

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DEVVY KIDD,

Plaintiff,

v.

DEPARTMENT OF THE ARMY,

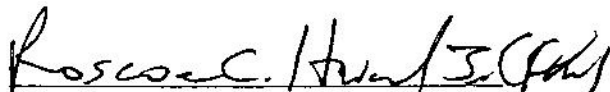
Defendant.

Civil Action: 1:03-cv-01436 (HHK)

**DEFENDANT'S MOTION TO DISMISS, OR ALTERNATIVELY,
CROSS MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT.**

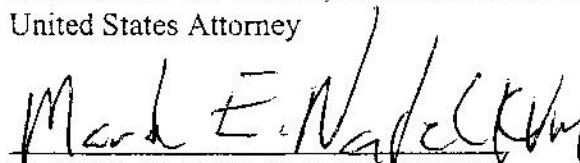
Comes now defendant, through undersigned counsel, pursuant to Fed. R. Civ. Pro. 12(b)(1), (5) and (6) and Rule 56, to move for dismissal and/or for summary judgment and its opposition to plaintiff's motion for summary judgment. A statement of material facts of which there is no genuine dispute, a memorandum in support of this motion, the Declaration of Colonel Elton C. Bruce and its attached exhibits (DEX 1), the Declaration of Wanda Farrow and its attached exhibits (DEX 2), the Declaration of Eric Voelz (DEX 3), and DEX 4 are attached in support of this motion.

Respectfully submitted,



ROSCOE C. HOWARD, JR. D.C. Bar #246470

United States Attorney



MARK E. NAGLE, D.C. Bar #246470

Assistant United States Attorney



DEPARTMENT OF THE ARMY
OFFICE OF THE CHIEF, ARMY RESERVE
WASHINGTON, DC 20310-2400

REPLY TO
ATTENTION OF

July 11, 2002

Chief, Army Reserve Staff Group

Ms. Devvy Kidd
P.O. Box 60543
Sacramento, California 95860

Dear Ms. Kidd:

This is in response to your Freedom of Information Act request dated May 28, 2002 for a copy of "Any document or 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, 1991. 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 object foreign to the human body that McVeigh received 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."

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. Enclosed is a copy of the transfer letter for your information. Should you have further questions about your request please contact NPRC, Mrs. Virginia Barrett, at (314) 538-4222. The NPRC also has a Website that may be useful and the address is <http://www.nara.gov/regional/mpr.html>.

I hope this information has been of assistance to you.

Sincerely,

Gary M. Profit
Colonel, U.S. Army
Director, Chief, Army Reserve
Staff Group

Enclosures

EXHIBIT

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DEVVY KIDD,

Plaintiff,

v.

DEPARTMENT OF THE ARMY,

Defendant.

Civil Action: 1:03-cv-01436 (HHK)

**DEFENDANT'S MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS, OR
ALTERNATIVELY, CROSS MOTION FOR SUMMARY JUDGMENT AND
OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Plaintiff, a *pro se* complainant, brought suit pursuant to the Freedom of Information Act, 5 U.S.C. 552 et seq. and the Privacy Act, 5 U.S.C. 552a et seq., requesting this Court to find: (1) that the Army improperly withheld documents pursuant to plaintiff's FOIA request; and (2) that plaintiff be granted access to such documents. Plaintiff filed a summary judgment seeking the same relief. Defendant moves to dismiss or alternatively cross motions for summary judgment and opposes plaintiff's motion for summary judgment. The Army has not improperly withheld records from the plaintiff. The Army conducted a reasonable search and properly redacted privacy information. Finally, plaintiff, still has not properly served process upon the United States.¹

¹Plaintiff is hereby advised that failure to respond to a dispositive motion may result in the district court granting the motion and dismissing the case. See Fox v. Strickland, 837 F.2d 507, 509 (D.C. Cir. 1988). Plaintiff should further take notice that any factual assertions contained in the affidavits and other attachments in support of defendant's motion will be accepted by the Court as true unless the plaintiff submits his own affidavits or other documentary evidence contradicting the assertions in the defendant's attachments. See Neal v. Kelly, 963 F.2d 453, 457 (D.C. Cir. 1992), Local Civil Rule 7.1(h) and Fed. R. Civ. P. 56(e), which provides as follows:

I. STANDARD

A. Motion to Dismiss

On a motion to dismiss under Rule 12(b)(1), the plaintiff bears the burden of establishing subject matter jurisdiction. District of Columbia Retirement Bd. v. United States, 657 F. Supp. 428, 431 (D.D.C. 1987). When the defendant makes a motion to dismiss for lack of subject-matter jurisdiction, the court must accept all the complaint's well-pled factual allegations as true. Pitney Bowes v. United States Postal Serv., 27 F. Supp. 2d 15, 19 (D.D.C. 1998). The court is not, however, required to accept unsupported inferences or legal conclusions that are cast as factual allegations. Rann v. Chao, 154 F.Supp. 2d 61, 64 (D.D.C. 2001).

In deciding a motion to dismiss under Rule 12(b)(1), the court is not limited to the allegations of the complaint. Hohri v. United States, 782 F.2d 227, 241 (D.C. Cir. 1986), *vacated on other grounds*, 482 U.S. 64 (1987). Rather, "the court may consider such materials outside the pleadings as it deems appropriate to resolve the question whether it has jurisdiction in the case."

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

Scolaro v. D.C. Bd. of Elections and Ethics, 104 F. Supp. 2d 18, 22 (D.D.C. 2000) (citing Herbert v. National Academy of Sciences, 974 F.2d 192, 197 (D.C. Cir. 1992)).

B. Summary Judgement

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); Diamond v. Atwood, 43 F.3d 1538, 1540 (D.C. Cir. 1995); Molerio v. FBI, 749 F.2d 815, 823 (D.C. Cir. 1984). Where no genuine dispute exists as to any material fact, summary judgment is required. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

A genuine issue of material fact is one that could change the outcome of the litigation. Id. at 247. "The burden on the moving party may be discharged by 'showing' - - that is, pointing out to the (Court) - - that there is an absence of evidence to support the non-moving party's case." Celotex, at 325. Once the moving party has met its burden, the non-movant may not rest on mere allegations, but must instead proffer specific facts showing that a genuine issue exists for trial. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). Thus to avoid summary judgment, the plaintiff must state specific facts or present some objective evidence that would enable the court to find she is entitled to relief.

In an opinion issued the same day as Celotex, the Supreme Court attempted to explain the circumstances in which summary judgment is appropriate: "if the evidence is merely colorable . . . or is not sufficiently probative . . . summary judgment may be granted . . . (T)he mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff." Anderson v. Liberty Lobby,

Inc., 477 U.S. at 252. Unsupported speculation is not enough to defeat a summary judgment motion; the existence of specific material evidentiary facts must be shown. Fed. R. Civ. P. 56(e) (the nonmoving party may not rest on mere allegations but “must come forward with ‘specific facts showing there is a genuine issue for trial.’”). See also Hayes v. Shalala, 902 F.Supp. 259, 263 (D.D.C. 1995)(opposition to summary judgment must consist of more than mere unsupported allegations or denials); Johnson v. Digital Equip. Corp., 836 F.Supp. 14, 18 (D.D.C. 1993) (evidence that is merely colorable or not sufficiently probative is insufficient to defeat summary judgment); Batson v. Powell, 912 F.Supp. 565, 578 (D.D.C. 1996).

In Celotex, the Supreme Court further instructed that the “(s)ummary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed ‘to secure the just, speedy and inexpensive determination of every action.’” 477 U.S. at 327, quoting Fed. R. Civ. P. 1.

II. ARGUMENT

A. The Army did not improperly withhold agency records from plaintiff.

In her Motion for Summary Judgment, plaintiff alleges that the Department of the Army has improperly withheld records responsive to plaintiff’s FOIA request under FOIA Exemption (b)(6). (See Plaintiff’s Brief in Support of Her Motion for Summary Judgment, page 2; hereafter “Pl. Mot. at __”)². The Supreme Court makes federal jurisdiction in a FOIA case dependent upon a showing that an agency has (1) “improperly”; (2) “withheld”; (3) “agency records.”

²Plaintiff’s motion for summary judgment is deficient in that the sole declaration in support of her motion is undated and as such fails to meet the requirements of 28 U.S.C.S. § 1746. 28 U.S.C.S § 1746 governs unsworn declarations under penalty of perjury and requires that when “any matter is required or permitted to be supported . . . or proved by the sworn declaration . . . such matter may . . . be supported . . . or proved by the unsworn declaration . . . in writing of such person which is subscribed by him, as true under penalty of perjury, and dated . . .” (28 U.S.C.S. § 1746, emphasis added).

Judicial authority to devise remedies and enjoin agencies can only be invoked, under the jurisdiction grant conferred by § 552, if the agency has contravened all three components of this obligation. Kissinger v. Reporters Committee for Freedom of the Press, 445 U.S. 136, 150 (1980). If an agency has not improperly withheld records, a FOIA suit should be dismissed. Kissinger, 445 U.S. at 139 ("When an agency has demonstrated that it has not "withheld" requested records in violation of the standards established by Congress, the federal courts have no authority to order the production of such records under the FOIA.").

In this case, the Army, through AR-PERSCOM, properly provided plaintiff the only responsive document in its possession, McVeigh's discharge order. (DEX 1, pp. 2-4) The Army properly withheld one nonresponsive document, McVeigh's "New GI Bill form," DD Form 2366. (DEX 2) There are no other documents within the agency's possession responsive to plaintiff's FOIA request. (Id.) Furthermore, there are no other documents concerning McVeigh within the agency's possession at all. (DEX 2, p. 2, ¶ 6, DEX 3, ¶ 7) To the extent that such documents exist, they currently reside outside the control of the Department of the Army and AR-PERSCOM. (DEX 3, ¶ 7). 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.

B. Plaintiff has failed to properly serve process upon the United States.

Plaintiff has failed to meet the service requirements under the Fed. R. Civ. P. 4(i). In accordance with Fed. R. Civ. P. 4(m), this case should be dismissed for plaintiffs failure to properly serve the United States within 120 days of the filing of the complaint. Plaintiff originally filed this action with the Clerk of the United States District Court, Northern District of California, on February 5, 2003 and served the complaint on the United States Attorney in

Sacramento, California on or about February 10, 2003. (See Plaintiff's Timely Service and Status Report, filed April 24, 2003). No other service on the United States has been accomplished. Under the Federal Rules of Civil Procedure Fed. R. Civ. P. 4(i), service of process upon the United States, its agencies, corporations, officers, or employees requires service of the complaint and summons to (a) the U.S. Attorney for the district in which the action is brought, and (b) the U.S. Attorney General in Washington, D.C. See Gardner v. United States, 2003 U.S. Dist. LEXIS 11583 (D.D.C. June 3, 2003)(Court denied plaintiff's reconsideration motion of the court's dismissal for failure to properly serve the agency.)

In this case, while plaintiff has successfully served the U.S. Attorney for the district in which the action was brought, plaintiff has failed to properly serve the Attorney General of the United States, in accordance with Fed. R. Civ. P. 4(i)2(A). Defendant raised this as an affirmative defense in its answer, yet plaintiff still has not properly effected service on the Attorney General of the United States. Accordingly, plaintiff's action should be dismissed.

C. The Army Conducted A Reasonable Search.

The FOIA imposes a duty upon agencies to conduct a "reasonable" search for responsive records. Oglesby v. United States Dep't of the Army, 920 F.2d 57, 68 (D.C. Cir. 1990); Weisberg v. United States Dep't of Justice, 705 F.2d 1344, 1352 (D.C. Cir. 1983). The adequacy of a search in this regard is to be judged not by whether there might exist any other documents possibly responsive to the request, but rather whether the search for those documents was adequate. Weisberg, 705 F.2d at 1351. The reasonableness of the agency's search depends on the facts of each case. Meeropol v. Meese, 790 F.2d 942, 952 (D.C. Cir. 1986) (search is not unreasonable simply because it fails to produce all relevant materials); Marrera v. United States Dep't of Justice, 622 F. Supp. 51, 54 (D.D.C. 1985) (no requirement that agency search every

division or field office; only requirement is "good faith" effort, using methods "reasonably expected to produce the information requested").

In demonstrating the reasonableness of a search an agency may rely upon reasonably detailed, non-conclusory affidavits submitted in good faith. Weisberg, 705 F.2d at 1352. "Affidavits that explain in reasonable detail the scope and methods of the search conducted by the agency will suffice to demonstrate compliance with the obligations imposed by the Freedom of Information Act." Perry v. Block, 684 F.2d 121, 127 (D.C. Cir. 1982). The reasonableness of a search is evaluated in light of the specificity of the request. Nation Magazine, Washington Bureau v. United States Customs Serv., 71 F.3d 885, 889 (D.C. Cir. 1995).

Once an agency has provided adequate affidavits, the burden shifts back to the plaintiff to demonstrate a lack of a good faith search. Miller v. United States Dep't of State, 779 F.2d 1378, 1383 (8th Cir. 1985). An adequate agency affidavit is accorded a presumption of good faith which cannot be rebutted by purely speculative claims about the existence and discoverability of other documents. Ground Saucer Watch, Inc. v. Central Intelligence Agency, 692 F.2d 770, 771 (D.C. Cir. 1982). Therefore, if plaintiff fails to rebut the agency affidavits with evidence of bad faith, summary judgment is proper. Miller, 779 F.2d at 1383.

In this case, the agency conducted a reasonable and adequate search for responsive records as evidenced by the attached declarations of Colonel Elton C. Bruce (DEX 1), Wanda Farrow (DEX 2), and Eric Voelz (DEX 3). These declarations demonstrate that in this case, the Army, through AR-PERSCOM, conducted a reasonable search for the materials requested by plaintiff. Specifically, the agency searched PERMS, a comprehensive electronic storage medium that would reasonably contain responsive information. (DEX 1, ¶ 5; DEX 2, ¶¶ 5-6). Following normal search procedures, it used McVeigh's social security number as the search parameter.

(DEX 2, ¶¶ 5-6). The search indicated that responsive records were closed and transferred to the vault at NARA. (DEX 2, ¶ 7). Furthermore, the Army followed its standard procedures to identify and request the records from NARA. (DEX 1, ¶ 5; DEX 2, ¶¶ 8-10). NARA shipped the entire McVeigh file to AR-PERSCOM for review. (DEX 3, ¶¶ 3-6). AR-PERSCOM reviewed the only two documents found in the record. (DEX 1, ¶ 17). AR-PERSCOM determined that McVeigh's discharge order was the only document that fell within plaintiff's request, and subsequently mailed a redacted copy of the document to plaintiff. (DEX 1, ¶¶ 17-18).

Since the agency conducted a reasonable, good faith, and adequate search for responsive records as evidenced by the detailed, non-conclusory affidavits submitted by defendants, absent allegations and proof of agency bad faith in conducting its search, defendant are entitled to summary judgment in this case.

D. The Army properly redacted privacy information from the discharge order.

Plaintiff alleges that the agency improperly exercised FOIA Exemption 6 when it redacted McVeigh's home address and social security number from his discharge order prior to release to plaintiff, asserting that McVeigh's privacy interests were extinguished upon his death. (Pl. Mot. at 1, 2). The Army, in accordance with the caselaw, properly balanced the McVeigh family's privacy interests in not disclosing their son's social security number and home address against the public interest in discovering such information. In doing so, the Army concluded that the public disclosure of such information would constitute an unwarranted invasion of personal privacy under the FOIA. The Court should uphold that determination.

FOIA Exemption 6 exempts from mandatory disclosure information about individuals in "personnel and medical files" when its disclosure "would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). The purpose of FOIA is to "shed light on

an agency's performance of its statutory duties." United States Dep't of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749, 773 (1989). "FOIA's central purpose is to ensure that the Government's activities be opened to the sharp eye of public scrutiny, not that information about private citizens that happens to be in the warehouse of the Government be so disclosed." Id. at 774; emphasis in original. Analysis of Exemption 6 questions is based ultimately on a balancing between the individual's privacy interest and the public interest in disclosure. Id. at 766.

While the right to privacy of deceased persons is not entirely settled, the majority rule is that death extinguishes a deceased's privacy rights. The D.C. Circuit has expressly recognized, however, that certain "reputational" and "family-related" interests survive death. In these cases, the Court has established that the privacy rights of deceased individuals are not completely extinguished and are routinely extended to their survivors in FOIA litigation involving Exemption 7(C).

