

**United States District Court
For the District of Columbia**

Devvy Kidd)	
)	
Annapolis, Maryland 21401)	Case No. CIV. 03-1436 HHK
)	
Plaintiff)	
)	
v.)	Reply to Defendant's Motion to Dismiss, or
)	Alternatively, Cross Motion for Summary
Department of the Army)	Judgment and Opposition to Plaintiff's
U. S. Army Reserve)	Motion for Summary Judgment
Personnel Command)	
1 Reserve Way)	
St. Louis. MO 63132)	
)	
Defendant)	
)	

Plaintiff filed her Declaration in Support of a Motion for Summary Judgment and Supporting Brief to the court on August 19, 2003.

Defendant continues to ignore most of Plaintiff's original FOIA request:

1. Any document or form **initiated by Timothy James McVeigh** to separate from the Department of the Army when on active duty status.

Defendant's response to this was to send Plaintiff a copy of McVeigh's DD 214 which Plaintiff did not request. This document is not initiated by the individual separating, but by the Department of the Army.

Timothy James McVeigh had to initiate a request to detach from active duty and this is the document Plaintiff seeks, not the DD 214. Somewhere in the Defendant's personnel files for Timothy James McVeigh will be his request to detach.

2. Any document or form initiated by the Department of the Army to separate Timothy James McVeigh for the reasons stated on his attached DD 214, Box 28.

Plaintiff already had the DD 214 which was obtained as a result of another lawsuit filed on behalf of Plaintiff by Judicial Watch in Washington, DC. Box 28 of this DD 214 is titled 'Narrative Reason for Separation.' Response for this box is: For the convenience of the government – FY 92 Early Transition Program.

Somewhere in the files of Defendant is the paperwork justifying this action re Box 28 and that is the documentation Plaintiff seeks.

3. Copies of all deployment records for the period May 24, 1988 through December 31, 1991. These records should include where he [McVeigh] was sent and duration of duty.

Defendant has completely ignored this request in the original FOIA.

4. Any and all documents from Timothy James McVeigh's medical records that document the insertion of a micro-chip, a bio-chip or any other object foreign to the human body that McVeigh received while in the U.S. Army. This would include documents for surgical implantation or any other method used.

Defendant's response to this part of the original FOIA request is unacceptable to Plaintiff.

5. Any and all documents in Timothy James McVeigh's medical records that document any visits, phone calls or correspondence dealing with a Dr. Louis Jolyn (Jolly) West.

Defendant's response to this part of the original FOIA request has been ignored.

Custodian of Records

Plaintiff received a letter from Defendant dated July 11, 2002 [attached] in which Defendant states:

“Your request has been forwarded to the National Personnel Records Center (NPRC), ATTN: Mrs. Virginia Barrett, 9700 Page Boulevard, St. Louis, Missouri 63132-5100 for a direct response to you. Upon discharge, separation or death from the United States Army, a soldier’s record is transferred to the NPRC. The Army Reserve is not authorized to supply the requested documents.”

Plaintiff then receives a new letter dated July 29, 2002 [attached] from the National Personnel Records in St. Louis informing her that:

“The NPRC is the physical custodian of the military records of former members of the U.S. Armed Forces. The Department of the Army retains legal custody of the military record. Therefore, we are referring your inquiry to the Army Reserve Personnel Command (AR-PERSCOM), which has jurisdiction over this matter.”

One letter from Defendant states that the MPRC at 9700 Page Blvd, St. Louis, MO., has requested documents, but then that agency located at 9700 Page Ave, St. Louis, MO doesn’t really have them, they are held by PERSCOM and are transferring the request.

At this point, a sanitized copy of McVeigh’s discharge paper was sent by Wanda Farrow, Case Analyst at U.S. Reserve Personnel Command.

Defendant’s Motion to Dismiss, or Alternatively, Cross Motion for Summary Judgment and Opposition to Plaintiff’s Motion for Summary Judgment, approximately page 5 states:

“In this case, the Army, through AR-PERSCOM, properly provided plaintiff the only responsive document in its possession, McVeigh’s discharge order... There are no other documents within the agency’s possession responsive to Plaintiff’s

FOIA request.”

