

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

2013 AUG 15 P 12:45

CIVIL ACTION

NO.
THOMAS STALCUP,
Plaintiff,

v.

OFFICE OF THE SECRETARY OF DEFENSE,
DEPARTMENT OF DEFENSE
AGENCY of the UNITED STATES of AMERICA,
Defendant

I. PARTIES

1. The plaintiff, THOMAS STALCUP at all times relevant to the allegations of this Complaint, is a citizen of the United States of America and has been a resident of the Town of Sandwich, Barnstable County, in the Commonwealth of Massachusetts.

2. The defendant, the DEPARTMENT OF DEFENSE (hereafter referred to as DOD), is an agency of the of the United States organized and existing under the laws of the United States of America.

II. JURISDICTION & VENUE

3. Subject matter jurisdiction exists pursuant to 5 USC § 552(a)(4)(B) which grants a district court of the United States jurisdiction to enjoin an agency from improperly withholding records and to order said agency to produce such records to the complainant. Venue is proper in the District of Massachusetts under 5 USC § 552(a)(4)(B) which grants jurisdiction to the district court in the district in which the complainant, Chairman of the Flight 800 Independent Researchers Organization, Thomas F. Stalcup, lives.

4. Plaintiff Stalcup, has exhausted his administrative remedies, and is therefore entitled to judicial review of this claim pursuant to 5 USC § 552(a)(4)(B).

III. STATEMENT OF FACTS

5. On or about March 28, 2010, pursuant to the Freedom of Information Act (hereinafter, FOIA), plaintiff Stalcup requested from defendant DOD “the names and dates of all Naval, Joint, Defense Program, and/or contractor exercises, operations, and/or tests conducted on the East Coast of the United States in June, July, and August 1996,” among other information as described in the original March 2010 FOIA request that is attached to this Complaint as **Exhibit A**

and herein incorporated by reference.

6. On or about March 28, 2010, pursuant to FOIA, plaintiff Stalcup requested from the Missile Defense Agency (hereafter referred to as MDA) “all Test and Evaluation Master Plan's for all systems involved in Missile Defense for FY1996,” among other information as described in the original March 2010 FOIA request that is attached to this Complaint as **Exhibit B** and herein incorporated by reference.

7. On September 17, 2010, Plaintiff Stalcup received an email from Stephanie Koeshall of the MDA stating that “the [FOIA] case was finalized by MDA on September 14, 2010. All documents have been transferred to the OSD Office of Freedom of Information which has oversight of the MDA FOIA program. You should expect to receive the documents and a letter detailing the release determination from them.”

8. On or about February 15, 2011, pursuant to FOIA, plaintiff Stalcup requested from the DOD “any and all submissions to the Office of the Secretary of Defense regarding the “analysis of, and conclusions regarding, the conduct and results” of any test or exercise conducted from June 1, 1996 to October 30, 1996 on or off the East Coast of the United States involving the launching of one or more missiles,” among other information as described in the original February 2011 FOIA request that is attached to this Complaint as **Exhibit C** and herein incorporated by reference.

9. Since no documents or information was provided by defendant DOD from any of the above mentioned FOIA requests within the time allowed under FOIA, plaintiff Stalcup filed Administrative Appeals for all three requests on August 19, 2011. Two of these Appeals are included as **Exhibit D**. The third appeal was filed electronically via an online submission form.

10. On August 22, 2011, Plaintiff Stalcup received an email from Curtis Gibbens of the Office of the Secretary of Defense stating: "MDA provided a document that had to be reviewed by ten agencies outside of the Office of the Secretary of Defense. We are still waiting for many of the agencies review response. I will contact them and ask for their status. Please note your previous request, 10-F-0812, was reopened. 11-F-0541 was administratively closed because it was similar to 10-F-0812."

11. The Defendant DOD has failed and/or refused to provide any responsive documents as of the date of the filing of this complaint, which is beyond the time specified under FOIA.

