

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DAVID CODREA

Plaintiff,

v.

DEPARTMENT OF THE AIR FORCE
c/o The Secretary of the Air Force
1670 Air Force Pentagon
Washington, DC 20330-01100

and

THE UNITED STATES DEPARTMENT
OF JUSTICE
950 Pennsylvania Ave, NW
Washington, DC 20530-0001

Defendants.

COMPLAINT
(Freedom of Information
Act, 5 U.S.C. §552).

Comes now the Plaintiff, David Codrea, by and through undersigned
counsel, and allege as follows:

1. This is an action under the Freedom of Information Act, 5 U.S.C.
§ 552, for injunctive and other appropriate relief and seeking the disclosure
and release of agency records improperly withheld from Plaintiff by the
Department of the Air Force and the United States Department of Justice.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1331 and 5 U.S.C. §552(a)(4)(B).

3. Venue lies in this district under 28 U.S.C. §1391(e).

PARTIES

4. Plaintiff David Codrea (“Codrea”) is an adult male resident of the state of Ohio and an internet blogger and Second Amendment journalist. In 2011, Codrea was named “Journalist of the Year” by the Second Amendment Foundation for his groundbreaking work exposing the “Fast and Furious” ATF “gunwalking” scandal, and was a co-recipient of Soldier of Fortune Magazine’s “2nd Amendment Freedom Fighter Award,” and Jews for the Preservation of Firearms Ownership’s “David and Goliath Award” for his work on that story. He was also named a 2014 Defender of Liberty by the Second Amendment Foundation.

5. Defendant U.S. Department of Justice is an agency of the United States Government headquartered at 950 Pennsylvania Ave, NW, Washington, DC 20530-0001. Defendant has possession, custody and control of records to which Plaintiff seek access.

6. Defendant Department of the Air Force is an agency of the United States Government which may be served by serving a copy of the

summons and complaint to the Secretary of the Air Force, 1670 Air Force Pentagon, Washington, DC 20330-1670. Defendant has possession, custody and control of records to which Plaintiff seek access.

STATEMENT OF FACTS

7. On or about November 6, 2017, Plaintiff submitted a Freedom of Information Act (FOIA) request to the National Personnel Records Center for records concerning Devin P. Kelley. A copy of same is attached as Exhibit “A” to this complaint.

8. The FOIA sought the following information:

Pursuant to the Freedom of Information Act (5 U.S.C. § 552), I hereby request all releasable information on Devin Patrick Kelley. It is understood that Kelley received a bad conduct discharge or dishonorable discharge from the US Air Force sometime in 2014 or earlier. I have located the following information online which may help identify him: U.S. v. Devin P. Kelley. CCA 38267. No. 14-0387/AF. I understand that he lived in New Braunfels, Texas and was twenty-six years of age. I specifically would like the court martial transcripts and all information that is releasable for a deceased individual[].

9. A response was received from the National Personnel Records Center which could not identify any responsive information.

10. On November 20, 2017, Plaintiff resubmitted his FOIA to the Department of the Air Force. On November 28, 2017, the Department of the Air Force responded and assigned the request a case number: 2018-00645-F. See Exhibit “B”.

11. On December 1, 2017, the Department of the Air Force, in apparent conjunction with the Federal Bureau of Investigation (FBI), denied Plaintiff's FOIA in full. That correspondence assigned the FOIA request an additional case number: 1389279-000. See Exhibit "C".

12. On or about December 3, 2017, Plaintiff appealed the determination through an online portal and submitted an identical appeal through email to "Beasley, Janet F CIV USAF SAF-AA (US)". A copy of the email is attached as Exhibit "D".

13. On January 23, 2018, undersigned received the denial from the Department of Justice, affirming the denial of the appeal. See Exhibit "E".

14. The requested information are public records under FOIA and further, court martial transcripts are public record.¹

15. As of the date of this Complaint, the Defendants have failed to produce the requested records or demonstrate that the requested records are *lawfully* exempt from production.

16. Instead, the Defendants have impermissibly attempted to utilize exemptions that do not apply to the requested documents and have not

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<https://www.jagcnet.army.mil/Sites/ACCA.nsf/homeContent.xsp?documentId=9FB06303763F8D9A85257B430052AA36>

segregated any documents that are releasable which the agencies have a duty to accomplish.

17. Plaintiff has exhausted his administrative remedies and this lawsuit is properly before this Court.

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

18. Plaintiff realleges paragraphs 1 through 17 as if fully stated herein.

19. Plaintiff is being irreparably harmed by reason of Defendants' violations of FOIA and Plaintiff will continue to be irreparably harmed unless the Defendants are compelled to comply with FOIA.

