

7/24/25

No. 25-1423

In The

Supreme Court of the United States

Mark Geraghty Wonders,

Petitioner

v.

Department of the Army General Counsel,

Respondent

On Petition For Writ Of Certiorari

To The United States Court Of Appeals For The District Of
Columbia Circuit

PETITION FOR WRIT OF CERTIORARI

Mark Geraghty Wonders
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Ozark, Alabama 36360
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QUESTIONS PRESENTED FOR REVIEW

Did the Agency violate the law by disregarding a judge's order and release only one of two legal reviews to the Petitioner in a security clearance hearing?

Did the Agency violate the law by misrepresenting the withheld legal review as a different Freedom of Information Act ("FOIA") document, and completely redacting it, prior to submitting it to the Petitioner?

Did the Agency violate the law by denying the Petitioner's subsequent 2012 and 2014 FOIA requests for the withheld legal review based upon claims of attorney-client privilege and FOIA protection not codified into the regulation until 2016?

LIST OF PARTIES TO THE PROCEEDING

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CORPORATE DISCLOSURE STATEMENT

A Corporate Disclosure Statement, as required by Rule 29.6, was previously submitted in Federal Court and continues to be valid. It was filed in the U. S. District Court of the District of Columbia under Case Number 1:23-cv-02770 (TNM).

LIST OF PRIOR PROCEEDINGS

Mark Geraghty Wonders v. Department of the Army Office of the General Counsel, No. 1:23-cv-02770 (TNM), U. S. District Court of the District of Columbia. Judgment entered Sept. 11, 2024.

Mark Geraghty Wonders v. Department of the Army Office of the General Counsel, No. 24-5214, U. S. Court of Appeals for the District of Columbia Circuit. Judgment entered May 13, 2025.

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CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS

Defense Office of Hearings and Appeals 25 June 2012 Decision
USA-C No. 11-07912, Administrative Judge Thomas Crean

STATEMENT OF THE BASIS FOR JURISDICTION; THE DATE OF THE JUDGMENT OR ORDER TO BE REVIEWED

Jurisdiction is routed to the Supreme Court of the United States after being heard through the U.S. District Court for the District of Columbia (Case1:23-cv-02770 (TNM)) (Judgment entered Sept. 11, 2024) and the U.S. Court of Appeals for the District of Columbia Circuit (Case No. 24-5214) (Judgment entered May 13, 2025).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED IN THE CASE

****Army Regulation 15-6 Boards, Commissions, and Committees
Procedures for Investigating Officers and Boards of Officers
Headquarters Department of the Army Washington, DC 2
October 2006**

****Army Regulation 15-6 Boards, Commissions, and Committees
Procedures for Investigating Officers and Boards of Officers
Headquarters Department of the Army Washington, DC 1 April
2016**

****5 United States Code § 552**

CONCISE STATEMENT OF THE CASE

The following statement is respectfully submitted to the COURT for consideration:

Agency Apparent Violation of Judge's Release Order

During a 2012 security clearance adjudication hearing, Defense Office of Hearings and Appeals ("DOHA") Administrative Judge Thomas Crean found in his 25 June 2012 Decision¹, that the Agency had difficulties identifying and timely releasing evidence submitted to the Defense Office of Hearings and Appeals ("DOHA") against the Petitioner. His Honor "... directed Department Counsel to coordinate with the DA CCF [Department of the Army Central Personnel Security Clearance Facility], and have them identify and provide all documents used to determine Appellant's access to classified information," noting that "...Department Counsel diligently coordinated with an attorney from the Office of the Judge Advocate General, U.S. Army, and

¹Case 1:23-cv-02770-TNM Document 14-12 Filed 03/12/24 Page 1 of 22

with attorneys from Appellant's command to have the required documents released to Appellant.” Among the selected documents were two legal reviews: the unredacted Sanders Legal Review and the redacted Ranchino Legal Review, which is the object of this writ.

In the 27 March 2012 FOIA response² to His Honor’s Order, however, the Petitioner only received the completely unredacted one-page Sanders Legal Review³, (listed as “Legal Review Findings – June 23, 2010,” and noted as “Not previously released”).

The Ranchino Legal Review⁴, however, was completely redacted and misrepresented as a one-page document,⁵ inexplicably listed as “Exhibit List No. 44 Redacted July 26, 2010

² Case 1:23-cv-02770-TNM Document 14-5 Filed 03/12/24 Page 1 of 7

³ Case 1:23-cv-02770-TNM Document 14-1 Filed 03/12/24 Page 1 of 2

⁴ Case 1:23-cv-02770-TNM Document 14-2 Filed 03/12/24 Page 1 of 2

⁵ In his declaration filed in Federal Court, Mr. Patrick stated he reviewed the Ranchino Legal Review “page-by-page and line-by-line” to confirm that there are no non-exempt portions that can be segregated from the exempt portions and produced, and that “no portions of it may be released beyond what was previously release” to [Petitioner].

