic signature to
21 this document.

22 /s/ Katherine L. Parker
23 Katherine L. Parker
24 Assistant U.S. Attorney
25
26
27
28

EXHIBIT H

1
2
3 UNITED STATES DISTRICT COURT
4 SOUTHERN DISTRICT OF CALIFORNIA
5

6 DENNIS M. BUCKOVETZ,
7 Plaintiff,
8 v.
9 UNITED STATES DEPARTMENT
10 OF THE NAVY,
11 Defendant.

Case No.: 18cv2736-MDD-KSC

**ORDER RE: STIPULATION OF
PARTIAL DISMISSAL WITHOUT
PREJUDICE**

[ECF No. 31]

12 On January 17, 2020, Plaintiff Dennis M. Buckovetz, proceeding *pro se*,
13 and Defendant United States Department of the Navy stipulated to dismissal
14 without prejudice of Plaintiff's "challenge to the adequacy of the Navy's
15 search for records" under the Freedom of Information Act ("FOIA"), 5 U.S.C. §
16 552(a)(4)(B), pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii).
17 (ECF No. 31). Accordingly, Plaintiff's challenge to the adequacy of
18 Defendant's record searches is **DISMISSED WITHOUT PREJUDICE**. The
19 only remaining requests for relief are those set forth in paragraphs 14, 15, 18,
20 and 20 of Plaintiff's First Amended Complaint. (See ECF No. 30). Each
21 party must bear its own attorney's fees and costs associated with the
22 dismissed claims.

23 **IT IS SO ORDERED.**

24 Dated: January 21, 2020



Hon. Mitchell D. Dembin
United States Magistrate Judge

From: efile_information@casd.uscourts.gov
To: efile_information@casd.uscourts.gov
Subject: Activity in Case 3:21-cv-00640-H-KSC Buckovetz et al v. The Department of the Navy Complaint
Date: Tuesday, April 13, 2021 4:02:12 PM

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court

Southern District of California

Notice of Electronic Filing

The following transaction was entered on 4/13/2021 at 4:01 PM PDT and filed on 4/13/2021

Case Name: Buckovetz et al v. The Department of the Navy

Case Number: [3:21-cv-00640-H-KSC](#)

Filer: Dennis M. Buckovetz
Lynne M. Bird

Document Number: [1](#)

Docket Text:

COMPLAINT against All Defendants (Filing fee \$ 402 receipt number ACASDC-15615333.), filed by Dennis M. Buckovetz, Lynne M. Bird. (Attachments: # (1) Civil Cover Sheet)

The new case number is 3:21-cv-640-H-KSC. Judge Marilyn L. Huff and Magistrate Judge Karen S. Crawford are assigned to the case. (Anderson, Travis)(zda)

3:21-cv-00640-H-KSC Notice has been electronically mailed to:

U S Attorney CV Efile.dkt.civ@usdoj.gov

Travis John Anderson tanderson@sheppardmullin.com, SeTaylor@sheppardmullin.com, je.jackson@sheppardmullin.com, jkeeping@sheppardmullin.com

3:21-cv-00640-H-KSC Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1106146653 [Date=4/13/2021] [FileNumber=15395481-0] [ab5c275488cdb74332a81681d1a395794005aaa61ec3845f116443d4c724d1981180c88b23481674fb93c533b7c3671eedc4629a5d8103cb439ff5d2a1f579c8]]

Document description: Civil Cover Sheet

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1106146653 [Date=4/13/2021] [FileNumber=15395481-1] [10233595db8f2e5f10fc4811e941a175836e7ea9e3802c38e74a16fec4e2b9ab8605286a4920e1a41935265cfd1154c42d894be195a4cd45297cd3ad6bf15017]]