

The National Security Archive

The George Washington University
Gelman Library, Suite 701
2130 H Street, NW
Washington, DC 20037

Phone: 202/994-7000
Fax: 202/994-7005
nsarchiv@gwu.edu
<http://www.nsarchive.org>

8 November 2006

Mr. James Hogan
Chief, Appeals Policy and Litigation Branch
Office of Freedom of Information
1155 Defense Pentagon
Washington, D.C. 20301-1155

Re: 00-F-0583

Dear Mr. Hogan:

This is an administrative appeal under the Freedom of Information Act. Through a letter dated 17 October 2006, the U.S. Air Force released a number of excised documents that your agency, among others, had reviewed. I ask for further review of these documents to determine whether more information may be released without harm to national security or foreign relations. I also ask the reviewers of this appeal to take into account previously declassified documents that are directly relevant to the information withheld in this case. The availability of this material, some of which various agencies, including the Air Force, the Defense Department, and the State Department declassified some years ago, should make it possible to release substantially more information from these documents.

One of the heavily excised documents in this release is an "Oral Presentation" by General Hickey, 6 November 1959, concerning a report on alternative retaliatory efforts that the NSC's Net Evaluation Committee, which Hickey directed, had prepared at the direction of President Eisenhower pursuant to NSC Action 2009. The details of Eisenhower's request, to determine the "relative merits ... of alternative retaliatory efforts directed toward a) primarily a military target system, b) primarily an urban-industrial target system, or c) an optimum mix of combined military-urban-industrial target systems," has been declassified for years. It has also been published in the State Department's *Foreign Relations* series (see enclosures 1, 2, and 3). Moreover, the JCS has declassified JCS Chairman General Twining's "terms of reference" to General Hickey, e.g., to develop target lists based on the alternatives listed above (see enclosure 3).

Significant information on the conclusions of the NESC/Hickey study has also been declassified over the years; e.g., JCS Chairman Twining's observation that the study showed that a "retaliatory force structure based on the destruction of an urban target system would not provide an adequate military posture" (see enclosure 4). A SIOP briefing prepared for President Kennedy includes summary information on the Hickey report, e.g., that "Successful attack of the optimum-mix [target] system should result in the US prevailing in general war" [see enclosure

5]. Finally, it should be possible to release more information on specific target types discussed in the Hickey presentation. Over the years, the Defense Department has declassified, and the *Foreign Relations* series has published, significant material from the early 1960s on strategic targeting priorities and target types (see enclosures 6 and 7). In light of these releases, much more information from this Cold War-era war planning document should be ripe for declassification release without harm to national defense. Indeed, I question whether the continued withholding of information from the decades-old Hickey report serves any significant national security interest.

Another document with significant excisions is a "US Air Force Structure Presentation to Congress by Col. Evans, 28 Jan 59." Much of the same information is withheld from a subsequent 2 February 1959 presentation. Again, previously released information is relevant to the release of additional details from this document:

P. 12: excision re: targets. Again, information on target types and categories in enclosures cited above, especially 6 and 7, should make it possible to release more information from this page. In addition, a declassified speech by General Curtis LeMay from May 1957 also contains information on target priorities (see enclosure 8).

P. 12A: withheld details re: possible deployment locations of Jupiter IRBMs. Previously declassified information, some published in a publicly-released Air Force history, shows that Italy, Greece, and Turkey, among other countries were considered as deployment sites for Jupiters. They were finally deployed in Italy and Turkey until early 1963 (see enclosures 9 through 12)

P. 12A: withheld details on Polaris submarine patrol areas. The State Department and the U.S. Navy has released information on patrols slated for Norwegian sea as well as Sino-Soviet target priority (see enclosure 13).

PP. 13 and 14: withheld details on ICBM and B-52 target range. That the Soviet Union, China, and satellite countries were within range of ICBMs should be easily declassified. Moreover, enclosure 6 at pages 5 and 6 contains relevant detail on targets slated for attack by ICBMs and other delivery systems.

P. 15: Details withheld from this page most likely concern Strategic Air Command ground alert operations, involving a capability for a 15 minute reaction time by alert bombers. Considerable detail has already been released on SAC's ground alert concepts and its implementation (see enclosures 14, 15, and 16).

P. 16: Bomber and missile force information withheld on this page should be easily releasable. Details on missile force numbers and bombers may be found in enclosure 6 at page 2.

P. 24: Excisions re: warning systems, space detection of missile launches, Ballistic Missile Early Warning System. Significant declassified information on these issues may be found in a study by the Institute for Defense Analyses, *History of Strategic Command and Control and Warning, 1945-1972* (see enclosure 17). For the SAGE system, see pages 214-216, for BMEWS, see

pages 216-218 and 340-341, for the Bomb Alarm System, see pages 218-219; for space-based launch detection systems such as SAMOS and MIDAS, see pages 219 and 345. Related information from the State Department (see enclosure 18) may also be relevant. The availability of this declassified information on the warning problem during the Cold War should make it possible for the Defense Department to release this page in its entirety.

P. 25: Excisions re: BOMARC air defense system. The excisions may relate to proposals to deploy BOMARC and interceptors in Canada. Declassified information on this subject is also available (see enclosures 19 and 20)

P. 42: Excisions re: possible space military capabilities. Information on this subject has already been declassified. Besides the details on SAMOS/MIDAS that may be found in enclosure 17, the Air Force has declassified general information on proposed orbital interceptor and satellite inspector (SAINT) systems (see enclosure 21)

Another excised document released by the Air Force is a 20 January 1959 "Summary of Actions Taken by the Joint Chiefs of Staff." Excised from this document is part of a proposed statement, discussed with Canadian authorities, on acquisition and control of nuclear weapons. If you have not already done so, I ask that the Canadian embassy be consulted to determine whether it has any objection to the release of this statement. In any event, considerable formerly sensitive information has already been declassified on the U.S.-Canadian nuclear relationship during the late 1950s (for example, see enclosure 18). In light of that, and assuming Canadian agreement, it should be possible to release the rest of the statement.

Several portions were excised from one of the documents, "Summary of Actions Taken by the Operations Deputies at their Meeting," 3 January 1959. I question whether, after so many years, any of the information excised from this documents remains so sensitive that it must continue to be withheld.

Sincerely,

(b)(6)

William Burr



~~TOP SECRET~~
DEPARTMENT OF THE AIR FORCE
11TH WING

00-F-0583

September 15, 1999

MEMORANDUM FOR DEPARTMENT OF DEFENSE (FOIA)

FROM: 11 CS/SCSR (FOIA)
1000 Air Force Pentagon
Washington DC 20330-1000

SUBJECT: Freedom of Information Act Request, Case #93- 1822

1. Under the Freedom of Information Act, we are forwarding the attached documents for review and direct reply back to this office.
2. If your review reveals information which you recommend be withheld, identify it in your reply. Include your rationale for withholding the information, FOIA exemption and the name and title of your denial authority.
3. The undersigned is the action officer at ([REDACTED])

RHONDA M. JENKINS
Freedom of Information Manager

Attachments:

1. XO's, State comments
2. Requester ltr
3. Records for review (TS)

This page is UNCLASSIFIED
when standing alone.

~~TOP SECRET~~
WORLD-CLASS PEOPLE • WORLD CLASS SUPPORT



United States Department of State

Washington, D.C. 20520

~~SECRET~~

(UNCLASSIFIED WHEN SEPARATED FROM ATTACHMENTS)

00-F-0583

Case Control No.: 199800786

Requester: Burr, William

(X)FOIA/PA ()Mandatory Review

TO:

(b)(6)

IIMSS/MSIS (FOIA)
U.S. Air Force

SEP 22 1998

(b)(6)

FROM:

(b)(6)

Director
Office of IRM Programs and Services

SUBJECT:

Reply to Request for Concurrence

REF:

Our memorandum dated June 16, 1998 (your case no. 93-1822)

The British Embassy has concurred in release of item #6 on page three of the document numbered 2 in the above-referenced case. In light of that, the Department of State has no objection to declassification and release of the item.

However, as explained more fully in our earlier memorandum, we believe this material should be forwarded to the Department of Defense for a determination as to whether it constitutes Formerly Restricted Data and whether, in light of that determination, it may or may not be declassified and released.

If you have any questions, please call (b)(6) and cite our case control number.

Attachment:

One document(s)

08 60 86 100 61

~~SECRET~~

(UNCLASSIFIED WHEN SEPARATED FROM ATTACHMENTS)



United States Department of State

Washington, D.C. 20520

~~SECRET~~

(UNCLASSIFIED WHEN SEPARATED FROM ATTACHMENTS)

00-F-0583

Case Control No.: 199800786

Requester: Burr, William

(X)FOIA/PA ()Mandatory Review

TO:

[REDACTED]
IIMSS/MSIS (FOIA)
U.S. Air Force

FROM:

[REDACTED] Director [REDACTED]
Office of IRM Programs and Services

SUBJECT: Reply to Referral for Concurrence

REF: Your memorandum dated February 5, 1998 (your case no. 93-1822)

We have reviewed the material attached to your memorandum and have no objection to declassification/release of the marked portion of the document numbered 5 (i.e., the portion entitled "SUBJECT: Draft Statement for Possible Use in the House of Commons Regarding the Acquisition and Control of Nuclear Weapons"), to which our review has been limited. We have referred a copy of the document numbered 2 to the British Embassy for concurrence in release of item #6 on page 3, the portion which you designated for our review. We will inform you when the Embassy has replied.

With respect to both documents, we would note that DOD has expressed the view that material involving military utilization of nuclear weapons, storage, deployment location, etc., falls under the Atomic Energy Act of 1954 in that it is considered Formerly Restricted Data (FRD) and is, therefore, not releasable. DOD may deem the designated portions of these documents to constitute such material. Accordingly, we believe these portions should be forwarded to Mr. A. H. Passarella, Director, FOI/Security Review at DOD for a release/denial determination based on the material's relevance to the above-cited Act.

~~SECRET~~

(UNCLASSIFIED WHEN SEPARATED FROM ATTACHMENTS)

If you have any questions, please call (b)(6)

Attachments:

Two documents

The National Security Archive

The George Washington University
Gelman Library, Suite 701
2130 H Street, N.W.
Washington, D.C. 20037

Phone: 202/994-7000
Fax: 202/994-7005
nsarchive@gwu.edu
www.nsarchive.org

August 26, 2004

Secretary of the Air Force
HQ U.S. Air Force
11 CS/SCSR (FOIA)
1000 Air Force Pentagon
Washington DC, 20330-1000

Re: Request under the FOIA, in reply please refer to Archive # 20040970AIR054

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), I am refiling the attached FOIA request (Air Force Ref. No. 93-1822/Archive Ref. No. 931089AIR051) that originally was filed on December 2, 1993 to the Department of the Air Force. The Air Force 11th Support Wing ordered the records from another agency but had not received them as of an April 15, 1994 letter.

The request asked for the following:

"Copies of the following documents from Accession 63-A-1609, Record Group 341, held at Federal Records Center, Suitland:

1. Copies of the following documents in Box 23, file RL (59) 258 JCS Meetings (Summaries of Actions) Sec. 1 (1 Jan. 59 - 14 May 59)
 - a. Memo, 1/5/59 to SAFS and enclosure
 - b. Summary of Actions, 1/13/59
 - c. Memo for SAF, 1/14/59 and enclosure
 - d. Memo by Wheless, 1/16/59
 - e. Memo to SAF, 1/20/59 and enclosure
 - f. Summary of Action, 1/20/59
 - g. Memo to SAFS, 1/28/59 and enclosure
 - h. Summary of Actions, 1/27/59
 - i. Memo to SAFS, 2/2/59 and enclosure
2. Box 35, file: RL (59) 317 ICBM (22 Aug. 59 -) Sec.3:
 - a. Donnelly letter to AFCCS, 12/19/59, with enclosure
3. Box 36:
 - a. File RL (59) 40B Speeches (Briefings & Presentations) Sec. 1 (1 Jan. 59 - 28 Feb. 59)
 - i. Air Council presentation, 1/22/59. "SATTUS 59-63"
 - ii. Doc. Presentation, "TUSAFRNAFOOTAFPAOCDOSE59," 2/2/59
 - b. File RL (59) 40B Speeches (Briefings & Presentations) Sec. 3 (5 June 59 -)
 - i. JCS to CCS, 10/30/59, with enclosure
 - ii. Presentation by General Hickey, 11/5/59

Note: I request that all documents be reviewed in their entirety, and that no information be omitted on the grounds of "non-relevance."

Attached is the original request, my December 13, 1993 correction of the Record Group number [above version is as corrected], and the Air Force Office of the Secretary's April 15, 1994 letter referred to above. Although more than 11 years have passed since the request was originally filed, we still have not received any response and therefore are refiling the request. Please treat this as a new FOIA request. I look forward to receiving your response within the twenty-day statutory time period.

If you regard any of these documents as potentially exempt from the FOIA's disclosure requirements, I request that you nonetheless exercise your discretion to disclose them. As the FOIA requires, please release all reasonably segregable nonexempt portions of documents. To permit me to reach an intelligent and informed decision whether or not to file an administrative appeal of any denied material, please describe any withheld records (or portions thereof) and explain the basis for your exemption claims.

