

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.

KEVIN D. EVANS,

Plaintiff,

v.

CENTRAL INTELLIGENCE AGENCY,

Defendant.

**COMPLAINT PURSUANT TO
FREEDOM OF INFORMATION ACT**

KEVIN D. EVANS ("EVANS") brings this action against the UNITED STATES CENTRAL INTELLIGENCE AGENCY ("CIA") for the improper refusal by the CIA to produce photographs requested by EVANS pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 & 17 C.F.R. § 200.80.

THE PARTIES

1. EVANS is a citizen of the United States and is a resident of the State of Colorado. EVANS is located at 6400 S. Fiddlers Green Circle, Suite 1820, Greenwood Village, Colorado 80111.

2. The CIA is a United States agency located in Washington, D.C.

Complaint

JURISDICTION AND VENUE

3. The Court has jurisdiction over this case, and venue is proper in this District, pursuant to 5 U.S.C. § 552(a)(4)(B).

CIA IS IN VIOLATION OF FOIA

4. On May 11, 2011, EVANS served his FOIA request (the "Request") on the CIA in accordance with the procedures set forth in 17 C.F.R § 200.80(d). A copy of the Request is attached hereto as Exhibit 1. The Request stated in part:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, I am requesting copies of the photographs of Osama Bin Laden's deceased body taken during the raid in Abbottabad, Pakistan.

* * *

If you deny all or any part of this request, please cite each specific exemption you think justifies your refusal to release the information and notify me of appeal procedures under the law.

5. On May 23, 2011, Susan Viscuso, CIA Information and Privacy Coordinator, responded by letter to EVANS, stating in part:

We accept your request and will process it in accordance with FOIA, . . . and will search for responsive records existing through the date of this acceptance letter. As a matter of administrative discretion, and in accordance with our regulations, the Agency has waived the fees for this request.

The large number of FOIA requests CIA receives has created unavoidable delays making it unlikely that we can respond within the 20 working days the FOIA requires. You have the right to consider our honest appraisal as a denial of your request and you may appeal to the Agency Release Panel. A more practical approach would permit us to continue processing your request and respond to you as soon as we can.

. . .

A copy of Ms. Viscuso's May 23, 2011 letter is attached hereto as Exhibit 2.

6. Because he had not heard from the CIA by June 28, 2011, EVANS sent Ms. Viscuso the letter attached hereto as Exhibit 3.

7. Ms. Viscuso responded by letter dated July 8, 2011 (Exhibit 4 hereto), stating:

We can appreciate your concern with not having received a final response to your request. It is the overwhelming number of requests and their complexity that causes delays in our responses. Our policy is to handle each request on a first-in, first-out basis, which we believe is the most equitable for all requesters. Again, we regret that we are unable to give you a definite date for completion and ask for your continued cooperation.

8. The CIA's response to the Request is now 112 days past due.

9. While EVANS was and is willing to discuss with the CIA any concerns the CIA might have to production of particular photographs or portions thereof (e.g., to the extent that such photographs might show sensitive military equipment, EVANS would accept a redacted version of such photographs), the CIA has never substantively responded to the Request. Accordingly, EVANS constructively has exhausted his administrative remedies, entitling him to bring this action.

RELIEF REQUESTED

The CIA improperly withholds and refuses to produce information responsive to the Request. Accordingly, EVANS respectfully requests that the Court enter judgment in his favor and:

- A. Enjoin the CIA from withholding and refusing to produce photographs of Osama Bin Laden's deceased body taken during the raid in Abbottabad, Pakistan; and
- B. Award EVANS his attorneys' fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E)(i).