Report – Undated” and “Not previously released,” along with a note stating “Please note Exhibit 44 was received by this office as a redacted document and we do not have the un-redacted original.” This despite the fact that the Agency Labor Relations Attorney confirmed via the Union that both legal reviews – in fact all submissions -- were forwarded unredacted to security officials as Agency evidence.⁶

Ranchino Legal Review Listed As “Document,” Unlike Sanders’; Only Document Redacted Post Submission

Sanders Review Shows Findings; Ranchino’s Omits Information

Interestingly, the Sanders Legal Review found: 1) the investigation “legally sufficient”; 2) that the proceedings complied with legal requirements; 3) that there was sufficient evidence to support the findings of the IO [investigating officer], and; 4) that the IO recommended further investigation. The Legal review did not recommend any specific actions be taken.

The redacted Ranchino Legal Review, of course, did not divulge any of these facts.

⁶ Case 1:23-cv-02770-TNM Document 14-3 Filed 03/12/24 Page 1 of 6

Before 2016, Regulation Did Not Address Legal Reviews As
Attorney-Client Privilege Documents; Were Routinely Released

The 2 October 2006 version of Army Regulation 15-6 Boards, Commissions, and Committees Procedures for Investigating Officers and Boards of Officers⁷ was in effect during this period. The regulation was updated on 1 April 2016⁸, some two years *after* the Petitioner filed subsequent FOIA requests for the Ranchino Legal Review.

Security Adjudicator Testifies He Reviewed Unredacted Ranchino Review; Believed *Petitioner* Filed Document As Evidence

Security Clearance Adjudicator Lonny Kessler testified that “As a matter of fact, you provided an unredacted copy of that [the Ranchino Legal Review] in your rebuttal,”⁹ adding subject matter expertise to the fact that legal review documents were freely and routinely released during this period (and prior to 2016).

⁷ Case 1:23-cv-02770-TNM Document 14-14 Filed 03/12/24 Page 1 of 4

⁸ Case 1:23-cv-02770-TNM Document 14-15 Filed 03/12/24 Page 1 of 9

⁹ Case 1:23-cv-02770-TNM Document 14-4 Filed 03/12/24 Page 1 of 11

**Petitioner's subsequent FOIA Requests Denied Under
Reasons Outlined In Yet Approved 2016 Regulation Update**

As documented in the Respondent's 28 February 2024 Declaration of John P. Patrick¹⁰ filed by Department of the Army Office of the General Counsel in United States District Court for the District of Columbia Case No. 1:23-cv-02270 (TNM), the Petitioner submitted subsequent 2012 and 2014 FOIA requests¹¹ for the withheld Ranchino Legal Review. Patrick stated he "... has served for approximately 16 years as Chief of the Ethics, Legislation, and Government Information Practices (ELGIP) Branch of the Administrative Law Division of the Office of The Judge Advocate General (OTJAG)," and was "... responsible for receiving, processing, and advising the Chief of Administrative Law Division on all Freedom of Information Act (FOIA) cases for his organization." He also stated that his office received the Petitioner's May 8, 2012, and April 30, 2014, respectively, requests, and that "... both denial letters from his office cited the

¹⁰ Case 1:23-cv-02770-TNM Document 12-5 Filed 02/29/24 Page 1 of 5

¹¹ Case 1:23-cv-02770-TNM Document 14-13 Filed 03/12/24 Page 1 of 3

attorney-client privilege of FOIA Exemption (b)(5) (5 U.S.C. 552 (b)(5) as the basis for the denials.”

Patrick also stated that “... AR 15-6 directs that the legal review will determine: (1) Whether an investigation complies with legal requirements; (2) What effects any errors would have; (3) Whether sufficient evidence supports the findings of the investigation or those substituted or added by the appointment authority, and; (4) Whether the recommendations are consistent with the findings.”

He also stated that “... he reviewed the Ranchino Legal Review “page-by-page and line-by-line” to confirm that there are no non-exempt portions that can be segregated from the exempt portions and produced, and that “no portions of it may be released beyond what was previously release” to [Petitioner].

This information, however, is the exact information the office assisted in releasing in the Sanders Legal Review.

