

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

KELLOGG BROWN & ROOT SERVICES, INC.,
4100 Clinton Drive
Houston, Texas 77020

and

KELLOGG BROWN & ROOT, INC.
4100 Clinton Drive
Houston, Texas 77020,

Plaintiffs,

vs.

Case No. _____

UNITED STATES DEPARTMENT OF
DEFENSE,

Serve:

Gary Nails, Civil Process Clerk
Office of the United States Attorney for the
District of Columbia
555 Fourth Street, NW
Washington, DC 20530

and

Eric Holder
Attorney General of the United States
950 Pennsylvania Ave., NW
Washington, DC 20530

Defendant.

COMPLAINT FOR INJUNCTIVE RELIEF
(Freedom of Information Act)

For their complaint against the United States Department of Defense (“DoD”), Plaintiffs
allege as follows:

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to enjoin the DoD from improperly withholding agency records and to order the production of all improperly withheld agency records.

2. The records at issue all relate to the planning and administration of the Logistics Civil Augmentation Program III (“LOGCAP III”) and/or KBR’s performance of the LOGCAP III contract, Contract No. DAAA09-02-D-0007. The records are responsive to four FOIA requests that KBR submitted to various points of contract within the DoD, including the Defense Contract Audit Agency (“DCAA”) and the Defense Contract Management Agency (“DCMA”), between December 2008 and January 2009.

Parties

3. Plaintiff Kellogg Brown & Root Services, Inc. is incorporated under the laws of the State of Delaware and maintains its principal place of business located at 4100 Clinton Drive, Houston, Texas 77020.

4. Plaintiff Kellogg Brown & Root, Inc. is incorporated under the laws of the State of Delaware and maintains its principal place of business located at 4100 Clinton Drive, Houston, Texas 77020.

5. For purposes of this action, Plaintiffs are referred to collectively as “KBR.”

6. Defendant DoD is an agency of the United States of America under 5 U.S.C. § 552(f)(1) and 5 U.S.C. § 551(1).

Jurisdiction & Venue

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

8. KBR has exhausted its administrative remedies.

9. Venue is proper pursuant to 5 U.S.C. § 552(a)(4)(B).

Facts

A. DECEMBER 5, 2008 FOIA REQUEST TO DCAA COMPONENTS

10. On December 5, 2008, KBR submitted a FOIA request to the following offices within DCAA seeking agency records related to support, planning and training regarding the LOGCAP III program:

Headquarters, Defense Contract Audit Agency
Attn: CMR, FOIA Service Center
8725 John J. Kingman Road, Suite 2135
Fort Belvoir, VA 22060-6219

Northeastern Region
Defense Contract Audit Agency
Attn: FOIA Service Center
59 Composite Way
Lowell, MA 01851-5150

A true and correct copy of the request is attached as Exhibit 1.

11. On December 15, 2008, the DCAA Northeastern Region office received the December 5 FOIA request. A true and correct copy of the corresponding return receipt is attached as Exhibit 2. On December 24, 2008, the DCAA Headquarters office received the December 5 FOIA request. A true and correct copy of the corresponding return receipt is attached as Exhibit 3.

12. On December 23, 2008, KBR received a letter, dated December 19, 2008, from the DCAA Headquarters requesting that KBR narrow its request and participate in a conference call regarding the request.

13. On December 24, 2008, KBR responded to DCAA's December 19 letter and stated its willingness to participate in the requested conference call and to consider narrowing the December 5 FOIA request.

14. On January 7, 2009, KBR's counsel and DCAA participated in a teleconference regarding the scope of the December 5 FOIA request.

15. On January 13, 2009, KBR submitted a revised FOIA request. A true and correct copy of the revised request is attached as Exhibit 4.

16. On January 15, 2009, KBR received an email from DCAA confirming receipt of the revised request. A true and correct copy of the email is attached as Exhibit 5.

17. On February 2, 2009, KBR received a final determination letter from DCAA closing the revised request on the grounds that compliance would be unduly burdensome for DCAA.

18. On March 13, 2009, KBR timely filed an administrative appeal challenging the DCAA's February 2 closure of the revised request.

19. On April 14, 2009, the DCAA denied KBR's administrative appeal.

B. DECEMBER 5, 2008 FOIA REQUEST TO DCMA

20. On December 5, 2008, KBR submitted a FOIA request to the DCMA FOIA Office seeking agency records related to support, planning and training regarding the LOGCAP III program. A true and correct copy of the request is attached as Exhibit 6.

21. On January 13, 2009, DCMA received the December 5 FOIA request. A true and correct copy of the corresponding return receipt is attached as Exhibit 7.

22. On January 30, 2009, KBR's counsel and DCMA counsel spoke via telephone regarding the scope of the December 5 FOIA request.

23. On February 12, 2009, KBR received a letter from DCMA, dated February 9, 2009, stating that the December 5 FOIA request was overly broad and asking KBR to narrow the request.

24. On February 17, 2009, KBR submitted a revised FOIA request to DCMA. A true and correct copy of the revised request is attached as Exhibit 8.

25. On February 19, 2009, KBR received an email from DCMA confirming receipt of the revised request. A true and correct copy of the email is attached as Exhibit 9.

26. By email correspondence dated February 19, 2009, June 30, 2009, and September 10, 2009, the DCMA informed KBR that the request would be processed in the coming months.