For example, in Schrecker v. United States Dep't of Justice, 254 F.3d 162, 166 (D.C. Cir. 2001), the Court found that "the death of the subject of personal information does diminish to some extent the privacy interest in that information, though it by no means extinguishes that interest; one's own and one's relations' interests in privacy ordinarily extend beyond one's death." In Campbell v. United States Dep't of Justice, 164 F.3d 20, 33-34 (D.C. Cir. 1998), the Court recognized that although "death clearly matters, as the deceased by definition cannot personally suffer the privacy-related injuries that may plague the living . . . [t]he court must also account for the fact that certain reputational interests and family-related privacy expectations survive death." In Campbell v. United States Dep't of Justice, 193 F. Supp.2d 29, 40-41 (D.D.C. 2001), the Court approved the agency's practice of balancing privacy and public interests taking

into consideration the "reputational and family related privacy expectations [that] survive death."

In this case, the Army removed McVeigh's personal identifying information (social security number and home address at the time of discharge) from the discharge order prior to release in accordance with 5 U.S.C. § 552(b)(6). Although McVeigh is deceased, he was a notorious criminal figure and his survivors have a substantial privacy interest in the nondisclosure of this redacted information, particularly in the disclosure of his home address where presumably his survivors currently reside and expect a privacy interest in such information, whereas the public has no countervailing interest in the disclosure of the same.

Even if the redacted privacy information in this case is not considered by the Court to be particularly sensitive in and of itself, McVeigh's privacy information may still be withheld to protect the privacy interests of surviving family members where disclosure would cause "a disruption of their peace of minds." N.Y. Times Co. v. NASA, 782 F. Supp. 628, 631-32 (D.D.C. 1991). More importantly, there is no significant public interest to balance against the survivors' privacy interest in anonymity, since such information fails to shed any light on the Army's performance of its statutory duties.

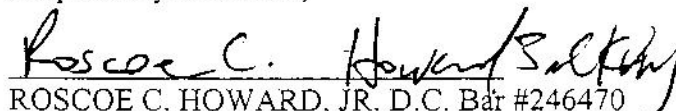
The Army properly balanced the McVeigh family's privacy interests in not disclosing their son's social security number and home address against the public interest in discovering such information. The Army concluded that the public disclosure of such information would constitute an unwarranted invasion of personal privacy under the FOIA. The Court should uphold that determination, deny plaintiff's summary judgment and enter summary judgment for the defendant in this case.

III. CONCLUSION

For the foregoing reasons, defendant respectfully moves this Honorable Court to dismiss

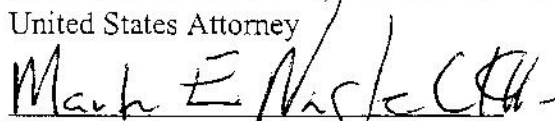
plaintiff's complaint or alternatively to grant defendant's cross motion for summary judgment and deny plaintiff's motion for summary judgment.

Respectfully submitted,



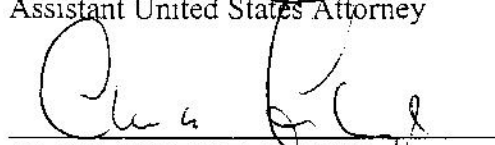
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¹ Plaintiff's complaint, as filed, did not contain marks identifying the six referenced exhibits therein. For ease of reference, defendant took the liberty to handwritten exhibit numbers at the bottom of each exhibit to the complaint, which is included in this submission at DEX 5.

E. On or about May 28, 2002, plaintiff filed a written FOIA request with the OCAR, seeking access to personnel documents related to the discharge, deployment, and medical examinations of Timothy James McVeigh ("McVeigh"). (Comp., p. 2, ¶ 5; DEX 1, ¶ 3; DEX 1, Attachment 1; DEX 2, ¶ 3).

F. On or about July 11, 2002, OCAR responded in writing to plaintiff's May 28, 2002 FOIA request, notifying plaintiff that her FOIA request was being forwarded to the NPRC for processing. (Comp., p. 2, ¶ 6; DEX 1, ¶ 3; DEX 1, Attachment 2; DEX 2, ¶ 3).

G. On or about July 29, 2002, the NPRC responded in writing to plaintiff's May 28, 2002 FOIA request, notifying plaintiff that her FOIA request was being forwarded to AR-PERSCOM for processing. (Comp., p. 2, ¶ 7; DEX 1, ¶ 4; DEX 1, Attachment 3; DEX 2, ¶ 4).

H. On August 1, 2002, an AR-PERSCOM human resources assistant with responsibilities for processing FOIA requests, Ms. Wanda Farrow, received and processed plaintiff's May 28, 2002 request pursuant to standard procedures. Ms. Farrow conducted a thorough search for the records using methods reasonably expected to produce the requested information. (DEX 1, ¶ 5; DEX 2, ¶¶ 3, 5).

I. The information plaintiff requested was reasonably likely to be located in the Personnel Electronic Records Management System ("PERMS"). PERMS is a comprehensive electronic storage medium for U.S. Army Reserve records. The PERMS search utility scans every record and identifies all documents associated with the search parameters. A PERMS search yields one of three results: it will provide matching documents, identify matching files that are closed, or indicate that no matching documents exist. Ms. Farrow searched PERMS using McVeigh's Social Security number as the search parameter. The PERMS search indicated that the file

concerning McVeigh was closed. (DEX 1, ¶ 5; DEX 2, ¶¶ 5-7).

J. 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. (DEX 3, ¶ 4.)

K. In order to request a record from NARA, a registry number is required. Ms. Farrow obtained the registry number by searching NARA's online tool using McVeigh's social security number. The registry number indicated that McVeigh's file was stored in NARA's vault. (DEX 1, ¶ 5; DEX 2, ¶¶ 7, 9-10).

L. In order to properly request a record from the vault, a "DAS Form 54" (Request for Official Military Personnel File, Microfiche, or Paper Document) is submitted to the designated point of contact. Ms. Farrow completed a DAS Form 54 and submitted it to the appropriate point of contact within AR-PERSCOM. (DEX 1, ¶ 5; DEX 2, ¶ 10).

M. On August 6, 2002, a NARA archivist, Mr. Eric Voelz, received DAS Form 54 from AR-PERSCOM with instructions to retrieve the McVeigh file from the vault. Upon retrieval, Mr. Voelz noted that the McVeigh file contained only two documents: a discharge order dated May 14, 1995 ("discharge order") and a Department of Defense ("DD") Form 2366, Veterans' Educational Assistance Act of 1984 (New GI Bill) dated May 28, 1988 ("DD Form 2366"). No other documents pertaining to McVeigh were found in the file or in NARA's possession. There is some indication that the Federal Bureau of Investigation may possess additional personnel documents pertaining to McVeigh. Mr. Voelz delivered the McVeigh file from the vault to the

designated point of contact from AR-PERSCOM. (DEX 3, ¶¶ 3-4, 6-7).

N. On August 9, 2002, Ms. Farrow received and reviewed the McVeigh file, which contained only the discharge order and DD Form 2366. Ms. Farrow determined that only the discharge order fell within the scope of plaintiff's written FOIA request. In accordance with 5 U.S.C. § 552(b)(6), Ms. Farrow removed McVeigh's social security number and home address from the discharge order. Ms. Farrow then sent plaintiff the redacted discharge order. The accompanying letter indicated that the discharge order was the only document found to be responsive to plaintiff's request. (DEX 1, ¶ 9; DEX 1, Attachment 6; DEX 2, ¶¶ 11-12, 14).

O. On or about December 8, 2002, plaintiff notified AR-PERSCOM in writing that she had not received a response to her May 28, 2002 FOIA request. (Comp., p. 2, ¶ 8; DEX 1, Attachment 7).

P. On or about December 20, 2002, Ms. Wanda Farrow from AR-PERSCOM responded in writing to plaintiff's December 8, 2002 correspondence by mailing another copy of McVeigh's one-page discharge order. Prior to mailing her December 20, 2002 correspondence, Ms. Farrow redacted McVeigh's social security number and home address from the discharge order as she did previously. In her December 20, 2002 correspondence, Ms. Farrow wrote that in accordance with 5 U.S.C. § 552(b)(6), the release of McVeigh's social security number and home address "could result in an unwarranted invasion of personal privacy to any surviving family members." (Comp., p. 2, ¶ 9; DEX 1, ¶¶ 10-11; DEX 1, Attachment 8; DEX 2, ¶¶ 15-16).

Q. On or about January 6, 2003, plaintiff appealed the December 20, 2002 decision by Ms. Farrow to the Commander, AR-PERSCOM, claiming that her May 28, 2002 FOIA request was improperly denied and that the protection of the FOIA exemption asserted by Ms. Farrow

did not extend to McVeigh's family members. Ms. Farrow received plaintiff's appeal on or about January 15, 2003. (Comp., p. 2, ¶ 10; DEX 1, ¶ 12; DEX 1, Attachment 13, Enclosure 1; DEX 2, ¶ 17).

R. On February 5, 2003, plaintiff filed a complaint pertaining to her FOIA request in the United States District Court for the Northern District of California. (Compl., p. 2).

S. On April 7, 2003, Ms. Farrow discovered that she incorrectly exercised Initial Denial Authority ("IDA") on plaintiff's FOIA request. The Commander of AR-PERSCOM, Colonel Elton C. Bruce, was the only individual within AR-PERSCOM who could exercise IDA. Consequently, Ms. Farrow forwarded plaintiff's FOIA request to Colonel Bruce for determination. (DEX 1, ¶¶ 14, 16; DEX 2, ¶¶ 19-20).

T. Colonel Bruce is familiar with the standard procedures used by AR-PERSCOM when conducting FOIA searches and is aware of the procedures Ms. Farrow used to search for records responsive to plaintiff's request. (DEX 1, ¶¶ 5-6).

U. On or about April 8, 2003, Colonel Bruce reviewed plaintiff's FOIA request and the McVeigh file. Colonel Bruce determined that only McVeigh's discharge order fell within the scope of plaintiff's request. In accordance with 5 U.S.C. § 552(b)(6), Colonel Bruce removed McVeigh's personal identifying information (social security number and home address) from the discharge order and mailed the redacted discharge order to plaintiff. The accompanying letter, dated April 8, 2003, indicated that the discharge order was the only document found to be responsive to plaintiff's request and informed plaintiff of her right to appeal his decision. (DEX 1, ¶¶ 17-18; DEX 1, Attachment 11).

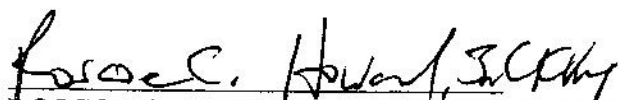
V. On April 9, 2003, Colonel Bruce also notified plaintiff in writing that her January 6,

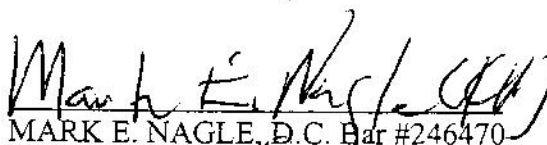
2003 appeal of AR-PERSCOM's original FOIA determination was considered by him to also be an appeal of his April 8, 2003 determination and subsequently forwarded plaintiff's appeal in writing to the Secretary of the Army, Office of the General Counsel, for final determination. (DEX 1, ¶ 20; DEX 1, Attachments 12-13).

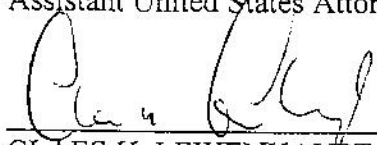
W. On April 21, 2003, a representative from the Secretary of the Army, Office of the General Counsel, Ms. Victoria Newhouse, acknowledged receipt of plaintiff's appeal in writing and informed plaintiff that a final decision on her appeal is pending. (DEX 4).

X. As of the date of this filing, a final decision on plaintiff's appeal remains pending. (DEX 4).

Respectfully submitted,


ROScoe C. HOWARD, JR. D.C. Bar #246470
United States Attorney


MARK E. NAGLE, D.C. Bar #246470
Assistant United States Attorney


CLAES H. LEWENHAUPT
Special Assistant United States Attorney
Judiciary Center Building
555 4th Street, N.W.
Washington, D.C. 20001
(202) 353-9895

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DEVVY KIDD,

Plaintiff,

vs.

DEPARTMENT OF THE ARMY,

Defendant.

No. Civ-S-300223 DFL GGH-PS

DECLARATION OF COLONEL ELTON C. BRUCE

My name is Elton C. Bruce and I make the following declaration under penalty of perjury:

1. I am the Commander, U.S. Army Reserve Personnel Command (AR-PERSCOM), St. Louis, Missouri. I am responsible for all administrative activities pertaining to the processing of requests submitted to AR-PERSCOM seeking documents under the Freedom of Information Act (FOIA), specifically including acting as the Initial Denial Authority (IDA) under delegation from Lieutenant General James R. Helmly, Chief, Army Reserve.
2. The statements in this declaration are based upon my personal knowledge, upon information available to me in my official capacity, and upon conclusions I drew based upon that information and knowledge. I have prepared this declaration to be filed in support of the named Defendant's defense of the captioned litigation.
3. Ms Wanda Farrow (FARROW) received Ms Kidd's FOIA request dated May 28, 2002, on August 1, 2002. Ms Kidd had initially submitted her request to Office of the Chief, Army Reserve (OCAR). The OCAR Staff Group responded directly to Ms Kidd on July 11, 2002, advising her that her request had been forwarded to the National Personnel Records Center (NPRC), St. Louis,

DECLARATION OF ELTON C. BRUCE



Missouri, as the custodian for any records that may fall within the scope of her request. She was also provided the mailing address, telephone number, and point of contact at NPRC as well as a copy of the transmittal letter. A copy of Ms Kidd's request is included as attachment 1 to this declaration. A copy of the OCAR Staff Group letter is included as attachment 2 to this declaration.

4. On July 29, 2002, NPRC responded to Plaintiff advising her that while the NRPC 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 and that her request was forwarded to AR-PERSCOM to address her request. The request was assigned to FARROW for processing. A copy of the NRPC letter is included as attachment 3 to this declaration.

5. I am familiar with the standard procedures used when conducting searches for personnel records within this organization pursuant to a FOIA request. I am also aware that FARROW followed her normal procedures when performing the search for the records requested by Ms Kidd. She searched the internal Personnel Electronic Records Management System (PERMS) for records responsive to Ms Kidd's request. She found none. She then checked the National Archives and Records Administration's (NARA) online system to get the registry number by which to request the file. At that time she saw that the record needed was stored in the vault at NARA. In order to request a record that is in the vault, a DAS Form 54 (Request for Official Military Personnel File, Microfiche or Paper Document) must be completed and submitted to the AR-PERSCOM Security Office. The designated point of contact was Mr. Thomas O'Connell. FARROW submitted the DAS Form 54 to Mr. O'Connell.

6. FARROW received the record from Mr. O'Connell on or before August 9, 2002. She reviewed the record and found only 2 documents: a discharge order dated May 14, 1995 and a DD Form 2366, Veterans' Educational Assistance Act of 1984 (New GI Bill), dated May 28, 1988.

DECLARATION OF ELTON C. BRUCE

7. **Discharge order dated May 14, 1995.** This is a 1-page document prepared by the U.S. Army Reserve Personnel Center and issued by COL Norman Brinsley in his official capacity as the Commander of the organization. The discharge order was addressed to Timothy James McVeigh and mailed to his last known address on July 8, 1996. The purpose of the document was to advise Mr. McVeigh that he was discharged from the US Army Reserve Control Group with an Honorable Discharge effective May 14, 1996. A copy of this order is included at attachment 4 to this declaration.

8. **DD Form 2366, Veterans' Educational Assistance Act of 1984 (New GI Bill), dated May 28, 1988.** This is a 1-page document prepared by an unknown person. The purpose of the document was to advise Mr. McVeigh of his eligibility and options under the GI Bill in force at that time upon his entry into military service. Mr. McVeigh signed the document twice: Once in block 2.1 signifying that he understood his eligibility and options and once in block 4.a. signifying that he was declining to participate in the program. A copy of this form is included at attachment 5 to this declaration.