As you know, the National Security Archive qualifies for waiver of search and review fees as a representative of the news media. This request is made as part of a scholarly and news research project and not for commercial use. For details on the Archive's research and publication activities, please see our Web site at the address above. Please notify me before incurring photocopying costs over \$100.

To expedite the release of the requested documents, please disclose them on an interim basis as they become available to you, without waiting until all the documents have been processed. If you have any questions regarding the identity of the records, their location, the scope of the request or any other matters, please call me at (b)(6) or e-mail me at (b)(6).

Sincerely,

(b)(6)

for William Burr
Senior Analyst

THE NATIONAL SECURITY ARCHIVE

SUITE 500 1755 MASSACHUSETTS AVENUE, N.W. WASHINGTON, D.C. 20036 (202) 797-0882

IN ALL CORRESPONDENCE PLEASE REFER
TO ARCHIVE FILE NO. 931089AIR051
12/02/1993

SAF/AAIA
(FOI)
1620 Air Force
The Pentagon
Washington D.C. 20330-1620

Dear Sir or Madam:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. Section 552, *et seq.* (as amended), I hereby request disclosure of the documents described on the attached page of this letter for inspection and possible copying. If you regard any of these documents as potentially exempt from the FOIA's disclosure requirements, I request that you nonetheless exercise your discretion to disclose them. As the FOIA requires, please release all reasonably segregable nonexempt portions of documents which contain information you regard as exempt. To permit me to reach an intelligent and informed decision whether or not to file an administrative appeal of any denied material, please describe any withheld records (or portions thereof) and explain the basis for your exemption claims.

This request is made on behalf of the National Security Archive, a nonprofit public interest research institute and library in Washington, D.C. The Archive is a tax-exempt nonprofit organization whose purpose is to enrich public policy debate by making widely available records on important areas of major public concern on foreign, defense and intelligence policy. Documents obtained by the Archive, including the records requested in this letter, are carefully analyzed, indexed, organized into collections and published. Archive document collections are also available for inspection and copying at the Archive by scholars, journalists, members of Congress and their staffs, present and former public officials, other public interest organizations, and the general public. Information in these documents is disseminated across the country through distribution of our published collections to research libraries and through the Archive's other publishing and media activities. I am conducting research on the subject of this request as part of an Archive research team which includes experts on the subject and which already has done extensive research and determined that the requested materials are necessary to our project.

Please also waive all fees in connection with this request. In National Security Archive v. U.S. Department of Defense, 880 F.2d 1381 (D.C. Cir. 1989), cert. denied, 110 S.Ct. 1478 (1990), the Archive was declared entitled to a waiver of all search and review fees under the FOIA as a "representative of the news media." This request also qualifies for a waiver of duplication fees because disclosure of the information in the requested documents is in the public interest since release to us of these records, which directly relate to the formation of U.S. policy on the subject, is likely to contribute significantly to greater public understanding of the operations or activities of the government in making that policy. Should you decline to waive or reduce all duplication fees, we are prepared to pay normal reproduction costs if I decide to copy the records produced, but please describe your specific reasons in writing and notify us before incurring costs over \$100.

To expedite the release of the requested documents, please disclose them on an interim basis as they become available to you, without waiting until all the documents have been processed. If you have any questions regarding the identity of the records, their location, the scope of the request or any other matters, please call me at [REDACTED]. I look forward to receiving your response within the ten-day statutory time period.

Sincerely,

[REDACTED]

FOIA Requester: Burr, William

FOIA Sequence Number: 931089AIR051
Date of Request: 12/02/1993
NSA Record Number: 11733

Subject of Request:

Copies of the following documents from Accession 63-A-1609, Record Group 241, held at Federal Records Center, Suitland

I. Copies of following documents in Box 23, file: RL (59) 258 JCS Meetings (Summaries of Actions) Sec. 1 (1 Jan 59 - 14 May 59)

- a. Memo, 1/5/59 to SAFS and enclosure
- b. Summary of Actions, 1/13/59
- c. Memo for SAF, 1/14/59, and enclosure
- d. Memo by Wheeler, 1/16/59
- e. Memo to SAF, 1/20/59 and enclosure
- f. Summary of Action, 1/20/59
- g. Memo to SAFS, 1/28/59 and enclosure
- h. Summary of Actions, 1/27/59
- i. Memo to SAFS, 2/2/59 and enclosure

II. Box 35, file: RL (59) 317 IGBM (22 Aug 59 -) Sec. 3:

1. Donnelly letter to AFCCS, 12/19/59, with enclosures

III. Box 36:

A. file RL (59) 40B Speeches (Briefings & Presentations) Sec. 1 (1 Jan 59 - 28 Feb 59)

1. Air Council presentation, 1/22/59, "SATTUS 59-63" L 2. Doc presentation, "TUSAFRANAFODTAFPAQBCDOSF59, 2/2/59

B. file RL (59) 40B Speeches (Briefings & Presentations) Sec. 3 (5 June 59 -)

1. JSS to CCS, 10/30/59, with enclosures
2. Presentation by General Hickey, 11/5/59

Note: I request that all documents be reviewed in their entirety, and that no information be omitted on the grounds of "non-relevance".

FOI/PA CASE ASSIGNMENT WORKSHEET

Case No:

01-A-00256-A1

ACTION ASSIGNED TO Fisher TEAM: A B C PMB

REVIEWER (b)(6) CARD

TYPE REQUEST: Appeal Commercial Educational News/Media NonCom/Scientific Other

EXPEDITED RESPONSE REQUESTED GRANT? Y N

DMDC/DCII CHECK

UP-FRONT DOCUMENT SEARCH

DATE RECEIVED:

REMARKS:

Steve - See me - continue denial?

'06 APR 27A 9:06

CLOSED WITHDRAWN

E-FOIA REPLY

(ASBCA) Armed Services Board of Contract Appeals	
(AT&L) Acquisition, Technology, & Logistics	
(AS&C) Advanced Systems & Concepts	
(DARPA) Defense Advanced Research Projects Agency	
(DPAP) Defense Procurement & Acquisition Policy	
(DARC) Defense Acquisition Regulation Council	
(DAU) Defense Acquisition University	
(ECOADJ) Economic Adjustment	
(DDR&E) Defense Research and Engineering	
(DS) Defense Systems	
(DSB) Defense Science Board	
(DSMC) Defense Systems Management College	
(DUSDAR) DUSD Acquisition Reform	
(I&E) Installations & Environment	
(JSFPO) Joint Strike Force Program Office	
(L&MR) Logistics & Material Readiness	
(DMEA) Defense Micro Electronics Activity	
(IC) International Cooperation	
(MDA) Missile Defense Agency	
(NCB) Nuclear, Chemical, & Biological Defense Programs	
(SADBU) Small & Disadvantaged Business Utilization	
(SPPGMS) Special Programs	
(ATSDIO) Assistant to the Secretary of Defense (Intelligence Oversight)	
(COMP) Comptroller	
(PA&E) Program Analysis & Evaluation	
(DPO) Defense Privacy Office	
(DRSO) Defense Reconstruction Support Office Note: formerly CPA & DSO-Iraq	

(EXSEC) The Exec. Secretariat	
(I) Intelligence	
(CIFA) Counterintelligence Field Activity	
(JFSC) Joint Forces Staff College	
(JS) Joint Staff	
(LA) Legislative Affairs	
(NDU) National Defense University	
(NII) Networks and Information Integration	
(NSPS) National Security Personnel System	
(NSSG) National Security Study Group	
(OGC) Office of General Counsel	
(DOHA) Director, Office of Hearings and Appeals	
(OSAWHL) Office of the Special Assistant to the Secretary of Defense for White House Liaison	
(OT&E) Operational Test & Evaluation	
(PA) Public Affairs	
(DVIC) Defense Visual Information Center	
(P&R) Personnel & Readiness	
(CPMS) Civilian Personnel Management Service	
(DEOMI) Defense Equal Opportunity Management Institute	
(DMDC) Defense Manpower Data Center	
(SIAD) Statistical Information Analysis Division	
(FVAP) Federal Voting Assistance Program	
(HA) Health Affairs	
(DHSD) Deployment Health Support	
(RA) Reserve Affairs	
(USUHS) Uniformed Services University of Health Sciences	
(PFFA) Pentagon Force Protection Agency	

(USDP) USD (Policy)	
(DTSA) Defense Technology Security Administration	
(ISA) International Security Affairs	
(AFRA) African Affairs	
(APA) Asian and Pacific Affairs	
(DPMO) Defense POW Missing Personnel Affairs Office	
(NESAA) Near Eastern & South Asian Affairs	
(WHA) Western Hemisphere Affairs	
(ISP) International Security Policy	
(EURNATO) European and NATO Affairs	
(FP) Forces Policy	
(DSCA) Defense Security Cooperation Agency	
(HD) Homeland Defense	
(SO/LIC) Special Operations and Low Intensity Conflict	
(CN) Counter Narcotics	
(CT) Combating Terrorism	
(SO) Stability Operations	
(ODA) Office of Detainee Affairs	
(ODNA) Office of the Director, Net Assessment	
(R&P) Resources and Plans	
(STRATEGY) DASD Also Former (PS) Policy Support Records	
(DPB) Defense Policy Board	
(WHMO) White House Military Office	
(WHS) Washington Headquarters Services	
(A&P) Acquisition & Procurement	
(APSD) Administration & Program Support	
(ESD) Executive Services Directorate	

(DFD) Defense Facilities	
(FMD) Financial Management	
(GC) General Counsel	
(HRD) Human Resources	
(P&E) Planning & Evaluation	
(PENREN) Pentagon Renovation & Construction Program Office	
No Nexus	
Not a Proper FOIA	
Not Reasonably Described	
No Records	

ARMY	NGA	
NAVY	NGB	
USAF	NSA	
USMC	NSC	
	SHAPE	
CENTCOM	TRICARE	
EUCOM		
JFCOM		
NORTHCOM		
PACOM	CIA	
SOCOM	C. GUARD	
SOUTHCOM	DEA	
STRATCOM	DHS	
TRANSCOM	DOE	
	DOJ	
DCAA	DOL	
DCMA	FAA	
DECA	FBI	
DFAS	FEMA	
DIA	GSA	
DISA	NARA	
DLA	NPRC	
DoDIG	ONDCP	
DoDEA	SEC. SVC.	
DSS	STATE	
DTIC		
DTRA		

BUSH LIBRARY RECEIVED

13 February 2006

February 4, 2006

01-A-00256-A

Deputy Archivist of the United States
c/o The George Bush Presidential Library
1000 George Bush Drive West
College Station, Texas 77845

RE: FOIA Appeal

Dear Sir or Madam:

I am writing to file an administrative appeal for the files not released in your letter dated January 19, 2006 (Case Log Number 1999-0137-F/1).

Also, please note my new address:

(b)(6)

Thank you.

(b)(6)

Dr. David C. Wills

~~SECRET~~



The George Bush Library

1000 George Bush Drive West College Station, Texas 77843
<http://bushlibrary.tamu.edu> (979) 691-4041

April 3, 2006

In reply refer to:
NLGB 99-0137-F/1 [Wills, David]

Director, Freedom of Information and Security Review
1155 Defense Pentagon Room 2C757
Washington, D.C. 20301-1155

Dear Director:

Under provisions of the Freedom of Information Act, as amended, and the Presidential Records Act (44 U.S.C. 22), a researcher has requested access on appeal to the enclosed national security classified documents from our Presidential record holdings. Enclosed please find documents concerning a FOIA appeal by David Wills including

- Wills' original FOIA request dated 11/30/1998
- Agency decision letter(s) exempting documents or portions of documents under FOIA (b)(1). Documents were reviewed under DoD Case Number 01-F-0256 dated 4/18/2002.
- Our letter to Wills informing him of agency decisions dated 1/19/2006
- Wills' appeal letter dated 2/4/2006
- Copies of original documents

Because the records being appealed are Presidential records administered in accordance with 44 U.S.C. 2201-2207 and Executive Order 13233, any information released through this appeals process must be approved for disclosure by the former and incumbent Presidents prior to being made public. Therefore, please send the review decision directly to the Bush Library. Once we have received approval from the former and incumbent Presidents, we will notify the researcher directly of your agency's determination with regard to this administrative appeal. The NLGB case number and document numbers should be used in any correspondence with the Bush Library.

If you have any questions, please contact me at (b)(6) or (b)(6)

Sincerely,

(b)(6)
Kathy Olson
Archivist

Encls.
As stated

UNCLASSIFIED UPON REMOVAL OF ENCLOSURES

~~SECRET~~

7

November 30, 1998

George Bush Presidential Library
1000 George Bush Drive West
College Station, TX 77842-0410

Dear Sirs,

Under the Freedom of Information Act (5 U.S.C. 552, as amended) and the Presidential Records Act (44 U.S.C. 22), I am requesting access to all materials at the Bush Library pertaining to the Vice President's Task Force on Combatting Terrorism (which ran from 1985 to 1986, and released a report on March 6, 1986).

