

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

FILED
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2013 AUG 15 P 12:45
U.S. DISTRICT COURT
DISTRICT OF MASS.

_____)	
THOMAS STALCUP)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. XXXXX
)	
NAVAL SPECIAL WARFARE COMMAND)	
2000 Trident Way)	
San Diego, CA 92155)	
)	
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. Defendant the Naval Special Warfare Command (“NSWC”) is a department of the U.S. Navy. The NSWC is an agency within the meaning of 5 U.S.C. § 552(f)(1) (2010). The Navy SEALS (“SEALS”) is a component of the NSWC .

I I. 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

The Navy SEALs Participated in the 1996 TWA Flight 800 Crash Recovery Efforts

5. The SEALs are part of the NSWC and are an elite branch of the US Navy that defend our nation and our allies worldwide.

6. In fulfilling this responsibility, the SEALs train extensively underwater, including underwater explosives ordnance disposal.

7. The SEALs participated in the recovery effort after the July 17, 1996 crash of TWA Flight 800, which crashed approximately ten miles off the coast of Long Island, New York.

8. The SEALs are made up of various groups, units, and teams, including “Special Boat Unit Twenty”, “Special Warfare Group Two”, and “SEAL Delivery Vehicle Team Two”.

9. An official website published by the U.S. Navy states that Special Boat Unit Twenty, together with divers from Special Warfare Group Two and SEAL Delivery Vehicle Team Two participated in the TWA Flight 800 recovery efforts. As of the writing of this complaint, the official Navy website listing these participants is accessible at: http://www.navy.mil/navydata/navy_legacy_hr.asp?id=290. A printed copy of this website is attached to this complaint as **Exhibit A**.

Plaintiff Stalcup Submitted a FOIA Request to United States Special Operations Command Regarding Navy SEAL Activity in the New York Area in 1996

10. On March 30, 2010, Plaintiff Stalcup transmitted, via an Internet submission form, a written FOIA request to the United States Special Operations Command in Tampa, FL, who then forwarded this request to the NSWC in San Diego, CA. The request was for all data, imagery, video, memos, communication,

reports, emails or any other information regarding any and all Navy Seal activity within 100 miles of the coast of Long Island, NY during the months of July and August 1996. In addition to the above request, Plaintiff Stalcup specifically requested any and all agency records that include:

- a. the names, locations, and dates of any and all missions, exercises, or other activity on July 17th and 18th, 1996;
- b. the names of all participating Seal teams and/or units in these activities
- c. detailed descriptions of these activities
- d. any and all information regarding any mishaps or successful engagements these Seal teams or units witnessed and/or were responsible for
- e. any information that mentions or discusses the downing or loss of any aircraft.
- f. the names, locations, and dates of any and all missions, exercises, or other activity on or after July 17th , 1996 involving the recovery of floating or submerged debris from TWA Flight 800, a drone, a missile, or any other type of ordnance within 100 miles of the coast of Long Island, NY
- g. the names of all participating Seal teams and/or units in these recovery activities
- h. detailed descriptions photos, and/or videos of these activities and any items recovered.

11. Plaintiff Stalcup also requested a waiver of fees because Plaintiff Stalcup's 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.

The NSWC Failed to Locate Responsive Documents

12. Plaintiff Stalcup received a letter from NSWC dated April 27, 2010 stating that no responsive documents were located after searching the "Command Public Affairs Office, Command Historian's

Office, Command Operations Directorate, Naval Special Warfare Group TWO, and Naval Warfare Development Group.”

13. NSWC notified Plaintiff Stalcup of its right to an administrative appeal and instructed Plaintiff Stalcup to send any such appeal to the Judge Advocate General of the Navy in Washington, D.C.

Plaintiff Stalcup Filed an Administrative Appeal with Judge Advocate General of the Navy

14. On June 14, 2010, Plaintiff Stalcup sent via certified mail an administrative appeal to the Judge Advocate General of the Navy (“Plaintiff Stalcup’s Administrative Appeal”).