9. FARROW determined that only one of the documents fell within the scope of the request. She "sanitized" - removed and withheld personal identifying information in accordance with 5 U.S.C. §552(b)(6) - and sent a copy of the redacted document to Ms Kidd on August 9, 2002. She sent the reply by regular, first class mail addressed to Ms Devvy Kidd, PO Box 60543, Sacramento, California, 95860-0543, the same address used at the top of Ms Kidd's May 28, 2002 request. The August 9, 2002 letter explained that no other records or information that she requested was available at this command. FARROW further advised Ms Kidd she had the right to appeal the determination response within 60 days to the Commander, U.S. Army Reserve Personnel Command. Ms Kidd never submitted an appeal in response to the August 9, 2002 determination letter. A copy of the August 9, 2002, letter is included as attachment 6 to this declaration.

DECLARATION OF ELTON C. BRUCE

10. Subsequently, on December 13, 2002, FARROW received another request directly from Ms Kidd dated December 8, 2002, restating that on July 24, 2002, Ms Kidd had received a letter from OCAR informing her that her FOIA request had been referred to NARA. And that she then received another letter dated July 29, 2002 from NARA informing her that her request had been forwarded to this Command. She further stated that she felt she has waited long enough for this information and if she did not receive the documents she requested within 20 calendar days after this agency signed for this letter, she will sue in federal district court. A copy of Ms Kidd's second request is included as attachment 7 to this declaration.

11. FARROW responded to Ms Kidd a second time by letter dated December 20, 2002, informing her that FARROW had responded previously to Ms Kidd on August 9, 2002. FARROW sent the reply by regular, first class mail addressed to Ms Devvy Kidd, PO Box 60543, Sacramento, California, 95860-0543, the same address used at the top of Ms Kidd's December 8, 2002 letter. FARROW included a copy of the August 9, 2002 letter and of the redacted discharge order. FARROW reiterated that the information Ms Kidd requested was not available in the record at this command. And finally FARROW re-advised Ms Kidd she had the right to appeal the determination response within 60 days to the Commander, U.S. Army Reserve Personnel Command. The letter that FARROW sent dated August 9, 2002 was never returned to this command. Nothing was ever returned to indicate that Ms Kidd did not receive a response until FARROW received the letter dated December 8, 2002. A copy of the December 20, 2002, letter is included as attachment 8 to this declaration.

12. On January 15, 2003, FARROW received a FOIA appeal dated January 6, 2003. FARROW requested the file from NARA again, using the same procedure mentioned above. Once the file was received, FARROW copied all of the documents and sent the appeal to the Command Judge Advocate (CJA) for a legal review. At that time FARROW also prepared a memo to forward the

DECLARATION OF ELTON C. BRUCE

appeal to the Secretary of the Army, Office of the General Counsel (OGC) and a letter informing Ms Kidd of the referral. This was on or about February 6, 2003. A copy of Ms Kidd's FOIA Appeal is included as attachment 9 to this declaration.

13. On February 18, 2003, while the case was in the CJA for review, the command received notification by service and summons that Ms Kidd had filed a civil lawsuit. On February 21, 2003, FARROW was instructed to stop processing the FOIA appeal due to the pending litigation.

14. On April 9, 2003, it came to my attention that FARROW improperly rendered initial determinations on Ms Kidd's FOIA requests. FARROW did not possess the administrative authority to render these initial FOIA determinations for U.S. Army Reserve Personnel Command.

15. Consequently, neither of FARROW'S responses to Ms Kidd was administratively or procedurally correct. Neither of the letters to Ms Kidd advised her if she submitted an appeal that it would be forwarded to the Department of the Army Office of the General Counsel for review. Each letter contained an erroneous statement of the appeal procedure. FARROW incorrectly advised Ms Kidd that any appeal she wished to submit should be submitted to Commander, AR-PERSCOM, creating the inference that Commander, AR-PERSCOM, would rule on her appeal when in fact the appeal would be forwarded to a higher level command. The correct appeal advisement should have read substantially as follows:

"In light of the above, your request is partially denied. This partial denial is made by the undersigned under authority delegated to me by Lieutenant General James R. Helmly, Chief, Army Reserve. You may appeal this partial denial. Any appeal you wish to submit must be done in writing, within 60 calendar days of the date of this letter, to this Command, Attention: ARPC-ZCC-A. Your appeal should contain a copy of this letter and outline the basis on which you disagree with the partial denial. Upon receipt of any appeal you may submit, I will forward it to the Secretary of the Army, Office of the General Counsel, Attention: V. Newhouse, 104 Army

DECLARATION OF ELTON C. BRUCE

Pentagon, Room 2E725, Washington, DC, 20310-0104, for a final determination."

The "undersigned" referenced in the appeal advisement is the person actually delegated the Initial Denial Authority (IDA): Commander, AR-PERSCOM.

16. In addition, FARROW erroneously exercised IDA. The exercise was erroneous because she had not been delegated IDA. The only person at this command who has delegated IDA is the Commander, AR-PERSCOM. On April 7, 2003, FARROW was instructed to advise Ms Kidd in writing that she did not have the administrative authority to make these determinations on behalf of AR-PERSCOM. A copy of FARROW's letter is included as attachment 10 to this declaration. FARROW was further directed to forward Ms Kidd's requests to the delegated IDA for review after which the delegated IDA would provide a direct response to Ms Kidd.

17. I reviewed both of Ms Kidd's requests, dated May 28, 2002 and December 8, 2002, respectively. I concluded that of the two documents, only the discharge order was within the scope of Ms Kidd's requests, but that the social security number and other personal information contained in the discharge order should be withheld under Title 5, U.S. Code, §552(b)(6). I determined that release of said information would result in a clearly unwarranted invasion of personal privacy. I also determined that no other records within the scope of Ms Kidd's requests are available at this command.

18. I responded directly to Ms Kidd in writing, by mail on April 8, 2003, advising her of my determinations. I also advised her of the procedures available to her should she elect to file an appeal. A copy of my response to Ms Kidd is included as attachment 11 to this declaration.

19. In addition, Ms Kidd filed an appeal in writing to FARROW's erroneous determinations on January 6, 2003. Recognizing that my determinations are

DECLARATION OF ELTON C. BRUCE

substantially the same as the determinations made by FARROW, I advised Ms Kidd that I would accept her January 6, 2003, appeal as an appeal to my determinations. I further advised Ms Kidd that I would notify her by separate correspondence when her appeal was forwarded to Secretary of the Army General Counsel. A copy of my response to Ms Kidd is included as attachment 11 to this declaration.

20. On April 9, 2003, I also notified Ms Kidd in writing, by mail that her January 6, 2003, appeal was forwarded to the Secretary of the Army, Office of the General Counsel, Attention: V. Newhouse, 104 Army Pentagon, Room 2E725, Washington, DC, 20310-0104, for appropriate action and a direct response. A copy of this notification is included as attachment 12 to this declaration. A copy of the transmittal memorandum with enclosures is included as attachment 13 to this declaration.

I declare under penalty of perjury, pursuant to 28 U.S.C. §1746, that the foregoing is true and correct to the best of my knowledge, information, and belief. Executed this 9th day of April 2003, at St. Louis, Missouri.



Elton C. Bruce
Colonel, U.S. Army
Commander
U.S. Army Reserve Personnel Command

Devvy Kidd
P.O. Box 60543
Sacramento, California 95860

Certified Mail Receipt: 7001 2510 0000 2855 8617

May 28, 2002

Office of the Chief, Army Reserve
ATTN: DAAR-ZXP (FOIA)
1421 Jefferson Davis Highway, Suite 12300
Arlington, VA 22202

Re: Timothy James McVeigh (Executed June 11, 2001)
Social Security No. 129-58-4709

Sir/Madame:

This is a request under the Freedom of Information Act (5 U.S.C. §552) and the regulations thereunder. I am more than willing to pay any reasonable research and copies fees for responding to this request; however, if the costs thereof should exceed \$100, please inform me in advance of producing the requested documents. I am not a commercial requester and I seek the documents requested below for personal reasons.

Under this FOIA I am requesting the following:

1. Any document or form initiated by Timothy James McVeigh to separate from the Department of the Army when on active duty status.
2. 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.
3. Copies of all deployment records for the period May 24, 1988 through December 31 1991. These records should include where he was sent and duration of duty.
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

Received
6-25-02
2:30 pm
M. Naled

Attachment

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

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.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Devy Kidd", written over a horizontal line.

Devy Kidd

CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY

1. NAME (Last, First, Middle) MCVEIGH TIMOTHY JAMES		2. DEPARTMENT, COMPONENT AND BRANCH ARMY/RA		3. SOCIAL SECURITY [REDACTED]	
4.a. GRADE, RATE OR RANK SGT		4.b. PAY GRADE E-5		5. DATE OF BIRTH (YYMMDD) 680423	
7.a. PLACE OF ENTRY INTO ACTIVE DUTY BUFFALO, NY		7.b. HOME OF RECORD AT TIME OF ENTRY (City and State, or 1) 6240 CARROLL BLVD LOCKPORT, NY 14094			
8.a. POST OF ASSIGNMENT AND MAJOR COMMAND FORSCOM - FC		8.b. STATION WHERE SEPARATED [REDACTED]			
9. COMMAND TO WHICH TRANSFERRED CSC 1st BN. 174th INF. 79 DELEWARE STREET, TONAWANDA, NY 14150				10. SGLI COVERAGE Amount: \$ 100.00	
11. PRIMARY SPECIALTY (List number, title and years and months in specialty. List additional specialty numbers and titles involving periods of one or more years) 11B120, FIGHTING VEHICLE INFANTRYMAN, 3 YRS AND 4 MOS//NOTHING FOLLOWS		12. RECORD OF SERVICE			
		a. Date Entered AD This Period		Year(s)	Month(s)
		b. Separation Date This Period		91	12
		c. Net Active Service This Period		03	07
		d. Total Prior Active Service		00	00
		e. Total Prior Inactive Service		00	00
		f. Foreign Service		00	03
		g. Sea Service		00	00
		h. Effective Date of Pay Grade		91	02
13. DECORATIONS, MEDALS, BADGES, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED (All periods of service) ARMY SERVICE RIBBON//NATIONAL DEFENSE SERVICE MEDAL//ARMY LAPEL BUTTON// SOUTHWEST ASIA SERVICE MEDAL W/2 BRONZE STARS//BRONZE STAR MEDAL//ARMY ACHIEVEMENT MEDAL //NOTHING FOLLOWS					
14. MILITARY EDUCATION (Course title, number of weeks, and month and year completed) PRIMARY LEADERSHIP DEVELOPMENT COURSE, 4 WEEKS, 1990//NOTHING FOLLOWS					
15.a. MEMBER CONTRIBUTED TO POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE PROGRAM		Yes	No	15.b. HIGH SCHOOL GRADUATE OR EQUIVALENT	
			X	Yes	
				No	
16. DAYS ACCRUED LEAVE					
17. MEMBER WAS PROVIDED COMPLETE DENTAL EXAMINATION AND ALL APPROPRIATE DENTAL SERVICES AND TREATMENT WITHIN 90 DAYS PRIOR TO SEPARATION					
Yes					
18. REMARKS BLOCK 6 INCLUDES PERIOD OF DEP: 880512-880523//SUBJECT TO ACTIVE DUTY RE AND/OR ANNUAL SCREENING//NOTHING FOLLOWS					
19.a. MAILING ADDRESS AFTER SEPARATION (Include Zip Code) [REDACTED]					
19.b. NEAREST RELATIVE (Name and address - include Zip Code) [REDACTED]					
20. MEMBER REQUESTS COPY 5 BE SENT TO		DIR. OF VET AFFAIRS		22. OFFICIAL AUTHORIZED TO SIGN (Typed name, grade, title signature) GARY A. WADSWORTH	
21. SIGNATURE OF MEMBER BEING SEPARATED [REDACTED]		X Yes		No	
23. TYPE OF SEPARATION RELIEF FROM ACTIVE DUTY					
24. CHARACTER OF SERVICE (Include upgrades) HONORABLE					
25. SEPARATION AUTHORITY AR 635-200 PARA 16-8					
26. SEPARATION CODE LCC					
27. REENTRY CODE 2B					
28. NARRATIVE REASON FOR SEPARATION FOR THE CONVENIENCE OF THE GOVERNMENT - FY92 EARLY TRANSITION PROGRAM					
29. DATES OF TIME LOST DURING THIS PERIOD NONE//NOTHING FOLLOWS					
30. MEMBER REQUESTS CC [REDACTED]					

RECORDED
02 JUN 91 PM 12:38
FEDERAL BUREAU OF INVESTIGATION
LOCKPORT, N.Y.

SPECIAL ADDITIONAL INFORMATION (For use by authorized agencies only)

23. TYPE OF SEPARATION RELIEF FROM ACTIVE DUTY		24. CHARACTER OF SERVICE (Include upgrades) HONORABLE	
25. SEPARATION AUTHORITY AR 635-200 PARA 16-8		26. SEPARATION CODE LCC	
27. REENTRY CODE 2B		28. NARRATIVE REASON FOR SEPARATION FOR THE CONVENIENCE OF THE GOVERNMENT - FY92 EARLY TRANSITION PROGRAM	
29. DATES OF TIME LOST DURING THIS PERIOD NONE//NOTHING FOLLOWS		30. MEMBER REQUESTS CC [REDACTED]	



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
OFFICE OF THE CHIEF, ARMY RESERVE
WASHINGTON, DC 20310-2400

July 11, 2002

Chief, Army Reserve Staff Group

Ms. Devvy Kidd
P.O. Box 60543
Sacramento, California 95860

Dear Ms. Kidd:

This is in response to your Freedom of Information Act request dated May 28, 2002 for a copy of "Any document or 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, 1991. 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 object foreign to the human body that McVeigh received 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."

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. Enclosed is a copy of the transfer letter for your information. Should you have further questions about your request please contact NPRC, Mrs. Virginia Barrett, at (314) 538-4222. The NPRC also has a Website that may be useful and the address is <http://www.nara.gov/regional/mpr.html>.

I hope this information has been of assistance to you.

Sincerely,

Gary M. Profit
Colonel, U.S. Army
Director, Chief, Army Reserve
Staff Group

Enclosures



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
OFFICE OF THE CHIEF, ARMY RESERVE
WASHINGTON, DC 20310-2400

July 11, 2002

Chief, Army Reserve Staff Group

National Personnel Records Center
ATTN: Mrs. Virginia Barrett
9700 Page Boulevard
St. Louis, Missouri 63132-5100

Dear Mrs. Barrett:

Enclosed is a Freedom of Information Act request dated May 28, 2002 from Ms. Devvy Kidd for a copy of "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, 1991. 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 object foreign to the human body that McVeigh received 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."

This request is being transferred to your headquarters for appropriate action and response to Ms. Kidd. Ms. Kidd has been provided a copy of this transfer letter.

Thank you for your assistance in this matter.

Sincerely,

Gary M. Profit
Colonel, U.S. Army
Director, Chief, Army Reserve
Staff Group

Enclosures



National Personnel Records Center

Military Personnel Records 9700 Page Avenue St. Louis, Missouri 63132-5100

July 29, 2002

Devvy Kidd
PO Box 60543
Sacramento, CA 95860

RE: Veteran's Name: McVeigh, Timothy J.
SSN/SN: ***Confidential***
Case Reference Number: 2002-204-0963

Thank you for contacting the National Personnel Records Center. 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. We regret that we cannot be of direct assistance; however, you may expect a response from the office shown below.

We have made every effort to assist you within the constraints of our resources. If you have any questions or comments regarding this response, you can reach me by phone at (314) 538-2191 or by mail at the address shown in the letterhead above, ATTN: NRPM3-A, Room 3315. Ensure you include the Case Reference Number listed above. All new requests for information or documents, or requests that pertain to other veterans, must be made in writing to the address shown in the letterhead above. Our web site also includes pertinent phone numbers and a request form.

Sincerely,

Francis Snead
Archives Technician

Cc: Commander
Army Reserve Personnel Command
ATTN: ARPC-ZCC-B
1 Reserve Way
St. Louis, MO 63132-5200

C#: F02-1677 MPC: WANDA
SUBJ: MCVEIGH TIMOTHY J
R: 8/1/2002 S: 8/29/2002

WOF
DEPARTMENT OF THE ARMY
U. S. ARMY RESERVE PERSONNEL CENTER
9700 PAGE AVENUE
ST. LOUIS, MO 63132-5200

ARPC-SFS-R
ORDERS D-05-642863

14 MAY 96

MCVEIGH TIMOTHY JAMES
4225 MILLER RD 146
FLINT MI 48507

SFS-R

129 58 4709 SGT 11H2
USAR CONTROL GROUP (AT)

YOU ARE DISCHARGED FROM THE COMPONENT SHOWN.