David C. Wills

(b)(6)

(b)(6)

(b)(6)



George Bush Library

1000 George Bush Drive West
College Station, TX 77845
979-260-9552
csdl.tamu.edu/bushlib

November 1, 2000

In reply refer to:
NLB 99-0137-F/1

Mr. H.J. McIntyre
Director, Freedom of Information & Security Review
Department of Defense
Room 2C 757
1155 Defense Pentagon
Washington, D.C. 20301-1155

Dear Mr. McIntyre:

Under provisions of the Freedom of Information Act, as amended, and the Presidential Records Act (44 U.S.C. 22), a researcher has requested access to the enclosed national security classified documents from our Presidential record holdings. Enclosed is a document list.

We have reviewed the documents under provisions of the PRA and request that you review the documents under the exemptions of the FOIA (other than b5 which does not apply to Presidential records), obtain any necessary concurrences, and advise us if, in your opinion, the documents may be declassified, and return the document copies with your response. When documents are declassified only in part, please provide the Library with copies clearly marked to identify the portions that have been exempted from declassification. If a document or any portions thereof should remain security classified, please provide us with the applicable exemption categories from E.O. 12958 and with a date or event when automatic declassification may be accomplished. Please also determine, where applicable, if TOP SECRET information may be downgraded.

Since the final decision on release is the responsibility of the Library, we will notify the requestor directly and provide copies of any released records. The NLB case number and document numbers should be used in any correspondence with the Bush Library. As a courtesy, we are enclosing a copy of the FOIA request for Bush Presidential records.

If you have any questions, please call me at [REDACTED]

Sincerely,

[REDACTED]
JIMMIE PURVIS
Archives Specialist

JGP:
Encls.

UNCLASSIFIED UPON REMOVAL OF ENCLOSURES



~~SECRET~~

DEPARTMENT OF DEFENSE
DIRECTORATE FOR FREEDOM OF INFORMATION AND SECURITY REVIEW
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

18 APR 2002

Ref: 01-F-0256
NLB 99-0137-F/1

Mr. Jimmie Purvis
George Bush Library
1000 George Bush Drive West
College Station, TX 77845

Dear Mr. Purvis:

This is in response to your November 1, 2000, Freedom of Information Act (FOIA) referral, copy enclosed.

Mr. Austin K. Yamada, Deputy Assistant Secretary of Defense for Combatting Terrorism Policy and Support, an Initial Denial Authority, has determined that the referred documents (copies enclosed) are exempt from release in their entirety. This information is currently and properly classified in accordance with Executive Order 12958, Section 1.5(a), which concerns military plans, weapons systems, or operation. This information is also exempt from declassification pursuant to Section 1.6(d)(4) of the Executive Order because its release would reveal United States military plans. Unclassified information within the documents has been determined to be exempt from release in accordance with Section 1.8(e) of the Executive Order. This section allows for the classification of items of information which are individually unclassified, but when compiled, reveal an additional association or relationship that meets the standards of classification. In this case, this information is classified in accordance with Executive Order 12958, Section 1.5 (a). Therefore, all of this information is withheld pursuant to 5 USC § 552 (b)(1). Docs 19, 31, 34.01, 31.02, 31.03, 66, 75.01, 76, 78, 115.02 → acc^m

The requester has a right to appeal the decision to withhold this information. Please advise him that any such appeal should offer justification to support an additional release, and must be received in this Directorate within 60 calendar days of your response to him.

Sincerely,

(b)(6)

H. J. McIntyre
Director

Enclosures:
As stated

~~SECRET~~



UNCLASSIFIED WHEN SEPARATED
FROM CLASSIFIED ENCLOSURE



George Bush Library

1000 George Bush Drive West
College Station, TX 77845
979.691.4041
bushlibrary.tamu.edu

January 19, 2006

Case Log Number:
1999-0137-F/1

David Wills



Dear Mr. Wills:

This letter is in further reference to your request dated November 30, 1998, for release of information from the Bush Library under the provisions of the Freedom of Information Act, 5 U.S.C. §§555, as amended and the Presidential Records Act (PRA), 44 U.S.C. §§2201-2207 for access to Bush Presidential materials related to the Vice President's Task Force on Terrorism. We have partially completed the coordination and processing, according to provisions of the PRA, FOIA and E.O. 13233, of the national security classified Presidential records that are responsive to your FOIA request.

Documents # 1, 2, 3, 4, 9, 10, 12, 13, 15, 24, 27, 36, 39, 40.01, 43, 44, 44.01, 45, 47, 50, 51, 53, 53.01, 54, 55, 55.02, 58.03, 60, 62, 62.01, 62.02, 62.05, 63.06, 64, 64.02, 69, 69.01, 69.02, 73, 79, 82, 83, 84, 84.01, 84.02, 84.03, 84.04, 84.05, 84.06, 85, 86, 96, 97, 104, 109.01, 110, 111, 111.01, 112, 112.01, 112.02, 114, 115, 115.01, 116, 116.01, 120.03, 123.01, 130.01, 130.02, 131, 131.01, 133, 133.01, 134.02, 137, 139, 139.01, 139.02, 139.03, 139.04, 139.05, 139.06, 141.02, 144, 145.01, 146, 147.01, 148, 149, 150, 151, 152, 153, 154, 170.02, 175.01, and 175.02 have been released in full.

Documents # 5, 25, 30, 138, and 138.01 have been released in part. Portions have been exempted from declassification under Sections (b) 1 of E.O. 12958.

Documents # 49, 52, 54.01, 59, 68, 122, 136, 157.01, 157.02, 174.01, and 175 have been released in part. Portions have been exempted from declassification under Sections (b) 1.5(c) of E.O. 12958.

Documents # 23 and 46 have been released in part. Portions have been exempted from declassification under Sections (b) 1.5(d) of E.O. 12958.

Documents # 48 and 55.01 have been released in part. Portions have been exempted from declassification under Sections (b) 1.5(c) and 1.5(d) of E.O. 12958.

Documents # 64.01, 70, 74, 81, and 119 have been released in part. Portions have been exempted from declassification under Sections (b) 1.5(e) and 1.5(g) of E.O. 12958.

Document # 11 has been released in part. Portions have been exempted from declassification under Sections (b) 1.5(e) and 1.5(g) of E.O. 12958.

Documents # 117.01, 118, 118.01, 161, 161.01, 172.01, and 173.02 have been released in part. Portions have been exempted from declassification under Sections (b) 1.5(c), 1.5(d), and 1.5(g) of E.O. 12958.

Documents # 19, 20, 21, 22, 22.01, 26, 28, 29, 31, 31.01, 31.02, 31.03, 32, 33, 35, 40, 41, 42, 46.01, 63, 64.05, 64.06, 64.07, 64.08, 66, 75.01, 76, 78, 89, 90, 95, 106, 107, 113, 115.02, 134, 134.01, 141, 141.01, 142, 147, 167, 171, and 176 have been denied in full under Sections (b) 1 of E.O. 12958.

Additionally, documents # 5, 25, 30, 64.01, 68, 81, 122, 137, 138, 138.01, 145.01, 157.01, 157.02, and 175 have been partially exempted under (b) 3 of the Freedom of Information Act, 5 U.S.C. §§552 (b), Title 10 Section 424.

Total pages released: 415.

At this time, you have the right to file an administrative appeal of any Bush Vice Presidential records responsive to your FOIA request that have been withheld under an exemption category of the FOIA, 5 U.S.C. §§552(b). To appeal a FOIA exemption, the appeal must be submitted in writing to the attention of the Deputy Archivist of the United States, c/o the George Bush Presidential Library, 1000 George Bush Drive West, College Station, TX 77845. You should also include a copy of your original request and our denial. Both your appeal letter and the envelope should be clearly marked "FOIA Appeal." You have 35 calendar days from the date of receipt of this letter to file your appeal. The Library will coordinate your appeal with the appropriate authority. Since these are Presidential records administered in accordance with 44 U.S.C. §§2201-2207 and Executive Order 13233, NARA must notify the former and incumbent Presidents prior to the release of any information in response to this appeal. Once an appeal determination is made and the provisions of E.O. 13233 have been met, we will contact you.

We will be happy to provide you copies of those records that have been declassified in full or in part upon receipt of the reproduction fee of \$.50 per page. We accept checks or MasterCard, Visa, Discover, and American Express credit cards. Checks should be made out to the National Archives Trust Fund. Or you may view the documents in our research room where a self-service copier is available for the price \$.15 per page.

If you have further questions regarding the national security classified portion of your FOIA please contact [REDACTED] mandatory review archivist, by email: [REDACTED] or phone [REDACTED]. If you wish to order copies or need further assistance, please contact the archivist on reference duty: library.bush@nara.gov or (979) 691-4041. Your FOIA case log number is 1999-0137-F/1. Please have this number accessible for reference during any future contact concerning this case.

Sincerely,

Robert Holzeis
Supervisory Archivist

RFH:seo



**DEPARTMENT OF DEFENSE
OFFICE OF FREEDOM OF INFORMATION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155**

20 FEB 2007

Ref: 01-A-00256(A)

MEMORANDUM FOR ASD SPECIAL OPS & LOW
INTENSITY CONFLICT (SO/LIC)
ATTN: (b)(6)

SUBJECT: Freedom of Information Act (FOIA) Appeal – The George Bush Library on
Behalf of Mr. David Wills

Attached is an appeal of your determination pertaining to the response to the requester in the case referenced above.

In order for the Director, Administration and Management to fulfill responsibilities as the appellate authority, the following is requested:

- Conduct a review of the information previously denied to the requester. On the SD Form 472 provided, cite the FOIA exemption(s) invoked for any recommended withholding, and your rationale for denial. Provide any additional documentation or comments which will assist in evaluating the appeals. Additionally this office has completed a cursory review and determined that the information bracketed in red is still classified under Executive Order 12958, as amended

Copies of forms SD 472 and DD 2086 are attached. Forward your response, including copies of all responsive records with completed legal coordination, to this Office by July 28, 2007. Please direct any questions concerning this appeal to Mr.

(b)(6) on (b)(6)

James P. Hogan
Chief, FOIA Policy, Appeals, and Litigation

Attachments:
As stated

~~SECRET~~

UPON REMOVAL OF ALL RESTRICTIONS
DOCUMENT BECOMES UNCLASSIFIED



~~SECRET~~
DEPARTMENT OF DEFENSE
OFFICE OF FREEDOM OF INFORMATION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

26 FEB 2007
Ref: 01-A-00256

MEMORANDUM FOR U.S. SPECIAL OPERATIONS COMMAND

ATTN: (b)(6)
SOCS-SJS-SI (FOIA)
7701 TAMPA POINT BOULEVARD
MACDILL AFB, FL 33621-5323

SUBJECT: Freedom of Information Act (FOIA) Appeal – The George bush Library on behalf of Mr. David Wills

The attached Appeal and responsive documents are forwarded as a matter under your cognizance. ASD Special Ops and Low Intensity Conflict recommended that this office coordinate the review of the documents with the U.S. Special Operations Command. Please review the attached documents, bracket any information you determine not releasable and return them to this office. Because this issue is under appeal, we must receive your determination(s) by July 28, 2007. Additionally this office has conducted an initial appellate review, and determined that the information bracketed in red is still classified under Executive Order 12958, as amended.

Our action officer is (b)(6); phone (b)(6)

(b)(6)

James P. Hogan
Chief, FOIA Policy, Appeals, and Litigation

Attachments:
As stated

~~SECRET~~

UPON REMOVAL OF ATTACHMENT(S),
DOCUMENT BECOMES UNCLASSIFIED



~~SECRET~~

DEPARTMENT OF DEFENSE
OFFICE OF FREEDOM OF INFORMATION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

28 FEB 2007

Ref: 01-A-00256(A)

MEMORANDUM FOR JOINT STAFF

ATTN: (b)(6)

R5686A

SUBJECT: Freedom of Information Act (FOIA) Appeal – The George Bush Library on Behalf of Mr. David Wills

Attached is an appeal of your determination pertaining to the response to the requester in the case referenced above.

In order for the Director, Administration and Management to fulfill responsibilities as the appellate authority, the following is requested:

- Conduct a review of the information previously denied to the requester. On the SD Form 472 provided, cite the FOIA exemption(s) invoked for any recommended withholding, and your rationale for denial. Provide any additional documentation or comments which will assist in evaluating the appeal. Additionally this office has completed a cursory review and determined that the information bracketed in red is still classified under Executive Order 12958, as amended.

Copies of forms SD 472 and DD 2086 are attached. Forward your response, including copies of all responsive records with completed legal coordination, to this Office by July 28, 2007. Please direct any questions concerning this appeal to Mr.

(b)(6) on (b)(6)

(b)(6)

James P. Hogan
Chief, FOIA Policy, Appeals, and Litigation

Attachments:
As stated

~~SECRET~~

UPON REMOVAL OF ATTACHMENT(S)
DOCUMENT BECOMES UNCLASSIFIED

The National Security Archive

The George Washington University
Gelman Library, Suite 701
2130 H Street, N.W.
Washington, D.C. 20037

03 - A - 0667 - A1

Phone: 202/994-7029
Fax: 202/994-7005
Email: mevans@gwu.edu
<http://www.nsarchive.org>

September 8, 2006

IN ALL CORRESPONDENCE PLEASE REFER
TO ARCHIVE FILE NO. 29939976DOD004
DOD NO. 04-F-0667 20030076DOD004

03

James Hogan
Chief, Policy, Appeals, and Litigation Branch
Department of Defense
Office of Freedom of Information
1155 Defense Pentagon
Washington, DC 20301-1155

RE: FREEDOM OF INFORMATION ACT APPEAL

Dear Mr. Hogan:

This letter constitutes an administrative appeal in accordance with the Freedom of Information Act (FOIA), 5 U.S.C. Sec. 552., of the Department of Defense response to a FOIA request I submitted on August 10, 2006 to the Department of Defense. The request was for all documents from 1998 to the present that pertain in whole or in part to the participation of Department of Defense officials in meetings of the National Security Council Principles Committee pertaining primary to Colombia. In a letter dated August 10, 2006 the Department of Defense informed me that 93 pages of documents responsive to my request were found (Attachment 1). The letter further advised me that all information contained within these pages is classified under Sections 1.4(a), (b), (c), and (d) of Executive Order 12958, and thus cannot be released. I appeal the decision to withhold this information.

