

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

Sherman Startz,
Petitioner-Appellant,

v.

Department of the Army,
Respondent-Appellee.

No. 25-1375

**REPLY IN SUPPORT OF MOTION TO SUPPLEMENT THE RECORD OR, IN THE
ALTERNATIVE, FOR REMAND**

(Pursuant to Federal Circuit Rule 27 and FRAP 27(a)(4))

Petitioner submits this reply in further support of the motion to supplement the record or, in the alternative, for remand. The government's opposition, filed May 16, 2025, fails to address or rebut the substantial evidence of cross-agency misconduct, record suppression, and procedural irregularity that renders the current MSPB record materially incomplete.

Since the filing of that opposition, additional evidence has been received under the Freedom of Information Act (FOIA) that further supports the necessity of remand and supplementation. Specifically:

1. Department of Defense OIG Final FOIA Response (DODOIG-2025-000963, dated May 21, 2025) confirms that DOD OIG and the DoD Hotline conducted searches and located records responsive to Complaint #20230213-083550, and that such records include inter-agency deliberations and sensitive law enforcement content withheld under Exemptions (b)(5), (b)(6), (b)(7)(C), and (b)(7)(E). This confirms the existence of material records demonstrating institutional knowledge and investigative activity directly tied to the whistleblower disclosure at issue in this appeal.
2. OSC FOIA Correspondence (dated May 20, 2025) indicates that responsive records remain unprocessed and in a "Simple" track status despite significant delay. The communication threatens administrative closure if the requester does not respond, despite the legal requirement to process the request without undue delay. This pattern is consistent with a broader strategy of obstructing record development and avoiding FOIA-triggered disclosure during the pendency of this litigation.

These newly obtained records are not duplicative or speculative—they are agency admissions that relevant evidence exists and is being withheld or delayed under pretext.

This contradicts the government's assertion that the record before the MSPB was complete, and supports petitioner's contention that the adjudication was tainted by material omission.

Accordingly, Petitioner respectfully renews his request that the Court grant the motion to supplement the record or remand the case to the Merit Systems Protection Board to consider the suppressed and newly located evidence.

Exhibits Attached:

- Exhibit H: DOD OIG FOIA Final Response – Case No. DODOIG-2025-000963 (May 21, 2025)
- Exhibit I: OSC Correspondence re: FOIA-2025-186 (May 20, 2025)

Respectfully submitted,

Sherman Startz
Petitioner-Appellant
907-231-9270

Dated: May 22, 2025

EXHIBT H



OFFICE OF INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500

May 21, 2025
Ref: DODOIG-2025-000963

SENT VIA EMAIL TO: shelbystartz@outlook.com
Mr. Sherman Startz

Dear Mr. Startz:

This responds to your Freedom of Information Act (FOIA) request for confirmation of referral and copies of transmittals to the Army pertaining to complaint 20230213-083550. We received your request on May 19, 2025, and assigned it case number DODOIG-2025-000963.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

The Administrative Investigations Component and the Department of Defense Hotline conducted searches and located records responsive to your request. In order to provide you with the greatest possible access to the responsive records, your request was processed under both the Privacy Act of 1974 (5 U.S.C. § 552a) and the FOIA (5 U.S.C. § 552). However, we have determined that the records responsive to your request are exempt from the access provisions of the Privacy Act. See 32 C.F.R. Part 310. For this reason, we have processed your request under the FOIA.

Upon review, we determined that the enclosed six pages are appropriate for release in part pursuant to the following FOIA exemptions:

- (b)(5), which pertains to certain inter-and intra-agency communications protected by the deliberative process privilege. The purpose for withholding such recommendations is to encourage the free and candid exchange of opinions and advice during the decision-making process. In applying the foreseeable harm standard, we determined that disclosure of this information is likely to diminish the candor of agency deliberations in the future;
- (b)(6), which pertains to information, the release of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7)(C), which pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy; and
- (b)(7)(E), which protects sensitive law enforcement information that could reasonably be expected to risk circumvention of the law.

May 21, 2025
Ref: DODOIG-2025-000963

Our review included consideration of the foreseeable harm standard, as stated in DoDM 5400.07. Under this standard, the content of a particular record should be reviewed and a determination made as to whether the DoD Component reasonably foresees that disclosing it, given its age, content, and character, would harm an interest protected by an applicable exemption.

If you consider this an adverse determination, you may submit an appeal. Your appeal, if any, must be postmarked within 90 days of the date of this letter, clearly identify the determination that you would like to appeal, and reference to the FOIA case number above. Send your appeal via mail to the Department of Defense, Office of Inspector General, ATTN: FOIA Appellate Authority, Suite 10B24, 4800 Mark Center Drive, Alexandria, VA 22350-1500, via email to foiaappeals@dodig.mil, or via facsimile to 571-372-7498. However, please note that FOIA appeals can only examine adverse determinations concerning the FOIA process. For more information on appellate matters and administrative appeal procedures, please refer to 32 C.F.R. Sec. 286.9(e) and 286.11(a).