Neither Sanders Nor Ranchino Legal Review Was Marked As Attorney-Client Privilege Or FOIA Protected Document

Patrick also stated that "... [t]hat the Army has maintained confidentiality of this July 27, 2010 attorney-client communication." However, neither the Sanders nor the Ranchino legal reviews are marked as attorney-client privilege documents or marked as FOIA protected.

Same Senior Army Lawyers Denying, Redacting Ranchino Review Approved Sanders Legal Review Release

One undeniable fact remains that a lawyer from the Office of The Judge Advocate General (OTJAG), who redacted one legal review (Ranchino) simultaneously released the other (Sanders).

Previous COURT Reviews Did Not Address the Agency's Alleged Violations of Legal Orders and FOIA Violations

Despite submission of the Petitioner's alleged regulatory violations, the Administrative Judge's order, and obvious FOIA violations, the LOWER COURTS did not opine on these matters. The record shows that the Petitioner made over two dozen requests to the Agency for these documents.¹²

¹² Case 1:23-cv-02770-TNM Document 14-16 Filed 03/12/24 Page 1 of 24

With respect, this is a grievous error which cast doubt on the lawful conduction of the Freedom of Information Act and has national consequences on its citizens and their right to information.

ARGUMENT AMPLIFYING REASONS FOR WRIT

The following argument is respectfully submitted to the COURT for consideration:

DOHA Administrative Judge Cited Relevant Due Process Violations and Security Clearance Process Abuse

It is critical to note that the Agency was cited for abusing the security clearance process, along with two Due Process violations in this matter. To wit:

“Appellant, through counsel, stated that he was not aware of all of the information the DA CCF considered in making its revocation decision.... Appellant's counsel made requests under the Freedom of Information Act for documents needed in his defense to both Appellant's command and the DA CCF. The documents they requested would provide Appellant with the basis for the DA CCF's revocation decision. The documents had either not been received, or if received, were so heavily redacted as to be of little use.”

"The second procedural issue concerns the consideration by the DA CCF of new evidence after Appellant responded to the SOR. In this case, Appellant received the SOR on October 11, 2010, and responded on December 8, 2010. The LOR was issued on June 8, 2011. On December 23, 2010, Appellant's garrison commander provided DA CCF a detailed letter stating his reasons why Appellant's security clearance should be revoked. The garrison commander raised new information in the letter which Appellant did not have the opportunity to refute or rebut."

Perhaps the most chilling violation is the finding that the Agency abused the security clearance process:

"The command attempted to terminate his government employment twice. He successfully defended himself and was awarded all pay and reinstatement at two arbitration hearings. It is also clear that after being unsuccessful with personnel

actions, the command turned to the security clearance process in an attempt to remove Appellant from government service. The security clearance process is not designed for and should not be used as a substitute or alternative to the procedure in the government personnel system."

Procedural Safeguards, FOIA Both Under Attack

Keeping His Honor's decision in mind, it is not unreasonable to find that the Agency could have intentionally violated the release order, manipulated the Ranchino Legal Review, and unlawfully withheld and denied subsequent FOIA requests in a blatant attempt to conceal wrong-doing and hide embarrassing, and possible criminal, actions. This is not the role of FOIA.

Since 1986, the *Navy v. Egan* decision has greatly restricted the tools individuals have to defend themselves against security clearance actions by eliminating any challenges to the merits of the case. Here, the Agency attempted to further erode what is left of individual's procedural Due Process. Disregarding the FOIA abuses here only weaken, and ultimately question, the process'

validity. Absolute power will corrupt this process absolutely if left unchecked.

The lower court opinions failed to address the most obvious question regarding this case: Why did the Agency release one legal review while simultaneously redact, withhold, and misidentify the other? This action is a clear violation of

A Federal Agency cannot legally withhold a Freedom of Information Act request merely because the records are embarrassing, reveal errors, or paint the agency in a bad light. While agencies sometimes abuse FOIA exemptions to hide embarrassing or politically sensitive information, the law is designed to prevent this. There were no Exemption 5 (Privileged Communication) ties to this document at that time or the other legal review would have been withheld as well.

The subsequent 2012 and 2014 requests to the Agency for the legal review were also denied, claiming attorney-client privilege and FOIA protection. Again, if true, the other documents would have been withheld.

In fact, the Army Regulation 15-6 covering legal reviews did not cite this change until 2016 – two years *after* these requests.

Agencies often abuse this exemption – which covers internal deliberative processes – to hide documents that reveal internal problems or embarrassing discussions. In this case, the legal reviews were not covered, and the release of one document while withholding the other reflects a gross abuse of the system.