AUTHORITY: AR 135-178
EFFECTIVE DATE: 14 MAY 96
COMPONENT: UNITED STATES ARMY RESERVE
TYPE OF DISCHARGE: HONORABLE
ADDITIONAL INSTRUCTIONS: IF RESERVE ID DD FORM 2A (RED) IS IN YOUR POSSESSION
RETURN IT TO THIS HQS, ATTN: ARPC-PAS-EVC. IF YOU HAVE ANY QUESTIONS IN THE
FUTURE ABOUT YOUR MILITARY RECORDS OR YOUR MILITARY SERVICE, ASK THE
NATIONAL PERSONNEL RECORDS CENTER, 9700 PAGE BLVD ST LOUIS MISSOURI
63132-5200. AS YOU NO LONGER HAVE ANY MILITARY STATUS, YOUR RECORDS ARE NO
LONGER HELD BY THE ARMY. REMEMBER TO INCLUDE YOUR FULL NAME, SOCIAL SECURITY
NUMBER AND ALL PREVIOUS SERVICE NUMBERS SO THAT YOUR RECORD CAN BE
POSITIVELY IDENTIFIED. SFSR-10

"SUBJECT BEING DISCHARGED ALTHOUGH ASSIGNED TO THIS ORGANIZATION,
IS NOT PRESENT FOR DUTY. DISCHARGE CERTIFICATE AND DISCHARGE ORDERS
ARE BEING MAILED TO LAST KNOWN ADDRESS THIS DATE, 08 July 1996."

FORMAT: 500

* ARPERCEN *
* OFFICIAL *

NORMAN S. BRINSLEY
COL, SF
COMMANDING

DISTRIBUTION: H2 PACKET: 15

Attachment

99 123 AL60601/3
VETERANS' EDUCATIONAL ASSISTANCE ACT OF 1984 (NEW GI BILL)
 (Chapter 30, Title 38, U.S. Code)

Privacy Act Statement

AUTHORITY: Chapter 30, Title 38, US Code, Sections 1411 and 1412; and EO 9397, November 1943 (SSN).
PRINCIPAL PURPOSE: To establish eligibility to participate in the Veterans' Educational Assistance Act of 1984 (New GI Bill.)
ROUTINE USES: Information will be used as a source document indicating participation status of each service member in the New GI Bill Educational Benefits Program.
DISCLOSURE: Disclosure of your social security number and other personal information is voluntary. However, this form CANNOT be processed if requested information is not provided.

1. SERVICE MEMBER

a. NAME (Last, First, Middle Initial)

MCVEIGH, TIMOTHY J.

b. SOCIAL SECURITY NUMBER (SSN)
 129-58-4789

2. STATEMENT OF UNDERSTANDING

- I am eligible for the New GI Bill based on my initial entry on active duty on or after July 1, 1985.
- I understand that I am automatically enrolled and that I have the option to disenroll. (See paragraph 3 or 4)
- If I disenroll, I must do so on the date designated by my service.
- I am a Service academy or ROTC scholarship graduate and I am NOT ELIGIBLE for the New GI Bill. (X if applicable) →
- I understand that if enrolled in the New GI Bill, my basic pay will be reduced \$100 per month for EACH of the first full 12 months of active duty and CANNOT BE REFUNDED, SUSPENDED OR STOPPED.
- I must complete three years of active duty service before I am entitled to \$300 per month for 36 months.
- If I have a two year obligation, I understand that I must complete two years of active duty to receive \$250 per month for 36 months.
- I must complete two years of active duty service and join the Selected Reserve for a minimum four year service agreement before I am entitled to \$300 per month for 36 months.
- If a non-high school graduate, I must complete all requirements for a high school diploma (or an equivalency certificate) before completion of my initial tour in order to qualify for the New GI Bill.
- I must use my benefits within 10 years of my separation or discharge from active duty for the entitlement in paragraph 2.g., or complete my Selected Reserve obligation for the entitlement in paragraph 2.h.
- I must receive an honorable discharge for service which established entitlement to the New GI Bill.

1. SERVICE MEMBER

(1) TYPED OR PRINTED NAME (Last, First, Middle Initial)
 MCVEIGH, TIMOTHY J.

(2) RANK/GRADE
 E-1

(3) SIGNATURE

(4) DATE SIGNED
 12 MAY 88

m. WITNESSING OFFICIAL

(1) TYPED OR PRINTED NAME (Last, First, Middle Initial)
 HERNANDEZ, EULALIO

(2) RANK/GRADE
 E-7

(3) SIGNATURE

(4) DATE SIGNED
 12 MAY 88

3. STATEMENT OF ENROLLMENT

I am enrolling in the "New GI Bill" and ACCEPT THE TERMS OF 2.a. through k.

a. SERVICE MEMBER

(1) TYPED OR PRINTED NAME (Last, First, Middle Initial)

(2) RANK/GRADE

(3) SIGNATURE

(4) DATE SIGNED

b. WITNESSING OFFICIAL

(1) TYPED OR PRINTED NAME (Last, First, Middle Initial)

(2) RANK/GRADE

(3) SIGNATURE

(4) DATE SIGNED

4. STATEMENT OF DISENROLLMENT

I do not desire to participate in the New GI Bill. I understand that I WILL NOT be able to enroll at a later date.

a. SERVICE MEMBER

(1) TYPED OR PRINTED NAME (Last, First, Middle Initial)

(2) RANK/GRADE
 PW-51

(3) SIGNATURE

(4) DATE SIGNED
 27 May 88

b. WITNESSING OFFICIAL

(1) TYPED OR PRINTED NAME (Last, First, Middle Initial)
 S. A. S. Trone

(2) RANK/GRADE
 W-4

(3) SIGNATURE

(4) DATE SIGNED
 27 May 88

5. SERVICE UNIQUE EDUCATION ASSISTANCE OPTIONS

If I enroll in the New GI Bill, I may be eligible for additional educational assistance based on my military specialty and/or years of service as shown below.



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY RESERVE PERSONNEL COMMAND
1 RESERVE WAY
ST. LOUIS, MISSOURI 63132-5200

August 9, 2002

*older
Request*

Special Inquiries Team

Ms. Devvy Kidd
PO Box 60543
Sacramento, CA 95860-0543

Dear Ms. Kidd:

This is in response to your request for copies of documents from the military personnel file and medical record of Timothy J. McVeigh. Your request was received in this office on August 1, 2002. Your request is being processed under the provisions of the Freedom of Information Act.

The information you requested is not available in Mr. McVeigh's record at this command. A copy of a discharge order is enclosed. The social security number and address has been deleted. Release of that information would result in an unwarranted invasion of personal privacy and is being withheld in accordance with Title 5, U.S. Code, Section 552 (b)(6).

If you consider my response to be a denial of your request, you may appeal by writing to the Commander, U.S. Army Reserve Personnel Command, Attention: ARPC-ZCC-A, 1 Reserve Way, St. Louis, MO 63132-5200, within 60 days of your receipt of this letter. Your appeal should state the basis of your disagreement.

Fees allowable under the Freedom of Information Act are waived. For additional information or assistance, please contact the Special Inquiries Team at (314) 592-0446.

Sincerely,

Wanda Farrow
Case Analyst

Enclosure

DRG

Attachment

W3.F

DEPARTMENT OF THE ARMY
U. S. ARMY RESERVE PERSONNEL CENTER
9700 PAGE AVENUE
ST. LOUIS, MO 63132-5200

ARPC-SFS-R
ORDERS D-05-642663

14 MAY 96

MCVEIGH TIMOTHY JAMES

SFS-R

SGT 11H2
USAR CONTROL GROUP (AT)

YOU ARE DISCHARGED FROM THE COMPONENT SHOWN.

AUTHORITY: AR 135-178
EFFECTIVE DATE: 14 MAY 96
COMPONENT: UNITED STATES ARMY RESERVE
TYPE OF DISCHARGE: HONORABLE
ADDITIONAL INSTRUCTIONS: IF RESERVE ID DD FORM 2A (RED) IS IN YOUR POSSESSION
RETURN IT TO THIS HQS. ATTN: ARPC-PAS-EVC. IF YOU HAVE ANY QUESTIONS IN THE
FUTURE ABOUT YOUR MILITARY RECORDS OR YOUR MILITARY SERVICE, ASK THE
NATIONAL PERSONNEL RECORDS CENTER, 9700 PAGE BLVD ST LOUIS MISSOURI
63132-5200. AS YOU NO LONGER HAVE ANY MILITARY STATUS, YOUR RECORDS ARE NO
LONGER HELD BY THE ARMY. REMEMBER TO INCLUDE YOUR FULL NAME, SOCIAL SECURITY
NUMBER AND ALL PREVIOUS SERVICE NUMBERS SO THAT YOUR RECORD CAN BE
POSITIVELY IDENTIFIED. SFSR-10

"SUBJECT BEING DISCHARGED ALTHOUGH ASSIGNED TO THIS ORGANIZATION,
IS NOT PRESENT FOR DUTY. DISCHARGE CERTIFICATE AND DISCHARGE ORDERS
ARE BEING MAILED TO LAST KNOWN ADDRESS THIS DATE, 08 July 1996."

FORMAT: 500

* ARPERCEN *
* OFFICIAL *

NORMAN S. BRINSLEY
COL, SF
COMMANDING

DISTRIBUTION: H2 PACKET: 15

Devvy Kidd
P.O. Box 60543
Sacramento, California 95860
916-928-0199 / e-mail: power@devvy.com

December 8, 2002

Certified Mail Receipt No. 7001 0320 0003 8000 2211

Commander
Army Reserve Personnel Command
Attn: ZRPC-ZCC-B
1 Reserve Way
St. Louis, MO 63132-5200

Re: Freedom of Information Act Request Saga


On May 28, 2002, I filed a FOIA (See enclosed).

On July 24, 2002, I received a letter (copy enclosed) from the Office of the Chief, Army Reserve. This letter states that they passed my FOIA on to the National Personnel Records Center on Page Blvd., in St. Louis.

Next I receive a letter dated July 29, 2002 (see enclosed) from NPRC on Page Ave in St. Louis, MO stating that they have passed my FOIA on to you.

I feel I have waited long enough for this information. If I don't receive the documents I have requested within 20 calendar days after your agency signs for this letter, I will be left with no choice but to sue in Federal District Court.

Very truly yours,


Devvy Kidd

Encl: NPRC ltr dated 7.29.02
ARSG ltrs dated 7.11.02 (2)
Original FOIA request dated 5.28.02

Attachment

103-7654
12/13/02



DEPARTMENT OF THE ARMY
U.S. ARMY RESERVE PERSONNEL COMMAND
1 RESERVE WAY
ST. LOUIS MO 63132-5200



December 20, 2002

Special Inquiries Team

Ms. Devvy Kidd
PO Box 60543
Sacramento, CA 95860-0543

Dear Ms. Kidd:

This is in response to your request for copies of documents from the military personnel file and medical record of Timothy J. McVeigh. Your request was received in this office on December 13, 2002 and is being processed under the provisions of the Freedom of Information Act.

Enclosed is a sanitized copy of the discharge order that separated Mr. McVeigh from the U.S. Army Reserve. The social security number and address has been deleted on this order. Release of that information could result in an unwarranted invasion of personal privacy to any surviving family members. This information is being withheld in accordance with Title 5, U.S. Code, Section 552 (b)(6). Please be advised that there are no provisions under the Freedom of Information Act to provide explanations. The act pertains to existing records only.

This office responded to your previous request on August 9, 2002 and sent a copy of the enclosed order. The remaining documents that you have requested are not available in Mr. McVeigh's file maintained at this command.

If you consider my response to be a denial of your request, you may appeal by writing to the Commander, U.S. Army Reserve Personnel Command, Attention: ARPC-ZCC-A, 1 Reserve Way, St. Louis, MO 63132-5200, within 60 days of your receipt of this letter. Your appeal should state the basis of your disagreement. Fees allowable under the Freedom of Information Act are waived. For additional information or assistance, please contact the Special Inquiries Team at (314) 592-0446.

Sincerely,

Wanda Farrow
Wanda Farrow
Case Analyst

Enclosure

NOF

DEPARTMENT OF THE ARMY
U. S. ARMY RESERVE PERSONNEL CENTER
8700 PAGE AVENUE
ST. LOUIS, MO 63132-5200

ARPC-SFS-R
ORDERS D-05-642653

14 MAY 86

MCVEIGH TIMOTHY JAMES

SFS-R

SGT 11H2
USAR CONTROL GROUP (AT)

YOU ARE DISCHARGED FROM THE COMPONENT SHOWN.

AUTHORITY: AR 135-178
EFFECTIVE DATE: 14 MAY 86
COMPONENT: UNITED STATES ARMY RESERVE
TYPE OF DISCHARGE: HONORABLE
ADDITIONAL INSTRUCTIONS: IF RESERVE ID DD FORM 2A (RED) IS IN YOUR POSSESSION, RETURN IT TO THIS HQS, ATTN: ARPC-PAS-EVC. IF YOU HAVE ANY QUESTIONS IN THE FUTURE ABOUT YOUR MILITARY RECORDS OR YOUR MILITARY SERVICE, ASK THE NATIONAL PERSONNEL RECORDS CENTER, 9700 PAGE BLVD ST LOUIS MISSOURI 63132-5200. AS YOU NO LONGER HAVE ANY MILITARY STATUS, YOUR RECORDS ARE NO LONGER HELD BY THE ARMY. REMEMBER TO INCLUDE YOUR FULL NAME, SOCIAL SECURITY NUMBER AND ALL PREVIOUS SERVICE NUMBERS SO THAT YOUR RECORD CAN BE POSITIVELY IDENTIFIED. SFSR-10

"SUBJECT BEING DISCHARGED ALTHOUGH ASSIGNED TO THIS ORGANIZATION.

IS NOT PRESENT FOR DUTY. DISCHARGE CERTIFICATE AND DISCHARGE ORDERS

ARE BEING MAILED TO LAST KNOWN ADDRESS THIS DATE, 08 July 1996."

FORMAT: 500

* ARPERCEN *
* OFFICIAL *

NORMAN S. BRINSLEY
COL, SF
COMMANDING

DISTRIBUTION: H2 PACKET: 15

REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY RESERVE PERSONNEL COMMAND
1 RESERVE WAY
ST. LOUIS, MISSOURI 63132-5200

APR 05 2003

Special Inquiries Team

Ms Devvy Kidd
PO Box 60543
Sacramento, CA, 95860-0543

Dear Ms Kidd:

On April 8, 2003, I responded to your Freedom of Information Act requests dated May 28, 2002 and December 13, 2002.

I disclosed a copy of a discharge order; however, the social security number and other personal information contained in the discharge order were withheld under Title 5, U.S. Code, §552(b)(6). I determined that release of said information would result in a clearly unwarranted invasion of personal privacy. I also determined that no other records within the scope of your requests were available at this command.

I advised you that you had the option to appeal each of my determinations in writing within 60 days of the date of my letter. Your January 6, 2003, appeal was received January 15, 2003. I advised you that I would accept your January 6, 2003, appeal as an appeal to my April 8, 2003, determinations.

Pursuant to Army Regulation 25-55, your appeal has been forwarded to the Secretary of the Army, Office of the General Counsel, Attention: V. Newhouse, 104 Army Pentagon, Room 2E725, Washington, DC, 20310-0104, for appropriate action and a direct response.

Sincerely,

A handwritten signature in cursive script, reading "Elton C. Bruce".