15. Plaintiff Stalcup’s Administrative Appeal appealed the NSWC’s failure locate responsive documents, “because the 1996 crash of TWA Flight 800 was an historic event and the Seals’ documented involvement in the search and recovery effort ten miles off the coast of Long Island required extensive planning, coordination, and communication between the Seals and the various agencies involved in the recovery effort.” Plaintiff Stalcup’s appeal went on to say that such “an effort would have resulted in volumes of documents, communications, and reports regarding this complex operation.”

16. Plaintiff Stalcup’s Administrative Appeal also provided an official Navy Internet link listing the specific SEAL unit involved in the recovery operation, as well as other Seal groups who provided divers to assist in the recovery effort.

Judge Advocate General of the Navy Denies Plaintiff Stalcup’s Administrative Appeal

17. Plaintiff Stalcup received a letter dated July 15, 2010 from the Judge Advocate General of the Navy (“JAG”) denying Plaintiff Stalcup’s Administrative Appeal.

18. JAG based its denial on a determination that the NSWC conducted an adequate search by searching “its hard copy and electronic records located within its Command Public Affairs Office,

Command Historian's Office, Command Operations Directorate, Naval Special Warfare Group TWO (NSWG-2), Naval Special Warfare Group FOUR (NSWG-4) and Naval Special Warfare Development Group (NSWDG) and its component commands, including Special Boat Unit TWENTY.”

19. JAG also informed Plaintiff Stalcup that upon receipt of Plaintiff Stalcup's appeal, a responsive document was located by the NSWC command historian, who located it at the Naval Historical Center in Washington, D.C. The document located is the 1996 Command History of the Navy Special Warfare Group TWO (NSWG-2). JAG informed Plaintiff Stalcup that this document will be provided to Plaintiff Stalcup by NSWC.

20. Command Histories are brief summaries of a specific Navy group, ship, unit, air-wing, etc. Although JAG stated that NSWC would be providing the NSWG-2 1996 Command History, Plaintiff Stalcup has not yet received this document. Now, at the writing of this complaint, many months have passed from the date Plaintiff Stalcup received JAG's letter and assurance that the NSWG-2 1996 Command History document would be provided.

21. Although JAG stated that the NSWC's search was “adequate and reasonably calculated to uncover all relevant documents,” that search located no responsive documents. A subsequent search located a responsive document.

22. Due to the high-profile nature of the recovery operation of TWA Flight 800, a commercial 747 aircraft that crashed only ten miles off of Long Island in 1996, hundreds if not thousands of documents likely exist regarding the Navy SEALs' well documented involvement in the salvage operations. Documents from these operations must certainly be maintained somewhere in the NSWC offices, and they should be readily available to any FOIA officer conducting a reasonably calculated search. If not, then the NSWC is obligated to forward the initial FOIA request to the appropriate office or agency that maintains such records.

Count I
Violation of the FOIA: Failure to Conduct and Adequate Search

23. Paragraphs 1-22 above are hereby incorporated by reference as if set forth fully herein.

24. The adequacy of the NSWC's search under the FOIA is determined by a test of "reasonableness." The NSWC's search was not "reasonably calculated to uncover all relevant documents." (157)

25. Plaintiff Stalcup has exhausted the applicable administrative remedies with respect to Plaintiff Stalcup's FOIA Request.

26. The NSWC has wrongly withheld responsive agency records from Plaintiff Stalcup.

27. Plaintiff Stalcup is entitled to injunctive relief compelling the release and disclosure of the requested agency records.

Requested Relief

WHEREFORE, plaintiff prays that this Court:

A. order defendant to conduct an adequate search for agency records responsive to Plaintiff Stalcup's

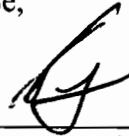
FOIA Request within five working days of the date of the Court's Order in this matter, with such searching including but not limited all offices of the NSWC, and where appropriate, to forward the original FOIA request to any other agency or office that may maintain such records;

B. order defendant to produce all responsive agency records within ten business days of the Court's Order in this matter;

- C. award plaintiff its costs and reasonable legal fees incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E) (2010); and grant such other relief as the Court may deem just and proper.