And:

“To the extent that such documents exist, they currently reside outside the control of the Department of the Army and AR-PERSCOM. Thus, plaintiff cannot show that the Army improperly withheld agency records in its possession and this court should dismiss plaintiff’s action on subject matter jurisdiction grounds and/or for failure to state a claim upon which relief may be granted.”

Conclusion

Defendant is making the claim that the Department of the Army has only two documents in its possession relating to Timothy James McVeigh, a soldier, who served almost four years of active duty.

In the Declaration of Eric Voelz [Defendant’s Exhibit 3], attached to Defendant’s Motion to Dismiss, etc., page 2, Mr. Voelz states that the file containing records pertaining to McVeigh contained only two documents: the discharge order and a DD Form 2366, Veteran’s Educational Assistance Act of 1984.

Plaintiff’s husband is a retired U.S. Army brigadier Colonel and the notion that the Department of the Army has only two pieces of paper in its files for a soldier who served four years is laughable at best. Medical records alone for a four year service duration would constitute more than two pieces of paper. Where are those records? Where are his deployment records? McVeigh served in the first Gulf War and tried out for Special Forces.

Defendant claims that “should the documents requested by Plaintiff exist,” they are currently outside the control of the Department of the Army and AR-PERSCOM. Yet,

the Army's own correspondence [attached] states that the NPRC is the physical custodian of military records for former members of the Armed Forces and AR-PERSCOM has legal jurisdiction.

Why would Defendant make such a statement? Because a Mr. Eric Voelz informed Defendant that he *believes* the personnel file of McVeigh is in the possession of the Federal Bureau of Investigation, in Oklahoma City, Oklahoma?

The Department of the Army just doesn't give up any soldier's records and if in this case they did, there would be a paper trail as to who requested them, when and where they went. It's called protocol.

How does Mr. Voelz know whether or not the subject record was ever in NARA's possession if the file had been looted? What information/documentation led Mr. Voelz to believe that McVeigh's complete military files are in the possession of the FBI in Oklahoma City?

Plaintiff has a problem with this entire scenario and reference is made to page 2 of Defendant's Statement of Material Facts to Which There is No Genuine Dispute, specifically items I, J, K and L.

Under Item J, it states:

"Under customary practice, a closed record is transferred to NARA. On or about **July 1997**, defendant, Department of the Army, pursuant to normal procedures, **delivered the personnel file containing records pertaining to McVeigh** to the National Archives and Records Center ("NARA"). On or about **June 2001**, the McVeigh file was transferred to the **NARA** records vault."

What this says is that McVeigh's personnel file was deposited with NARA by

Defendant “On or about July 1997,” which is rather difficult to pin down since July has 31 days.

There is no mention of the file being transferred to any other agency, yet in the next sentence in Item J, it reads: “On or about June 2001, the McVeigh file was transferred to the NARA records vault.” [June has 30 days] The key word here being vault. If the Defendant first delivered McVeigh’s records to NARA in the month of July 1997, where were they stored? They apparently weren’t put into NARA’s vault until almost five years later.

How is it McVeigh’s personnel file was delivered to the same location twice, but there is no explanation given as to how this was accomplished and by whom?

Timothy James McVeigh was honorably discharged in **1991**. According to Defendant, the Army, specifically the National Personnel Records Center (NPRC) had physical possession of McVeigh’s record and Army Reserve Personnel Command (AR-PERSCOM) has legal jurisdiction over those records.

Yet, according to Defendant’s ‘Statement of Material Facts to Which There is No Genuine Dispute,’ page 3, Item J, McVeigh’s personnel files weren’t transferred to NARA until **1997** where mysteriously, they were transferred back to NARA in June **2001** with no record of ever being released into someone or some agency’s custody? And, now for the most amazing part of this story: On page 2 of the Declaration of Eric Voelz, item 7, which reads:

“While the subject record was never in NARA’s possession, I have developed information that leads me to believe the record is in the possession.....”