The Agency and its Attorneys Violated the Law; These Actions Cannot Be Tolerated

The agency has clearly violated the Freedom of Information Act (FOIA), 5 United States Code § 552, by legally releasing one legal review while simultaneously withholding the damaging one to protect itself from embarrassment and exposed corruption. The law was not designed to protect illegal lawyers' activities by the government, and should never be condoned.

CONCLUSION

For 16 years attempts have been made in numerous venues to secure the second of two legal reviews of Army investigations filed as evidence in a security clearance action taken against the Petitioner.

After 18 months, senior Army attorneys from the Pentagon released one of the legal reviews.

Subsequent attempts to secure the other through the Freedom of Information Act ("FOIA") were denied due to "attorney-client privilege." These denials, however, were wrongly determined because the regulation in place at the time of the Petitioner's requests did not consider said legal reviews as such and were routinely released to investigated individuals.

These same Pentagon senior lawyers who previously released one legal review now argue to withhold the other in Federal District and Appeals Court, citing no explanation in said records for the inconsistency.

Under FOIA, an Agency cannot deny the release of information due to what might be embarrassing or would shed light on corruption. The evidence filed in this case confirms the Agency's wrongful actions, and the continued illegal withholding of this legal review is simply an attempt to continue this coverup.

For the foregoing reasons, the petition for a writ of certiorari should be granted, and the COURT should order the release of the second legal review in the interest of justice.

Respectfully submitted,

/s/

Mark Geraghty Wonders
Pro Se Petitioner

June 17, 2026

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
300 Constitution Avenue, N.W.
Washington, D.C. 20001**

IN THE MATTER OF:

Mark Geraghty Wonders:

1177 Mose Ware Road :

Ozark, Alabama 36360 :

Plaintiff, :

:Civil Action No. 1:23-cv-02770-TNM

:

vs. :

:

Department of the Army:

Office of the General Counsel:

104 Army Pentagon:

Washington, D.C. 20310-0104:

:

Defendant, :

**PLAINTIFF'S COMBINED OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS, OR IN THE ALTERNATIVE, MOTION
FOR SUMMARY JUDGMENT AND CROSS-MOTION**

Comes now the Plaintiff's Combined Opposition to
Defendant's Motion to Dismiss, or in the Alternative, Motion for
Summary Judgment and Cross-Motion as ORDERED by His
Honor on 17 January 2024 and in response to the Defendant's 29
April 2024 motion. The following document and sixteen (16)
Plaintiff Exhibits are respectfully submitted to the COURT:

I. Overview

Since 21 September 2010, the Plaintiff has attempted over a dozen times, and in various venues, to obtain copies of all documents submitted by the Agency to Security Clearance Adjudicators -- specifically an unredacted copy of the 27 July 2010 Ranchino Legal Review.

As the following facts and documentation will show, this legal review, claimed to be an attorney-client work product and exempt from release under FOIA, was, in fact, 1) freely submitted to Security Clearance Adjudicators; 2) submitted in an unredacted format according to the Agency Security Manager; 3) submitted with another legal review also in an unredacted format; 4) considered as part of the Agency evidence package according to the Security Clearance Adjudicator; 5) finally and inexplicably vanished in a falsified FOIA release -- only after several confusing months when the Agency had trouble, according to an Agency Administrative Judge, locating and identifying the evidence, and; 6) the Agency released a completely unredacted copy of the other submitted (Sanders)

legal review. The following are the Plaintiff's submitted facts for the record:

II. Statement of Facts

The following facts and supporting exhibits are respectfully submitted:

- a. The 23 June 2010 Sanders Legal Review (Plaintiff Exhibit ("PE") A) was freely submitted to Security Adjudication Officials.** The legal review did not have any attorney-client privilege markings and was completely unredacted. (PE A, P. 2)
- b. The 27 July 2010 Ranchino Legal Review (PE B) was freely submitted to Security Adjudication Officials, but released to the Plaintiff completely redacted.** The legal review did not have any attorney-client privilege markings labels and was completely redacted. (PE B, P.2)
- c. The 29 June 2015 Request for Information ("RFI") response to the Union (PE C) confirmed the Ranchino**

Legal Review and investigation was submitted to Security Officials completely unredacted. (PE C, P. 5)

Further, then Fort Rucker Security Manager Kathy Johnson also confirmed no documents were submitted in redacted format. (PE C,