Elton C. Bruce
Colonel, U.S. Army
Commanding

Attachment

12

REPLY TO
ATTENTION OFDEPARTMENT OF THE ARMY
U.S. ARMY RESERVE PERSONNEL COMMAND
1 RESERVE WAY
ST. LOUIS, MISSOURI 63132-5200

APR 09 2003

ARPC-ZJA

MEMORANDUM FOR Office of the Secretary of the Army, Attn: Office of the General Counsel (Ms V. Newhouse), 104 Army Pentagon, Room 2E725, Washington, DC, 20310-0104

SUBJECT: Freedom of Information Act Appeal

1. This package is forwarded in accordance with AR 25-55, para. 5-300.
2. Enclosure 1 is the appeal from Ms Devvy Kidd regarding adverse determinations of her requests for military medical and personnel records of Mr. Timothy James McVeigh.
3. Enclosure 2 is the initial response to Ms Kidd. COL Bruce C. Bruce, Commander, AR-PERSOM, exercised Initial Denial Authority as delegated by Lieutenant General James R. Helmly, Chief, Army Reserve.
4. Enclosure 3 is the letter advising Ms Kidd of this referral.
5. Enclosure 4 contains a copy of all documents found in Mr. McVeigh's record located at the National Archives and Records Administration.
6. Enclosure 5 is additional relevant material. Enclosure 6 is the "no records" certification.
7. The point of contact for this action is Mr. Michael Suire. His number is (314) 592 0678.

FOR THE COMMANDER:

Kathleen M. Bigler
KATHLEEN M. BIGLER *Judge Advocate*
COL, JA
Command Judge Advocate

6 Encls
as

Attachment
13

Devvy Kidd
P.O. Box 60543
Sacramento, California 95860
916-928-0199 / e-mail: power@devvy.com

Certified Mail Receipt 7001 0360 0004 3146 9275

January 6, 2003

Commander
U.S. Army Reserve Personnel Command
Attn: ARPC-ZCC-A
1 Reserve Way
St. Louis, MO 63132-5200

FOIA Appeal

Enclosed is the history of my original Freedom of Information Act request.

Last week I received a final response dated December 20, 2002; attached with this appeal Ms. Farrow forwarded me a document I did not request and denied my original request citing personal privacy to any family members of Timothy James McVeigh.

Mr. McVeigh was executed June 11, 2001. I have a copy of the death certificate which contains his social security number and all other information contained in such a document.

Dead people have no privacy rights. My FOIA does not extend to any family member of Mr. McVeigh. The information I have requested deals with McVeigh's military service and his medical records, not his family's.

Therefore, I appeal the decision of Ms. Farrow to withhold the documents I have requested under my original FOIA and ask that my request be processed and the documents I seek released.

Very truly yours,


Devvy Kidd

Enclosure

1

113-1132
11/15/03
D.V. 2/25/03

REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY RESERVE PERSONNEL COMMAND
1 RESERVE WAY
ST. LOUIS, MISSOURI 63132-6200

APR 08 2003

Special Inquiries Team

Ms Devvy Kidd
PO Box 60543
Sacramento, CA, 95860-0543

Dear Ms Kidd:

This is in response to your request for military medical and personnel records pertaining to Timothy James McVeigh. Your May 28, 2002, request letter was received in this agency on August 1, 2002. Your December 8, 2002, request letter was received in this agency on December 13, 2002. Your requests were processed under the Freedom of Information Act (FOIA). This letter addresses both requests. Fees allowable under the FOIA are waived.

A copy of a discharge order is enclosed. The social security number and other personal information contained in the discharge order are being withheld under Title 5, U.S. Code, §552(b)(5). I have determined that release of said information would result in a clearly unwarranted invasion of personal privacy. You may appeal this determination using the procedures described below.

I have also determined that no other records within the scope of your requests are available at this command. A "no records" determination may be considered an adverse determination. If you consider my no records determination to be an adverse determination, you may appeal this determination using the procedures described below.

In light of the above, your request is partially denied. This partial denial is made by the undersigned under authority delegated to me by Lieutenant General James R. Helmly, Chief, Army Reserve. You may appeal this partial denial. Any appeal you wish to submit must be done in writing, within 60 calendar days of the date of this letter, to this Command, Attention: ARPC-ZCC-A. Your appeal should contain a copy of this letter and outline the basis on which you disagree with the partial denial. Upon receipt of any appeal you may submit, I will forward it to the Secretary of the Army, Office of the General Counsel, Attention: V. Newhouse, 104 Army Pentagon, Room 2E725, Washington, DC, 20310-0104, for a final determination.

Enclosure

2

- 2 -

I recognize that my determinations above are substantially the same as the determinations made by Ms Wanda Farrow in her 2 responses to you on August 9, 2002 and December 20, 2002. I also recognize that you appealed her determinations in writing on January 6, 2003. In light thereof, I accept your January 6, 2003 appeal as an appeal to my determinations. I will notify you by separate correspondence when your appeal is forwarded to Secretary of the Army General Counsel.

Sincerely,



Elton C. Bruce
Colonel, U.S. Army
Commanding

Enclosures

NOF

DEPARTMENT OF THE ARMY
U. S. ARMY RESERVE PERSONNEL CENTER
8700 PAGE AVENUE
ST. LOUIS, MO 63122-5200

14 MAY 86

ARPC-SFS-R
ORDERS 0-05-642693

MCVEIGH TIMOTHY JAMES

SFS-P

~~XXXXXXXXXX~~ SGT 11M2
USAR CONTROL GROUP (AT)

YOU ARE DISCHARGED FROM THE COMPONENT SHOWN.

AUTHORITY: AR 135-173
EFFECTIVE DATE: 14 MAY 86
COMPONENT: UNITED STATES ARMY RESERVE
TYPE OF DISCHARGE: HONORABLE
ADDITIONAL INSTRUCTIONS: IF RESERVE ID DD FORM 2A (REQ) IS IN YOUR POSSESSION
RETURN IT TO THIS HQS. ATTN: ARPC-PAS-EVC. IF YOU HAVE ANY QUESTIONS IN THE
FUTURE ABOUT YOUR MILITARY RECORDS OR YOUR MILITARY SERVICE, ASK THE
NATIONAL PERSONNEL RECORDS CENTER, 9700 PAGE BLVD ST LOUIS MISSOURI
63122-5200. AS YOU NO LONGER HAVE ANY MILITARY STATUS, YOUR RECORDS ARE NO
LONGER HELD BY THE ARMY. REMEMBER TO INCLUDE YOUR FULL NAME, SOCIAL SECURITY
NUMBER AND ALL PREVIOUS SERVICE NUMBERS SO THAT YOUR RECORD CAN BE
POSITIVELY IDENTIFIED. STSG-10

"SUBJECT BEING DISCHARGED ALTHOUGH ASSIGNED TO THIS ORGANIZATION.
IS NOT PRESENT FOR DUTY. DISCHARGE CERTIFICATE AND DISCHARGE ORDERS
ARE BEING MAILED TO LAST KNOWN ADDRESS THIS DATE. 08 July 1996"

FORMAT: 500

* ARPERCEN *
* OFFICIAL *

NORMAN S. BRINSLEY
COL, SF
COMMANDING

DISTRIBUTION: H2

PACKET: 15

REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY RESERVE PERSONNEL COMMAND
1 RESERVE WAY
ST. LOUIS, MISSOURI 63132-5200

APR 08 2003

Special Inquiries Team

Ms Devvy Kidd
PO Box 60543
Sacramento, CA, 95860-0543

Dear Ms Kidd:

On April 8, 2003, I responded to your Freedom of Information Act requests dated May 28, 2002 and December 13, 2002.

I disclosed a copy of a discharge order; however, the social security number and other personal information contained in the discharge order were withheld under Title 5, U.S. Code, §552(b)(6). I determined that release of said information would result in a clearly unwarranted invasion of personal privacy. I also determined that no other records within the scope of your requests were available at this command.

I advised you that you had the option to appeal each of my determinations in writing within 60 days of the date of my letter. Your January 6, 2003, appeal was received January 15, 2003. I advised you that I would accept your January 6, 2003, appeal as an appeal to my April 8, 2003, determinations.

Pursuant to Army Regulation 25-55, your appeal has been forwarded to the Secretary of the Army, Office of the General Counsel, Attention: V. Newhouse, 104 Army Pentagon, Room 2E725, Washington, DC, 20310-0104, for appropriate action and a direct response.

Sincerely,

A handwritten signature in cursive script, reading "Elton C. Bruce".

Elton C. Bruce
Colonel, U.S. Army
Commanding

Enclosure

3

NOF

DEPARTMENT OF THE ARMY
U. S. ARMY RESERVE PERSONNEL CENTER
9700 PAGE AVENUE
ST. LOUIS, MO 63132-5200

ARPC-SFS-R
ORDERS C-05-642553

14 MAY 86

MCVEIGH TIMOTHY JAMES
4225 MILLER RD 146
FLINT MI 48507

SFS-R

129 E3 4709 SGT 11H2
USAR CONTROL GROUP (AT)

YOU ARE DISCHARGED FROM THE COMPONENT SHOWN.

AUTHORITY: AR 135-173
EFFECTIVE DATE: 14 MAY 86
COMPONENT: UNITED STATES ARMY RESERVE
TYPE OF DISCHARGE: HONORABLE
ADDITIONAL INSTRUCTIONS: IF RESERVE ID DD FORM 2A (RED) IS IN YOUR POSSESSION,
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NUMBER AND ALL PREVIOUS SERVICE NUMBERS SO THAT YOUR RECORD CAN BE
POSITIVELY IDENTIFIED. SPER-10

"SUBJECT BEING DISCHARGED ALTHOUGH ASSIGNED TO THIS ORGANIZATION,
IS NOT PRESENT FOR DUTY. DISCHARGE CERTIFICATE AND DISCHARGE ORDERS
ARE BEING MAILED TO LAST KNOWN ADDRESS THIS DATE, 08 July 1996."

FORMAT: 500

* ARPERCEN *
* OFFICIAL *

NORMAN S. BRINSLEY
COL, SF
COMMANDING

DISTRIBUTION: H2 PACKET: 15

Enclosure
4

99 123 AL60601/3
9772 R

VETERANS' EDUCATIONAL ASSISTANCE ACT OF 1984 (NEW GI BILL)

(Chapter 30, Title 38, U.S. Code)

Privacy Act Statement

AUTHORITY: Chapter 30, Title 38, US Code, Sections 1411 and 1412; and EO 9397, November 1943 (SSN).

PRINCIPAL PURPOSE: To establish eligibility to participate in the Veterans' Educational Assistance Act of 1984 (New GI Bill.)

ROUTINE USES: Information will be used as a source document indicating participation status of each service member in the New GI Bill Educational Benefits Program.

DISCLOSURE: Disclosure of your social security number and other personal information is voluntary. However, this form CANNOT be processed if requested information is not provided.

1. SERVICE MEMBER

a. NAME (Last, First, Middle Initial)

MCVEIGH, TIMOTHY J.

b. SOCIAL SECURITY NUMBER (SSN)
129-58-4709

2. STATEMENT OF UNDERSTANDING

- I am eligible for the New GI Bill based on my initial entry on active duty on or after July 1, 1985.
- I understand that I am automatically enrolled and that I have the option to disenroll. (See paragraph 3 or 4)
- If I disenroll, I must do so on the date designated by my service.
- I am a Service academy or ROTC scholarship graduate and I am NOT ELIGIBLE for the New GI Bill. (X if applicable) →
- I understand that if enrolled in the New GI Bill, my basic pay will be reduced \$100 per month for EACH of the first full 12 months of active duty and CANNOT BE REFUNDED, SUSPENDED OR STOPPED.
- I must complete three years of active duty service before I am entitled to \$300 per month for 36 months.
- If I have a two year obligation, I understand that I must complete two years of active duty to receive \$250 per month for 36 months.
- I must complete two years of active duty service and join the Selected Reserve for a minimum four year service agreement before I am entitled to \$300 per month for 36 months.
- If a non-high school graduate, I must complete all requirements for a high school diploma (or an equivalency certificate) before completion of my initial tour in order to qualify for the New GI Bill.
- I must use my benefits within 10 years of my separation or discharge from active duty for the entitlement in paragraph 2.b., or complete my Selected Reserve obligation for the entitlement in paragraph 2.h
- I must receive an honorable discharge for service which established entitlement to the New GI Bill.

3. SERVICE MEMBER

(1) TYPED OR PRINTED NAME (Last, First, Middle Initial)
MCVEIGH, TIMOTHY J.

(2) RANK/GRADE
E-1

(3) SIGNATURE

(4) DATE SIGNED
12 MAY 88

4. WITNESSING OFFICIAL

(1) TYPED OR PRINTED NAME (Last, First, Middle Initial)
HERNANDEZ, EULALIO

(2) RANK/GRADE
E-7

(3) SIGNATURE

(4) DATE SIGNED
12 MAY 88

5. STATEMENT OF ENROLLMENT

I am enrolling in the "New GI Bill" and ACCEPT THE TERMS OF 2.a. through k.

a. SERVICE MEMBER

(1) TYPED OR PRINTED NAME (Last, First, Middle Initial)

(2) RANK/GRADE

(3) SIGNATURE

(4) DATE SIGNED

b. WITNESSING OFFICIAL

(1) TYPED OR PRINTED NAME (Last, First, Middle Initial)

(2) RANK/GRADE

(3) SIGNATURE

(4) DATE SIGNED

6. STATEMENT OF DISENROLLMENT

I do not desire to participate in the New GI Bill. I understand that I WILL NOT be able to enroll at a later date.

a. SERVICE MEMBER

(1) TYPED OR PRINTED NAME (Last, First, Middle Initial)

(2) RANK/GRADE

(3) SIGNATURE

(4) DATE SIGNED

b. WITNESSING OFFICIAL

(1) TYPED OR PRINTED NAME (Last, First, Middle Initial)

(2) RANK/GRADE

(3) SIGNATURE

(4) DATE SIGNED

7. SERVICE UNIQUE EDUCATION ASSISTANCE OPTIONS

If I enroll in the New GI Bill, I may be eligible for additional educational assistance based on my military specialty and/or years of service as shown below.

Devvy Kidd
P.O. Box 60543
Sacramento, California 95860

Certified Mail Receipt 7001 2510 0000 2855 8617

May 28, 2002

Office of the Chief, Army Reserve
ATTN: DAAR-ZXP (FOIA)
1421 Jefferson Davis Highway, Suite 12300
Arlington, VA 22202

Re: Timothy James McVeigh (Executed June 11, 2001)
Social Security No. 129-58-4709

Sir/Madamme:

This is a request under the Freedom of Information Act (5 U.S.C. §552) and the regulations thereunder. I am more than willing to pay any reasonable research and copies fees for responding to this request; however, if the costs thereof should exceed \$100, please inform me in advance of producing the requested documents. I am not a commercial requester and I seek the documents requested below for personal reasons.

Under this FOIA I am requesting the following:

1. Any document or form initiated by Timothy James McVeigh to separate from the Department of the Army when on active duty status.
2. 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.
3. Copies of all deployment records for the period May 24, 1988 through December 31 1991. These records should include where he was sent and duration of duty.
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

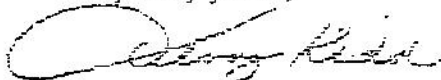
Received
6-25-02
2:30 PM
M. N. N. N.

Enclosure 5

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

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.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Devvy Kidd", written over a horizontal line.