You may contact our FOIA Public Liaison at FOIAPublicLiaison@dodig.mil, or by calling 703-604-9785, for any further assistance with your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road—OGIS, College Park, MD 20740-6001, email at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. However, OGIS does not have the authority to mediate requests made under the Privacy Act of 1974 (request to access one's own records).

If you have any questions regarding this matter, please contact our office at 703-604-9775 or via email at foiarequests@dodig.mil.

Sincerely,



Searle Slutzkin
Division Chief
FOIA, Privacy and Civil Liberties Office

Enclosures:
As stated

From: (b)(7)(E) @dodig.mil
To: ISS; (b)(6), (b)(7)(C) @mail.mil; (b)(6), (b)(7)(C) @army.mil; (b)(6), (b)(7)(C) @army.mil;
(b)(6), (b)(7)(C) @army.mil
Subject: (U//CUI) 20230213-083550-CASE-03 P2 Info Referral - DOWNLOAD REQUIRED (b)(6), (b)(7)(C)
Date: Sunday, May 7, 2023 4:01:55 PM



CLASSIFICATION:
~~UNCLASSIFIED//CONTROLLED~~
~~UNCLASSIFIED INFORMATION~~

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New to transfer.dodig.mil? You will need to set your account password in order to view the message. Your email address is your account name. Use [Forgot Password](#) to set your password.

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~~INFORMATION~~

~~This e-mail is from the Office of the Inspector General, Department of Defense, and may contain information that is law enforcement sensitive, or "Controlled Unclassified Information" (CUI), or otherwise subject to the Privacy Act and/or legal and or other privileges that restrict release without appropriate legal authority~~

1. FROM	2. TO	3. PRIORITY	4. CASE NO.
Agency: DoD OIG	Agency: Army	<input type="checkbox"/> Priority 1 - Emergency	20230213-083550-CASE-03
	Sub-Agency: CID	<input type="checkbox"/> Priority 1	5. REFERRAL DATE
Sub-Agency: Hotline	Sub-Activity:	<input checked="" type="checkbox"/> Priority 2	5/7/2023
		<input type="checkbox"/> Priority 3	6. SUSPENSE DATE
			N/A

7. INDEPENDENCE

In all matters relating to investigative work, the investigative organization must be free, both in fact and appearance, from impairments to independence; must be organizationally independent; and must maintain an independent attitude. This standard places upon agencies; audit, inspection, and investigative organizations; and individuals assigned to conduct inquiries the responsibility for maintaining independence, so that findings, judgments, conclusions, and recommendations will be impartial and will be viewed as impartial by knowledgeable third parties. **If your organization's independence is impaired, in fact or appearance, take no investigative actions and contact the DoD Point of Contact for this Referral (Item 11 below) immediately.**

8. REFERRAL

	a. ACTION REFERRAL. The attached complaint is referred to your Component for ACTION. Conduct an inquiry and provide this office a DoD Hotline Completion Report by the suspense date in Item 6 above. If more time is needed, submit a written extension request to the DoD Hotline Point of Contact for this Referral (Item 11 below) before the suspense date stating the reason for the delay and the anticipated completion date.
X	b. INFORMATION REFERRAL. The attached complaint or disagreement is referred to your Component for INFORMATION. The DoD Component Hotline Coordinator is required to examine the referral to determine if an inquiry is warranted; however, a DoD Hotline Completion Report is not required unless your Component conducts an inquiry resulting in substantiated allegations.
	c. EVALUATE and recommend an appropriate course for the attached complaint. <input type="checkbox"/> Case accepted for Action <input type="checkbox"/> Refer this matter to the following organization(s): <input type="checkbox"/> Other. (Explain in 8d.)
	d. OTHER remarks:

9. ADDITIONAL INFORMATION

	a. SUPPLEMENT. Supplement to previous referral under this case number.
	b. IDENTITY OF THE SOURCE <input type="checkbox"/> Anonymous source. <input type="checkbox"/> The source did not consent to the disclosure of his or her identity. If you need the source's help during an investigation, contact the DoD Point of Contact for this Referral (Item 11 below).
X	c. RETALIATION COMPLAINT. This case is not being sent to you for the retaliation matter. For questions about the retaliation matter, contact the Whistleblower Reprisal Investigations Directorate.
	d. DOD SENIOR OFFICIALS. This case is NOT being sent to you for the senior official matter. In the event you develop a credible allegation of senior official misconduct, you must notify DoD OIG Directorate for Investigation of Senior Officials, IAW DoDD 5505.06.

