



February 27, 2020

U.S. Army Freedom of Information Act Office
Records Management and Declassification Agency
9301 Chapek Rd. Bldg 1458
Fort Belvoir, VA 22060-5605

RE: FOIA Request to the Department of the Army Regarding Information about the Recent Army Decision Ordering the Company, Shields of Strength, to Remove All Biblical References from the Products It Offers to Soldiers.

To Whom it May Concern:

This letter is a request ("Request") in accordance with the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the corresponding department/agency implementing regulations.

The Request is made by the American Center for Law and Justice ("ACLJ")¹ on behalf of its members. The ACLJ respectfully seeks expedited processing and a waiver of fees related to this Request as set forth in an accompanying memorandum.

To summarize, this Request seeks records pertaining to information exchanged between current and/or former Department of the Army ("DA") officials and employees, current and former United States Army ("US Army") officials and employees, current and former Army Trademark Licensing Program officials and employees, current and former Army Judge Advocate General's (JAG) Corps officials and employees, current and former Army Chaplain Corps ("DACH") officials and employees, current and former Army and Air Force Exchange Service ("Exchange") Office of General Counsel, Compliance Division, officials and employees, and/or any other current and/or former Government official(s) and employee(s) concerning the Army's Decision ordering the company, Shields of Strength, to remove all biblical references from the products it offers to soldiers.

¹The ACLJ is a not-for-profit 501(c)(3) organization dedicated to the defense of constitutional liberties secured by law. The ACLJ regularly monitors governmental activity and works to inform the public of such affairs. The ACLJ and its global affiliated organizations are committed to ensuring governmental accountability and the ongoing viability of freedom and liberty in the United States and around the world.

Background

This Background provides certain relevant contextual information, to the extent known, that contributes to the reasonableness of the records sought, as contemplated by DOD FOIA regulation 32 C.F.R. 286.5(a) as well as Army Regulation 25-55(1-507).²

A brief background of the company, Shields of Strength, follows.

It was December 1998 that the first Shields of Strength were placed in a store. They sold well enough that by 2001, stores across the country were carrying them and on one fateful day they caught the eye of Colonel David Dodd. . . . When he contacted Kenny and Tammie about buying some in bulk they graciously gave Colonel Dodd 500 Shields for his combat-ready troops.

Born that day was a lifelong friendship and relationship between Shields of Strength and the military. The most popular “tag” for most soldiers was emblazoned with the U.S. Flag and engraved with Joshua 1:9. It’s this “tag” that made its way to a young Army Captain named Russell Rippetoe. . . .

In 2003, while serving in Iraq, Captain Rippetoe was killed in action while wearing a Shield of Strength. He was the first American casualty of Operation Iraqi Freedom to be laid to rest at Arlington National Cemetery.

The following month, during the 2003 Memorial Day Ceremony at Arlington National Cemetery, President Bush referenced the dog tag Captain Rippetoe was wearing and read the scripture engraved on it. It was a surreal moment for Kenny and his family and they had no idea and no way to prepare for the media storm to come. . . .

One call Kenny didn’t miss, however, was from Joe Rippetoe, Russell Rippetoe’s father. Joe, who like his son was a veteran of war, was so taken by the Shield of Strength his son had worn that he wanted to make sure that each of the other soldiers from Russell’s unit had one. . . .

Since that time Kenny and Tammie have made over four million of the dog tags and have given hundreds of thousands of them to the U.S. military as well as other ministries. In fact, Stephen Mansfield wrote in his book, *Faith of the American Soldier*, “aside from the official insignias they wear, [the SOS dogtag] is the emblem most often carried by members of the military in Afghanistan and Iraq.”³

² *The Department of the Army Freedom of Information Act Program*, DEP’T OF THE ARMY, (Nov. 1, 1997) https://www.rmda.army.mil/foia/docs/r25_55.pdf.

³ *About Us*, SHIELDS OF STRENGTH, <https://www.shieldsofstrength.com/about-us/> (last visited Feb. 4, 2020).

According to reports, in 2012, the Army granted Shields of Strength a license to feature Army trademarks on its products.⁴

On or about July 8, 2019, the Military Religious Freedom Foundation (“MRFF”), sent a letter to the Director of the Army Trademark Licensing Program, demanding, among other things, that the Army “immediately notify this ‘Shields of Strength’ organization to cease and desist from using the official Army logo on its Christian religious proselytizing sales products. . . .”⁵

Also according to reports, on or about August 12, 2019, Paul Jensen, Director of the Army Trademark Licensing Program, sent an email (with the subject line, “Negative Press”) to Mr. Vaughan, founder and president of Shields of Strength, writing: “You are not authorized to put Biblical verses on your Army products. For example Joshua 1:9. Please remove ALL biblical references from all of your Army products.”⁶

Reports indicate that, in response to the August 12, 2019 Army Trademark Licensing Program email to Mr. Vaughan, Shields of Strength could no longer put Biblical verses on its Army products.

To the best of the Requestor’s knowledge and belief, this Request seeks records of which the Department of the Army (DA), the United States Army (US Army), the Army Trademark Licensing Program, the U.S. Army Judge Advocate General’s (JAG) Corps, the U.S. Army Chaplain Corps (DACH), and the Army and Air Force Exchange Service (Exchange) Office of General Counsel, Compliance Division, would most likely be custodians.