Devvy Kidd

IDENTIFICATION PURPOSES

THIS IS AN IMPORTANT RECORD.
SAFEGUARD IT.ALL SEPARATIONS IN
AREAS RENDERED TO

CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY

1. NAME (Last, First, Middle) MCVEIGH TIMOTHY JAMES		2. DEPARTMENT, COMPONENT AND BRANCH ARMY/RA		3. SOCIAL SECURITY [REDACTED]																												
4. GRADE, RATE OR RANK SGT		4.B. PAY GRADE E-5		5. DATE OF BIRTH (YYMMDD) 680423																												
6. RESERVE OBLIG. TERM. Year 30 Month 30		7. HOME OF RECORD AT TIME OF ENTRY (City and State, or) BUFFALO, NY 14204																														
8. PLACE OF ENTRY INTO ACTIVE DUTY BUFFALO, NY		9. HOME OF RECORD AT TIME OF ENTRY (City and State, or) BUFFALO, NY 14204																														
10. COMMAND TO WHICH TRANSFERRED CSC 1st BN. 174th INF. 79 DELEWARE STREET, TONAWANDA, NY 14150		11. SGLI COVERAGE Amount: \$ 100.00																														
12. PRIMARY SPECIALTY (List number, title and years and months in specialty. List additional specialty numbers and titles involving specialty of more than 1 year.) 11020, FIGHTING VEHICLE INFANTRYMAN, 3 YRS AND 4 MOS//NOTHING FOLLOWS		13. RECORD OF SERVICE																														
		<table border="1"> <thead> <tr> <th></th> <th>Year(s)</th> <th>Month(s)</th> </tr> </thead> <tbody> <tr> <td>a. Date Entered AD This Period</td> <td>88</td> <td>05</td> </tr> <tr> <td>b. Separation Date This Period</td> <td>91</td> <td>12</td> </tr> <tr> <td>c. Net Active Service This Period</td> <td>03</td> <td>07</td> </tr> <tr> <td>d. Total Prior Active Service</td> <td>00</td> <td>00</td> </tr> <tr> <td>e. Total Prior Inactive Service</td> <td>00</td> <td>00</td> </tr> <tr> <td>f. Foreign Service</td> <td>00</td> <td>00</td> </tr> <tr> <td>g. Sea Service</td> <td>00</td> <td>00</td> </tr> <tr> <td>h. Effective Date of Pay Grade</td> <td>91</td> <td>01</td> </tr> </tbody> </table>					Year(s)	Month(s)	a. Date Entered AD This Period	88	05	b. Separation Date This Period	91	12	c. Net Active Service This Period	03	07	d. Total Prior Active Service	00	00	e. Total Prior Inactive Service	00	00	f. Foreign Service	00	00	g. Sea Service	00	00	h. Effective Date of Pay Grade	91	01
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b. Separation Date This Period	91	12																														
c. Net Active Service This Period	03	07																														
d. Total Prior Active Service	00	00																														
e. Total Prior Inactive Service	00	00																														
f. Foreign Service	00	00																														
g. Sea Service	00	00																														
h. Effective Date of Pay Grade	91	01																														
14. DECORATIONS, MEDALS, BADGES, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED (All periods of service) ARMY SERVICE RIBBON//NATIONAL DEFENSE SERVICE MEDAL//ARMY LABEL BUTTON// SOUTHWEST ASIA SERVICE MEDAL W/2 BRONZE STARS//BRONZE STAR MEDAL//ARMY ACHIEVEMENT MEDAL//NOTHING FOLLOWS																																
15. MILITARY EDUCATION (Course title, number of weeks, and month and year completed) PRIMARY LEADERSHIP DEVELOPMENT COURSE, 4 WEEKS, 1990//NOTHING FOLLOWS																																
16. MEMBER CONTRIBUTED TO POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE PROGRAM		Yes No [X] []		17. HIGH SCHOOL GRADUATE OR EQUIVALENT																												
		Yes No [X] []		18. DAYS ACCRUED LEAVE																												
19. MEMBER WAS PROVIDED COMPLETE DENTAL EXAMINATION AND ALL APPROPRIATE DENTAL SERVICES AND TREATMENT WITHIN 90 DAYS PRIOR TO SEPARATION [X]																																
20. REMARKS BLOCK 6 INCLUDES PERIOD OF DEP: 880512-880523//SUBJECT TO ACTIVE DUTY RE AND/OR ANNUAL SCREENING//NOTHING FOLLOWS																																
21. MAILING ADDRESS AFTER SEPARATION (Include Zip Code) [REDACTED]		22. NEAREST RELATIVE (Name and address - include Zip Code) [REDACTED]																														
23. MEMBER REQUESTS COPY 5 BE SENT TO DIR OF VET AFFAIRS [X] YES [] NO		24. OFFICIAL AUTHORIZED TO SIGN (Typed name, title, date, and signature) GARY A. WADSWORTH, GS7, CH, TRANS																														

SPECIAL ADDITIONAL INFORMATION (For use by authorized agencies only)

25. TYPE OF SEPARATION RELIEF FROM ACTIVE DUTY		26. CHARACTER OF SERVICE (Include upgrades) HONORABLE	
27. SEPARATION AUTHORITY AR 635-200 PARA 16-8		28. SEPARATION CODE LCC	
29. NARRATIVE REASON FOR SEPARATION FOR THE CONVENIENCE OF THE GOVERNMENT - FYBZ EARLY TRANSITION PROGRAM		30. REENTRY CODE 23	
31. DATES OF TIME LOST DURING THIS PERIOD NONE//NOTHING FOLLOWS		32. MEMBER REQUESTS CO [REDACTED]	

RECORDED
2002 JAN 01 PM 12:30
HUMAN RESOURCES
OFFICE
FORT MONMOUTH, N.J.

REPLY TO
ATTENTION OFDEPARTMENT OF THE ARMY
OFFICE OF THE CHIEF, ARMY RESERVE
WASHINGTON, DC 20310-2400

July 11, 2002

Chief, Army Reserve Staff Group

Ms. Devvy Kidd
P.O. Box 60543
Sacramento, California 95860

Dear Ms. Kidd:

This is in response to your Freedom of Information Act request dated May 28, 2002 for a copy of "Any document or 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, 1991. 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 object foreign to the human body that McVeigh received 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."

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. Enclosed is a copy of the transfer letter for your information. Should you have further questions about your request please contact NPRC, Mrs. Virginia Barrett, at (314) 538-4222. The NPRC also has a Website that may be useful and the address is <http://www.nara.gov/regional/mpr.html>.

I hope this information has been of assistance to you.

Sincerely,

A handwritten signature in cursive script, reading "Gary M. Profit".

Gary M. Profit
Colonel, U.S. Army
Director, Chief, Army Reserve
Staff Group

Enclosures

REPLY TO
ATTENTION OFDEPARTMENT OF THE ARMY
OFFICE OF THE CHIEF, ARMY RESERVE
WASHINGTON, DC 20310-3400

July 11, 2002

Chief, Army Reserve Staff Group

National Personnel Records Center
ATTN: Mrs. Virginia Barrett
9700 Page Boulevard
St. Louis, Missouri 63132-5100

Dear Mrs. Barrett:

Enclosed is a Freedom of Information Act request dated May 28, 2002 from Ms. Devvy Kidd for a copy of "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, 1991. 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 object foreign to the human body that McVeigh received 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."

This request is being transferred to your headquarters for appropriate action and response to Ms. Kidd. Ms. Kidd has been provided a copy of this transfer letter.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script, reading "Gary M. Profit".

Gary M. Profit
Colonel, U.S. Army
Director, Chief, Army Reserve
Staff Group

Enclosures

*National Personnel Records Center*

Military Personnel Records 9700 Page Avenue St. Louis, Missouri 63132-5100

July 29, 2002

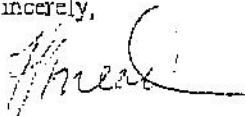
Devvy Kidd
PO Box 60543
Sacramento, CA 95860

RE: Veteran's Name: McVeigh, Timothy J.
SSN/SN: ***Confidential***
Case Reference Number: 2002-204-0963

Thank you for contacting the National Personnel Records Center. 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. We regret that we cannot be of direct assistance; however, you may expect a response from the office shown below.

We have made every effort to assist you within the constraints of our resources. If you have any questions or comments regarding this response, you can reach me by phone at (314) 538-2191 or by mail at the address shown in the letterhead above, ATTN: NRPM3-A, Room 3315. Ensure you include the Case Reference Number listed above. All new requests for information or documents, or requests that pertain to other veterans, must be made in writing to the address shown in the letterhead above. Our web site also includes pertinent phone numbers and a request form.

Sincerely,


Francis Shead
Archives Technician

TOV ✓
Cc: Commander
Army Reserve Personnel Command
ATTN: ARPC-ZCC-B
1 Reserve Way
St. Louis, MO 63132-5200

C#: F02-1677 MPC: WANDA
SUBJ: MCVEIGH TIMOTHY J
R: 8/1/2002 S: 8/29/2002

REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY RESERVE PERSONNEL COMMAND
1 RESERVE WAY
ST. LOUIS, MISSOURI 63132-5200

August 9, 2002

Special Inquiries Team

Ms. Devvy Kidd
PO Box 60543
Sacramento, CA 95860-0543

Dear Ms. Kidd:

This is in response to your request for copies of documents from the military personnel file and medical record of Timothy J. McVeigh. Your request was received in this office on August 1, 2002. Your request is being processed under the provisions of the Freedom of Information Act.

The information you requested is not available in Mr. McVeigh's record at this command. A copy of a discharge order is enclosed. The social security number and address has been deleted. Release of that information would result in an unwarranted invasion of personal privacy and is being withheld in accordance with Title 5, U.S. Code, Section 552 (b)(6).

If you consider my response to be a denial of your request, you may appeal by writing to the Commander, U.S. Army Reserve Personnel Command, Attention: ARPC-ZCC-A, 1 Reserve Way, St. Louis, MO 63132-5200, within 60 days of your receipt of this letter. Your appeal should state the basis of your disagreement.

Fees allowable under the Freedom of Information Act are waived. For additional information or assistance, please contact the Special Inquiries Team at (314) 592-0446.

Sincerely,

Wanda Farrow
Case Analyst

Enclosure

m/47

DEPARTMENT OF THE ARMY
U. S. ARMY RESERVE PERSONNEL CENTER
9700 PAGE AVENUE
ST. LOUIS, MO 63132-5200

ARPC-SFS-R
ORDERS D-05-B42693

14 MAY 96

MCVEIGH TIMOTHY JAMES

SFS-R

[REDACTED] SGT 11M2
USAR CONTROL GROUP (AT)

YOU ARE DISCHARGED FROM THE COMPONENT SHOWN.

AUTHORITY: AR 135-178
EFFECTIVE DATE: 14 MAY 96
COMPONENT: UNITED STATES ARMY RESERVE
TYPE OF DISCHARGE: HONORABLE
ADDITIONAL INSTRUCTIONS: IF RESERVE ID DD FORM 2A (RED) IS IN YOUR POSSESSION
RETURN IT TO THIS HQS. ATTN: ARPC-PAS-EVC. IF YOU HAVE ANY QUESTIONS IN THE
FUTURE ABOUT YOUR MILITARY RECORDS OR YOUR MILITARY SERVICE, ASK THE
NATIONAL PERSONNEL RECORDS CENTER, 9700 PAGE BLVD ST LOUIS MISSOURI
63132-5200. AS YOU NO LONGER HAVE ANY MILITARY STATUS, YOUR RECORDS ARE NO
LONGER HELD BY THE ARMY. REMEMBER TO INCLUDE YOUR FULL NAME, SOCIAL SECURITY
NUMBER AND ALL PREVIOUS SERVICE NUMBERS SO THAT YOUR RECORD CAN BE
POSITIVELY IDENTIFIED. SFSR-10

"SUBJECT BEING DISCHARGED ALTHOUGH ASSIGNED TO THIS ORGANIZATION.
IS NOT PRESENT FOR DUTY. DISCHARGE CERTIFICATE AND DISCHARGE ORDERS
ARE BEING MAILED TO LAST KNOWN ADDRESS THIS DATE, 06 July 1996

FORMAT: 500

* ARPERCEN *
* OFFICIAL *

NORMAN S. BRINSLEY
COL, SF
COMMANDING

DISTRIBUTION: H2

PACKET: 15

Devvy Kidd
P.O. Box 60543
Sacramento, California 95860
916-928-0199 / e-mail: power@devvy.com

December 8, 2002

Certified Mail Receipt No. 7001 0320 0003 8000 2211

Commander
Army Reserve Personnel Command
Attn: ZRPC-ZCC-B
1 Reserve Way
St. Louis, MO 63132-5200

Re: Freedom of Information Act Request Saga

On May 28, 2002, I filed a FOIA (See enclosed).

On July 24, 2002, I received a letter (copy enclosed) from the Office of the Chief, Army Reserve. This letter states that they passed my FOIA on to the National Personnel Records Center on Page Blvd., in St. Louis.

Next I receive a letter dated July 29, 2002 (see enclosed) from NPRC on Page Ave in St. Louis, MO stating that they have passed my FOIA on to you.

I feel I have waited long enough for this information. If I don't receive the documents I have requested within 20 calendar days after your agency signs for this letter, I will be left with no choice but to sue in Federal District Court.

Very truly yours,


Devvy Kidd

Encl: NPRC ltr dated 7.29.02

ARSG ltrs dated 7.11.02 (2)

Original FOIA request dated 5.28.02

103-7101
12/12/02



DEPARTMENT OF THE ARMY
U.S. ARMY RESERVE PERSONNEL COMMAND
1 RESERVE WAY
ST. LOUIS MO 63132-5200



December 25, 2002

Special Inquiries Team

Ms. Devvy Kidd
PO Box 60543
Sacramento, CA 95860-0543

Dear Ms. Kidd:

This is in response to your request for copies of documents from the military personnel file and medical record of Timothy J. McVeigh. Your request was received in this office on December 13, 2002 and is being processed under the provisions of the Freedom of Information Act.

Enclosed is a sanitized copy of the discharge order that separated Mr. McVeigh from the U.S. Army Reserve. The social security number and address has been deleted on this order. Release of that information could result in an unwarranted invasion of personal privacy to any surviving family members. This information is being withheld in accordance with Title 5, U.S. Code, Section 552 (b)(6). Please be advised that there are no provisions under the Freedom of Information Act to provide explanations. The act pertains to existing records only.

This office responded to your previous request on August 9, 2002 and sent a copy of the enclosed order. The remaining documents that you have requested are not available in Mr. McVeigh's file maintained at this command.

If you consider my response to be a denial of your request, you may appeal by writing to the Commander, U.S. Army Reserve Personnel Command, Attention: ARPC-ZCC-A, 1 Reserve Way, St. Louis, MO 63132-5200, within 60 days of your receipt of this letter. Your appeal should state the basis of your disagreement. Fees allowable under the Freedom of Information Act are waived. For additional information or assistance, please contact the Special Inquiries Team at (314) 592-0446.

Sincerely,


Wanda Farrow
Case Analyst

Enclosure

REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY RESERVE PERSONNEL COMMAND
1 RESERVE WAY
ST. LOUIS, MISSOURI 63132-6200

APR 04 2003

Special Inquiries Team

Ms Devvy Kidd
PO Box 60543
Sacramento, CA, 95860-0543

Dear Ms Kidd:

On August 9, 2002, I responded to your request for military medical and personnel records pertaining to Timothy James McVeigh dated May 28, 2002. On December 20, 2002, I responded to your second request for military medical and personnel records pertaining to Timothy James McVeigh dated December 8, 2002. Each request was processed under the Freedom of Information Act (FOIA).

In each instance, I provided a copy of a discharge order. Again in each instance, the social security number and other personal information contained in the discharge order were withheld under Title 5, U.S. Code, §552(b)(6), based on my determination that release of said information would result in a clearly unwarranted invasion of personal privacy. Also in each instance I advised you that no other records within the scope of your requests were available at this command. I concluded each letter advising you of the manner in which you could appeal my determinations should you so elect.

This letter is to advise you that my office does not possess the administrative authority to render these determinations for the U.S. Army Reserve Personnel Command. Consequently, each of your requests is now being reviewed by the appropriate authority within this organization. You will soon receive an initial determination of your previous FOIA requests directly from Colonel Elton C. Bruce, Commander, U.S. Army Reserve Personnel Command, once the review is complete.

I regret any inconvenience this misunderstanding may have caused.

Sincerely,


Wanda Farrow
Case Analyst

CERTIFICATION

I hereby certify that after making a good faith effort and conducting a thorough search of our records using methods which can reasonably be expected to produce the information requested, there are no other U.S. Army Reserve agency records as described by Mrs. Devvy Kidd on Mr. Timothy J. McVeigh. This search included a check of files currently maintained by the Department of the Army Reserve and the National Personnel Records Center as well as historical files transferred to storage.



Wanda Farrow
Case Analyst
9 April 2003

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DEVVY KIDD,

Plaintiff,

vs.

DEPARTMENT OF THE ARMY,

Defendant.

No. Civ-S-300223 DFL GGH-PS

DECLARATION OF WANDA FARROW

My name is Wanda Farrow and I make the following declaration under penalty of perjury:

1. I am a GS-0203-5, Human Resources Assistant, assigned to the Special Inquiries Section, Customer Contact Office at the U.S. Army Reserve Personnel Command (AR-PERSCOM), St. Louis, Missouri. My duties include receipt, review, and processing of requests submitted to AR-PERSCOM seeking documents under the Freedom of Information Act (FOIA).