Several documents responsive to my request have already been declassified and released by the Department of Defense. For example, in response to previous FOIA requests, the Department of Defense has sent me the read-aheads for Principals Committee Meetings that took place on July 7, 1998 (Attachment 2), September 9, 1999 (Attachment 3), and September 24, 1999 (Attachment 4). According to the released documents, all three of those meetings focused on Colombia.

I would expect that most of the documents reviewed in response to this FOIA request primarily pertain to the development and implementation Plan Colombia, a multi-billion dollar counter-narcotics, security, and development program. In reviewing these documents, I ask that you keep in mind that Plan Colombia is the centerpiece of American policy in Colombia and one of the most important American programs in all of Latin America.

When Plan Colombia was first announced, President Clinton called it "urgently needed" and "in our fundamental national interest" (Attachment 5). In 2000, Brian E. Sheridan, Assistant Secretary of Defense for Special Operations and Low Intensity Conflict gave detailed testimony before Congress about Plan Colombia (Attachment 6). Claiming that "the US has a vital material interest in the success of this plan," he outlined the various aspects of the program as well as "concerns" that the Department of Defense had about the plan,

including the poor organization of the Colombian Armed Forces, the human rights situation in Colombia, and the possibility of the US becoming engaged in Colombian counter-insurgency efforts.

I also ask you to note that the Presidential Decision Directive on Colombia has been declassified and released by the Department of State (Attachment 7). This directive is the promulgation of the policy shaped in the National Security Council Principles Committee meetings that I have requested documents from. The document says that one of the "primary objectives" of Plan Colombia is to "increase the capability of the Colombian National Police, in conjunction with the Colombian Armed Forces units, to curtail the cultivation and production of illicit drugs in Colombia" as well as "to interdict shipments of illicit drugs and the precursor and essential chemicals necessary for the production of such drugs at and within the borders, including the territorial waters, of Colombia."

I would remind you that non-sensitive material must be released unless inextricably intertwined with other sensitive material. At a minimum, I expect that document titles, dates, subject headings, and other non-sensitive material can be released without disclosing sensitive information.

Thank you for your consideration of this appeal. I look forward to a prompt response. Please contact me with any questions or comments at (b)(6), or by email (b)(6)

Sincerely,

(b)(6)

Michael Evans
Analyst

Attachments:

1. Letter to (b)(6) from Will Kammer. August 10, 2006.
2. Read-ahead for July 7, 1998 Principals Committee Meeting on Panama-Colombia. July 2, 1998.
3. Read-ahead for the September 9, 1999 Principals' Committee Meeting. Undated.
4. Read-ahead for September 24, 1999 Principal's Committee Meeting on Colombia. September 22, 1999.
5. Statement by Bill Clinton, President. January 11, 2000.
6. Statement of the Honorable Brian E. Sheridan, Assistant Secretary of Defense of Special Operations and Low Intensity Conflict.
7. Presidential Decision Directive/NSC-73. August 3, 2000.

The National Security Archive

The George Washington University
Gelman Library, Suite 701
2130 H Street, N.W.
Washington, D.C. 20037

Phone: 202/994-7000
Fax: 202/994-7005
nsarchiv@gwu.edu
www.nsarchive.org

January 28, 2003

Will Kammer
Department of Defense
Directorate for Freedom of Information
1155 Defense Pentagon
Washington, D.C. 20301-1155

03-F-0667

Re: Request under the FOIA, in reply refer to Archive # 20030076DOD004

Dear Mr. Kammer:

Pursuant to the Freedom of Information Act (FOIA), I hereby request copies of all memoranda, summaries, talking points, briefing papers, "Read-ahead" memoranda, and similar documents pertaining to participation of Department of Defense (DoD) officials in meetings of the National Security Council Principals Committee pertaining primarily to Colombia from 1998 to the present.

I ask that these documents be reviewed in their entirety, and that all attachments and annexes are also reviewed for release. Please do not exclude any material on the basis of non-relevance.

Please be sure to search the following offices for responsive material (as well as any other offices you suspect may have relevant documents):

- Office of the Deputy Assistant Secretary of Defense for Counternarcotics
- Office of the DoD Coordinator for Drug Enforcement Policy and Support
- Office of the Deputy Assistant Secretary of Defense for Drug Enforcement Policy and Support
- Office of the Under Secretary of Defense for Policy
- Office of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict
- Office of the Secretary of Defense
- Office of the Deputy Secretary of Defense

If you regard any of these documents as potentially exempt from the FOIA's disclosure requirements, I request that you nonetheless exercise your discretion to disclose them. As the FOIA requires, please release all reasonably segregable nonexempt portions of documents. To permit me to reach an intelligent and informed decision whether or not to file an administrative appeal of any denied material, please describe any withheld records (or portions thereof) and explain the basis for your exemption claims.

IS03/001294

As you know, the National Security Archive qualifies for waiver of search and review fees as a representative of the news media. This request is made as part of a scholarly and news research project and not for commercial use. For details on the Archive's research and publication activities, please see our Web site at the address above. Please notify me before incurring photocopying costs over \$100.

To expedite the release of the requested documents, please disclose them on an interim basis as they become available to you, without waiting until all the documents have been processed. If you have any questions regarding the identity of the records, their location, the scope of the request or any other matters, please call me at (202) 994-7000. I look forward to receiving your response within the twenty-day statutory time period.

Sincerely Yours,

A black rectangular box redacting the signature of Michael Evans.

Michael Evans

FREEDOM OF INFORMATION ACT REQUEST INTERIM RESPONSE

1. DATE OF REQUEST	2. DATE RECEIVED	3. CASE WORKLOAD	4. CASE NUMBER
28 Jan. 03	28 Jan. 03	2110	03-F-0667

This is an interim response to your Freedom of Information Act (FOIA) request, received in this directorate on the above date. Your request has been assigned the case number indicated above, and is being processed as quickly as possible in accordance with procedural requirements promulgated in DoD Regulation 5400.7-R at 32 CFR 286. The actual processing time will depend upon its complexity, whether it involves sensitive records, voluminous records, extensive searches, consultation among DoD components or other agencies, and our administrative workload which is listed in block 3 above.

If you have any questions, please call (b)(6) and ask for

LTC

(b)(6)

29 JAN 2003

Director, Freedom of Information and Security Review, DOD
Room 2C757, 1155 Defense Pentagon, Washington, DC 20301-1155

SD FORM 537-1, OCT 1999

PREVIOUS EDITION MAY BE USED.

DEPARTMENT OF DEFENSE
DIRECTORATE FOR FREEDOM OF INFORMATION AND SECURITY REVIEW
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

OFFICIAL BUSINESS

Mr. Michael Evans
The National Security Archive
Gelman Library, Suite 701
2130 H Street, N. W.
Washington, DC 20037



DEPARTMENT OF DEFENSE
OFFICE OF FREEDOM OF INFORMATION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

Ref: 03-F-0667
20030076DOD0004

Mr. Michael Evans
The National Security Archive
The George Washington University
Gelman Library, Suite 701
2130 H Street, N.W.
Washington, DC 20037

AUG 10 2008

Dear Mr. Evans:

This is the final response to your Freedom of Information Act (FOIA) request dated January 28, 2003, for copies of records "pertaining to participation of Department of Defense (DoD) officials in meetings of the National Security Council Principles Committee pertaining primarily to Colombia from 1998 to the present." I apologize for the delay of this response, which was caused by the need to consult with other DoD components and federal agencies.

William J. Kane, Chief, Information Management Division of the Joint Staff (JS), Robert J. Newberry, Principal Director for the Assistant Secretary of Defense (Counter Narcotics) (CN), and Daniel Sanborn, Deputy Director, Access Management, National Security Council (NSC) have determined that the responsive documents, totaling 93 pages, are exempt from release in their entireties pursuant to 5 U.S.C. § 552(b)(1) because they are currently and properly classified in accordance with Executive Order 12958, as amended, Sections 1.4(a), (b), (c), (d), which concern military plans, weapons systems, or operations; foreign government information; intelligence activities (including special activities), intelligence sources or methods, or cryptology; and foreign relations or foreign activities of the United States, including confidential sources. Certain information is also exempt from release pursuant to 5 U.S.C. § 552(b)(5), which pertains to certain inter- and intra-agency communications protected by the deliberative process privilege.

If you are not satisfied with this action, you may submit an administrative appeal to James Hogan, Chief, Policy, Appeals and Litigation Branch at the above address. Your appeal should be postmarked within 60 calendar days of the date of this letter,

should cite to case number 06-F-0667, and should be clearly marked "Freedom of Information Act Appeal." There are no fees associated with this response.

Sincerely,

(b)(6)

for

Will Kammer
Chief

Enclosures:
As stated

~~SECRET~~

03-A-0667-A1

USDP TASKER



DEPARTMENT OF DEFENSE
OFFICE OF FREEDOM OF INFORMATION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

APR 29 2016
Ref: 03-A-0667-A1
03-F-0667

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR POLICY
ATTN: (b)(6)

SUBJECT: Freedom of Information Act (FOIA) Appeal – Mr. Michael Evans

Attached are copies of the initial FOIA request, the Appeal and two responsive documents totaling nine pages in the case referenced above. During the initial determination, these pages were denied in full. In order for the Director, Oversight and Compliance to fulfill responsibilities as the appellate authority, the following is requested:

Please conduct a line-by-line review of the information previously denied. If you determine any of the previously denied information should remain exempt from release, enclose that information in RED brackets, cite the FOIA exemption(s) invoked, and provide your rationale for continued denial on SD Form 472. Please note the documents' scheduled declassification dates. Therefore, in order for these documents to be withheld under FOIA exemption (b)(1), they must be reclassified and recommend your coordination with the document originator.

Please forward your response to this office by June 30, 2016. If you have questions regarding this appeal, contact (b)(6) at (b)(6) or (b)(6)

(b)(6)

for
Danaeka Spear
Chief, Appellate Office

Attachments:

1. Tab A: FOIA request letter
2. Tab B: FOIA appeal letter
3. Tab C: SD Form 472
4. Tab D: Previous SD Form 472 reviews with clean documents (6)

~~SECRET~~

UNCLASSIFIED UPON REMOVAL OF ENCLOSURES



~~SECRET//NOFORN~~
DEPARTMENT OF DEFENSE
OFFICE OF FREEDOM OF INFORMATION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

CS-A-0667-A1
NSC Tasker

APR 29 2016
Ref: 03-A-0667-A1
Re: 03-F-0667

MEMORANDUM FOR: NATIONAL SECURITY COUNCIL
DIRECTOR OF ACCESS MANAGEMENT
RM 5013
NEW EXECUTIVE OFFICE BUILDING
WASHINGTON, DC 20504

SUBJECT: Freedom of Information Act (FOIA) Appeal – Mr. Michael Evans

Attached are copies of the initial FOIA request, the Appeal and 15 responsive documents totaling 88 pages in the case referenced above. During the initial determination, these pages were denied in full. In order for the Director, Oversight and Compliance to fulfill responsibilities as the appellate authority, the following is requested:

Please conduct a line-by-line review of the information previously denied. If you determine any of the previously denied information should remain exempt from release, enclose that information in RED brackets, cite the FOIA exemption(s) invoked, and provide your rationale for continued denial. We believe that additional information can be released without causing a foreseeable harm to future agency deliberations. If you do not agree with this recommendation, please state your rationale for continued denial in your response. Please note the documents' scheduled declassification dates. Therefore, in order for these documents to be withheld under FOIA exemption (b)(1), they must be reclassified.

Please forward your response to this office by June 30, 2016. If you have any questions regarding this appeal, our action officer is (b)(6) at (b)(6) or

(b)(6)

(b)(6)

JS
Danaeka Spear
Chief, Appellate Office

Attachments:

1. Tab A: FOIA request letter
2. Tab B: FOIA appeal letter
3. Tab C: Previous NSC reviews dated January 31, 2006 and May 2, 2006
4. Tab D: Copies of clean documents ~~(S//NF)~~

~~SECRET//NOFORN~~
UNCLASSIFIED UPON REMOVAL OF ENCLOSURES



DEPARTMENT OF DEFENSE
OFFICE OF FREEDOM OF INFORMATION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

03-A-0667-A1

JS Tasker

APR 29 2016

Ref: 03-A-0667-A1

03-F-0667

JS FOIA 06623-05

MEMORANDUM FOR JOINT STAFF

ATTN: (b)(6)

SUBJECT: Freedom of Information Act (FOIA) Appeal – Mr. Michael Evans

Attached are copies of the initial FOIA request, the Appeal and three responsive documents totaling 12 pages in the case referenced above. During the initial determination, these pages were denied in full. In order for the Director, Oversight and Compliance to fulfill responsibilities as the appellate authority, the following is requested:

Please conduct a line-by-line review of the information previously denied. Please note that two documents were previously reviewed by Joint Staff. A third document is believed to have Joint Staff equities and is attached. If you determine any of the previously denied information should remain exempt from release, enclose that information in RED brackets, cite the FOIA exemption(s) invoked, and provide your rationale for continued denial on SD Form 472. Please note the documents' scheduled declassification dates. Therefore, in order for these documents to be withheld under FOIA exemption (b)(1), they must be reclassified and recommend your coordination with the document originator.

