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Appeal vs. Army carries legal threat

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MIDDLETOWN - Attorney General Richard Blumenthal has set in motion a fight against the U.S. Judge Advocate General's refusal to release a legal opinion saying where an Army facility must be built.

The question about how specific the Base Realignment and Closure Act of 2005 is on whether the facility should be in Middletown or nearby has been on the minds of local and state politicians as well as regular folks for months. Over and over again in public meetings and letters to Army officials, the question of how the language should be translated has been asked.

The law states that the facility should be built in Middletown "if a suitable location" can be found.

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Blumenthal, Secretary of the State Susan Bysiewicz, U.S. Rep. Rosa DeLauro, D-3rd District, and others have suggested the "if" in the wording makes it plausible that the facility could be put elsewhere.

Repeatedly they have requested a copy of the legal opinion that the Army has said indicates the facility must be built in Middletown.

In response, Army officials have said the opinion is off limits. Most recently - on Oct. 8 - Lt. Col. Christian Gifford, acting chief of the Administrative Law Division of the Army, sent Blumenthal a letter in response to the attorney general's September Freedom of Information request that the Army release the opinion.

"The opinion is not releasable to you in accordance with attorney-client privilege and the deliberative process privilege of FOIA Exemption 5," Gifford stated in the letter. "The attorney-client privilege protects internal agency communications such as documents, advisory opinions and recommendations and deliberations comprising part of a process by which government decisions and policies are formulated."

Friday, Blumenthal, in turn, filed a formal appeal of the refusal to Secretary of the Army Pete Geren.

The attorney general maintains that the BRAC Act states that the Army training facility is to be built in Middletown, but only "if a suitable site can be obtained."

"Despite this BRAC language," Blumenthal said in a statement, "Army Corps of Engineers representatives publicly and repeatedly claimed that the Judge Advocate General determined in a May 21, 2007, letter that this language means that the facility 'must' be built in Middletown, regardless of whether a suitable site is available."

That May 2007 letter did not give Blumenthal what he wanted. He wants the actual legal opinion on which the letter was based.

He rejects the idea that the opinion is protected by attorney-client privilege and urged "immediate release of the opinion because time is of the essence as the Army Corps of Engineers has said it plans to select a preferred site for the facility by Oct. 31."

"The Army Corps of Engineers has also stated that it is selecting the site through an open and transparent process that includes substantial public input," Blumenthal wrote in his letter to Geren. "But that input is meaningless if the public cannot see and comment on the views of the decision-makers about the applicable law which will guide the decision."

In a phone call Monday, the attorney general said the Army's position is unclear. At times its representatives say the facility must be in Middletown, he said. At others, they say it can be up to 20 miles away.

"We're somewhat mystified by the Army's position, because all we're really seeking here is another explanation or theory," Blumenthal said. "Sometimes they refer to the mandate that it has to be 20 miles away. All we want to know is what's their position."

If Geren does not agree to release the opinion, a possible next step in the fight could be a court battle, Blumenthal said. "This appeal could well substantially impact and maybe even determine the outcome of the training facility location."

The center is a response to the BRAC Act, which mandates smaller individual reserve bases be closed and replaced with larger combined locations where reservists train on alternate weekends.

According to corps officials, the center will resemble a college campus with training, including firearm training, completed on computers and in classrooms. Outdoor drills will be done elsewhere. The Middletown facility will have storage space, but it will contain firearms. The facility will have the capacity for 655 reservists, but will house a full-time crew of 70 workers.

According to the corps' schedule, it will announce in late October or early November which of four sites in town it prefers for the facility. Of the four, officials and residents of Middletown have endorsed a Smith Street park - Cucia Park - and vocally opposed a Boardman Lane property with an active farm and two species of concern: sedge grass and the New England box turtle.

"We understand that Middletown officials and the community have indicated their preference for the park," Blumenthal said. "If it is somewhere else in Middletown, like Boardman Lane, our position would probably be, outside of Middletown."

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