COUNT I: REQUEST FOR MANDATORY INJUNCTIVE RELIEF ORDERING THE DEFENDANT DOD TO RELEASE ALL RECORDS DESCRIBED IN THE PLAINTIFF'S REQUESTS UNDER THE FREEDOM OF INFORMATION ACT.

12. The plaintiff hereby incorporates by reference the allegations of Paragraphs 1 through 5 of this Complaint as though fully set forth herein.

13. U.S.C. § 552 (a)(3) requires that governmental agencies "upon any request...shall make the records promptly available to any person."

14. Defendant DOD must be ordered by the Court to comply fully with Plaintiff Stalcup's FOIA requests forthwith.

COUNT II: REQUEST FOR COSTS & ATTORNEYS FEES FOR BAD FAITH REFUSAL TO COMPLY WITH FOIA STATUTORY MANDATE.

15. The Defendant DOD's failure and refusal to release its full file to Plaintiff was in willful and intentional violation of the FOIA statute, and was therefore done in bad faith.

Plaintiff's appeal was in willful and intentional violation of the FOIA statute and regulations, and was therefore done in bad faith.

17. By reason of Defendant DOD's willful and intentional violations of the FOIA statute and regulations, the Plaintiff has been compelled to file this action in order to obtain copies of the public documents to which he is entitled by law, and where such violations by the Defendant DOD were done in bad faith, Plaintiff Stalcup is entitled to his actual costs of litigation and attorneys fees as provided by 5 U.S.C. Sect. 552(a) (4) (E), as amended Open Government Act of 2007, Sect. 4(a)(2)(ii)(I).

WHEREFORE, the plaintiff demands Judgment & Relief as follows:

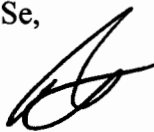
First, on Count I: That the Court order the Defendant DOD to produce its complete file on TWA Flight 800 as described in Plaintiff's FOIA request within DOD File F-2010-00895;

Second, on Count II: That the Court order the Defendant DOD to pay the plaintiff's actual attorneys fees, litigation costs and expenses for bringing this action; and

Third, on the Complaint: That the Court award to Plaintiff such other relief as this it deems just, equitable and appropriate based on the law and the facts as pleaded herein.

Dated: August 13, 2013

For the Plaintiff, Thomas Stalcup
Pro Se,



Thomas F. Stalcup, PhD
8 Peters Pond Dr.
Sandwich, MA 02644
(774) 392-0856
stalcup@gmail.com

Exhibit A

MEDIA REVIEW INC.

The TWA 800 Project

Tom Stalcup
President
19 Research Road
East Falmouth, Massachusetts 02536
Tel: (774) 392-0856
Email: stalcup@datagarrison.com

<http://www.dod.gov/cgi-bin/mailform.cgi>
Thank you for your response. Your message has been sent.

March 28, 2010

OSD/JS FOIA Requester Service Center
Office of Freedom of Information
1155 Defense Pentagon
Washington, DC 20301-1155

SUBJECT: East Coast Navy and Joint Exercises in 1996

Dear Sir or Madam:

I respectfully request: 1) the names and dates of all Naval, Joint, Defense Program, and/or contractor exercises, operations, and/or tests conducted on the East Coast of the United States in June, July, and August 1996; 2) any and all follow-up reports, observer reviews, and Joint Universal Lessons Learned Reports from all such exercises, operations, and/or tests that included intercept and/or target missiles or drones off the East Coast of the United States between May 1996 and October 1996; and 3) all memos, reports, emails, or other communications related to the downing of a commercial aircraft (simulated or otherwise) during any such event listed above.

I request a waiver of fees because my interest in the records is not primarily commercial and disclosure of the information will contribute significantly to public understanding of the events leading up to present status of the federal investigation into the crash of TWA Flight 800. I am also Chairman of a non-profit group investigating the crash, and we make the results of our research freely available to the public. See our website for more information: <http://Flight800.org>

If documents or media are denied in whole or in part, despite the public interest, please specify which exemption(s) is (are) claimed for each passage, document, or media denied, Give the number of pages in each document and the total number of pages pertaining to this request and the dates of documents withheld, In the case of recorded media, give a complete description of any denied media or media segment, Regarding documents, I request that excised material be "blacked out" rather than "whited out" and that the remaining non-exempt portions of documents be released as provided under the Freedom of Information Act,

Please advise me of any past, present and/or future destruction of records that could be considered related in any way to this request, including the date of and authority for such destruction. I expect to appeal any denials, so please specify the office and address to which an appeal should be directed.