Please forward your response to this office by June 30, 2016. If you have questions regarding this appeal, contact (b)(6) at (b)(6) or (b)(6)

Danaea Spear
Danaea Spear
Chief, Appellate Office

Attachments:

1. Tab A: FOIA request letter
2. Tab B: FOIA appeal letter
3. Tab C: Previous SD Form 472 review
4. Tab D: Copies of clean documents ~~(S/NF)~~

UNCLASSIFIED UPON REMOVAL OF ENCLOSURES

The National Security Archive

The George Washington University
Gelman Library, Suite 701
2130 H Street, N.W.
Washington, D.C. 20037

Phone: 202/994-7029
Fax: 202/994-7005
Email: mevans@gwu.edu
<http://www.nsarchive.org>

May 6, 2008

IN ALL CORRESPONDENCE PLEASE REFER
TO ARCHIVE FILE NO. 20030247DOD018

DOD FILE NO. 03-F-1082

James Hogan, Chief
Policy, Appeals and Litigation Branch
Office of Freedom of Information
1155 Defense Pentagon
Washington, DC 20301-1155

RE: FREEDOM OF INFORMATION ACT APPEAL

Dear Sir or Madam:

This letter constitutes an administrative appeal in accordance with the Freedom of Information Act (FOIA), 5 U.S.C. Sec. 552., of a Department of Defense response to a FOIA request I submitted on April 1, 2003. The request was for any information about the activities of California Microwave Systems, Inc. (CMS) in Colombia. I further requested that you search all reporting on or monitoring of CMS operations in Colombia and documents that relate to Northrup Grumman (or any other subdivision thereof) involvement with aerial reconnaissance (whether for counternarcotics, counterinsurgency, or any other purpose) programs in Colombia. According to the Department of Defense's letter of response, dated March 31, 2008, 118 were withheld in full and portions of an additional eight documents were withheld on the basis of Sections 1.4(a)(b)(c)(d), Sections 3.3(b)(5)(b)(6), and exemptions (b)(1), (b)(5) and (b)(6).

It is likely that the documents in question pertain to CMS involvement in the SOUTHCOM Reconnaissance System (SRS), a U.S. intelligence-gathering program in Colombia. Two planes operated by CMS personnel crashed over Colombia in February and March 2003: the first during a counterdrug surveillance mission, the second while assisting search and recovery efforts relating to the first accident. Two men from the February plane (a CMS employee and a Colombian military officer) were executed by members of the Revolutionary Armed Forces of Colombia (FARC). Three CMS employees that survived the February crash were subsequently taken hostage by the FARC.

I would point out that these accidents and the subsequent investigations are discussed in declassified documents and have been the subject of several news stories. In reviewing the withheld material for maximum declassification, I would ask that you please consider the detailed information already available about CMS, the February and March 2003 crashes and the SRS program.

An April 3, 2003 Department of Defense document released on appeal in a separate FOIA request (DOD case # 05-F-1817; 05-A-1817) contains the following details about the February and March crashes.

At approximately 0852 hours on February 13, 2003, contact was lost with SRS # 2...The Americans on board were California Microwave Systems (a subsidiary [sic] of Northrup-Grumman) contract employees. The Colombian on board was Colombian Army host nation rider. The senior pilot and the host nation rider were killed by the FARC. Three crewmembers were taken hostage by the FARC...

An independent non-governmental research institute and library located at the George Washington University, the Archive collects and publishes declassified documents obtained through the Freedom of Information Act. A tax-exempt public charity, the Archive receives no U.S. government funding; its budget is supported by publication royalties and donations from foundations and individuals.

In the evening of March 25, SRS #1 crashed eleven nautical miles north of Laramia...It was on a search and rescue mission for the missing crew of the previous crash. The plane was carrying three American crewmembers and no host nation rider.

The document mentions the ongoing formal investigation into the crashes, as well as media reports on the safety concerns regarding single engine aircraft operations in Colombia. In particular, the document notes that both the Los Angeles Times and the Miami Herald reported that two former California Microwave employees had "repeatedly warned their employers of the risks of the Colombia SRS missions. Specifically they cited the following concerns: danger of use of single-engine Cessna due to high elevations flights and triple canopy jungle, frequent night flights, heavy equipment loads." Southern Command reportedly acknowledged that they received the letters and "assessed it was an internal Northrup/Grumman issue," but also adjusted flight routes and requested "an operational standdown to evaluate the problem." (Attachment 2)

A State Department cable from April 2003 also mentions the safety concerns of the two former SRS pilots whose "November and December 2002 letters to Northrop Grumman management officials raised concerns about the safety of the SRS program." The cable refutes a claim published in the *Los Angeles Times* stating that the U.S. planned to continue to use single-engine Cessna airplanes in spite of two deadly crashes. (Attachment 3)

A July 1, 2003 investigation report, recently released by U.S. Southern Command (SOUTHCOM FOIA case # 04-111), includes extensive details about the March 2003 plane crash and the SRS program in general. The "Mishap Narrative" that begins on page five is a detailed summary of the events surrounding the accident, including the actions of James Oliver, Tommy Schmidt and Ralph Ponticelli, the three CMS employees killed in the accident. The "Summary of Evidence" that begins on page ten includes specific information about the mission and organization of the SOUTHCOM Reconnaissance System and the SRS contract, awarded to California Microwave Systems through its parent company, Northrup Grumman Systems Corp. The report contains detailed information about the contract and the roles of the companies involved. In the analysis of the accident itself, the report notes prior engine problems with the Cessna 208B and personnel issues within the SRS program, including one pilot's perception that there was an "SRS 'culture' of not always operating 'by the book'". Some of the theories accepted in the report's analysis include:

- SRS aircrew operated SRS aircraft in a complacent manner.
- Pilot at the controls was not prepared to navigate properly on the route flown.
- The Contract failed to establish an adequate means to ensure quality control of the contractor's method of performance.
- SRS local leadership failed to properly control and discipline unprofessional and unsafe practices. (Attachment 4)

Although much of the declassified material addresses the SRS program and the plane crashes, U.S. government agencies have also released documents about the ongoing efforts to free the CMS employees held hostage by the FARC. A Department of Defense information memo released on appeal in FOIA case # 05-F-1817; 05-A-1817 details talking points for a meeting with representatives of Northrop Grumman. The memo notes, "It is U.S. Government policy to assist an employing organization's efforts to secure their employees safe release...It is also U.S. Government policy to deny hostage takers the benefits of ransom, prisoner releases, policy changes, or other acts of concession." The memo also notes that Northrop Grumman planned to withdraw from the SRS program as of June 2003. (Attachment 5)

Aside from government documents, numerous news articles published in the past few years have also covered the incident, the safety concerns expressed by the pilots and the ongoing hostage situation.

• **The Washington Times**, March 18, 2003: Attesting to CMS's involvement in Colombia, this article quotes the CMS website: "Our real-time intelligence systems have been used in peacekeeping operations in Korea, Haiti and Bosnia, and for counternarcotics in Colombia and South America and the Caribbean," the site says." (Attachment 6)

• **The New York Times**, February 14, 2004: Regarding the CMS employees who were taken hostage by the FARC, the article explains that, "The three Americans -- Marc Gonsalves, Keith Stansell and Thomas Howes -- worked cloaked in secrecy for two subsidiaries of Northrop Grumman, the huge military contractor, in an arrangement used increasingly by the United States government in conflict zones from Colombia to Afghanistan." The article further reports that "rebels killed two other survivors: an American pilot, Tom Janis, and a Colombian intelligence officer. Weeks later, on March 25, a plane on a mission to track the captives hit a tree. Three more Americans were killed: Tommy Schmidt, Ralph Ponticelli and James Oliver. The men were part of a team of a dozen or so pilots and technicians overseen by the American military mission in Latin America, the Southern Command, based in Miami. Their operation was dubbed the Southcom Reconnaissance System, and Northrop Grumman held the \$8.6 million contract for the work." (Attachment 7)

• **Atlanta Journal Constitution**, May 9, 2004: In reference to a federal lawsuit filed by families of the victims, this article states, "The suit alleges Northrop Grumman used single-engine Cessna 208B Super Caravans in the program because they were less costly than multiengine craft. The suit says government and Northrop Grumman officials ignored warnings from pilots that the planes were 'underpowered and unable to provide a safe platform for the surveillance.'" (Attachment 8)

• **Times-Picayune**, May 21, 2004: "Families of four American civilian contractors killed when two Defense Department drug surveillance planes crashed in Colombia in February and March 2003 have filed federal lawsuits alleging that negligence led to the deaths." The article describes the nature of the suits, which target "companies involved in the manufacture and maintenance of the airplane and its engine," as well as "companies that ran the spy plane program, the Defense Department and various people involved. The suits, all of which seek damages, deal with the Southcom Reconnaissance System, a program run under the auspices of the Defense Department's Southern Command, which is based in Miami. Following the trend of contracting jobs once performed by military personnel to private companies, the program was outsourced to California Microwave Systems, a division of defense contractor Northrop Grumman Corp." (Attachment 9)

• **The Los Angeles Times**, December 1, 2007: Northrop Grumman made news again following the recent discovery of video footage of hostages "Thomas Howes, Keith Stansell and Marc Gonsalves, employees of defense contractor Northrop Grumman Corp. who were captured when their plane crash-landed in the Colombian jungle in 2003." The videos offered the first "proof of life" of Betancourt and the three Americans in more than four years. Also captured were letters and documents, including a will written by Howes that had Monday's date." (Attachment 10)

Considering the extensive information already publicly available about CMS's involvement in Colombia and the CMS employees involved in the plane crashes, including their identification and the legal action their families plan to take, I ask that you please review the withheld material in this case. Given the public knowledge, it is reasonable to assume that, at a minimum, portions of the withheld and excised documents could be released at this time.

With respect to the material withheld on the basis of FOIA exemption (b)(1), I ask that you use your discretion to release the sections that are either factual and/or descriptive, or that are no longer time sensitive. I would remind you that non-sensitive material must be released unless inextricably intertwined with other sensitive material. At a minimum, I expect that document titles, dates, subject headings, and other non

sensitive material could be released without disclosing sensitive information.

With respect to the material withheld on the basis of exemption (b)(5), I ask that each portion of these documents be independently evaluated to determine whether they are, in fact and according to law, exempt from mandatory disclosure. Furthermore, any claim of exemption five is wholly discretionary — material believed to be covered by it can always be disclosed as a matter of agency discretion. In fact, the Justice Department's Office of Information and Privacy has advised that agencies may exercise their discretion to release information previously withheld under the (b)(5) exemption. Where the government has complete discretion to assert or not assert an exemption, consideration should be given (as Congress has made clear) to the public interest in disclosure. I ask that our request for such a release be given careful, sympathetic consideration. I would also remind you that the courts have ruled that the (b)(5) exemption should not apply to "statements of policy and interpretations which have been adopted by the agency." [Federal Open Market Comm. v. Merrill, 443 U.S. 340, n.23 1979; Schwartz v. IRS, 511 F.2d 1303, 13 05-06 (D.C. Cir. 1975); Bristol-Myers Co. v. FTC, 424 F.2d 935 (D.C. Cir. 1969)]. Moreover, to fall under exemption (b)(5), a document must be a direct part of the pre decisional process in that it makes recommendations or expresses opinions on legal or policy matters to be decided by the agency, and furthermore that the government must carry the burden of establishing the existence of a genuine pre-decisional process. Portions of the documents not meeting these requirements should be released.

Thank you for your consideration of this appeal. I look forward to a prompt response. Please contact me with any questions or comments at (b)(6) or by email (b)(6)

Sincerely,

Michael Evans
Analyst

The National Security Archive

The George Washington University
Gelman Library, Suite 701
2130 H Street, N.W.
Washington, D.C. 20037

03-F-1082
Phone: 202/994-7000
Fax: 202/994-7005
nsarchiv@gwu.edu
www.nsarchive.org

April 1, 2003

Will Kammer
Department of Defense
Directorate for Freedom of Information
1155 Defense Pentagon
Washington, D.C. 20301-1155

Re: Request under the FOIA, in reply refer to Archive # 20030247DOD018

Dear Mr. Kammer:

Pursuant to the Freedom of Information Act (FOIA), I hereby request disclosure of all documents relating in whole or in part to the activities of California Microwave Systems, Inc. (CMS) in Colombia. According to press accounts (please see *The Washington Times*, March 18, 2003), CMS is a division of Northrup Grumman and specializes in imagery, communications and electronics intelligence. It has acknowledged performing reconnaissance missions in Latin America, and has been the recipient of contracts from the U.S. Army to develop specialized image-gathering aircraft to be used by the U.S. Southern Command for Aerial Reconnaissance Low projects (for more information on this topic, please see <http://www.globalsecurity.org/intell/systems/ar1.htm>).