20. Plaintiff's administrative remedies are exhausted and therefore, this lawsuit is properly before this Court.

WHEREFORE, Plaintiff respectfully requests that the Court:

(1) Order Defendants to conduct a search for any and all responsive records to Plaintiff's FOIA request and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA request;

(2) Order Defendants to produce, by a date certain, any and all non-exempt records to Plaintiff's FOIA request, and a *Vaughn* index of any responsive records withheld under claim of exemption;

(3) Enjoin Defendants from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA request;

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

(5) Grant Plaintiff such other relief as the Court deems just and proper.

Dated: January 29th, 2018

Respectfully Submitted,

DAVID CODREA

/s/ Stephen D. Stamboulieh

Stephen D. Stamboulieh
Stamboulieh Law, PLLC
P.O. Box 4008
Madison, MS 39130
(601) 852-3440

stephen@sdslaw.us

DC District Court Bar# MS0009

Counsel for Plaintiff



P.O. Box 4008, Madison, MS 39130 | (601) 852-3440 | stephen@sdsllaw.us

November 6, 2017

National Personnel Records Center
1 Archives Drive
St. Louis, MO 63138
Fax: 314-801-9195

RE: Request for Records on Devin Patrick Kelley

To whom this may concern:

Pursuant to the Freedom of Information Act (5 U.S.C. § 552), I hereby request all releasable information on Devin Patrick Kelley. It is understood that Kelley received a bad conduct discharge or dishonorable discharge from the US Air Force sometime in 2014 or earlier. I have located the following information online which may help identify him: U.S. v. Devin P. Kelley. CCA 38267. No. 14-0387/AF. I understand that he lived in New Braunfels, Texas and was twenty-six years of age. I specifically would like the court martial transcripts and all information that is releasable for a deceased individual¹.

Warm regards,


STEPHEN D. STAMBOULIEH

¹ <http://www.foxnews.com/us/2017/11/06/texas-church-shooting-who-is-gunman-devin-patrick-kelley.html> ("The suspect, who is believed to be from New Braunfels, a suburb outside San Antonio, was found dead in his car after he sped away from the scene of the shooting.")



The Secretary

DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

28 November 2017

SAF/AAII (FOIA)
1000 Air Force Pentagon
Washington DC 20330-0100

Stephen Stamboulieh (Esq)
Attorney
P.O. Box 4008
Madison, MS 39130

Dear Mr. Stamboulieh,

We received your 20 November 2017, Freedom of Information Act (FOIA) request stating "I hereby request all releasable information on Devin Patrick Kelley. It is understood that Kelley received a bad conduct discharge or dishonorable discharge from the US Air Force sometime in 2014 or earlier. I have located the following information online which may help identify him: U.S. v. Devin P. Kelley. CCA 38267. No. 14-0387/AF. I understand that he lived in New Braunfels, Texas and was twenty-six years of age. I specifically would like the court martial transcripts and all information that is releasable for a deceased individual".

Every effort will be made to respond to your request as required under the FOIA. If you have questions, please mail them to the above address or email usaf.pentagon.saf-aa.mbx.haf-foia-workflow@mail.mil and refer to case number 2018-00645-F.

Thank you,

FOIA Administration Section



DEPARTMENT OF THE AIR FORCE
UNITED STATES AIR FORCE
WASHINGTON DC 20330



1 December 2017

SAF/AAL (FOIA)
1000 Air Force Pentagon
Washington DC 20330-01000

Mr. Stephen Stamboulieh (Esq)
P.O. Box 4008
Madison, MS 39130

Dear Mr. Stamboulieh,

This is a final response to your 20 November 2017, Freedom of Information Act (FOIA) request for court-martial records concerning former Airman First Class Devin P. Kelley, specifically, the record of trial (ROT, approximately 610 pages).

After consultation with the Federal Bureau of Investigation (FBI), the FBI has determined the records are properly withheld at this time under the Freedom of Information Act (b)(7)(A) of Title 5, United States Code, Section(s) 552. FOIA Exemption (b)(7)(A) permits the withholding of records compiled for law enforcement purposes, when release could reasonably be expected to interfere with enforcement proceedings.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days from the date of this letter in order to be considered timely. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FBI FOI/PA Request Number 1389279-000 and the Air Force FOIA Request Number, 2018-00645-F assigned to your request so that it may be easily identified.

You may contact the Air Force FOIA Public Liaison Officer, Ms. Anh Trinh, if you have any questions pertaining to this matter, at usaf.pentagon.saf-cio-a6.mbx.af-foia@mail.mil, (703) 614-8500, or the Office of Government Information Services to inquire about the FOIA mediation services they offer at 877-684-6448, or emailing ogis@nara.gov.

BREAKING BARRIERS...SINCE 1947

Please direct your questions regarding this response to Ms. Janet Beasley at (703) 614-3025 or janet.f.beasley.civ@mail.mil and reference the FBI FOI/PA Request #1389279-000 and Air Force FOIA Request #2018-00645-F.

