

JURISDICTION AND VENUE

5. This action arises under the Freedom of Information Act (“FOIA”), 5 USC § 552.
6. This Court has jurisdiction over the parties and subject matter pursuant to 5 USC § 552(a)(4)(B).
7. Venue is proper in this district pursuant to 5 USC § 552(a)(4)(B).

STATEMENT OF FACTS

BACKGROUND

8. WikiLeaks is an online publisher of censored information.
9. According to the White House¹, on July 22, 2010 *The New York Times* notified Obama administration officials about the imminent publication of the Afghan War Diary (CENTCOM CIDNE-A database files) by *The New York Times* and foreign media organizations, including WikiLeaks.
10. Employees of *The New York Times* worked closely with the Obama administration prior to publication of the Afghan War Diary, including having a meeting at the Department of State with representatives from the White House, Department of State, the Office of the Director of National Intelligence, the Central Intelligence Agency, the Defense Intelligence Agency, the Federal Bureau of Investigation, and the Pentagon.²
11. The White House praised *The New York Times* for its efforts and due diligence.³
12. Before subsequent meetings and conference calls, the Washington bureau of *The New York Times* sent batches of specific cables that would be published in coming days.⁴

¹ <http://www.whitehouse.gov/the-press-ofce/press-briefing-press-secretary-robert-gibbs-7262010>

² <http://abcnews.go.com/blogs/politics/2010/07/whistleblower-blasts-wikileaks-irresponsible-to-publish-intelligence-says-it-enlisted-soldier-as-per/>

³ *Id.*

13. A small group of individuals at the Department of State came to daily conversations of *The New York Times* with the government's concerns, which the *New York Times* relayed to other news outlets.⁵

14. Employees of the *New York Times* had extensive conversations with United States government officials concerning WikiLeaks' publications of the Iraq War Logs, Afghan War Diary, Department of State cables, and the Guantanamo Detainee Assessment Briefs.⁶

15. Members of the Obama administration and other officials in the United States government pressured media organizations, including *The New York Times* to stop calling WikiLeaks a "whistleblower web site."⁷

16. This FOIA case relates to records of communications between employees of *The New York Times* and the Department of State concerning documents published by WikiLeaks.

PLAINTIFF'S FOIA REQUEST

17. On March 11, 2013, Ms. O'Brien caused to be sent a FOIA request to the Department of State via email, requesting "Any and all records (including emails; letters; memos; meeting minutes and/or meeting notes; audio and/or video, transcripts; working papers; and reports) of communications between and 'The New York Times' and its employees (including but not limited to Bill Keller; Scott Shane; Eric Schmitt; David Sanger; Dean Baquet; Ian Fisher; John Burns; and Ravi Somaiya) and the U.S. State Department concerning

⁴ <http://www.nytimes.com/2011/01/30/magazine/30Wikileaks-t.html?pagewanted=print>

⁵ *Id.*

⁶ <http://www.nytimes.com/2010/11/29/world/29askthetimes.html?pagewanted=all&http://www.nytimes.com/2011/04/25/world/guantanamo-files-a-note-to-readers.html?gwh=2208324164028D3D74B2CC3B064B2CAA>

⁷ <http://video.nytimes.com/video/2010/12/08/business/media/1248069418111/assange-arrest-changes-wikileaks-story.html>

WikiLeaks.org publications including the Collateral Murder video (aka ‘12 JUL 07 CZ ENGAGEMENT ZONE 30 GC Anyone.avi’); Afghan War Diary (aka CENTCOM CIDNE-A database SigAct files); Iraq War Logs (aka CENTCOM CIDNE-I database SigAct files); Cablegate (aka Net Centric Diplomacy database SIPDIS cables); and the GTMO files (aka SOUTHCOM Guantanamo Detainee Assessment Briefs) between January 1, 2010 and March 11, 2013.’ Ms. O’Brien also requested a waiver of fees.

18. In a letter dated March 13, 2013, the Department of State acknowledged receipt of Ms. O’Brien’s FOIA request described in the previous paragraph, assigned it Case Control No. F-2013-04204, and granted her request for a waiver of fees.

19. In an email to Ms. O’Brien on October 9, 2013, Chris Barnes of the Department of State’s FOIA Requester Service Center provided an estimated date of completion for the request of July 2014.

**THE DEPARTMENT OF STATE’S FAILURE TO RESPOND TO PLAINTIFF’S FOIA
REQUEST**

20. The Department of State’s response to Ms. O’Brien’s FOIA request (F-2013-04204) was due twenty working days after the Department of State received it on March 11, 2013, which would have been April 8, 2013.

21. As of the filing of this Complaint, Ms. O’Brien has not received a response to her FOIA request (F-2013-04204) with a determination as to whether the Department of State will comply with the request.

22. Under 5 USC § 552(a)(6)(C)(i), Ms. O’Brien is deemed to have exhausted her administrative remedies with regard to her FOIA request (F-2013-04204) because the Department of State has failed to comply with the statutory time limit.

COUNT I:
VIOLATION OF FOIA

23. This Count realleges and incorporates by reference all of the preceding paragraphs.

24. Each of the documents referred to in this Complaint is incorporated herein by reference.

25. Defendant has violated FOIA by failing to timely respond with a determination as to whether it will comply with Plaintiff's FOIA request (F-2013-04204).

26. Plaintiff has been and will continue to be irreparably harmed until Defendant is ordered to comply with Plaintiffs' FOIA request.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- (1) Declare Defendant's failure to comply with FOIA to be unlawful;
- (2) Enjoin Defendant from continuing to withhold the records responsive to Plaintiff's FOIA request and otherwise order Defendant to produce the requested records without further delay;
- (3) Grant Plaintiff an award of attorney fees and other litigation costs reasonably incurred in this action pursuant to 5 USC § 552(a)(4)(E)(i);
- (4) Grant Plaintiff such other and further relief which the Court deems proper.

Respectfully Submitted,

/s/ Jeffrey Light

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