2. The statements in this declaration are based upon my personal knowledge, upon information available to me in my official capacity, and upon conclusions I drew based upon that information and knowledge. I have prepared this declaration to be filed in support of the named Defendant's defense of the captioned litigation.

3. I received Ms Kidd's FOIA request dated May 28, 2002, on August 1, 2002. She had initially submitted her request to Office of the Chief, Army Reserve (OCAR). The OCAR Staff Group responded directly to Ms Kidd on July 11, 2002, advising her that her request had been forwarded to the National Personnel Records Center (NPRC), St. Louis, Missouri, as the custodian for any records that may fall within the scope of her request. She was also provided

DECLARATION OF WANDA FARROW



the mailing address, telephone number, and point of contact at NPRC as well as a copy of the transmittal letter.

4. On July 29, 2002, NPRC responded to Plaintiff advising her that while 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 and that her request was forwarded to AR-PERSCOM to address her request. The request was assigned to me for processing.

5. I followed my normal search procedure. I searched the Personnel Electronic Records Management System (PERMS) for records responsive to Ms Kidd's request. I have used the PERMS system many times to identify and locate records responsive to a FOIA request. I used the PERMS system to locate and identify records responsive to Ms Kidd's FOIA request. I used Mr. McVeigh's social security number (SSN) as the search parameter. PERMS identified that no records were available at AR-PERSCOM but the search did indicate that records possibly responsive to Ms Kidd's FOIA request might have been transferred to the National Archives and Records Administration. The PERMS system operated normally and in the manner that I expected.

6. PERMS is a comprehensive electronic storage medium for over 1,169,895 U.S Army Reserve and veteran's records. I am an authorized PERMS user with access for the purpose of identifying and locating records within the scope of my duties as a FOIA case analyst. I commence a search by entering a social security number (SSN) into the PERMS search utility at which time PERMS searches the Personnel Table to identify every document associated with that SSN held in the system. It does not stop until every record in PERMS is reviewed for a match to the search parameter. The search is complete and conclusive.

7. Once completed, the search results present 1 of 3 possibilities. The results will (1) identify the documents matching the search parameter; (2)

DECLARATION OF WANDA FARROW

identify that records containing the search parameter were once available but have since been closed, usually indicating the record has been transferred to NARA; or, (3) that no records containing the search parameter are available.

8. When the PERMS search results indicate that records matching the search parameter have been closed and probably transferred to NARA, the next step is to use NARA's on line search utility to request a Finding Activity Report (FAR) using the SSN as a search parameter. Assuming a NARA record exists that matches the search parameter, the FAR will identify the specific physical location of the record within NARA so that a request for the record can be submitted.

9. I then accessed NARA's on line search utility to request a Finding Activity Report (FAR) using Mr. McVeigh's SSN as a search parameter to identify NARA's registry number by which to request the file. The registry number was V2988, the "V" signifying that the record I needed was stored in the vault at NARA.

10. In order to request a record that is in the vault, a DAS Form 54 (Request for Official Military Personnel File, Microfiche or Paper Document) must be completed and submitted to the AR-PERSCOM Security Office. The designated point of contact was Mr. Thomas O'Connell. I submitted the DAS Form 54 to Mr. O'Connell.

11. I received the record from Mr. O'Connell on or before August 9, 2002. I reviewed the record and found only 2 documents: a discharge order dated May 14, 1995 and a DD Form 2366, Veterans' Educational Assistance Act of 1984 (New GI Bill), dated May 28, 1988.

12. **Discharge order dated May 14, 1995.** This is a 1-page document prepared by the U.S. Army Reserve Personnel Center and issued by COL Norman Brinsley in his official capacity as the Commander of the organization.

DECLARATION OF WANDA FARROW

The discharge order was addressed to Timothy James McVeigh and mailed to his last known address on July 8, 1996. The purpose of the document was to advise Mr. McVeigh that he was discharged from the US Army Reserve Control Group with an Honorable Discharge effective May 14, 1996. A copy of this order is included as attachment 1 to this declaration.

13. **DD Form 2366, Veterans' Educational Assistance Act of 1984 (New GI Bill), dated May 28, 1988.** This is a 1-page document prepared by an unknown person. The purpose of the document was to advise Mr. McVeigh of his eligibility and options under the GI Bill in force at that time upon his entry into military service. Mr. McVeigh signed the document twice: Once in block 2.1 signifying that he understood his eligibility and options and once in block 4.a. signifying that he was declining to participate in the program. A copy of this form is included as attachment 2 to this declaration.

14. I determined that only one of the documents fell within the scope of the request. I "sanitized" - removed and withheld personal identifying information in accordance with 5 U.S.C. §552(b)(6) - and sent a copy of the redacted document to Ms Kidd on August 9, 2002. I sent the reply by regular, first class mail addressed to Ms Devvy Kidd, PO Box 60543, Sacramento, California, 95860-0543, the same address used at the top of her May 28, 2002 request. My August 9th letter explained that no other records or information that she requested was available at this command. I further advised her she had the right to appeal my response within 60 days to the Commander, U.S. Army Reserve Personnel Command. Ms Kidd never submitted an appeal in response to my August 9, 2002 determination letter.

15. Subsequently, on December 13, 2002, I received another request directly from Ms Kidd dated December 8, 2002, restating that on July 24, 2002, she received a letter from OCAR informing her that her FOIA request had been referred to NARA. And that she then received another letter dated July 29, 2002 from NARA informing her that her request had been forwarded to this

DECLARATION OF WANDA FARROW

Command. She further stated that she felt she has waited long enough for this information and if she did not receive the documents she requested within 20 calendar days after this agency signed for this letter, she will sue in federal district court.

16. I responded to Ms Kidd a second time by letter dated December 20, 2002, informing her that I had responded previously to her on August 9, 2002. I sent the reply by regular, first class mail addressed to Ms Devvy Kidd, PO Box 60543, Sacramento, California, 95860-0543, the same address used at the top of her December 8, 2002 letter. I included a copy of that letter and of the redacted discharge order. I reiterated that the information she requested was not available in the record at this command. And finally I re-advised her she had the right to appeal my response within 60 days to the Commander, U.S. Army Reserve Personnel Command. The letter that I sent dated August 9, 2002 was never returned to this command. Nothing was ever returned to indicate that Ms Kidd did not receive a response until we received the letter dated December 8, 2002.

17. On January 15, 2003, I received a FOIA appeal dated January 6, 2003. It seems to me that she completely ignored the fact that the documents were not available. I requested the file from NARA again, using the same procedure mentioned above. Once the file was received I copied all of the documents and sent the appeal to the Command Judge Advocate (CJA) for a legal review. At that time I also prepared a memo in order to forward the appeal to the Secretary of the Army, Office of the General Counsel (OGC) and a letter informing Ms Kidd of the referral. This was on or about February 6, 2003.

18. On February 18, 2003, while the case was in the CJA for review, I was notified that Ms Kidd had filed a civil lawsuit. On February 21, 2003, I was instructed to stop processing the FOIA appeal due to the pending litigation.

DECLARATION OF WANDA FARROW

19. I have since learned that my office does not possess the administrative authority to render these initial FOIA determinations for U.S. Army Reserve Personnel Command. Consequently, on April 7, 2003, I forwarded both of Ms. Kidd's FOIA requests to the appropriate FOIA review authority within AR-PERSCOM: Colonel Elton C. Bruce, Commander, U.S. Army Reserve Personnel Command. Therefore, each of my letters responding to Ms. Kidd's FOIA request contained an erroneous statement of the appeal procedure. The correct appeal advisement should have read substantially as follows:

"In light of the above, your request is partially denied. This partial denial is made by the undersigned under authority delegated to me by Lieutenant General James R. Helmly, Chief, Army Reserve. You may appeal this partial denial. Any appeal you wish to submit must be done in writing, within 60 calendar days of the date of this letter, to this Command, Attention: ARPC-ZCC-A. Your appeal should contain a copy of this letter and outline the basis on which you disagree with the partial denial. Upon receipt of any appeal you may submit, I will forward it to the Secretary of the Army, Office of the General Counsel, Attention: V. Newhouse, 104 Army Pentagon, Room 2E725, Washington, DC, 20310-0104, for a final determination."

The "undersigned" referenced in the appeal advisement is the person actually delegated the Initial Denial Authority (IDA): Commander, AR-PERSCOM.

20. In addition, I erroneously exercised IDA. The exercise was erroneous because I had not been delegated IDA. The only person at this command who has delegated IDA is the Commander, AR-PERSCOM. On April 7, 2003, I was instructed to advise Ms Kidd that the prior responses were not legally correct, and to forward her requests to the delegated IDA for review and a direct response to Ms Kidd. A copy of this letter is included as attachment 3 to this declaration.

DECLARATION OF WANDA FARROW

I declare under penalty of perjury, pursuant to 28 U.S.C. §1746, that the foregoing is true and correct to the best of my knowledge, information, and belief. Executed this 8th day of April 2003, at St. Louis, Missouri.

A handwritten signature in cursive script, appearing to read "Wanda Farrow", is written over a horizontal line.

Wanda Farrow
Human Resources Assistant
Special Inquiries Section
Customer Contact Office
U.S. Army Reserve Personnel Command

DECLARATION OF WANDA FARROW

DEPARTMENT OF THE ARMY
U. S. ARMY RESERVE PERSONNEL CENTER
9700 PAGE AVENUE
ST. LOUIS, MO 63132-5200

ARPC-SFS-R
ORDERS D-05-642653

14 MAY 96

MCVEIGH TIMOTHY JAMES
4225 MILLER RD 146
FLINT MI 48907

SFS-R

129 58 4708 SGT 11H2
USAR CONTROL GROUP (AT)

YOU ARE DISCHARGED FROM THE COMPONENT SHOWN.

AUTHORITY: AR 135-178
EFFECTIVE DATE: 14 MAY 96
COMPONENT: UNITED STATES ARMY RESERVE
TYPE OF DISCHARGE: HONORABLE
ADDITIONAL INSTRUCTIONS: IF RESERVE ID DO FORM 2A (RED) IS IN YOUR POSSESSION
RETURN IT TO THIS HQS. ATTN: ARPC-PAS-EVC. IF YOU HAVE ANY QUESTIONS IN THE
FUTURE ABOUT YOUR MILITARY RECORDS OR YOUR MILITARY SERVICE, ASK THE
NATIONAL PERSONNEL RECORDS CENTER, 9700 PAGE BLVD ST LOUIS MISSOURI
63132-5200. AS YOU NO LONGER HAVE ANY MILITARY STATUS, YOUR RECORDS ARE NO
LONGER HELD BY THE ARMY. REMEMBER TO INCLUDE YOUR FULL NAME, SOCIAL SECURITY
NUMBER AND ALL PREVIOUS SERVICE NUMBERS SO THAT YOUR RECORD CAN BE
POSITIVELY IDENTIFIED. SFSR-10

"SUBJECT BEING DISCHARGED ALTHOUGH ASSIGNED TO THIS ORGANIZATION,
IS NOT PRESENT FOR DUTY. DISCHARGE CERTIFICATE AND DISCHARGE ORDERS
ARE BEING MAILED TO LAST KNOWN ADDRESS THIS DATE, 08 July 1996."

FORMAT: 500

* ARPERCEN *
* OFFICIAL *

NORMAN S. BRINSLEY
COL, SF
COMMANDING

DISTRIBUTION: H2

PACKET: 15

Attachment
1



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY RESERVE PERSONNEL COMMAND
1 RESERVE WAY
ST. LOUIS, MISSOURI 63132-5200

APR 08 2003

Special Inquiries Team

Ms Devvy Kidd
PO Box 60543
Sacramento, CA, 95860-0543

Dear Ms Kidd:

On August 9, 2002, I responded to your request for military medical and personnel records pertaining to Timothy James McVeigh dated May 28, 2002. On December 20, 2002, I responded to your second request for military medical and personnel records pertaining to Timothy James McVeigh dated December 8, 2002. Each request was processed under the Freedom of Information Act (FOIA).

In each instance, I provided a copy of a discharge order. Again in each instance, the social security number and other personal information contained in the discharge order were withheld under Title 5, U.S. Code, §552(b)(6), based on my determination that release of said information would result in a clearly unwarranted invasion of personal privacy. Also in each instance I advised you that no other records within the scope of your requests were available at this command. I concluded each letter advising you of the manner in which you could appeal my determinations should you so elect.

This letter is to advise you that my office does not possess the administrative authority to render these determinations for the U.S. Army Reserve Personnel Command. Consequently, each of your requests is now being reviewed by the appropriate authority within this organization. You will soon receive an initial determination of your previous FOIA requests directly from Colonel Elton C. Bruce, Commander, U.S. Army Reserve Personnel Command, once the review is complete.

I regret any inconvenience this misunderstanding may have caused.

Sincerely,


Wanda Farrow
Case Analyst

Attachment

3

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DEVVY KIDD,

Plaintiff,

vs.

DEPARTMENT OF THE ARMY,

Defendant.

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No. Civ-S-300223 DFL GGH-PS

DECLARATION OF ERIC VOELZ

My name is Eric Voelz and I make the following declaration under penalty of perjury:

1. I am an Archivist, GS-1420-12, assigned to the Military Operations Branch at the National Archives and Records Administration (NARA), St. Louis, Missouri. My duties include the preservation, storage, and ensuring the continued availability of Federal records, including access and control of classified, VIP, and employee-relative records, maintained in the vault at NARA.
2. The statements in this declaration are based upon my personal knowledge, upon information available to me in my official capacity, and upon conclusions I drew based upon that information and knowledge. I have prepared this declaration to be filed in support of the named Defendant's defense of the captioned litigation.
3. On or about August 6, 2002, I received a DAS Form 54 (Request for Official Military Personnel File, Microfiche or Paper Document) from the U.S. Army Reserve Personnel Command (AR-PERSCOM) Security Office. The designated point of contact was Mr. Thomas O'Connell. Mr. O'Connell was requesting a record with reference number V2988. The "V number" indicated it was stored in the vault.

DECLARATION OF ERIC VOELZ



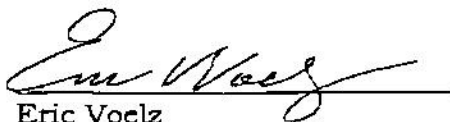
4. The file contained records pertaining to Mr. Timothy McVeigh. The file was delivered into the vault on or about June 19, 2001. I noted that there were only two documents in the record: a discharge order dated May 14, 1995 and a DD Form 2366, Veterans' Educational Assistance Act of 1984 (New GI Bill), dated May 28, 1988. To the best of my knowledge and belief the file in my possession today, and in my possession on or about August 6, 2002, is the same file and contains the same records as it did when it arrived at NARA on or about July 1997.

5. Later, on or about January 21, 2003, I received a second DAS Form 54 from the AR-PERSCOM Security Office. The designated point of contact was Mr. Thomas O'Connell. Mr. O'Connell was again requesting record number V2988.

6. I again retrieved the file and delivered it to Mr. O'Connell. The file was again returned to me approximately a week later.

7. 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 of the Federal Bureau of Investigation, in Oklahoma City, Oklahoma. The point of contact is Mr. Carl Benoit, Chief Division Counsel, at (405) 290 7770.

I declare under penalty of perjury, pursuant to 28 U.S.C. §1746, that the foregoing is true and correct to the best of my knowledge, information, and belief. Executed this 7th day of April 2003, at St. Louis, Missouri.


Eric Voelz
Military Operations Branch
National Archives and Record
Administration

DECLARATION OF ERIC VOELZ

REPLY TO
ATTENTION OFDEPARTMENT OF THE ARMY
OFFICE OF THE GENERAL COUNSEL
104 ARMY PENTAGON
WASHINGTON, DC 20310-0104

April 21, 2003

Ms. Devvy Kidd
P.O. Box 60543
Sacramento, California 95860

Dear Ms. Kidd:

This letter acknowledges our receipt of your Freedom of Information Act (FOIA) appeal dated January 6, 2003, from the U.S. Army Reserve Personnel Command.

Your appeal will be reviewed on a first-in, first-out basis. We want to assure you that we will review your appeal in turn and respond to you as expeditiously as possible.

Sincerely,

Victoria Jersey Newhouse
Assistant to the General Counsel

UNITED STATES DISTRICT COURT

NORTHERN

District of

CALIFORNIA

DEVVY KIDD, PLAINTIFF
V.