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

157. Weisberg, 705 F.2d at 1351; see, e.g., Johnston v. United States Dep't of Justice, No. 97-2173, 1998 WL 518529, at *1 (8th Cir. Aug. 10, 1998) (concluding that agency demonstrated that it conducted search reasonably calculated to uncover all responsive documents); Campbell v. United States Dep't of Justice, 164 F.3d 20, 27 (D.C. Cir. 1998) (noting that an agency must search "using methods which can be reasonably expected to produce the information requested" (quoting Oglesby v. United States Dep't of the Army, 920 F.2d 57, 68 (D.C. Cir. 1990))); Miller v. United States Dep't of State, 779 F.2d 1378, 1383 (8th Cir. 1985) (recognizing that search must be "reasonably calculated to uncover all relevant documents" (quoting Weisberg, 705 F.2d at 1351)); cf. Comer v. IRS, No. 97-76329, 2000 WL 1566279, at *2 (E.D. Mich. Aug. 17, 2000) ("[T]he government is not required to expend the same efforts under FOIA that it would in response to a litigation-specific document request."). But see Al Najjar v. Ashcroft, No. 00-1472, slip op. at 4-5 (D.D.C. July 22, 2003) (acknowledging that the agency's "affidavit on its face tends to establish the adequacy of the search," yet nonetheless requiring the agency to conduct a further search "in the interest of ensuring a complete resolution of this matter" and in light of the "limited burden" that the further search ostensibly would impose).

Exhibit A

TWA FLIGHT 800 NAVY SUPPORT TO THE RECOVERY EFFORTS

Participating Navy units and commands

- Combat Logistics Group Two
- Naval Sea Systems Command (OOC)
- USS Grasp (ARS 51)
- USS Grapple (ARS 53)
- USS Oak Hill (LSD 51)
- USS Trenton (LPD 14)
- Helicopter Support Squadron Eight
- Helicopter Support Squadron Six
- Amphibious Craft Unit Two
- Amphibious Construction Battalion Two
- Special Boat Unit Twenty
- Naval Reserve Inshore Boat unit Two Three
- New York Naval Militia

Units and command providing Navy divers

- USS Grasp (ARS 51)
- USS Grapple (ARS 53)
- Explosive Ordnance Disposal Mobile Unit Two
- Explosive Ordnance Disposal Mobile Unit Six
- Mobile Diving and Salvage Unit Two
- Ships Intermediate Maintenance Activity, Norfolk, Va.
- Naval Medical Research Institute
- Navy Experimental Diving Unit
- Naval Diving and Salvage Training Center
- USS Shenandoah (AD 44)
- USS Emory S. Land (AS 39)
- USS L. Y. Spear (AS 36)
- Special Warfare Group Two
- SEAL Delivery Vehicle Team Two
- Naval Submarine Medical Research Laboratory, Groton, Conn.

Under Navy contract

- Oceaneering Technology
- M/V Pirouette
- M/V Diage G.
- M/V Marion C II
- SAIC

Total Navy and contract personnel: 1,450

Maximum number of Navy personnel on station: 783

Reviewed: 16 September 2009

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Official Website of the United States Navy

Chief of Information
Attn: US Navy
1200 Navy Pentagon
Washington DC 20350-1200

[FOIA - Privacy Policy - No Fear Act
Accessibility/Section 508](#)

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
 2013 AUG 15 P 12:45
 County of Residence of First Listed Plaintiff
 (EXCEPT IN U.S. PLAINTIFF CASES)
 Barnstable DISTRICT COURT
 DISTRICT OF MASS
 (c) Attorneys (Firm Name, Address, and Telephone Number)
 8 Peters Pond Dr.
 P/O Sr Sandwich, MA 02644
 774 392 0856

DEFENDANTS
 Naval Special Warfare Command
 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	FOREFEITURE/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 <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 Tide 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 Antitrust <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 checked="" type="checkbox"/> 893 Environmental Matters <input 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 Constitutional 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)(4)(b)
 Brief description of cause:
 Failure to comply with FOI Act by not releasing documents.

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. Naval Special Warfare Command

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