- d. U.S. Army Central Personnel Security Clearance Facility (CCF) Security Adjudicator Lonny Kessler testified he received and considered an unredacted copy of the 27 July 2010 Ranchino Legal Review (PE D, Transcript ("Tr.") Pp. 575, 577). Further, Kessler incorrectly inferred the Plaintiff submitted the document. (PE D, Tr., P. 575)**

- e. The 27 March 2012 FOIA release (PE E) lists no Ranchino Legal Review. The U.S. Army Intelligence and Security Command (INSCOM) FOIA release (PE 2, P. 2) of the 24 February 2012 U.S. Army CCF "Certification of Documents pertaining to Wonders, Mark G.," [PE E, P. 3] through HQDA DCS G2, inexplicably stated that "...Please note Exhibit 44 [of the 68-exhibit list] was received by**

this office as a redacted document and we do not have the unredacted original.”

1. The “Redacted July 26, 2010 Report” (Exhibit 44)(PE E, P.5) is apparently the Ranchino investigation, which they claim was forwarded to them as redacted.
2. The Sanders 23 June 2010 legal review (Exhibit 17)(PE E, P. 4) is listed as a “Legal Review Finding” and not redacted.
3. The Certification of Documents (PE E, P. 3) certifies that “...the documents ... to include those provided to CCF from Mr. Wonders and his attorney are all the documents/materials CCF used to base its adjudicative determination...”
4. The certified FOIA listing **makes no mention** of the submitted Ranchino legal review.

5. Agency certification, Security Manager statement, and Security Adjudicator statements conflict and seriously damage Agency credibility regarding the 27 June 2010 Ranchino Legal Review. Further, the listing of the Sanders legal review seems to confirm security officials regularly consider said documents.

f. Agency colluded to withhold original favorable security decision from Plaintiff (PE F). On 5 October 2010 (PE F, P. 2), the CCF originally restored the Plaintiff's security clearance; however, after Fort Rucker Security Manager Johnson notified Fort Rucker senior leaders of the decision, Agency officials colluded with Security officials to rescind and recharge the Plaintiff (PE F, Pp. 3-4).

1. On 6 October 2010, Deputy to the Garrison

Commander Justin Other Mitchell e-mailed fellow Fort Rucker senior leaders recommending the decision be withheld from the Plaintiff. (PE F, P. 4)

2. Mitchell also recommended senior leaders find and delete all e-mails concerning this action from their computers. (PE F, P. 4)

g. After the Agency coordinated with CCF, the original decision was rescinded and charges refiled on 7 October 2010 (PE G).

- 1. CCF never notified Plaintiff of the rescinded favorable decision.**
- 2. Only after Plaintiff drove to CCF at Fort Meade in March 2011 to request all documents did they release the rescinded favorable decision.**

h. Fort Rucker Staff Judge Advocate Office lawyers misled Plaintiff's attorney about Agency collusion with CCF (PE H). The 3 and 5 May 2011 Fort Rucker Staff Judge Advocate (LTC Kevin Robitaille) Responses (PE H, Pp. 2-3) to Plaintiff's attorney Stuart Kirsch stating that

“...no actions were taken by any USAACE [Fort Rucker] official based on the 5 October 2010 [CCF decision] letter,” (PE H, P. 3) and that “...Your allegations that the 5 October 2010 letter demonstrates some malfeasance on the part of USAACE officials are baseless.” (PE H, P. 2)

- i. **Agency tries to discredit Plaintiff toward CCF deciding officials, labeling Plaintiff as a “threat.” (PE I)** The 13 October 2010 Fort Rucker Security Manager Johnson and Security Adjudicator Kessler e-mail string re: the Agency’s request to the U.S. Army CCF for a determination if the Plaintiff would be considered a threat under its “Insider Threat Task Force” (PE I, P. 3) similar to the 5 November 2009 terrorist mass shooting at Fort Hood (now Fort Cavazos), near Killeen, Texas, where U.S. Army Major Nidal Hasan fatally shot 13 people and injured more than 30 others. **The Agency produced no evidence to justify this inquiry.**

j. **CCF Security Adjudicator addressed Agency's "Insider Threat Task Force" assertion and abnormal number of inquiries into Plaintiff's case (PE J).** In the 22-23 January 2015 MSPB Transcript (Tr., Pp. 614-617), CCF Security Adjudicator Kessler found the "Insider Threat Task Force" unjustified (PE J, Tr. P. 616), and that Fort Rucker's abnormal number of checks on Plaintiff's adjudication status was an "infrequent thing" (PE J, P. 617) from Agencies.

k. **Agency Security Manager Johnson rebuffed two official attempts to release submitted documentation to CCF (PE K).** The Plaintiff submitted requests to Johnson via a 21 June 2011 email request which she responded to justifying withholding the information because she was unsure of the validity of the email address. (PE K, P. 2) She was also sent via USPS Certified Mail (PE K, Pp. 3-4) another official request which was never received a response. On 8 June 2011, the CCF replied to the Plaintiff's request for the evidence (PE K, P.