Controlled by: DoD OIG
Controlled by: Administrative Investigations, DoD Hotline
CUI Category: PRIIG/INV/WHSTL
Distribution/Dissemination Controls: FEDCON
POC: 1-800-424-9098

~~WARNING: INSPECTOR GENERAL SENSITIVE INFORMATION - CUI. The information contained in this record and any accompanying attachments may contain sensitive information which is protected from mandatory disclosure under the Freedom of Information Act (FOIA), 5 U.S.C. 552. This record, including any attachments, is for the sole use of the intended recipient(s) and should not be released to unauthorized persons. If you are not the intended recipient please contact the sender by e-mail and destroy all copies of the original message and attachments.~~

10. REFERRAL REMARKS (Use Referral Remarks Continuation Sheet if needed)

Allegations of (b)(5) in the attached document are referred to your component for information and action deemed appropriate. Carefully review the document for allegations warranting investigation. An HCR must be submitted for substantiated allegations that result from an information case referral. Questions pertaining to the information that has been referred should be directed via your assigned Hotline Coordinator at your DoD Component.

Case-01 DCIS/closed
Case-02 WRI/closed
Case-03 CID/info
Case-04 non ref/error
Case-05 DAIG/info

11. DOD HOTLINE POINT OF CONTACT FOR THIS REFERRAL

a. NAME	b. TELEPHONE	c. E-MAIL ADDRESS
(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C) @dodig.mil

Controlled by: DoD-OIG
Controlled by: Administrative Investigations, DoD Hotline
CUI Category: PRIIG//INV//WHSTL
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POC: 1-800-424-9098

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From: (b)(7)(E) @dodig.mil
To: ISS; (b)(7)(E) @army.mil
Subject: (U//CUI) 20230213-083550-CASE-05 P3 Info Referral - DOWNLOAD REQUIRED
Date: Sunday, May 7, 2023 4:07:13 PM



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~~INFORMATION~~

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1. FROM	2. TO	3. PRIORITY	4. CASE NO.
Agency: DoD OIG Sub-Agency: Hotline	Agency: Army Sub-Agency: Army IG Sub-Activity:	___ Priority 1 - Emergency	20230213-083550-CASE-05
		___ Priority 1	5. REFERRAL DATE
		___ Priority 2	5/7/2023
		<input checked="" type="checkbox"/> Priority 3	6. SUSPENSE DATE
N/A			

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In all matters relating to investigative work, the investigative organization must be free, both in fact and appearance, from impairments to independence; must be organizationally independent; and must maintain an independent attitude. This standard places upon agencies; audit, inspection, and investigative organizations; and individuals assigned to conduct inquiries the responsibility for maintaining independence, so that findings, judgments, conclusions, and recommendations will be impartial and will be viewed as impartial by knowledgeable third parties. **If your organization's independence is impaired, in fact or appearance, take no investigative actions and contact the DoD Point of Contact for this Referral (Item 11 below) immediately.**

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CUI

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Case-01 DCIS/closed
Case-02 WRI/closed
Case-03 CID/info
Case-04 non ref/error

11. DOD HOTLINE POINT OF CONTACT FOR THIS REFERRAL

a. NAME	b. TELEPHONE	c. E-MAIL ADDRESS
(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C) @dodig.mil

Controlled by: DoD OIG
Controlled by: Administrative Investigations, DoD Hotline
CUI Category: PRIIG//INV//WHSTL
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CUI

EXHIBT I



Startz FOIA Update Letter in FOIA-2025-186

From jwheeler@osc.gov <jwheeler@osc.gov>

Date Tue 5/20/2025 1:42 PM

To shelbystartz@outlook.com <shelbystartz@outlook.com>



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218

Washington, DC 20036-4505

(202) 804-7000

May 20, 2025

Mr. Sherman Startz
550 Lebo Blvd Apt. #34
Bremerton, WA 98310

Via Email: shelbystartz@outlook.com

Re: Freedom of Information Act and/or Privacy Act Request #FOIA-2025-186

Dear Mr. Startz:

Please be advised that your Freedom of Information Act (FOIA) and/or Privacy Act request to the U.S. Office of Special Counsel (OSC) has been in the request queue pending processing. We acknowledge your request and are committed to communicating with requesters.

After an initial review when it was received, your request was placed in our "Simple" track for FOIA requests. (OSC categorizes its FOIA requests in three tracks, "simple," "complex," and "expedited." We then generally process the requests in the order in which they were received within each category).

Because your request is Simple and it has been a long time since you made the request, OSC would like to confirm that you are still seeking the records requested. If you find that you no longer need the requested records, please advise **BY REPLY EMAIL** stating that you longer wish to have your request processed. We will administratively close your request at that time.

