

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

NATIONAL INSTITUTE OF MILITARY JUSTICE )  
1318 Princess Street )  
Alexandria, VA 22314 )

Plaintiff,

v.

U.S. DEPARTMENT OF DEFENSE )  
The Pentagon )  
Washington, D.C. 20301-1155 )

Defendant. )

---

CASE NUMBER 1:04CV00312

JUDGE: Reggie E. Walton

DECK TYPE: FOIA/Privacy Act

DATE STAMP: 02/26/2004

**COMPLAINT FOR INJUNCTIVE RELIEF**

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552, seeking the release of agency records improperly withheld from plaintiff by defendant Department of Defense (“DOD”).

**Jurisdiction and Venue**

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. 552(a)(4)(B).

3. Plaintiff National Institute for Military Justice (“NIMJ”) is a nonprofit corporation, provides information to the public about military justice issues and has, *inter alia*, published the *Annotated Guide to the Procedures for Trials by Military Commissions of Certain Non-United States Citizens in the War Against Terrorism* (LexisNexis 2002) and the *Military*

*Commission Instructions Sourcebook* (2003). NIMJ also maintains an extensive website, [www.nimj.org](http://www.nimj.org), on which it collects, uploads, and otherwise disseminates documents concerning military commissions for the benefit of scholars, practitioners, the public, and the news media.

4. Defendant DOD is an agency within the meaning of 5 U.S.C. § 552(f).

#### **Plaintiff's FOIA Request**

5. By a letter to DOD dated October 3, 2003, plaintiff submitted a Freedom of Information Act ("FOIA") request for

all written or electronic communications that the Department (including the Secretary and General Counsel) has either sent to or received from anyone (other than an officer or employee of the United States acting in the course of his or her official duties) regarding the President's November 13, 2001 Military Order, the Secretary's Military Commission Orders, and the Military Commission Instructions. This request includes but is not limited to suggestions or comments on potential, proposed, or actual terms of any of those Orders or Instructions and any similar, subsequent, superseding or related Orders or Instructions, whether proposed or adopted.

#### **Defendant DOD's Failure to Timely Comply with Plaintiff's Request**

6. On November 18, 2003, defendant made an "interim" response to plaintiff's request by producing some, but not all, of the requested documents.

7. On January 14, 2004, plaintiff appealed the denial of its request.

8. Defendant has failed to act on plaintiff's appeal within the time provided by FOIA, 5 U.S.C. § 552(a)(6)(A)(ii).

9. Plaintiff has exhausted the applicable administrative remedies. 5 U.S.C. § 552(a)(6)(C).

10. Defendant has wrongfully withheld the requested documents from plaintiff.

**Requested Relief**

WHEREFORE, plaintiff prays that this Court:

- A. order defendants to disclose the requested records in their entireties and make copies available to plaintiff;
- B. provide for expeditious proceedings in this action;
- C. award plaintiff its costs and reasonable attorneys fees incurred in this action; and
- D. grant such other relief as the Court may deem just and proper.

Respectfully submitted,



Mark H. Lynch  
D.C. Bar No. 193110  
Emily Hancock  
D.C. Bar No. 477573  
Covington & Burling  
1201 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2401  
(202) 662-6000

Counsel for Plaintiff

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

NATIONAL INSTITUTE OF MILITARY JUSTICE )  
1318 Princess Street )  
Alexandria, VA 22314 )

Plaintiff, )

v. )

U.S. DEPARTMENT OF DEFENSE )  
The Pentagon )  
Washington, D.C. 20301-1155 )

Defendant. )

CASE NUMBER 1:04CV00312

JUDGE: Reggie B. Walton

DECK TYPE: FOIA/Privacy Act

DATE STAMP: 02/26/2004

**CERTIFICATE REQUIRED BY CIVIL RULE 26.1**

I, the undersigned, counsel of record for plaintiff the National Institute of Military Justice (NIMJ), certify to the best of my knowledge and belief, that NIMJ has no parent companies, subsidiaries or affiliates that have any outstanding securities in the hands of the public. These representations are made in order that judges of this Court may determine the need for recusal.

Respectfully submitted,



Mark H. Lynch  
D.C. Bar No. 193110  
Covington & Burling  
1201 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2401  
(202) 662-6000

Counsel for Plaintiff