McVeigh’s record was never in NARA’s possession? How can that be? In Mr.

Voelz' sworn statement, **same page**, item 4, Voelz states: "The file contained records pertaining to Mr. Timothy McVeigh. The file was delivered into the vault [NARA's vault] on or about June 19, 2001.

Defendant's own sworn submission as covered above, says that NARA took possession of the files on two different dates in two different years.


For the record, jury selection for McVeigh's trial began September 29, 1997. McVeigh was executed on June 11, 2001. These dates are very close to the delivery of McVeigh's personnel file to NARA, twice.

Therefore, Plaintiff requests the court grant her motion for summary judgment as Defendant has provided a convoluted response that does not determine one way or another if anyone seems to know where the documents are or where they might have been.

All Plaintiff has been provided is speculation by Mr. Eric Voelz that the personnel file of Timothy James McVeigh may be in the possession of the FBI.

I, Devvy Kidd, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing facts are true and correct.

Devvy Kidd


Annapolis, MD 21401

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing **Reply to Defendant's Motion to Dismiss, or Alternatively, Cross Motion for Summary Judgment and Opposition to Plaintiff's Motion for Summary Judgment** upon the below named counsel for the Defendant United States Department of the Army by depositing the same in the United States mail; certified, postage prepaid, in an envelope addressed to him at his correct mailing address:


Certified mail receipt: 7003 1010 0003 8274 7968

Claes H. Lewenhaupt
Special Assistant United States Attorney
Judiciary Center Building
555 4th St., N.W. Room 10-452
Washington, DC 20530

Dated this 26th day of September 2003

Devvy Kidd
[REDACTED]
Annapolis, MD 20401

**United States District Court
For the District of Columbia**

Devvy Kidd)	
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Annapolis, Maryland 21401)	Case No. CIV. 03-1436 HHK
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Department of the Army)	Motion and a Brief for Summary Judgment
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Personnel Command)	
1 Reserve Way)	
St. Louis. MO 63132)	
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Defendant)	
_____)	

Motion for Summary Judgment

This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, as amended, to compel the production of records concerning Timothy James McVeigh, deceased.

This court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B).

Plaintiff is the requester of the withheld records.

Defendant Department of the Army is an agency of the United States and has possession of and control over the records that Plaintiff seeks.

By certified mail dated May 28, 2002, Plaintiff requested certain documents and records under the control of Defendant.

Over the next several months, Defendant sent Plaintiff a number of documents never requested and denied requested documents.

Plaintiff filed an appeal on January 6, 2003 via certified mail. On February 5, 2003,

Plaintiff filed a Complaint for Declaratory and Injunctive Relief.

Plaintiff has a statutory right to the records that it seeks, and there is no legal basis for Defendant's refusal to disclose them. Timothy James McVeigh, subject of this FOIA became deceased on June 11, 2001.

Dead people have no privacy rights. Two main areas of the law apply to dead people: 1) disposal of bodies; and 2) crimes committed against dead bodies. The deceased, Timothy James McVeigh, was executed and his body disposal handled by the appropriate authorities. At the time of his death, Timothy James McVeigh was unmarried and had no known children. Plaintiff maintains that to release the requested documents and records has no application in regards to the privacy of his living relatives.

WHEREFORE, Plaintiff requests that this Court:

Declare that Defendant's refusal to disclose the records requested by Plaintiff is unlawful;

Order Defendant to make the requested records available to Plaintiff;

Award Plaintiff reimbursement for reasonable out of pocket expenses for this case; and


Grant such other and further relief as this Court may deem just and proper.

Respectfully submitted:

Devy Kidd

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Annapolis, MD

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St. Louis. MO 63132)	
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Defendant)	
_____)	

Brief in Support of Motion for Summary Judgment

Statement of Facts:

Plaintiff filed with Defendant Department of the Army on May 28, 2002, via certified mail, a FOIA request (See Exhibit 1) in the form of a letter to Defendant FOIA officer, requesting access to certain records under the FOIA. Access was requested for:

Any document for form initiated by Timothy James McVeigh to separate from the Department of the Army when on active duty status.