If you remain interested in the records, please advise **BY REPLY EMAIL** stating that you wish to have your request processed. You may wish to consider narrowing the scope of your request, which will allow us to provide a response more quickly. If you wish to speak with someone directly, you may contact the FOIA Public Liaison, at 202-804-7000. **If we do not receive a response to this message by May 27th, we will administratively close your request.** Thank you for your attention to this matter. We look forward to hearing from you soon!

Thank you,

Office of the Clerk
U.S. Office of Special Counsel
1730 M. St, NW
Washington, DC 20036
foiarequest@osc.gov

Attachment below-

May 20, 2025

Processing Update Confirmation

OSC FOIA Request # FOIA-2025-186

- *I, Sherman Startz, would like OSC to continue processing my FOIA request (#FOIA-2025-186) in its order in the queue. I understand that my request may still take some time to complete.*
- *I, Sherman Startz, give my consent to OSC to withdraw my FOIA request (#FOIA-2025-186). I understand that the requested records will not be processed.*
- *I, Sherman Startz, would like to narrow the scope of my initial FOIA request (#FOIA-2025-186) currently pending in OSC's queue. Please consider the narrowed scope as follows:*

Signature

Date

**You may reply to this email, fax the signed form to (202) 254-5151 or scan and email it to FOIArequest@osc.gov.
Please keep a copy for your records.**



Startz Referral of Records Consent in FOIA-2025-186

From jwheeler@osc.gov <jwheeler@osc.gov>

Date Fri 5/9/2025 2:09 PM

To shelbystartz@outlook.com <shelbystartz@outlook.com>



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218

Washington, DC 20036-4505

(202) 804-7000

May 9, 2025

Mr. Sherman Startz
550 Lebo Blvd Apt. #34
Bremerton, WA 98310

Via Web Download: shelbystartz@outlook.com

Re: Freedom of Information Act and/or Privacy Act Request (#FOIA-2025-186)

Dear Mr. Startz:

I am writing regarding your Freedom of Information Act (FOIA)/Privacy Act request for records. In reviewing your request, the U.S. Office of Special Counsel (OSC) may identify documents that originated with another federal agency. If you would like these records processed as part of your FOIA request, OSC would have to send them to that agency for that agency's review and direct response to you. Pursuant to the Privacy Act of 1974, 5 U.S.C. § 552a, OSC requires your written consent in order to send the records for processing. Accordingly, please review the consent options attached to this letter and indicate your preference. If you provide consent, OSC will refer the records for processing. If you do not provide consent or if we do not hear from you by **May 16th**, OSC will construe that to mean that you do not want the records processed as part of your FOIA request.

If you have any questions, would otherwise like to discuss your request, or you require dispute resolution services, please feel free to contact Barbara Wheeler Jones, OSC's Chief FOIA Officer and FOIA Public Liaison, at bwheeler@osc.gov or at (202) 804-7000. Please reference the above-noted tracking number if you call or write. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer.

With kind regards,

/s/

Jennifer Wheeler

FOIA Team
Office of the Clerk

See attachment below-

You can reach OGIS by mail at Office of Government Information Services (OGIS), National Archives and Records Administration, 8601 Adelphi Road, Room 2510, College Park, MD, 20740-6001; by email at ogis@nara.gov; by fax at 202-741-5769; or by telephone at 202-741-5770 or toll-free at 1-877-684-6448.

Referral of Records Consent

- *I, Sherman Startz, give my consent to OSC to refer records that originated with another federal agency, including any records that I submitted to OSC, for purposes of processing FOIA request no. FOIA-2025-186. (Please circle your selection.)*
- *I, Sherman Startz, do not give my consent to OSC to refer records responsive in this FOIA request FOIA-2025-186. I understand that these records will not be processed as part of my FOIA request because I have not provided consent for their referral. (Please circle your selection.)*

Signature

Date

Please mail the signed consent to the Office of General Counsel at the address at the top of this letter by **May 16, 2025**. You may also fax the signed form to (202) 254-3711, reply or scan and email it to FOIArequest@osc.gov. Please keep a copy for your records.

Referral of Records Consent

- *I, Sherman Startz, give my consent to OSC to refer records that originated with another federal agency, including any records that I submitted to OSC, for purposes of processing FOIA request no. FOIA-2025-186. (Please circle your selection.)*

- 

Sherman Startz

5-9-2025

Signature

Date

Please mail the signed consent to the Office of General Counsel at the address at the top of this letter by **May 16, 2025**. You may also fax the signed form to (202) 254-3711, reply or scan and email it to FOIArequest@osc.gov. Please keep a copy for your records.