5), stating "if there were questions or concerns" to contact Security Manager Johnson. That same day, CCF published its decision to revoke the Plaintiff's security clearance (PE K, Pp. 6-8). This was attached to a 9 June 2011 memorandum from Ms. Johnson's supervisor (PE K, P. 9), stating, again, if I had questions to contact her.

1. Defense Office of Hearings and Appeals (DOHA)

Administrative Judge found Agency misused Security Clearance process, and Agency's problems identifying and releasing documents (PE L). In his 25 June 2012 Department of Defense (DoD) DOHA decision (USA-C No. 11-07912), **Judge Thomas Crean found the following:**

1. "There is no doubt that Appellant is a thorn in the side of the command at Fort Rucker. He has filed numerous EEO complaints. The command attempted to terminate his government employment twice. He successfully defended himself and was awarded all pay and reinstatement at two arbitration hearings. It

is also clear that after being unsuccessful with personnel actions, the command turned to the security clearance process in an attempt to remove Appellant from government service. The security clearance process is not designed for and should not be used as a substitute or alternative to the procedure in the government personnel system." (PE L, Decision, P. 20)

2. Judge Crean cited he "...held a pre-hearing telephone conference with Appellant's attorney and Department Counsel on November 1, 2011. Since the file was voluminous and it was not clear what information DA CCF considered, I directed Department Counsel to coordinate with the DA CCF, **and have them identify and provide all documents used to determine Appellant's access to classified information.**" (PE L, Decision, P. 3) NOTE: The CCF published its revocation on 8 June 2011; however, five months later, it claimed it could not identify the evidence.

3. The DA CCF was initially unable to identify the documents considered in reaching their decision concerning Appellant. Department Counsel carefully culled the DA CCF file and identified 68 documents she believed were the basis for the DA decision. The DA CCF acknowledged that Department Counsel was correct and certified the 68 documents contained the information considered in reaching the revocation decision. Department Counsel diligently coordinated with an attorney from the Office of the Judge Advocate General, U.S. Army, and with attorneys from Appellant's command to have the required documents released to Appellant." (PE L, Decision, P. 3)

4. Judge Crean also stated that "Appellant [Plaintiff], through counsel, stated that he was not aware of all of the information the DA CCF considered in making its revocation decision..., and that "...The documents they requested would provide Appellant with the basis for the DA CCF's revocation decision. The

documents had either not been received, or if received, were so heavily redacted as to be of little use.” (PE L, Decision, P. 3)

5. His Honor also cited that “The second procedural issue concerns the consideration by the DA CCF of new evidence after Appellant responded to the SOR. In this case, Appellant received the SOR on October 11, 2010, and responded on December 8, 2010. The LOR was issued on June 8, 2011.” (PE L, Decision, P. 4)
6. On December 23, 2010, Appellant's garrison commander provided DA CCF a detailed letter stating his reasons why Appellant's security clearance should be revoked. The garrison commander raised new information in the letter which Appellant did not have the opportunity to refute or rebut. The garrison commander's letter is not specifically addressed in the June 8, 2011, revocation decision. However, it would be unusual for the DA CCF to not consider a commander's recommendation. The consideration of

this information without Appellant's knowledge and without the opportunity to provide explanation is a denial of due process, fundamental fairness, and calls into question the impartiality of the process. It is recommended that the Central Adjudication Facility (CAF) not consider any information that an appellant has not been provided. Appellant must be afforded the opportunity to respond to any derogatory information." (PE L, Decision, P. 4)

m. Defendants previously denied Plaintiff FOIA for

Ranchino Legal Review (PE M). The 14 October 2012 and 14 July 2014 Department of the Army Office of the Judge Advocate General letters to the Plaintiff denying previous FOIA requests for the 27 July 2010 Ranchino Legal Review due to Attorney-Client Privilege.

1. Attorney-Client Privilege work product and legal reviews cited as FOIA protected by the Defendant

is never mentioned once in the AR 15-6 2006

version (PE N) which was in effect during this action.

2. Said agency 2012 and 2014 denials (PE P, Pp. 2-3)

apparently cite the current AR 15-6 regulation

which did not go into effect until 2016 – two years

after their denial letters.

n. The Investigation regulation in effect at the time of this action never cites legal reviews as attorney client privilege documents, nor FOIA protection (PE N).