Thank you,

Tom Stalcup

Exhibit B

MEDIA REVIEW INC.

The TWA 800 Project

Tom Stalcup
President
19 Research Road
East Falmouth, Massachusetts 02536
Tel: (774) 392-0856
Email: stalcup@datagarrison.com

March 28, 2010

Missile Defense Agency
ATTN: FOIA Requester Service Center
Building 5222, Martin Road/DS/VBII/2F142
Redstone Arsenal, Alabama 35898
Telephone: (256)450-2383
FAX: (256) 450-1210

SUBJECT: 1996 Missile Defense Test and Evaluation Master Plans, Live Fire Test and Evaluation Information, and Joint Lessons Learned Reports

Dear Sir or Madam:

I respectfully request: 1) all Test and Evaluation Master Plan's for all systems involved in Missile Defense for FY1996; 2) All information regarding Live Fire Test and Evaluation exercises that included intercept and/or target missiles off the East Coast of the United States between May 1996 and October 1996; 3) any and all Joint Universal Lessons Learned Reports from all exercises that included intercept and/or target missiles off the East Coast of the United States between May 1996 and October 1996; and 4) all memos, reports, emails, or other communications related to the downing of a commercial aircraft (simulated or otherwise) during any exercise conducted in 1996 or 1997.

I request a waiver of fees because my interest in the records is not primarily commercial and disclosure of the information will contribute significantly to public understanding of the events leading up to present status of the federal investigation into the crash of TWA Flight 800. I am also Chairman of a non-profit group investigating the crash, and we make the results of our research freely available to the public. See our website for more information: <http://Flight800.org>

If documents or media are denied in whole or in part, despite the public interest, please specify which exemption(s) is (are) claimed for each passage, document, or media denied, Give the number of pages in each document and the total number of pages pertaining to this request and the dates of documents withheld, In the case of recorded media, give a complete description of any denied media or media segment, Regarding documents, I request that excised material be "blacked out" rather than "whited out" and that the remaining non-exempt portions of documents be released as provided under the Freedom of Information Act,

Please advise me of any past, present and/or future destruction of records that could be considered related in any way to this request, including the date of and authority for such destruction. I expect to appeal any denials, so please specify the office and address to which an appeal should be directed.

Thank you,

Tom Stalcup

Exhibit C

MEDIA REVIEW INC.

The TWA 800 Project

Tom Stalcup
President
19 Research Road
East Falmouth, Massachusetts 02536
Tel: (774) 392-0856
Email: stalcup@datagarrison.com

http://www.dod.mil/pubs/foi/foia_thankyou.html
Thank you for your submission to the FOIA Requester Service Center.

February 15, 2011

OSD/JS FOIA Requester Service Center
Office of Freedom of Information
1155 Defense Pentagon
Washington, DC 20301-1155

SUBJECT: East Coast Missile Testing Analyses and Results Submitted to the OSD in 1996

Dear Sir or Madam:

Pursuant to the Freedom of Information Act, I respectfully request any and all submissions to the Office of the Secretary of Defense regarding the "analysis of, and conclusions regarding, the conduct and results" of any test or exercise conducted from June 1, 1996 to October 30, 1996 on or off the East Coast of the United States involving the launching of one or more missiles. This request includes, but is not limited to all submissions to the Office of the Secretary of Defense as required by subsection (c)(2) of section 237 of the National Defense Authorization Act for Fiscal Year 1994.