Most of what has been publicly revealed concerning CMS is based on information that has surfaced since February 2003, when employees of CMS on board a small plane in Colombia were forced to make an emergency landing in Caqueta, Colombia. Two men from the plane (one an CMS worker, the other a Colombian military officer) were allegedly executed by troops from the Revolutionary Armed Forces of Colombia, or FARC. Three remaining CMS employees were subsequently taken hostage by the FARC.

While I seek any documents generated as a result of this incident, I also request that you search for all reporting on or monitoring of CMS operations in Colombia prior to the downing of the plane. Please search for material that makes specific reference to CMS, as well as all documents that relate to Northrup Grumman (or any other subdivision thereof) involvement with aerial reconnaissance programs in Colombia, whether they are for counternarcotics, counterinsurgency, or any other purpose.

If you regard any of these documents as potentially exempt from the FOIA's disclosure requirements, I request that you nonetheless exercise your discretion to disclose them. As the FOIA requires, please release all reasonably segregable nonexempt portions of documents. To permit me to reach an intelligent and informed decision whether or not to file an administrative appeal of any denied material, please describe any withheld records (or portions thereof) and explain the basis for your exemption claims. I also ask that no material be omitted on the basis of "non-relevance."

As you know, the National Security Archive qualifies for waiver of search and review fees as a representative of the news media. This request is made as part of a scholarly and news research project and not for commercial use. For details on the Archive's research and publication activities, please see our Web site at the address above. Please notify me before incurring photocopying costs over \$100.

To expedite the release of the requested documents, please disclose them on an interim basis as they become available to you, without waiting until all the documents have been processed. If you have any questions regarding the identity of the records, their location, the scope of the request or any other matters, please call me at (202) 994-7000. I look forward to receiving your response within the twenty-day statutory time period.

Sincerely Yours,

(b)(6)

Michael Evans

**FREEDOM OF INFORMATION ACT REQUEST INTERIM RESPONSE
(COMPLEX REQUESTS)**

1. DATE OF REQUEST	2. DATE RECEIVED	3. CASE WORKLOAD	4. CASE NUMBER
<i>April 1, 2003</i>	<i>April 1, 2003</i>	<i>2033 cases</i>	<i>03-F-1082</i>

This is an interim response to your Freedom of Information Act (FOIA) request, received in this directorate on the above date. Your request has been assigned the case number indicated above, and is being processed as quickly as possible in accordance with procedural requirements promulgated in DoD Regulation 5400.7-R at 32 CFR 286. As currently worded, your request may take considerable time to complete. The actual processing time will depend upon its complexity, whether it involves sensitive records, voluminous records, extensive searches, consultation among DoD components or other agencies, and our administrative workload which is listed in block 3 above.

If you have any questions or would like to discuss how to limit your request in order to speed up the processing time, please call:

(b)(6)

and ask for

(b)(6)

Director, Freedom of Information and Security Review, DOD
Room 2C757, 1155 Defense Pentagon, Washington, DC 20301-1155



**DEPARTMENT OF DEFENSE
OFFICE OF FREEDOM OF INFORMATION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155**

21 MAR 2006

Ref: 03-F-1082

Mr. Michael Evans
The National Security Archive
Gelman Library, Suite 701
2130 H Street, N.W.
Washington, DC 20037

Dear Mr. Evans:

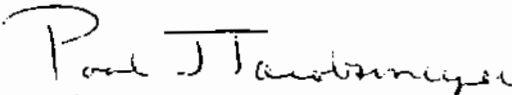
This responds to your Freedom of Information Act/Privacy Act request dated April 1, 2003, Archive # 20030247DOD018, and received in this Office on April 1, 2003, for records pertaining to, "the activities of California Microwave Systems, Inc. (CMS) in Colombia." The eight enclosed documents are provided as responsive to your request. Please note one document located for this request was not processed because it was handled on case number 05-F-1817, as documents B13 and B13A.

Mr. Robert Newberry, Principal Director, Office of the Deputy Assistant Secretary Of Defense, Counter-Narcotics has determined that portions of these eight documents, as well as 118 additional documents totaling 498 pages which are being denied in their entirety, are exempt from release because they are currently and properly classified in accordance with Executive Order 12958, as amended, specifically, Section 1.4 (a) concerning military plans, weapons, or operations; Section 1.4 (b) concerning foreign government information; Section 1.4 (c) concerning Intelligence activities (including special activities), intelligence sources or methods, or cryptology, and Section 1.4 (d) concerning foreign relations or foreign activities of the United States, including confidential sources. The information denied is exempt from automatic declassification in accordance with Section 3.3 (b)(1), which could reveal the identity of a confidential human source, or a human intelligence source, or reveal information about the application of an intelligence source or method; Section 3.3 (b)(5) which could reveal military war plans which remain in effect, and Section 3.3 (b)(6), which could reveal information, including foreign government information, that would seriously and demonstrably impair relations between the United States and a foreign government, or seriously and demonstrably undermine ongoing diplomatic activities of the United States. Additional information is exempt from release pursuant to 5 U.S.C. § 552(b)(5), which pertains to certain inter- or intra-agency communications protected by the deliberative process

privilege. Further information has been withheld pursuant to 5 U.S.C. § 552(b)(6), which applies to information that, if released, would constitute a clearly unwarranted invasion of the personal privacy of third parties. Accordingly, this information is denied pursuant to 5 USC § 552 (b)(1), (b)(5) and (b)(6).

If you are dissatisfied with this action you may submit an appeal to this Office, by writing to James Hogan, Chief, Policy, Appeals and Litigation Branch, Office of Freedom of Information, 1155 Defense Pentagon, Washington, D.C. 20301-1155. Your appeal letter should be postmarked within 60 calendar days of the date of this letter and should cite case number 03-F-1082.

Sincerely,


for Will Kammer
Chief

Enclosures:
As stated

FOI/PA CASE ASSIGNMENT WORKSHEET

Case No:

03-A-1082-A1

ACTION ASSIGNED TO _____ TEAM: A B C D REVIEWER _____ CARD _____

TYPE REQUEST: *Appeal Commercial Educational News/Media NonCom/Scientific Other*

EXPEDITED RESPONSE REQUESTED _____ GRANT? Y N DCII CHECK _____

UP-FRONT DOCUMENT SEARCH _____ FEE WAIVER REQUESTED _____ DATE RECEIVED:

REMARKS:

10 MAY 14 9:38

CLOSED WITHDRAWN

(ASBCA) Armed Services Board of Contract Appeals
(AT&L) Acquisition, Technology, & Logistics
(A&T) Acquisition & Technology
(DAU) Defense Acquisition University
(DPAP) Defense Procurement & Acquisition Policy
(DARC) Defense Acquisition Regulation Council
(PSA) Portfolio Systems Acquisition
(TC) Treaty Compliance
(SBP) Small Business Programs
(BT) Business Transformation
(BTA) Business Transformation Agency
(DDR&E) Defense Research and Engineering
(AS&C) Advanced Systems & Concepts
(DARPA) Defense Advanced Research Projects Agency
(DMEA) Defense Micro Electronics Activity
(DSB) Defense Science Board
(I&E) Installations & Environment
(ECOADJ) Economic Adjustment
(L&MR) Logistics & Material Readiness
(IC) International Cooperation
(MDA) Missile Defense Agency
(NCB) Nuclear, Chemical, & Biological Defense Programs
(SPPGMS) Special Programs
(ATSDIO) Assistant to the Secretary of Defense (Intelligence Oversight)
(COMP) Comptroller
(PA&E) Program Analysis & Evaluation
(DPO) Defense Privacy Office
(EXSEC) The Exec. Secretariat

E-FOIA REPLY

(I) Intelligence
(CIFA) Counterintelligence Field Activity
(JS) Joint Staff
(LA) Legislative Affairs
(NDU) National Defense Univ.
(NI) Networks and Information Integration
(NSPS) National Security Personnel System
(NSSG) National Security Study Group
(ODNA) Office of the Director, Net Assessment
(OGC) Office of General Counsel
(DOHA) Director, Office of Hearings and Appeals
(OSAWHL) Office of the Special Assistant to the Secretary of Defense for White House Liaison
(PA) Public Affairs
(DMA) Defense Media Activity
(P&R) Personnel & Readiness
(CPMS) Civilian Personnel Management Service
(DEOMI) Defense Equal Opportunity Management Institute
(DMDC) Defense Manpower Data Center
(SIAD) Statistical Information Analysis Division
(FVAP) Federal Voting Assistance Program
(HA) Health Affairs
(DHSD) Deployment Health Support
(RA) Reserve Affairs
(PFPA) Pentagon Force Protection Agency
(USDP) (Policy)
(AP) Asian & Pacific Security Affairs
(CEN) Central Asia
(EAS) East Asia
(SEA) South and Southeast Asia

(IS) International Security Affairs
(AFR) Africa
(EUR) Europe & NATO
(MID) Middle East
(GS) Global Security Affairs
(CMO) Coalition Affairs
(GTS) Counternarcotics, Counterproliferation, and Global Threats
(DPO) Detainee Affairs
(MPA) Defense POW Missing Personnel Affairs Office
(DSCA) Defense Security Cooperation Agency
(DTSA) Defense Technology Security Administration
(PRT) Partnership Strategies
(HD) Homeland Defense and America's Security Affairs
(CMC) Crisis Management & Defense Support for Civil Authorities
(HLD) Homeland Def.
(HSI) Homeland Security Integration
(WHA) Western Hemisphere Affairs
(PDUSDP) Policy Director
(PPO) Policy Planning
(SPD) Support for Public Diplomacy
(SO/LIC) Special Operations and Low Intensity Conflict
(FT&R) Forces Transformation & Resources
(SOC) Special Operations
(STB) Stability Operations
(STR) Strategic Capabilities
(WHMO) White House Military Office
(WHS) Wash HQ Services

(A&P) Acquisition & Procurement
(ESD) Executive Services Directorate
(GC) General Counsel
(HRD) Human Resources
(PENREN) Pentagon Renovation
No Nexus Response
Not a Proper Request Reply
Not Reasonably Described
No Records Response
Not an Agency Record
Verification Response

ARMY	DTRA
NAVY	NGA
USAF	NGB
USMC	NRO
	NSA
CENTCOM	NSC
EUCOM	SHAPE
JFCOM	TRICARE
NORTHCOM	
PACOM	CIA
SOCOM	C. GUARD
SOUTHCOM	DEA
STRATCOM	DHS
TRANSCOM	DOE
	DOJ
DCAA	DOL
DCMA	FAA
DECA	FBI
DFAS	FEMA
DIA	GSA
DISA	NARA
DLA	NPRC
DoDIG	OPM
DoDEA	SEC. SVC.
DSS	STATE
DTIC	VA

~~SECRET~~



DEPARTMENT OF DEFENSE
DEFENSE FREEDOM OF INFORMATION POLICY OFFICE
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

12 NOV 2009

Ref: 03-A-1082

MEMORANDUM FOR: USD POLICY EXECUTIVE SECRETARIAT
ATTN: (b)(6)

SUBJECT: Freedom of Information Act (FOIA) Appeal – Mr. Michael Evans

Attached are copies of the initial decision and the appeal in the case referenced above. In order for the Deputy Director, Administration and Management to fulfill responsibilities as the appellate authority, we ask that you conduct another review of the attached 121 documents (documents 2-8, 11-29, 32-61, and 63-127). Please note that Documents 2 and 4 were partially released. All the remaining documents were withheld in their entirety.

Taking into consideration the passage of time, the subsequent release of the hostages, and the fact that certain information has already been publicly released, we believe significant portions should be released on appeal. Therefore, we request that you conduct a line-by-line review, bracket any information you determine should remain withheld, cite the FOIA exemption(s) invoked, and provide your rationale for withholding. While conducting your appellate review, please keep in mind the United States Attorney General's latest guidance, i.e., there is a presumption of openness and FOIA Exemptions 2 and 5 may only be used if the agency can articulate a foreseeable harm. Also, please note that the unclassified portions of classified documents cannot be withheld under FOIA Exemption 1.

Once we receive your appellate review, we will ask the United States Southern Command to review the documents for their equities. Afterwards, we will forward the Defense Intelligence Agency documents and the Department of State documents to those agencies for their final response.

Please forward your response to this office 20 business days from the date of this memo. Our action officer is Darrell Williams at (b)(6) or

(b)(6)

(b)(6)

James P. Hogan
Chief

*Documents
located in
FOIA EXPRESS*

Attachments:
As stated

COPY

~~SECRET~~

UNCLASSIFIED WHEN SEPARATED FROM ENCLOSURES

SECRET



**DEPARTMENT OF DEFENSE
DEFENSE FREEDOM OF INFORMATION POLICY OFFICE
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155**

OCT 11 2012

Ref: 03-A-1082

**MEMORANDUM FOR: JOINT STAFF
ATTN: DECLASSIFICATION BRANCH**

SUBJECT: Freedom of Information Act (FOIA) Appeal – Mr. Michael Evans

Attached is a copy of the appeal in the case referenced above. In order for the Acting Deputy Director, Administration and Management to fulfill responsibilities as the appellate authority, the following is requested:

Please conduct a review of the two attached documents (71 and 72). OUSD(P) has conducted an appellate review of the responsive documents and determined that they had no equities in these documents; however, OUSD(P) has requested that JS review these documents. Therefore, we ask that you conduct a review of the responsive documents, bracket any information which you recommend remain exempt, cite the FOIA exemption(s) invoked for any recommended withholding, and provide your rationale for denial to this office. Please be advised that an appellate review of these documents are being conducted concurrently by US Southern Command.