27. DCMA has not made a determination on the revised request within the time limits prescribed by FOIA, 5 U.S.C. § 552(a)(6)(A)(i).

C. JANUARY 7, 2009 FOIA REQUEST - AUDIT REPORTS

28. On January 7, 2009, KBR submitted a FOIA request to the following recipients seeking records regarding various materials used to support DCAA-issued Audit Papers:

Defense Contract Audit Agency
Central Region
Attn: FOIA Service Center
6321 Campus Circle Drive East
Irving, TX 75063-2742

Defense Contract Audit Agency
Headquarters
Attn: CMR, FOIA Service Center
8725 John J. Kingman Road, Suite 2135
Fort Belvoir, VA 22060-6219

Defense Contract Audit Agency
Northeastern Region
Attn: FOIA Service Center
59 Composite Way
Lowell, MA 01851-5150

Defense Contract Audit Agency
Iraq Branch Office
APO, AE 09366

AMSAS
U.S. Army Sustainment Command
1 Rock Island Arsenal
Rock Island, Illinois 61299-6500

A true and correct copy of the request is attached as Exhibit 10.

29. The January 7 FOIA request was received by: the DCAA Northeastern Region on January 12, 2009; the DCAA Central Region on January 14, 2009; the DCAA Iraq Branch office

on January 16, 2009; and the DCAA Headquarters office on January 22, 2009. A true and correct copy of the corresponding return receipts are attached as Exhibit 11.

30. On January 21, 2009, the DCAA Headquarters Office informed KBR by letter, dated January 14, 2009, that the request would be processed in accordance with DCAA's "first in, first out" practice.

31. On February 10, 2009, KBR received a final determination letter from the DCAA Headquarters office, dated February 4, 2009, stating that the requested records are exempt from release pursuant to FOIA.

32. On April 2, 2009, KBR timely filed an administrative appeal challenging the DCAA's refusal to provide responsive records.

33. On April 27, 2009, DCAA issued a decision denying KBR's administrative appeal.

D. JANUARY 7, 2009 FOIA REQUEST - FORMS 1

34. On January 7, 2009, KBR submitted a FOIA request to the following recipients seeking records regarding various materials used to support DCAA-issued Notices of Intent to

Disallow:

Defense Contract Audit Agency
Central Region
Attn: FOIA Service Center
6321 Campus Circle Drive East
Irving, TX 75063-2742

Defense Contract Audit Agency
Headquarters
Attn: CMR, FOIA Service Center
8725 John J. Kingman Road, Suite 2135
Fort Belvoir, VA 22060-6219

Defense Contract Audit Agency
Northeastern Region
Attn: FOIA Service Center
59 Composite Way
Lowell, MA 01851-5150

Defense Contract Audit Agency
Iraq Branch Office
APO, AE 09366

AMSAS
U.S. Army Sustainment Command
1 Rock Island Arsenal
Rock Island, Illinois 61299-6500

A true and correct copy of the request is attached as Exhibit 12.

35. The January 7 FOIA request was received by: the DCAA Northeastern Region on January 12, 2009; the DCAA Central Region on January 12, 2009; the DCAA Iraq Branch office on January 16, 2009; and the DCAA Headquarters office on January 22, 2009. A true and correct copy of the corresponding return receipts are attached as Exhibit 13.

36. On January 21, 2009, the DCAA Headquarters Office informed KBR by letter dated January 14, 2009, that the request would be processed in accordance with DCAA's "first in, first out" practice.

37. On February 17, 2009, KBR received a final determination letter from the DCAA Headquarters office, dated February 4, 2009, stating that the requested records are exempt from release pursuant to FOIA.

38. On April 2, 2009, KBR timely filed an administrative appeal challenging the DCAA's refusal to provide responsive records.

39. On May 1, 2009, DCAA issued a decision denying KBR's administrative appeal.

COUNT I - FAILURE TO COMPLY WITH FOIA

40. KBR incorporates each of the foregoing paragraphs of this Complaint.

41. Pursuant to FOIA, 5 U.S.C. § 552(a), KBR has a statutory right to access the requested agency records.

42. The DoD, by and through its component agencies, has failed to comply with the time limits prescribed by FOIA, 5 U.S.C. § 552(a)(6)(A)(i).

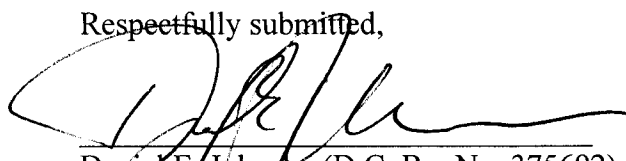
43. The DoD, by and through its component agencies, has improperly withheld agency records responsive to KBR's FOIA requests.

PRAYER FOR RELIEF

WHEREFORE, KBR respectfully requests that this Court enter a judgment for KBR and award the following relief:

- a. Enjoin DoD from withholding the requested records and order DoD to produce said records to KBR in accordance with FOIA, 5 U.S.C. § 552;
- b. Expedite the proceedings in this action;
- c. Award KBR its costs and attorney's fees reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- d. Grant KBR such other and further relief as the Court may deem just and proper.

Respectfully submitted,



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November 10, 2009

ATTORNEYS FOR PLAINTIFFS

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