I request a waiver of fees because my interest in the records is not primarily commercial and disclosure of the information will contribute significantly to public understanding of the events leading up to present status of the federal investigation into the crash of TWA Flight 800. I am also Chairman of a non-profit group investigating the crash, and we make the results of our research freely available to the public. See our website for more information: <http://Flight800.org>

If documents or media are denied in whole or in part, despite the public interest, please specify which exemption(s) is (are) claimed for each passage, document, or media denied, Give the number of pages in each document and the total number of pages pertaining to this request and the dates of documents withheld, In the case of recorded media, give a complete description of any denied media or media segment, Regarding documents, I request that excised material be "blacked out" rather than "whited out" and that the remaining non-exempt portions of documents be released as provided under the Freedom of Information Act,

Please advise me of any past, present and/or future destruction of records that could be considered related in any way to this request, including the date of and authority for such destruction. I expect to appeal any denials, so please specify the office and address to which an appeal should be directed.

Thank you,

Tom Stalcup

Exhibit D

MEDIA REVIEW INC.

The TWA 800 Project

Tom Stalcup
President
19 Research Road
East Falmouth, Massachusetts 02536
Tel: (774) 392-0856
Email: stalcup@datagarrison.com

August 19, 2011

OSD/JS FOIA Requester Service Center
Office of Freedom of Information
1155 Defense Pentagon
Washington, DC 20301-1155

SUBJECT: APPEAL – Regarding my Feb. 15, 2011 FOIA request transmitted via your on-line form with the subject East Coast Missile Testing Analyses and Results Submitted to the OSD in 1996

Dear Sir or Madam:

I respectfully appeal your effective denial of my FOIA request, since no responsive documents have been provided in the time prescribed by the FOI Act.

Thank you,

Tom Stalcup

MEDIA REVIEW INC.

The TWA 800 Project

Tom Stalcup
President
19 Research Road
East Falmouth, Massachusetts 02536
Tel: (774) 392-0856
Email: stalcup@datagarrison.com

August 19, 2011

OSD/JS FOIA Requester Service Center
Office of Freedom of Information
1155 Defense Pentagon
Washington, DC 20301-1155

FOIA APPEAL – FOIA Case Number 10-F-0812

SUBJECT: 1996 Missile Defense Test and Evaluation Master Plans, Live Fire Test and Evaluation Information, and Joint Lessons Learned Reports

Dear Sir or Madam:

I respectfully appeal your effective denial of my FOIA request, since no responsive documents have been provided in the time prescribed by the FOI Act.

Thank you,

Tom Stalcup

JS 44 (Rev. 12-12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM)

I. (a) PLAINTIFFS

Thomas Stalcup

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

Barnstable

(c) Attorneys (Firm Name, Address, and Telephone Number)
Pro Se, 8 Peters Pond Dr.

Sandwich, MA 02644, 774 392 0856

DEFENDANTS

Office of The Secretary of Defense (DOD)
County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- | | | | | | |
|---|---|---------------------------------------|---|--------------------------------|--------------------------------|
| Citizen of This State | PTF <input checked="" type="checkbox"/> 1 | DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | PTF <input type="checkbox"/> 4 | DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Annuity <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable Sat TV <input type="checkbox"/> 850 Securities Commodities Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

5 USC § 552(a)(1)(b)

Brief description of cause:

Non-compliance with FOI Act by not releasing document 5a

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE *8/13/13*

SIGNATURE OF ATTORNEY OF RECORD

[Signature]

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Stalcup v. DOD

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 410, 441, 470, 535, 830', 891, 893, 895, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 110, 130, 140, 160, 190, 196, 230, 240, 290,320,362, 370, 371, 380, 430, 440, 442, 443, 445, 446, 448, 710, 720, 740, 790, 820', 840', 850, 870, 871.
- III. 120, 150, 151, 152, 153, 195, 210, 220, 245, 310, 315, 330, 340, 345, 350, 355, 360, 365, 367, 368, 375, 385, 400, 422, 423, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 625, 690, 751, 791, 861-865, 890, 896, 899, 950.

*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES NO

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division Central Division Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division Central Division Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (if yes, submit a separate sheet identifying the motions)

YES NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME

Pro Se, Thomas Stalcup

ADDRESS

8 Peters Pond Dr. Sandwich, MA 02644

TELEPHONE NO.

774 392 0856