Please forward your response to this office by November 15, 2012. You may direct any questions concerning this memorandum to Ms. Danaeka Spear at (b)(6) or

(b)(6)

Sincerely,

(b)(6)

James P. Hogan
Chief

Attachments:

- (1) Mr. Evans' Appeal
- (2) Mr. Evans' Initial Request
- (3) Responsive Documents

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UNCLASSIFIED WHEN SEPARATED FROM ENCLOSURES

~~SECRET~~



**DEPARTMENT OF DEFENSE
DEFENSE FREEDOM OF INFORMATION POLICY OFFICE
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155**

OCT 12 2012

Ref: 03-A-1082

MEMORANDUM FOR: USD POLICY EXECUTIVE SECRETARIAT

ATTN: (b)(6)

SUBJECT: Freedom of Information Act (FOIA) Appeal – Mr. Michael Evans

Attached are copies of the appeal and the responsive documents in the case referenced above. On December 12, 2009, Policy completed an appellate review of the attached documents and forwarded their release recommendations to this office. During the appellate review, Policy determined that they did not have any objections to the release of Policy equities in the attached documents and the documents should be referred to the Department of State, DIA and (b)(3):50 USC 6. However, during the initial review of this case, Policy's Counter Narcotics Division withheld the attached documents in their entirety. Since Policy was the only component to withhold information on these pages during the initial determination, we are asking that Policy take a second look at the attached responsive pages, before we refer these documents to State, (b)(3):50 and DIA, with no objections to their release.

Please forward your response to this office by November 2, 2012. You may direct any questions concerning this appeal to Ms. Danaeka Spear at (b)(6) or

(b)(6)

Sincerely,

(b)(6)

for James P. Hogan
Chief

Attachments:

- (1) Mr. Evan's FOIA Appeal
- (2) Mr. Evan's Initial Request
- (3) Policy's appellate 472
- (4) Responsive documents

~~SECRET~~

UNCLASSIFIED WHEN SEPARATED FROM ENCLOSURES

~~SECRET~~



**DEPARTMENT OF DEFENSE
DEFENSE FREEDOM OF INFORMATION POLICY OFFICE
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155**

OCT 12 2002

Ref: 03-A-1082

MEMORANDUM FOR: U.S. SOUTHERN COMMAND
ATTN: MARCO T. VILLALOBOS
SCES-SM-CFO
3511 NW 91ST AVENUE
MIAMI, FL 33172-1217

SUBJECT: Freedom of Information Act (FOIA) Appeal – Mr. Michael Evans

Attached is a copy of the appeal in the case referenced above. In order for the Acting Deputy Director, Administration and Management to fulfill responsibilities as the appellate authority, the following is requested:

Please conduct a review of the attached documents (14-16, 21, 34, 35, 39, 40, 46-48, 51, 52, 57, 59, 70-72, 76-78, 86, 88, 89, 93-95, 100, 102, 103, 106, 110, 111, 112-114, 116, and 117). These documents were initially withheld in their entirety. This office has conducted an appellate review of these documents and recommends the release of the information highlighted in yellow at minimum. We ask that you please bracket the information and cite the FOIA exemption(s) invoked for any information that your office wants to continue to withhold from release along with your rationale for denial..

While reviewing this document, please keep in mind President Obama's January 21, 2009, FOIA memorandum and the United States Attorney General's March 19, 2009, FOIA policy guidance, which both strongly encourages discretionary disclosure of information unless there is a foreseeable harm in releasing the information. Since there is a presumption of openness, the Department of Justice will only defend a discretionary denial under FOIA Exemptions 5 if the agency reasonably foresees that disclosure would harm an interest protected by one of the statutory exemptions. Therefore, if you want to continue to withhold the information currently denied under FOIA Exemptions 5, please articulate the foreseeable harm that would occur if the information were released.

~~SECRET~~

UNCLASSIFIED WHEN SEPARATED FROM ENCLOSURES

SECRET

Please forward your response to this office by November 15, 2012. You may direct any questions concerning this memorandum to Ms. (b)(6) at (b)(6) or (b)(6).

Sincerely,

(b)(6)

(S) James P. Hogan
Chief

Attachments:

- (1) Mr. Evans' Appeal
- (2) Mr. Evans' Initial Request
- (3) Responsive Documents

SECRET

UNCLASSIFIED WHEN SEPARATED FROM ENCLOSURES

The National Security Archive

The George Washington University
Gelman Library, Suite 701
2130 H Street, N.W.
Washington, D.C. 20037



Phone: 202.994.7000
Fax: 202.994.7005
nsarchive@gwu.edu
<http://www.nsarchive.org>

04-A-2268-A1

Thursday, January 11, 2007

James Hogan, Chief
Policy, Appeals, and Litigation Branch
Department of Defense
Office of Freedom of Information
1155 Defense Pentagon
Washington, DC 20301-1155

Re: Case Control No. 04-F-2268 / Archive No. 20040770DOD091

Dear Mr. Hogan:

This letter is an administrative appeal regarding a Freedom of Information Act (FOIA) request submitted on July 26, 2004 by Peter Kornbluh. The request was for all documents related in whole or in part to the Department of Defense plan code-named "Desert Badger." In the Department's letter of December 07, 2006 it was stated that a search located thirteen pages of responsive material which was withheld in full under exemption (b)(1).

The information within these pages is highly unlikely to harm "military plans, weapon systems or operations." General details regarding the plan are already public knowledge through statements given by public officials, including President George W. Bush, and media reports. This plan was also discussed in the attached excerpt from Bob Woodward's book, *Plan of Attack*. More importantly, this plan was completed before the 2003 invasion of Iraq and was made obsolete by that invasion because this plan was designed to react to potential actions which may be taken by Saddam Hussein's government in Iraq. In this case, it is apparent that the extraordinary public interest regarding the military planning against the Saddam government outweighs the desire for secrecy. For the same reasons, it is unlikely that the release of any information contained in these pages would threaten the "foreign relations or foreign activities" of the U.S. since it concerns relations which a regime no longer in power. The historical and public interests in these matters outweigh secrecy concerns in this regard.

I appreciate your search of records, but ask that you review these pages again while giving due interest to the extraordinary public interest concerning the U.S. relationship with Iraq before the war and information which is already public knowledge. Please use your discretion to ensure maximum disclosure of information. At a minimum, I request that the Department release all reasonably segregable information in the documents.

Sincerely yours,

(b)(6)

Roger Strother

Attachment: as stated.

An Independent non-governmental research institute and library located at the George Washington University, the Archive collects and publishes declassified documents obtained through the Freedom of Information Act. Publication royalties and tax deductible contributions through The National Security Archive Fund, Inc. underwrite the Archive's budget.



DEPARTMENT OF DEFENSE
OFFICE OF FREEDOM OF INFORMATION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

12 JAN 2007

Ref: 04-A-2268(A)

Mr. Roger Strother
The National Security Archive
The George Washington University
Gelman Library Suite 701
2130 H Street, NW
Washington, DC 20037

Dear Mr. Strother:

This acknowledges receipt of your Freedom of Information Act appeal, dated January 11, 2007.

Due to a large number of pending appeals, we are unable to complete your appeal within the statutory time requirement. In fairness to the general public, we make every effort to treat all requesters equally. Accordingly, responses are made on a first-in, first-out, easy-hard basis, and controlled in response queues. After the appellate review, your appeal will be processed in turn, by date of its receipt, and whether the case is easy or difficult to complete.

Sincerely,

(b)(6)

James P. Hogan
Chief, FOIA Policy, Appeals and Litigation

The National Security Archive

The George Washington University
Gelman Library, Suite 701
2130 H Street, N.W.
Washington, D.C. 20037

Phone: 202/994-7000
Fax: 202/994-7005
nsarchive@gwu.edu
www.nsarchive.org

July 26, 2004

04-F-2268

Will Kammer
Directorate for Freedom of Information and Security Review
Department of Defense
Room 2C757
1155 Defense Pentagon
Washington, D.C. 20301-1155

Re: Request under the FOIA, in reply please refer to Archive # 20040770DOD091

To Mr. Kammer:

Pursuant to the Freedom of Information Act (FOIA), I hereby request disclosure of the following:

All documents related in whole or in part to the Department of Defense plan code-named "Desert Badger," primarily concerning the U.S. response if American pilots were shot down over Iraq. The response operation was discussed during a briefing on January 10, 2001, for President Bush and the Joint Chiefs of Staff at the Pentagon.

[The document is referred to in the attached pages of Bob Woodward's Plan of Attack, New York: Simon and Schuster, 2004. (p.11, 64-65)]

Please keep in mind that Mr. Woodward's description of this plan (attached) makes it apparent that he was given access to documentation of it, and that furthermore all the material in his book was cleared for publication by the White House. Although I am aware of the atypical circumstances which allowed Mr. Woodward access to such documentation, he does remain a member of the public, and as FOIA case law clearly maintains, "Either all requestors have access, or none do... The first person to get the information may give it away; so if one person gets it, 'any person' may... The Act clearly intended to give any member of the public as much right to disclosure as one with a special interest therein." Please see *U.S. Dept. of the Air Force v. Federal Labor Relations Authority*, 838F.2d 229 (7th Cir. 1988).

If you regard any of these documents as potentially exempt from the FOIA's disclosure requirements, I request that you nonetheless exercise your discretion to disclose them. As the FOIA requires, please release all reasonably segregable nonexempt portions of documents. To permit me to reach an intelligent and informed decision whether or not to file an administrative appeal of any denied material, please describe any withheld records (or portions thereof) and explain the basis for your exemption claims.

As you know, the National Security Archive qualifies for waiver of search and review fees as a representative of the news media. This request is made as part of a scholarly and news research project and not for commercial use. For details on the Archive's research and publication activities, please see our Web site at the address above. Please notify me before incurring photocopying costs over \$100.

To expedite the release of the requested documents, please disclose them on an interim basis as they become available to you, without waiting until all the documents have been processed. If you have any questions regarding the identity of the records, their location, the scope of the request or any other

matters, please call me at (202) 994-7000. I look forward to receiving your response within the twenty-day statutory time period.

Sincerely,

(b)(6)

Elly Page
For: Peter Kornbluh



DEPARTMENT OF DEFENSE
OFFICE OF FREEDOM OF INFORMATION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

DEC 07 2006

Ref: 04-F-2268
20040770DOD091

Mr. Peter Kornbluh
The National Security Archive
Gelman Library, Suite 701
2130 H. St., NW
Washington, D.C. 20037

Dear Mr. Kornbluh:

This is the final response to your Freedom of Information Act (FOIA) request dated July 26, 2004, for "all documents related in whole or in part to the Department of Defense plan code-named "Desert Badger," primarily concerning the U.S. response if American pilots were shot down over Iraq." We received your request on the same date and assigned it FOIA case number 04-F-2268.

The Joint Staff located thirteen pages of material responsive to your request. William J. Kane, an Initial Denial Authority for the Joint Staff, has determined that the pages are exempt from release because they contain information which is currently and properly classified in accordance with Executive Order 12958, as amended, Section 1.4(a), which pertains to military plans, weapons systems or operations, and (d), which concerns foreign relations or foreign activities of the United States. Accordingly, this information is being withheld pursuant to 5 U.S.C. § 552(b)(1).

