

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

GRANT F. SMITH,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 14-1611 (TSC)
)	
DEPARTMENT OF DEFENSE,)	
)	
Defendant.)	
)	

**DEFENDANT’S REPLY IN SUPPORT OF ITS MOTION FOR MODIFICATION OF
SCHEDULING ORDER AND RESPONSE TO PLAINTIFF’S MOTION FOR
IN CAMERA REVIEW AND RELEASE**

Defendant, Department of Defense (“Defendant” or DoD”), respectfully files this reply to Plaintiff’s Response to Defendant’s Motion for Modification of Scheduling Order and Motion for In Camera Review and Release filed on December 26, 2014. *See* ECF No. 16. Defendant submits the following:

1. While the Defendant does not oppose Plaintiff’s request for an *in camera* review of the document, the review would appear to be premature as the information contained in the report is subject to 10 U.S.C. § 130c. Plaintiff’s response questions whether 10 U.S.C. § 130c is applicable to the report (Pl’s Resp. at ¶¶ 5, 8, 9). DoD confirms that the information in the report was provided by the Israel government. *See e.g., Nat’l Institute of Military Justice v. U.S. Dep’t of Defense*, 404 F.Supp.2d 325, 336 (D.D.C. 2005). Plaintiff also questions the applicability of 10 U.S.C. § 130c because the report was prepared by the Institute for Defense Analyses (Pl’s Resp. at ¶ 9). Though the report was prepared by the Institute for Defense Analyses, it was prepared for the Office of the Under Secretary of

Defense, DoD, and the report remains in the custody and control of DoD. Finally, to Plaintiff's point that the review by Israel is optional rather than mandatory (Pl's Resp. at ¶ 9), though DoD concedes that the statute is permissive in that it states "may",¹ diplomatic relations dictate that DoD seeks Israel's review. Thus, respectfully, if the Court were to order release of the information in question before Israel completes its review, DoD would be placed in a difficult position of honoring both the authority of this Court and the sanctity of its diplomatic agreements.

2. DoD confirms that the authors of the report subject to this FOIA request, "Critical Technology Assessment in Israel and NATO Nations," are Edwin Townsley and Clarence Robinson. *See* Pl's Resp. at ¶ 7.
3. While DoD admits to delays with respect to Plaintiff's FOIA request, the delays were not made in bad faith. As stated in DoD's Motion, DoD is working with Israel to process the report and Israel has stated that its review should be complete by January 16, 2015. Def's Mot. at ¶ 3. Again, DoD regrets requesting the Court to modify its scheduling order, but does so because of the extraordinary circumstances present in this case.

WHEREFORE, DoD, respectfully requests this Court to grant its Motion for Modification of Scheduling Order.

Dated: January 5, 2015

Respectfully submitted,

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¹ 10 U.S.C. § 130c(d)(1), (d)(3).

By: _____/s/_____
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