Records Requested

For purposes of this Request, the term “record” is “any information” that qualifies under 5 U.S.C. § 552(f), and includes, but is not limited to, the original or any full, complete and unedited copy of any log, chart, list, memorandum, note, correspondence, writing of any kind, policy, procedure, guideline, agenda, handout, report, transcript, set of minutes or notes, video, photo, audio recordings, or other material. The term “record” also includes, but is not limited to, all relevant information created, stored, received or delivered in any electronic or digital format, e.g., electronic mail, instant messaging or Facebook Messenger, iMessage, text messages or any other means of communication, and any information generated, sent, received, reviewed, stored or located on a government *or private* account or server, consistent with the holdings of *Competitive Enterprise Institute v. Office of Science and Technology Policy*, No. 15-5128 (D.C. Cir. July 5, 2016) (rejecting agency argument that emails on private email account were not under agency control, and holding, “If a department head can deprive the citizens of their right to know what his

⁴ Letter from Michael Berry, Chief of Staff, Director of Military Affairs, First Liberty, to Paul Jensen, Director, Army Trademark Licensing Program (Dec. 3, 2019) (available at <https://firstliberty.org/wp-content/uploads/2019/12/Letter-to-Army-Trademark-Licensing-Office-FINAL.pdf>).

⁵ Letter from Michael L. Weinstein, Founder and President, Military Religious Freedom Foundation, to Director, Army Trademark Licensing Program (July 8, 2019) (available at https://www.mrff.org/press-releases/2019/Shields_of_Strength_Army.pdf).

⁶ See Letter from Michael Berry to Paul Jensen, *supra* note 4.

department is up to by the simple expedient of maintaining his departmental emails on an account in another domain, that purpose is hardly served.”).

For purposes of this Request, the term “briefing” includes, but is not limited to, any meeting, teleconference, electronic communication, or other means of gathering or communicating by which information was conveyed to one or more person(s). For purposes of this Request, all sources, documents, letters, reports, briefings, articles and press releases cited in this Request are incorporated by reference as if fully set forth herein.

For purposes of this Request, the term “DA official” includes, but is not limited to, any person who is (1) employed by or on behalf of the DA or the US Army in any capacity; (2) contracted for services by or on behalf of the DA or the US Army in any capacity; or (3) appointed by the President of the United States to serve in any capacity at the DA or the US Army, all without regard to the specific component or office in which that person serves.

For purposes of this Request, and unless otherwise indicated, the timeframe of records requested herein is January 1, 2017, to January 31, 2020.

Pursuant to FOIA, 5 U.S.C. § 552, ACLJ hereby requests that the DA/US Army respond to the following numbered requests and produce all responsive records:

1. All records, communications or briefings created, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any DA or US Army official regarding the company, Shields of Strength, including any such records sent to and/or received from the Army Trademark Licensing Program Office and/or any government official outside of DA, as referenced in the Background section above, including but not limited to any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, DA/US Army electronic mail or message accounts, non-DA/US Army electronic mail or message accounts, personal electronic mail or message accounts, DA/US Army servers, non-DA/US Army servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.
2. All records, communications or briefings created, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any DA/US Army official regarding any employee(s) or former employee(s) of Shields of Strength, including any such records sent to and/or received from the Army Trademark Licensing Program Office and/or any government official outside of DA/US Army, as referenced in the Background section above, including but not limited to any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, DA/US Army electronic mail or message accounts, non-DA/US Army electronic mail or message accounts, personal electronic mail or message accounts, DA/US Army servers, non-

DA/US Army servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

3. All records, communications or briefings created, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any DA/US Army official regarding Kenny Vaughan, founder and president of Shields of Strength, and/or his wife, Tammie Vaughan, including any such records sent to and/or received from the Army Trademark Licensing Program Office and/or any government official outside of DA/US Army, as referenced in the Background section above, including but not limited to any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, DA/US Army electronic mail or message accounts, non-DA/US Army electronic mail or message accounts, personal electronic mail or message accounts, DA/US Army servers, non-DA/US Army servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.
4. All of the Army Trademark Licensing Program Office emails pertaining to Shields of Strength from January 1, 2017, to January 31, 2020.
5. All of the Army and Air Force Exchange Service (Exchange) Office of General Counsel, Compliance Division,⁷ emails pertaining to Shields of Strength from January 1, 2017, to January 31, 2020.
6. A list of all firms licensed to use the Army emblem on products they produce from January 1, 2017, to January 31, 2020.

CONCLUSION

If this Request is denied in whole or in part, the ACLJ requests that, within the time requirements imposed by FOIA, you support all denials by reference to specific FOIA exemptions and provide any judicially required explanatory information, including but not limited to, a *Vaughn* Index.

Moreover, as explained in an accompanying memorandum, the ACLJ is entitled to a waiver of all fees associated with it. The ACLJ reserves the right to appeal a decision to withhold any information sought by this request and/or to deny the separate application for expedited processing and waiver of fees.

⁷ *Freedom of Information Act*, EXCHANGE, <https://www.aafes.com/about-exchange/public-affairs/FOIA/> (last visited Feb. 4, 2020).

Thank you for your prompt consideration of this Request. Please furnish all applicable records and direct any responses to:

Jordan Sekulow, Executive Director
Abigail Southerland, Senior Litigation Counsel
Benjamin P. Sisney, Senior Litigation Counsel
American Center for Law and Justice



I affirm that the foregoing request and attached documentation are true and correct to the best of my knowledge and belief.

Respectfully submitted,

Handwritten signature of Jordan Sekulow in black ink.

Jordan Sekulow
Executive Director

Handwritten signature of Abigail Southerland in black ink.

Abigail Southerland
Senior Litigation Counsel

Handwritten signature of Benjamin P. Sisney in black ink.

Benjamin P. Sisney
Senior Litigation Counsel