Dated: September 28, 2011.

s/ Kevin D. Evans
By: _____

Kevin D. Evans
6400 South Fiddlers Green Circle
Suite 1820
Denver, Colorado 80111
Telephone: 720.200.0676
Facsimile: 720.200.0679
Email: kdevans@s-elaw.com

Exhibit 1

Complaint Pursuant to Freedom of Information Act

Kevin D. Evans v. Central Intelligence Agency

OFFICE OF KEVIN D. EVANS
6400 S. Fiddlers Green Circle
Suite 1820
Greenwood Village, Colorado 80111

Kevin D. Evans: (720) 200-0613
kdevans@s-elaw.com

May 11, 2011

VIA FACSIMILE (703.613.3007)
and UNITED STATES MAIL
Information and Privacy Coordinator
Central Intelligence Agency
Washington, D.C. 20505

Re: FOIA Request

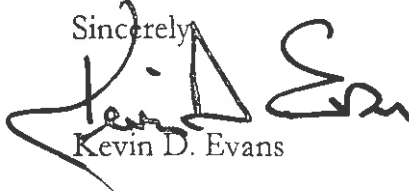
Dear Coordinator:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, I am requesting copies of the photographs of Osama Bin Laden's deceased body taken during the raid in Abbottabad, Pakistan.

If there are any fees associated with this request, please notify me before processing if the amount exceeds \$100.

If you deny all or any part of this request, please cite each specific exemption you think justifies your refusal to release the information and notify me of appeal procedures available under the law.

If you have any questions regarding this FOIA request, please contact me at the number above.

Sincerely,

Kevin D. Evans

TRANSMISSION VERIFICATION REPORT

TIME : 05/11/2011 14:55
NAME : STEESE & EVANS, P.C.
FAX : 720-200-0679
TEL : 720-200-0676
SER.# : BR0G3J577490

DATE, TIME	05/11 14:55
FAX NO./NAME	17036133007
DURATION	00:00:43
PAGE(S)	02
RESULT	OK
MODE	STANDARD ECM

Exhibit 2

Complaint Pursuant to Freedom of Information Act

Kevin D. Evans v. Central Intelligence Agency

Central Intelligence Agency



Washington, D.C. 20505

23 May 2011

Mr. Kevin D. Evans
STEESE-EVANS-FRANKEL, P.C.
6400 South Fiddlers Green Circle, Suite 1820
Denver, CO 80111

Reference: F-2011-01393

Dear Mr. Evans:

On 12 May 2011, the office of the Information and Privacy Coordinator received your 11 May 2011 Freedom of Information Act (FOIA) request, made on behalf of STEESE-EVANS-FRANKEL, P.C., for **“copies of the photographs of Osama Bin Laden’s deceased body during the raid in Abbottabad, Pakistan.”** We have assigned your request the reference number above. Please use this number when corresponding so that we can identify it easily.

We accept your request and will process it in accordance with the FOIA, 5 U.S.C. § 552, as amended, and the CIA Information Act, 50 U.S.C. § 431, as amended, and will search for responsive records existing through the date of this acceptance letter. As a matter of administrative discretion, and in accordance with our regulations, the Agency has waived the fees for this request.

The large number of FOIA requests CIA receives has created unavoidable delays making it unlikely that we can respond within the 20 working days the FOIA requires. You have the right to consider our honest appraisal as a denial of your request and you may appeal to the Agency Release Panel. A more practical approach would permit us to continue processing your request and respond to you as soon as we can. You will retain your appeal rights and, once you receive the results of our search, can appeal at that time if you wish. We will proceed on that basis unless you object.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan Viscuso", with a long horizontal flourish extending to the right.

Susan Viscuso
Information and Privacy Coordinator

Exhibit 3

Complaint Pursuant to Freedom of Information Act

Kevin D. Evans v. Central Intelligence Agency

OFFICE OF KEVIN D. EVANS
6400 S. Fiddlers Green Circle
Suite 1820
Greenwood Village, Colorado 80111

Kevin D. Evans: (720) 200-0613
kdevans@s-elaw.com

June 28, 2011

VIA FACSIMILE (703.613.3007)
and UNITED STATES MAIL

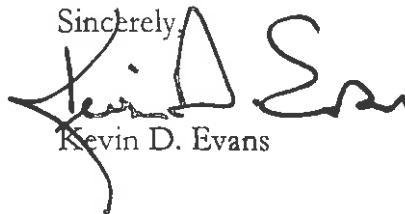
Ms. Susan Viscuso
Information and Privacy Coordinator
Central Intelligence Agency
Washington, D.C. 20505