Sincerely,

JANET F. BEASLEY

Stephen Stamboulieh

From: Stephen Stamboulieh
Sent: Sunday, December 3, 2017 7:35 PM
To: 'Beasley, Janet F CIV USAF SAF-AA (US)'
Subject: RE: FOIA Request 2018-00645-F (response)

Ms. Beasley,

I just submitted this appeal, and because I am limited to 2000 words, it is rather short, but I copy it here for you to review. In short, I believe the agencies' withholding is improper and contrary to law.

To whom this may concern:

First, the agency failed to address "all information that is releasable for a deceased individual" and instead narrowed the request to the court-martial transcript only. The response claimed that the FBI has intervened and claimed (b)(7)(A) because these records were "compiled for law enforcement purposes". This is patently false as the court-martial at issue was not compiled for a law enforcement purpose now for the FBI. Court martial transcripts are public record: <https://www.jagcnet.army.mil/Sites/ACCA.nsf/homeContent.xsp?documentId=9FB06303763F8D9A85257B430052AA36>

See *Ctr. for Constitutional Rights v. Lind*, 954 F. Supp. 2d 389, 400–01 (D. Md. 2013) ("The highest military appellate court has stated that "Congress intended that, to the extent 'practicable,' trial by court-martial should resemble a criminal trial in a federal district court," *United States v. Valigura*, 54 M.J. 187, 191 (C.A.A.F.2000), and that "public confidence in matters of military justice would quickly erode if courts-martial were arbitrarily closed to the public." *United States v. Travers*, 25 M.J. 61, 62 (C.M.A.1987). Similarly, the Army Court of Criminal Appeals has recognized that the "right of public access to criminal trials applies with equal validity to trials by courts-martial," ... The right to a public trial is also embedded in R.C.M. 806, which provides: "Except as otherwise provided in this rule, courts-martial shall be open to the public.")

The agency has a duty to segregate documents that are releasable and then release them. In the alternative, if you still deem these documents properly withheld, please let me know immediately so I may be deemed to have exhausted my administrative remedies and can proceed accordingly. If you would like to discuss, please give me a call.

Reference Nos.

FBI FOI/PA Request #1389279-000

Air Force FOIA Request #2018-00645-F

Thank you,

Stephen D. Stamboulieh
Stamboulieh Law, PLLC
P.O. Box 4008
Madison, MS 39130
Telephone (601) 852-3440

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

From: Beasley, Janet F CIV USAF SAF-AA (US) [mailto:janet.f.beasley.civ@mail.mil]

Sent: Friday, December 1, 2017 1:43 PM

To: Stephen Stamboulieh <Stephen@sdslaw.us>

Subject: FOIA Request 2018-00645-F (response)

Mr. Stamboulieh

Attached please find the response to FOIA Request 2018-00645-F.

V/r

//SIGNED//

JANET F. BEASLEY

Government Information Specialist/Paralegal Headquarters Air Force Information Office (SAF/AAll)

DSN: 224-3025

Commercial: 703-614-3025

Janet.f.beasley.civ@mail.mil

Workflow: usaf.pentagon.saf-aa.mbx.haf-foia-workflow@mail.mil

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U.S. Department of Justice
Office of Information Policy
Suite 11050
1425 New York Avenue, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

Stephen Stamboulieh, Esq.
Stamboulieh Law, PLLC
Post Office Box 4008
Madison, MS 39130
Stephen@sdslaw.us

Re: Appeal No. DOJ-AP-2018-001271
Request No. 1389279
CDT:JNW

VIA: FOIAonline

Dear Mr. Stamboulieh:

You appealed from the action of the Federal Bureau of Investigation on records on which it consulted with the United States Air Force pursuant to your Freedom of Information Act request for access to records concerning Devin Patrick Kelley.

After carefully considering your appeal, I am affirming the FBI's action on the records on which it consulted. The FOIA provides for disclosure of many agency records. At the same time, Congress included in the FOIA nine exemptions from disclosure that provide protection for important interests such as personal privacy, privileged communications, and certain law enforcement activities. The FBI properly withheld this information in full because it is protected from disclosure under the FOIA pursuant to 5 U.S.C. § 552(b)(7)(A) and it is reasonably foreseeable that disclosure of this information would harm the interests protected by this provision. This provision concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to interfere with enforcement proceedings.

Please be advised that this Office's decision was made only after a full review of this matter. Your appeal was assigned to an attorney with this Office who thoroughly reviewed and analyzed your appeal, your underlying request, and the action of the FBI in response to your request.

If you are dissatisfied with my action on your appeal, the FOIA permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).

For your information, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is as follows: Office of Government Information

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Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; email at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. If you have any questions regarding the action this Office has taken on your appeal, you may contact this Office's FOIA Public Liaison for your appeal. Specifically, you may speak with the undersigned agency official by calling (202) 514-3642.

Sincerely,

X

Sean R. O'Neill
Chief, Administrative Appeals Staff