1. The 2 October 2006 version of Army Regulation 15-6

(“AR 15-6”) Procedures for Investigating Officers and

Boards of Officers (PE N) never mentions attorney-

client work product labeling or FOIA protection.

2. In Chapter 2-3. Action of the appointing authority, the

Judge Advocate’s (JA’s) review will determine— (1)

Whether the proceedings comply with legal

requirements. (2) What effects any errors would have.

(3) Whether sufficient evidence supports the findings of the investigation or board or those substituted or added by the appointing authority (see para 3-10*b*).

(4) Whether the recommendations are consistent with the findings. (PE N, P. 3)

3. In Chapter 2-3 c. (3), (PE N, P.3), Substantial errors are (a) ...those that have a material adverse effect on an individual's substantial rights. Examples are the failure to meet requirements as to composition of the board or denial of a respondent's right to counsel; (b) When such errors can be corrected without substantial prejudice to the individual concerned, the appointing authority may return the case to the same investigating officer or board for corrective action.

Individuals or respondents who are affected by

such a return will be notified of the error, of the

proposed correction, and of their rights to

comment on both; (c) If the error cannot be

corrected, or cannot be corrected without substantial

prejudice to the individual concerned, the appointing authority may not use the affected part of that investigation or board as the basis for adverse action against that person. NOTE: This was never done as the Agency withheld the investigation until after the CCF decision.

4. In Chapter 2-3 c. (4), (PE N, P. 4), *Failure to object*, No error is substantial within the meaning of this paragraph if there is a failure to object or otherwise bring the error to the attention of the legal advisor or the president of the board at the appropriate point in the proceedings. **Accordingly, errors described in (3) above may be treated as harmless if the respondent fails to point them out.** Evidence shows that, to date, the Ranchino legal review has been withheld from the Plaintiff, and, again, any errors couldn't be pointed out due to the withholding of the documents.

5. Plaintiff was never notified of any errors, and had the investigation withheld from him until after CCF made its second security clearance determination. One of the reasons for withholding the information was due to a "criminal investigation" which was never conducted (PE P, P. 5) cited in a 7 December 2010 letter.

o. The updated AR 15-6 only begins the process of identifying and labeling legal reviews as attorney-client privilege documents protected under FOIA (PE O).

1. The 1 April 2016 Army Regulation 15-6 Procedures for Investigating Officers and Boards of Officers (PE O, P.6), Chapter 2-7 d., states that "...The legal review will be conducted in writing and included as part of the investigative or board report. The legal review should be appropriately marked as attorney work product

and/or client advice, which is legally privileged and exempt from release under FOIA. (PE O, P. 6)

p. Plaintiff made over a dozen for Ranchino Legal

Review (PE P). From 21 June 2010 to the Present, the Plaintiff has attempted to secure Ranchino Investigation Legal Review. The following is a list of attempts to secure the Ranchino information:

- 1. 13 September 2010** – FOIA request to Agency FOIA Office
- 2. 21 September 2010** – Request to Agency HR Office
- 3. 7 October 2010** – Official Request to CCF after decision was reversed
- 4. 7 December 2010** – Request to Chief of Staff (Col.) Ball; denied due to “criminal” probe
- 5. 24 February 2011** – FOIA request for Ranchino investigation now labeled as “criminal” investigation denied

6. **28 February 2011** – resulted in partial redacted release and no legal review
7. **18 May 2011** – USPS Certified Mail request to Deputy Garrison Commander Mitchell for documents
8. **23 May 2011** – USPS Certified Mail request to Garrison Commander (Col.) Muskopf for documents
9. **22 June 2011** – Plaintiff email to Security Manager Johnson for documents; Johnson denies request as she was unsure of address
10. **23 June 2011** – USPS Certified Mail request to Security Manager Johnson
11. **15 August 2011** – Deputy Garrison Commander Mitchel denies AFGE 1815 Union request for Ranchino document in part due to possible SAUSA investigation which was nonexistent
12. **1 November 2011** – After the Plaintiff attorney inquired to the DOHA Judge about the delayed release of the documents, the Agency was ordered to clarify what information DA CCF considered, and directed Department Counsel to coordinate with the DA CCF,

and have them identify and provide all documents
used to determine Appellant's access to classified
information.

13.24 February 2012 – Agency releases FOIA request
misidentifying the Ranchino legal review and stating it
was received in its redacted format, misleading the
Plaintiff and defying the DOHA Administrative Judge's
order.