Re: FOIA Request
Reference F-2011-01393

Dear Ms. Viscuso:

On May 11, 2011 I served a FOIA Request on the Central Intelligence Agency ("CIA"), the content of which is repeated here: "Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, I am requesting copies of the photographs of Osama Bin Laden's deceased body taken during the raid in Abbottabad, Pakistan." By letter dated May 23, 2011, you indicated that the CIA had received my FOIA Request but needed additional time to process it and respond thereto. I would appreciate it if you would apprise me when I can expect to receive a response to my FOIA Request, which now has been pending for 48 days.

Sincerely,



Kevin D. Evans

STEESE ♦ EVANS ♦ FRANKEL, P.C.

FAX TO: Susan Viscuso
CIA Information and Privacy Coordinator

FROM: Kevin D. Evans

DATE: June 28, 2011

FAX NUMBER: 703.613.3007

NUMBER OF PAGES: 2 (with cover page)

The attached information is **CONFIDENTIAL** and is intended only for use of the addressee(s) named above. If the reader of this message is not the intended recipient(s) or the employee or agent responsible for delivering the message to the intended recipient(s), please note that any dissemination, distribution or copying of this communication is strictly prohibited. Anyone who receives this communication in error should notify us immediately by telephone and return the original message to us at the above address via the U.S. Mail.

TRANSMISSION VERIFICATION REPORT

TIME : 06/28/2011 09:04
NAME : STEESE & EVANS, P.C.
FAX : 720-200-0679
TEL : 720-200-0676
SER.# : BROG3J577490

DATE, TIME	06/28 09:04
FAX NO./NAME	17036133007
DURATION	00:00:31
PAGE(S)	02
RESULT	OK
MODE	STANDARD ECM

Exhibit 4

Complaint Pursuant to Freedom of Information Act

Kevin D. Evans v. Central Intelligence Agency

Central Intelligence Agency



Washington, D.C. 20505

8 July 2011

Mr. Kevin D. Evans
STEESE-EVANS-FRANKEL, P.C.
6400 South Fiddlers Green Circle
Suite 1820
Denver, CO 80111

Reference: F-2011-01393

Dear Mr. Evans:

On 28 June 2011, the office of the Information and Privacy Coordinator received your 28 June 2011 Freedom of Information Act (FOIA) request, made on behalf of STEESE-EVANS-FRANKEL, P.C., for status of your 11 May 2011 FOIA request for **“copies of the photographs of Osama Bin Laden’s deceased body taken during the raid in Abbottabad Pakistan.”**

We can appreciate your concern with not having received a final response to your request. It is the overwhelming number of requests and their complexity that causes delays in our responses. Our policy is to handle each on a first-in, first-out basis, which we believe is the most equitable for all requesters. Again, we regret that we are unable to give you a definite date for completion and ask for your continued cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan Viscuso", with a long horizontal flourish extending to the right.

Susan Viscuso
Information and Privacy Coordinator

Court Name: U.S. District Court, Colorado
Division: 1
Receipt Number: COX041713
Cashier ID: sg
Transaction Date: 09/28/2011
Payer Name: CHUCK STEESE

CIVIL FILING FEE
For: CHUCK STEESE
Amount: \$350.00

CREDIT CARD
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

11-CV-02544

A fee of \$45.00 will be assessed on any returned check.

JS 44 (Rev 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

KEVIN D. EVANS

(b) County of Residence of First Listed Plaintiff Arapahoe
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
6400 S. Fiddlers Green Circle
Suite 1820, Denver, CO 80016 720.201.0613

DEFENDANTS

CENTRAL INTELLIGENCE AGENCY

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input checked="" type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

5 U.S.C. § 552 et seq.

Brief description of cause:

freedom of Information Act request for photographs

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$
fees and costs

CHECK YES only if demanded in Complaint:
JURY DEMAND: Yes No

DATE

09.28.2011

SIGNATURE OF ATTORNEY OF RECORD

Kevin D. Evans

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG JUDGE _____