Any document or form initiated by the Department of the Army to separate Timothy James McVeigh for the reasons stated on the attached DD-214, Box 28.

Copies of all deployment records for the period May 24, 1988 through December 31, 1999. These records should include where he was sent and duration of duty.

Any and all documents from Timothy James McVeigh's medical records that document the insertion of a micro-chip, a bio-chip or any other foreign object to the

human body that McVeigh received while in the U.S. Army. This would include documents for surgical implantation or any other method used.

Any and all documents in Timothy James McVeigh's medical records that document any visits, phone calls or correspondence dealing with a Dr. Louis Jolyn (Jolly) West.

Plaintiff received a letter from Defendant dated July 11, 2002 (See Exhibit 2) informing Plaintiff that her request was being forwarded to a different location.

Plaintiff received another letter from Defendant dated July 29, 2002 (See Exhibit 3) informing Plaintiff that they were again forwarding the FOIA to another location.

On December 8, 2002 via certified mail, Plaintiff sent a new letter to Army Reserve Personnel Command (See Exhibit 4) documenting the run around in passing the FOIA from one place to another.

On December 20, 2002, Plaintiff received another letter from Defendant (See Exhibit 5) in which Defendant provided Plaintiff with a "sanitized" discharge order redacting the deceased social security number and address. Plaintiff had already provided Defendant with deceased's death certificate which contained the social security number and his address, a federal penitentiary in Terra Haute, IN. The document provided by Defendant is non-responsive to the documents and records sought by Plaintiff.

Plaintiff filed an appeal via certified mail January 6, 2003 (See Exhibit 6). Defendant's representative signed for this appeal on January 8, 2003.

As of February 4, 2003, Defendant had not responded to Plaintiff's appeal, so Plaintiff filed a Complaint for Declaratory and Injunctive Relief (See Exhibit 7).

Defendant requested a 30-day extension to file an answer which was granted by Plaintiff on March 5, 2003 (See Exhibit 8).

Plaintiff filed a Timely Service and Status Report on April 24, 2003 (See Exhibit 9).

Plaintiff filed a Rule 26(a) Conference document on April 24, 2003 (See Exhibit 10).

Plaintiff filed a Request to Transfer Case on June 11, 2003 (See Exhibit 11).

Plaintiff received notice dated June 16, 2003 that Defendant had no opposition to Plaintiff's Request to Transfer Case. Plaintiff received a June 19, 2003 notification that this case was now transferred to the United States District Court for the District of Columbia (See Exhibit 12).

Plaintiff received a notice dated June 27, 2003 (See Exhibit 13) from Judge Kennedy's court regarding requirements for counsel for all parties to enter their appearance in accordance with Local Civil Rule 83.6. Plaintiff is pro se and therefore has not submitted any response.

July 9, 2003, Plaintiff received notification that a filing regarding this case had been electronically transferred from Sacramento, California. (Exhibit 14).

Sometime during the early part of July 2003 (Plaintiff was transition from moving and mail was sent to former residence), Defendant sent Plaintiff a copy of her Request to transfer case, along with a letter addressed to Plaintiff's husband requesting "Mr. Devvy Kidd's" social security and/or service number, complete middle name and date of birth. Plaintiff's husband, John, is a retired Army Colonel. Devvy Kidd is the wife of John. It defies any logic to connect the Request for Transfer on a civil case with the cover letter received (See Exhibit 15).

Respectfully submitted:

Devvy Kidd

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing motion, declaration and brief for summary judgment upon the below named counsel for the Defendant United States Department of the Army by depositing the same in the United States mail; certified, postage prepaid, in an envelope addressed to him at his correct mailing address:

Certified mail receipt: 7003 0500 0000 4353 1401

Claes H. Lewenhaupt
Special Assistant United States Attorney
Judiciary Center Building
555 4th St., N.W. Room 10-452
Washington, DC 20530

Dated this 2nd day of September 2003

Devvy Kidd
[REDACTED]
Annapolis, MD 20401