SUMMONS IN A CIVIL CASE

CASE NUMBER:

UNITED STATES DEPARTMENT OF THE ARMY
DEFENDANT

CIV.S-03-0225 DFL GSH-PS

TO: (Name and address of Defendant)

DEPARTMENT OF THE ARMY
U.S. ARMY RESERVE PERSONNEL COMMAND
1 RESERVE WAY
ST. LOUIS MO. 63132-5200

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

PRO SE:

DEVVY KIDD
2133 SHERINGTON WAY
SACRAMENTO, CA 95835

Just Snodgrass

February 10, 2003

an answer to the complaint which is served on you with this summons, within 30 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

Jack L. Wagner, Clerk

FEB 5 2003

CLERK

DATE

(By) Jack L. Wagner
DEPUTY CLERK



(CERT MAIL 7002 0460 0002 0697 5267)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DEVVY KIDD,
2133 Sherington Way
Sacramento, California 95835

Plaintiff,

v.

Department of the Army
U.S. Army Reserve
Personnel Command
1 Reserve Way
St. Louis, MO 63132

Defendant.

CRS-03-0225 DFL GGH-PS
Case No. _____

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

Plaintiff, Devvy Kidd, pro se, hereby files this complaint for compliance with the Freedom of Information Act, 5 U.S.C. § 552 *et seq.* As grounds therefore, Plaintiff respectfully alleges as follows:

JURISDICTION AND VENUE

1. This court has jurisdiction over this action pursuant to 28 U.S.C. § 1346 (a)(2) (United States as defendant), 5 U.S.C. § 552(a)(4)(b) (FOIA), and 5 U.S.C. § 552a(g)(5).
2. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B).

PARTIES

3. Plaintiff, Devvy Kidd, is a resident of the State of California, residing at 2133 Sherington Way, Sacramento, California 95835.

4. Defendant Department of the Army, is an agency and entity of the United States Government. Defendant Department of the Army, has its principle place of

business in the District of Columbia. Defendant Department of the Army has possession of the documents to which Plaintiff seeks access.

STATEMENT OF FACTS

5. 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 or 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 1991. 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 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.

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.

6. Plaintiff received a letter from Defendant dated July 11, 2002 (See Exhibit 2)
7. Plaintiff received another letter from Defendant dated July 29, 2002 (See Exhibit 3).
8. On December 9, 2002, Plaintiff sent another letter to Defendant (See Exhibit 4).
9. Plaintiff then received another letter from Defendant dated December 20, 2002, (See Exhibit 5) which is non-responsive to the documents sought by Plaintiff.
10. Plaintiff filed an appeal via certified mail January 6, 2003 (See Exhibit 6). Defendant's representative signed for this appeal on January 8, 2003. It is now March 4,

2003 and Defendant has not responded to Plaintiff's appeal within the legal time allowed.

COUNT 1

11. Plaintiff realleges paragraphs 1-13 as if fully set forth herein.

12. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i-ii), and 5 U.S.C. § 552 (a)(6)(C), Plaintiff shall be deemed to have exhausted her administrative remedies with respect to her FOIA request to Defendant Department of Army.

13. Pursuant to 5 U.S.C. § 552(a)(3), Plaintiff has a right of access to all of the documents requested in the FOIA request and Defendant has no legal basis for refusing to disclose all of these documents to Plaintiff, which has not occurred to date. The subject of this FOIA deals with neither privacy rights nor national security.

WHEREFORE, Plaintiff respectfully requests that the Court: (1) declare that Defendant's refusal to disclose the documents requested by Plaintiff is unlawful; (2) order Defendant to make the requested documents available to Plaintiff; (3) award Plaintiff her costs and any applicable penalties under the law against Defendant in this action; and grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Devvy Kidd", is written over a horizontal line.

Devvy Kidd
2133 Sherington Way
Sacramento, California 95835
916-928-0199

Pro se

Devvy Kidd
P.O. Box 60543
Sacramento, California 95860

Certified Mail Receipt: 7001 2510 0000 2855 8617

May 28, 2002

Office of the Chief, Army Reserve
ATTN: DAAR-ZXP (FOIA)
1421 Jefferson Davis Highway, Suite 12300
Arlington, VA 22202

Re: Timothy James McVeigh (Executed June 11, 2001)
Social Security No. 129-58-4709

Sir/Madame:

This is a request under the Freedom of Information Act (5 U.S.C. §552) and the regulations thereunder. I am more than willing to pay any reasonable research and copies fees for responding to this request; however, if the costs thereof should exceed \$100, please inform me in advance of producing the requested documents. I am not a commercial requester and I seek the documents requested below for personal reasons.

Under this FOIA I am requesting the following:

1. Any document or form initiated by Timothy James McVeigh to separate from the Department of the Army when on active duty status.
2. 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.
3. Copies of all deployment records for the period May 24, 1988 through December 31 1991. These records should include where he was sent and duration of duty.
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

EXHIBIT..

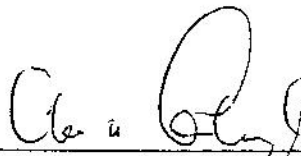
1

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

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.

Very truly yours,

Devvy Kidd



CLAES H. LEWENHAUPT

Special Assistant United States Attorney

Judiciary Center Building

555 4th Street, N.W.

Washington, D.C. 20001

(202) 353-9895



National Personnel Records Center

Military Personnel Records 9700 Page Avenue St. Louis, Missouri 63132-5100

July 29, 2002

Devvy Kidd
PO Box 60543
Sacramento, CA 95860

RE: Veteran's Name: McVeigh, Timothy J.
SSN/SN: ***Confidential***
Case Reference Number: 2002-204-0963

Thank you for contacting the National Personnel Records Center. 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. We regret that we cannot be of direct assistance; however, you may expect a response from the office shown below.

We have made every effort to assist you within the constraints of our resources. If you have any questions or comments regarding this response, you can reach me by phone at (314) 538-2191 or by mail at the address shown in the letterhead above, ATTN: NRPM3-A, Room 3315. Ensure you include the Case Reference Number listed above. All new requests for information or documents, or requests that pertain to other veterans, must be made in writing to the address shown in the letterhead above. Our web site also includes pertinent phone numbers and a request form.

Sincerely,

Francis Snead
Archives Technician

Cc: Commander
Army Reserve Personnel Command
ATTN: ARPC-ZCC-B
1 Reserve Way
St. Louis, MO 63132-5200

Devy Kidd
P.O. Box 60543
Sacramento, California 95860
916-928-0199 / e-mail: power@devvy.com

December 8, 2002

Certified Mail Receipt No. 7001 0320 0003 8000 2211

Commander
Army Reserve Personnel Command
Attn: ZRPC-ZCC-B
1 Reserve Way
St. Louis, MO 63132-5200

Re: Freedom of Information Act Request Saga

On May 28, 2002, I filed a FOIA (See enclosed).

On July 24, 2002, I received a letter (copy enclosed) from the Office of the Chief, Army Reserve. This letter states that they passed my FOIA on to the National Personnel Records Center on Page Blvd., in St. Louis.

Next I receive a letter dated July 29, 2002 (see enclosed) from NPRC on Page Ave in St. Louis, MO stating that they have passed my FOIA on to you.

I feel I have waited long enough for this information. If I don't receive the documents I have requested within 20 calendar days after your agency signs for this letter, I will be left with no choice but to sue in Federal District Court.

Very truly yours,

Devy Kidd

Encl: NPRC ltr dated 7.29.02
ARSG ltrs dated 7.11.02 (2)
Original FOIA request dated 5.28.02

EXHIBIT
4



DEPARTMENT OF THE ARMY
U.S. ARMY RESERVE PERSONNEL COMMAND
1 RESERVE WAY
ST. LOUIS MO 63132-5200



December 20, 2002

Special Inquiries Team

Ms. Devvy Kidd
PO Box 60543
Sacramento, CA 95860-0543

Dear Ms. Kidd:

This is in response to your request for copies of documents from the military personnel file and medical record of Timothy J. McVeigh. Your request was received in this office on December 13, 2002 and is being processed under the provisions of the Freedom of Information Act.

Enclosed is a sanitized copy of the discharge order that separated Mr. McVeigh from the U.S. Army Reserve. The social security number and address has been deleted on this order. Release of that information could result in an unwarranted invasion of personal privacy to any surviving family members. This information is being withheld in accordance with Title 5, U.S. Code, Section 552 (b)(6). Please be advised that there are no provisions under the Freedom of Information Act to provide explanations. The act pertains to existing records only.

This office responded to your previous request on August 9, 2002 and sent a copy of the enclosed order. The remaining documents that you have requested are not available in Mr. Mc Veigh's file maintained at this command.

If you consider my response to be a denial of your request, you may appeal by writing to the Commander, U.S. Army Reserve Personnel Command, Attention: ARPC-ZCC-A, 1 Reserve Way, St. Louis, MO 63132-5200, within 60 days of your receipt of this letter. Your appeal should state the basis of your disagreement. Fees allowable under the Freedom of Information Act are waived. For additional information or assistance, please contact the Special Inquiries Team at (314) 592-0446.

Sincerely,


Wanda Farrow
Case Analyst

Enclosure

EXHIBIT 5

NOF

DEPARTMENT OF THE ARMY
U. S. ARMY RESERVE PERSONNEL CENTER
9700 PAGE AVENUE
ST. LOUIS, MO 63132-5200

ARPC-SFS-R
ORDERS D-05-542653

14 MAY 96

MCVEIGH TIMOTHY JAMES

SFS-R

██████████ SGT 11H2
USAR CONTROL GROUP (AT)

YOU ARE DISCHARGED FROM THE COMPONENT SHOWN.

AUTHORITY: AR 135-178
EFFECTIVE DATE: 14 MAY 96
COMPONENT: UNITED STATES ARMY RESERVE
TYPE OF DISCHARGE: HONORABLE
ADDITIONAL INSTRUCTIONS: IF RESERVE ID DD FORM 2A (RED) IS IN YOUR POSSESSION
RETURN IT TO THIS HQS, ATTN: ARPC-PAS-EVC. IF YOU HAVE ANY QUESTIONS IN THE
FUTURE ABOUT YOUR MILITARY RECORDS OR YOUR MILITARY SERVICE, ASK THE
NATIONAL PERSONNEL RECORDS CENTER, 9700 PAGE BLVD ST LOUIS MISSOURI
63132-5200. AS YOU NO LONGER HAVE ANY MILITARY STATUS, YOUR RECORDS ARE NO
LONGER HELD BY THE ARMY. REMEMBER TO INCLUDE YOUR FULL NAME, SOCIAL SECURITY
NUMBER AND ALL PREVIOUS SERVICE NUMBERS SO THAT YOUR RECORD CAN BE
POSITIVELY IDENTIFIED. SFSR-10

"SUBJECT BEING DISCHARGED ALTHOUGH ASSIGNED TO THIS ORGANIZATION,
IS NOT PRESENT FOR DUTY. DISCHARGE CERTIFICATE AND DISCHARGE ORDERS
ARE BEING MAILED TO LAST KNOWN ADDRESS THIS DATE, 08 July 1996."

FORMAT: 500

* ARPERCEN *
* OFFICIAL *

NORMAN S. BRINSLEY
COL, SF
COMMANDING

DISTRIBUTION: H2 PACKET: 15

Devvy Kidd
P.O. Box 60543
Sacramento, California 95860
916-928-0199 / e-mail: power@devvy.com

Certified Mail Receipt: 7001 0360 0004 3146 9275

January 6, 2003

Commander
U.S. Army Reserve Personnel Command
Attn: ARPC-ZCC-A
1 Reserve Way
St. Louis, MO 63132-5200

FOIA Appeal

Enclosed is the history of my original Freedom of Information Act request.

Last week I received a final response dated December 20, 2002; attached with this appeal. Ms. Farrow forwarded me a document I did not request and denied my original request citing personal privacy to any family members of Timothy James McVeigh.

Mr. McVeigh was executed June 11, 2001. I have a copy of the death certificate which contains his social security number and all other information contained in such a document.

Dead people have no privacy rights. My FOIA does not extend to any family member of Mr. McVeigh. The information I have requested deals with McVeigh's military service and his medical records, not his family's.

Therefore, I appeal the decision of Ms. Farrow to withhold the documents I have requested under my original FOIA and ask that my request be processed and the documents I seek released.

Very truly yours,

Devvy Kidd

EXHIBIT 6

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ODELL JENNINGS

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION

and

FEDERAL BUREAU OF PRISONS

and

EXECUTIVE OFFICE FOR
UNITED STATES ATTORNEYS

and

BUREAU OF ALCOHOL, TOBACCO
& FIREARMS

and

OFFICE OF INFORMATION & PRIVACY
United States Department of Justice

Defendants.

Civil Action No. 03-1651 (JDB)

MOTION ENLARGEMENT OF TIME

Pursuant to Rule 6(b)(1) of the Federal Rules of Civil Procedure, Defendants respectfully request an enlargement of time— until October 2, 2003— to file a response to the Complaint in the above-styled matter. Currently, Defendants' response is due September 15, 2003. This is Defendants' first motion for an enlargement of time. Defendants' counsel has not been able to discuss this request with *Pro Se* Plaintiff because he is currently incarcerated

In support of their motion, Defendants motion present that Plaintiff will not be prejudiced by the Court's grant of this motion since his Complaint raises claims relating to his request for information under the Freedom of Information Act ("FOIA"), 5 U.S.C. §552 (1988) and, after a reasonable a search of this request, Defendants released all responsive, non-exempt, documents. Further, defendants' motion is necessitated by the fact that, despite best efforts, the undersigned counsel for Defendants has not been supplied with the necessary information from the client agency to timely complete a dispositive motion. Agency personnel from whom such information could be provided indicates that he just received a copy of the Plaintiff's Complaint yesterday and, as a result, has not had an opportunity to research the validity of his claims. In addition, he notes his recent assignment to the FOIA Office and thus the need to become more educated regarding the Plaintiff's case. Finally, the enlargement of time requested herein is necessary to allow the undersigned to meet other case commitments and still file a timely reply in this matter.

For the foregoing reasons, Defendants respectfully request an enlargement of time-- until October 2, 2003-- to file a response.¹

¹ In accordance with the Court's Local Rule 7.1(c), a proposed order is attached herewith.

Respectfully submitted,

/s/

ROSCOE C. HOWARD, JR., D.C. Bar #246470
Assistant United States Attorney

/s/

MARK E. NAGLE, D.C. Bar #416364
Assistant United States Attorney

/s/

ROBIN M. EARNEST, D.C. Bar #458304
Assistant United States Attorney
Judiciary Center Building
555 4th Street, N.W., 10th Floor
Washington, D.C. 20530
(202) 514-7139

DATED: September 3, 2003

ODELL JENNINGS

V.

Civil Action No. 03-1651 (JDB)

Upon consideration of Defendants' Motion for Enlargement of Time, it is hereby ordered that the motion is granted. Defendants may file a response to Plaintiff's Complaint, on or before October 2, 2003.

UNITED STATES DISTRICT JUDGE

cc:

Robin M. Earnest
Assistant United States Attorney
United States Attorney's Office for
the District of Columbia
Civil Section, 10th Floor
555 Fourth Street, N.W.
Washington, D.C. 20530

Odell Jennings
R#08187-424
United States Penitentiary
P.O. Box 26030
Beaumont, TX 77720

CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2003, I caused to be served, by United States mail (first-class mail, postage prepaid), a copy of "DEFENDANTS' MOTION FOR ENLARGEMENT OF TIME" addressed as follows:

ODELL JENNINGS
R#08187-424
UNITED STATES PENITENTLARY
P.O. Box 26030
Beaumont, TX 77720

ROBIN M. EARNEST
Assistant United States Attorney
Judiciary Center Building
555 4th Street, N.W., 10th Floor
Washington, D.C. 20530
(202) 514-7139

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of September, 2003, a true and correct copy of the foregoing was served through the Electronic Court Filing system to:

Devvy Kidd
8 South Cherry Grove Avenue
Annapolis, MD 21401

Plaintiff

A handwritten signature in black ink, appearing to read 'Claes H. Lewenhaupt', is positioned above the printed name and title.

Claes H. Lewenhaupt
Special Assistant U.S. Attorney
555 Fourth Street, N.W., 10-452
Washington, D.C. 20530