14.14 October 2012 – Department of the Army denies
release of Ranchino legal review due to attorney-
client privilege and FOIA protection.

15.14 July 2014 -- Department of the Army denies
release of Ranchino legal review due to attorney-
client privilege and FOIA protection.

16.28 August 2017 – FOIA request for all evidence
against Plaintiff regarding a post bar which included
all investigations

17.2 August 2023 – Army Judge Advocate General
denies Plaintiff's 27 October 2022 FOIA request for
Ranchino legal Review

18.8 September 2023 – Army Office of General Counsel

(Defendant) upholds decision; neither entity makes mention of attorney-client privilege.

III. Summary and Conclusion

In addition to the facts listed in the overview, the following factors cripple the Agency position that this is an attorney-client work product protected under FOIA. To wit: 1) the communication was not only between the attorney and/or an agent and the client once it was released to a third-party security adjudicator as “evidence;” 2) the communication was not intended to be confidential, as not one but two legal reviews were freely forwarded, and the security adjudicator indicated it was sent by the Plaintiff, thus indirectly acknowledging no attorney-client protection; 3) the communication was not seeking legal advice, and; 4) no waiver was required regarding privilege because there was never privilege to waive, and neither legal review was marked as such.

The additional information concerning this action is chilling. It depicts an Agency willing to falsify certification of an incomplete

FOIA report. It also shows a history of withholding information from the Plaintiff and deleting emails, while simultaneously holding numerous ex parte communications regarding the overturning of the original favorable decision and its comfort in alleging the Plaintiff was some kind of threat. It shows Agency lawyers misleading the Plaintiff in stating the Agency had no role in the overturned favorable decision. The record also clearly shows a pattern of consistent rejection of over a dozen requests for the information used in the security clearance adjudication. More importantly, an Agency Defense Office of Hearing and Appeals (DOHA) Administrative Judge noted Due Process violations and the Agency's misuse of the security clearance adjudication system. (Please note that the Agency can overrule a DOHA AJ decision as non-binding.)

The Agency's denial of the release of the Ranchino Legal Review is not some staunch or heroic defense of attorney-client privilege, or even a defense of FOIA. It is purely an attempt to continue its ongoing cover-up of the collusion and corruption which occurred during this action. The 1988 *Navy v. Egan*

decision ended all review of the merits of a security action, leaving only challenges to regulatory and/or procedural Due Process errors. In this action, the Agency has apparently decided to go after these last identified Due Process "errors." Absolute power corrupts absolutely: In this case the ease in which this transpired is extremely alarming and screams out for an investigation.

In its pleading, the Defendant states that "...Thus, to avoid summary judgment here, Plaintiff must present some objective evidence that would enable the Court to find that he is entitled to relief." Also, the Defendant stated that "...In *Anderson*, the Supreme Court further explained that "the 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*, 477 U.S. at 252; see also *Laningham v. Navy*, 813 F.2d 1236, 1242 (D.C. Cir. 1987) (establishing that non-movant is "required to provide evidence that would permit a reasonable jury to find" in its favor). Finally, in its Patrick Declaration, it stated that "...Here, the Army has

established that disclosing information protected by the attorney-client privilege would inhibit government attorneys from appropriately fulfilling their duties representing the United States by providing candid legal advice for fear that their mental impressions may be disclosed to persons other than the intended recipients of the legal advice." The Plaintiff respectfully disagrees with this position and facts.

Under 5 USC 7701 (c)(2)(A), the MSPB will not sustain an agency decision if the appellant proves the affirmative defense of harmful error in the agency's application of its procedures in arriving at a security clearance determination. *Rogers v. Department of Defense*, 115 LRP 47854 , 122 MSPR 671 (MSPB 2015), citing *Schnedar v. Department of the Air Force*, 114 LRP 2688 , 120 MSPR 516 (MSPB 2014). To prove this affirmative defense, the appellant must show both that the agency committed procedural error and that the error was harmful. *Rogers v. Department of Defense*, 115 LRP 47854 , 122 MSPR 671 (MSPB 2015), citing *Parker v. Defense Logistics Agency*, 80 FMSR 7008 , 1 MSPR 505 (MSPB 1980).

For the aforementioned reasons, the Plaintiff respectfully requests that His Honor: 1) ORDER the complete and unredacted release of Ranchino legal review so a de novo review of the Plaintiff's security action be conducted, and; 2) ORDER an independent investigation into the Agency actions.

I certify that the above pleading is true and accurate to the best of my knowledge.

Date

Signature