If you are not satisfied with this action, you may submit an administrative appeal to James Hogan, Chief, Policy, Appeals and Litigation Branch at the above address. Your appeal should be postmarked within 60 calendar days of the date of this letter, should cite to case number 04-F-2268, and should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

(b)(6)

for Will Kammer
Chief

FOI/PA CASE ASSIGNMENT WORKSHEET

Case No:

04-17-2268-11

ACTION ASSIGNED TO _____ TEAM: A B C PMB REVIEWER DH CARD

TYPE REQUEST: Appeal Commercial Educational News/Media NonCom/Scientific Other

EXPEDITED RESPONSE REQUESTED _____ GRANT? Y N DCII CHECK _____

UP-FRONT DOCUMENT SEARCH _____ DATE RECEIVED:

REMARKS:

07 JAN 11 3:45

CLOSED

WITHDRAWN

E-FOIA REPLY

(ASBCA) Armed Services Board of Contract Appeals
(AT&L) Acquisition, Technology, & Logistics
(A&T) Acquisition & Technology
(DAU) Defense Acquisition University
(DPAP) Defense Procurement & Acquisition Policy
(DARC) Defense Acquisition Regulation Council
(PSA) Portfolio Systems Acquisition
(SBP) Small Business Programs
(BT) Business Transformation
(BTA) Business Transformation Agency
(DDR&E) Defense Research and Engineering
(AS&C) Advanced Systems & Concepts
(DARPA) Defense Advanced Research Projects Agency
(DMEA) Defense Micro Electronics Activity
(DSB) Defense Science Board
(I&E) Installations & Environment
(ECADJ) Economic Adjustment
(L&MR) Logistics & Material Readiness
(IC) International Cooperation
(MDA) Missile Defense Agency
(NCB) Nuclear, Chemical, & Biological Defense Programs
(SPPGMS) Special Programs
(ATSDIO) Assistant to the Secretary of Defense (Intelligence Oversight)
(COMP) Comptroller
(PA&E) Program Analysis & Evaluation
(DPO) Defense Privacy Office
(EXSEC) The Exec. Secretariat
(I) Intelligence

(CIFA) Counterintelligence Field Activity
(JFSC) Joint Forces Staff College
(JS) Joint Staff
(LA) Legislative Affairs
(NDU) National Defense Univ.
(NII) Networks and Information Integration
(NSPS) National Security Personnel System
(NSSG) National Security Study Group
(ODNA) Office of the Director, Net Assessment
(OGC) Office of General Counsel
(DOHA) Director, Office of Hearings and Appeals
(OSAWHL) Office of the Special Assistant to the Secretary of Defense for White House Liaison
(OT&E) Operational Test & Evaluation
(PA) Public Affairs
(DVIC) Defense Visual Information Center
(P&R) Personnel & Readiness
(CPMS) Civilian Personnel Management Service
(DEOMI) Defense Equal Opportunity Management Institute
(DMDC) Defense Manpower Data Center
(SIAD) Statistical Information Analysis Division
(FVAP) Federal Voting Assistance Program
(HA) Health Affairs
(DHSD) Deployment Health Support
(RA) Reserve Affairs
(USUHS) Uniformed Services University of Health Sciences
(PPFA) Pentagon Force Protection Agency
(USDP) USD (Policy)

(DRSO) Defense Reconstruction Support Office Formerly CPA & DSO-Iraq
(PDUSD) Principal Deputy
(DPB) Defense Policy Board
(ODA) Office of Detainee Affairs
(R&P) Resources and Plans
(STRATEGY) DASD
(ISA) International Security Affairs
(AFRA) African Affairs
(APA) Asian and Pacific Affairs
(DPMO) Defense POW Missing Personnel Affairs Office
(DSCA) Defense Security Cooperation Agency
(NESAA) Near Eastern & South Asian Affairs
(WHA) Western Hemisphere Affairs
(ISP) International Security Policy
(DTSA) Defense Technology Security Administration
(EURASIA) Russia, Ukraine, & EURASIA Affairs
(EURNATO) European and NATO Affairs
(FP) Forces Policy
(NP) Negotiations Policy
(HD) Homeland Defense
(SO/LIC) Special Operations and Low Intensity Conflict
(CN) Counter Narcotics
(CT) Combating Terrorism
(SO) Stability Ops.
(WHMO) White House Military Office
(WHS) Washington Headquarters Services

(A&P) Acquisition & Procurement
(ESD) Executive Services Directorate
(GC) General Counsel
(HRD) Human Resources
(PENREN) Pentagon Renovation
No Nexus Response
Not a Proper Request Reply
Not Reasonably Described
No Records Response
Verification Response

ARMY	DTRA
NAVY	NGA
USAF	NGB
USMC	NSA
	NSC
CENTCOM	SHAPE
EUCOM	TRICARE
JFCOM	
NORTHCOM	
PACOM	CIA
SOCOM	C. GUARD
SOUTHCOM	DEA
STRATCOM	DHS
TRANSCOM	DOE
	DOJ
DCAA	DOL
DCMA	FAA
DECA	FBI
DFAS	FEMA
DIA	GSA
DISA	NARA
DLA	NPRC
DoDIG	ONDCP
DoDEA	SEC. SVC.
DSS	STATE
DTIC	VA



**DEPARTMENT OF DEFENSE
OFFICE OF FREEDOM OF INFORMATION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155**

12 JAN 2007
Ref: 04-A-2268(A)

MEMORANDUM FOR JOINT STAFF

ATTN: (b)(6)

SUBJECT: Freedom of Information Act (FOIA) Appeal – Roger Strother

Attached is an appeal of your determination pertaining to the response to the requester in the case referenced above.

In order for the Director, Administration and Management to fulfill responsibilities as the appellate authority, the following is requested:

- Conduct a review of the information previously denied to the requester. On the SD Form 472 provided, cite the FOIA exemption(s) invoked for any recommended withholding, and your rationale for denial. Provide any additional documentation or comments which will assist in evaluating the appeal.

Copies of forms SD 472 and DD 2086 are attached. Forward your response, including copies of all responsive records with completed legal coordination, to this Office by February 9, 2006. Our action office is Stephen Fisher; email,

(b)(6)

phone,

(b)(6)

(b)(6)

/ James P. Hogan

Chief, FOIA Policy, Appeals, and Litigation

Attachments:

As stated



**DEPARTMENT OF DEFENSE
FREEDOM OF INFORMATION DIVISION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155**

NOV 06 2015
Ref: 04-A-2268-A1
04-F-2268
JS #6341

MEMORANDUM FOR: JOINT STAFF (JS)
ATTN: DECLASSIFICATION BRANCH

SUBJECT: Freedom of Information Act (FOIA) Appeal – Mr. Peter Kornbluh

Attached are copies of the initial FOIA request the appeal and SD form 472 which recommended the document be denied in full. In order for the Director, Administration to fulfill responsibilities as the appellate authority, the following is requested:

Please conduct a search and review of the 13 page document which is responsive to the referenced request for. During your review, should you identify records which you determine to be too sensitive for release, please bracket in RED any information you believe should be exempt from release. Cite the FOIA exemption(s) invoked for any recommended withholding, and provide your rationale for denial.

Please forward your response to this office by December 1, 2015. You may direct any questions concerning this appeal to Mr. Donald Nicholson at (b)(6)

(b)(6)

Sincerely,

(b)(6)

Danaeka Spear
Chief

Attachments:

- Tab (1) FOIA request dated July 26, 2004
- Tab (2) SD form 472 dated January 3, 2006
- Tab (3) FOIA Appeal dated January 11, 2007

Nichelson, Donald CIV WHS ESD (US)

From: Nicholson, Donald CIV WHS ESD (US)
Sent: Monday, November 09, 2015 7:45 AM
To: JS Pentagon DoM Mailbox JointStaffFOIA
Cc: Spear, Danaeka L CIV WHS ESD (US); (b)(6) CTR (US); McComb, Douglas Gregory (Doug) CIV JS DOM (US)
Subject: [U] 04-A-2268-A1 Request JS Review of (1) Document, Requester, Peter Kornbluh
Attachments: 04-A-2268-A1 JS Tasking.pdf; Tab (1) 04-A-2268-A1 FOIA Request.pdf; Tab (2) 04-A-2268-A1 SD form 472.pdf; Tab (3) 04-A-2268-A1 FOIA Appeal.pdf

Tracking:	Recipient	Delivery
	JS Pentagon DoM Mailbox JointStaffFOIA	Delivered: 11/9/2015 7:45 AM
	Spear, Danaeka L CIV WHS ESD (US)	Delivered: 11/9/2015 7:45 AM
	(b)(6) CTR (US)	Delivered: 11/9/2015 7:45 AM
	McComb, Douglas Gregory (Doug) CIV JS DOM (US)	Delivered: 11/9/2015 7:45 AM

UNCLASSIFIED

Good morning ,

Request JS staff locate, and review one responsive document totaling 13 pages. It appears from previous email trails that the document was DIF, however, OFOI never received the document.

See SD form 472, and Tabs (1), through (3) for further details.

r/s

Don Nicholson, Sr.
Freedom of Information Division (FOID)
FOIA Appeals Analyst

(b)(6) fax

NIPR: (b)(6)
SIPR: (b)(6)
JWICS : (b)(6)

UNCLASSIFIED

C4-A-2766-A1

REMARKS:

Highlighted = Task Directly

(AT&L) Acquisition, Technology, & Logistics	
(AS&C) Advanced Systems & Concepts	
(A&T) Acquisition & Technology	
(BTA) Business Transformation Agency	
(DARS) Defense Acquisition Regulation System	
(DARPA) Defense Advanced Research Projects Agency	
(DAU) Defense Acquisition University	
(DOR&E) Defense Research and Engineering	
(DMEA) Defense Micro Electronics Activity	
(DPAP) Defense Procurement & Acquisition Policy	
(DSB) Defense Science Board	
(I&E) Installations & Environment	
(L&MR) Logistics & Material Readiness	
(MDA) Missile Defense Agency	
(NCB) Nuclear, Chemical, & Biological Defense Programs	
(SBP) Small Business Programs	
(COMP) Comptroller	
(PA&E) Program Analysis & Evaluation	
(DPO) Defense Privacy Office	
(EXSEC) The Exec. Secretariat	
(OGC-LA) Prior to EXSEC	
(I) USD - Intelligence	
(JS) Joint Staff	
(LA) Legislative Affairs	
(NDU) National Defense Univ.	
(NI) Networks and Information Integration	
(ODNA) Office of the Director, Net Assessment	

(OGC) Office of General Counsel	
(OMC) Office of Military Commissions	
(DOHA) Director, Office of Hearings and Appeals	
(PA) Public Affairs	
(DMA) Defense Media Activity	
(P&R) Personnel & Readiness	
(CPMS) Civilian Personnel Management Service	
(DMDC) Defense Manpower Data Center	
(FVAP) Federal Voting Assistance Program	
(HA) Health Affairs	
<i>(DHSD) Deployment Health Support-thru HA</i>	
(RA) Reserve Affairs	
(PFFA) Pentagon Force Protection Agency	
(USDP) (Policy)	
(AP) Asian & Pacific Security Affairs	
(IS) International Security Affairs	
(GS) Global Security Affairs	
(DPO) Detainee Affairs	
(DPMO) Defense POW Missing Personnel Affairs Office	
(DSCA) Defense Security Cooperation Agency	
(DTSA) Defense Technology Security Administration	
(HD) Homeland Defense and America's Security Affairs	
(SO/LIC) Special Operations and Low Intensity Conflict	

[illegible]

No Nexus Response	
Not a Proper Request Reply	
Not Reasonably Described	
Not an Agency Record	
No Records Response	
Withdrawn	
DCII Check	
Card or E-mail Interlm	

Use Referral Letter/Memo for:

ARMY		OTRA	
NAVY		NGA	
USAF		NGB	
USMC		NRO	
		NSA	
CENTCOM		NSC	
EUCOM		TRICARE	
JFCOM			
NORTHCOM		CIA	
PACOM		C. GUARD	
SOCOM		DEA	
SOUTHCOM		DHS	
STRATCOM		DOE	
TRANSCOM		DOJ	
		DOL	
CITF		FAA	
DCAA		FBI	
DCMA		FEMA	
DECA		GSA	
DFAS		NARA	
DIA		NPRC	
DISA		OPM	
DLA		SEC. SVC.	
DoDIG		STATE	
DoDEA		VA	
DSS			

*"The presumption of disclosure should be applied to all decisions involving FOIA."
—Presidential Memorandum, January 21, 2009*

Russ Kick



13 Feb 2009

Mr. James Hogan, Chief
Defense Freedom of Information Policy Office
1155 Defense Pentagon
Washington DC 20301-1155

Dear Mr. Hogan:

This is an appeal under the Freedom of Information Act, regarding request 04-F-2766.

In a letter of January 6, 2009, Will Kammer rejected my April 29, 2004, request for "all photographs showing interior areas of Camp X-Ray and Camp Delta" and "all photographs of detainees who are being kept, or who were kept, at Camp X-Ray and Camp Delta from 11 Jan 2002 to the present."

I am appealing the latter ruling, regarding photos of detainees. In withholding all 5,537 photos in their entirety, Mr. Kammer cited exemption (b)(1), with particular regard to material concerning "intelligence activities (including special activities), intelligence sources or methods, or cryptology."

First of all, I ask you to make sure that not a *single one* of those 5,537 photos is releasable. The FOIA requires the release of "any reasonably segregable portion of a record" that is releasable. Any individual photo from among the 5,537 would be reasonably segregable. Therefore, I ask that you make sure that each individual photo is truly unreleasable.

Second, it seems odd that not a single photo can be partially redacted in a way that makes it releasable. I ask that you consider whether applying redactions to the photos would make at least some of them releasable.

Finally, I assume that when each detainee enters the system, a mugshot is taken of him. Certainly there are many such mugshots among the 5,537 photos. It would seem that such mugshots, which reveal nothing except the detainee's face, are releasable in that they would not compromise intelligence activities, sources, or methods. After all, the DOD has already released lists of all Guantanamo detainees, so their names and nationalities are already a matter of public record. Their mugshots should be, as well. If absolutely necessary, a black bar could be placed across their eye area to make them unrecognizable, although this would be odd since mugshots are always released unredacted.

*"Starting today, every agency and department should know that this administration stands on the side not of those who seek to withhold information, but those who seek to make it known."
—President Barack Obama*

*"The presumption of disclosure should be applied to all decisions involving FOIA."
—Presidential Memorandum. January 21, 2009*

On a related matter, if photographs are released, I request that they be in digital format, rather than print-outs. Under section a(3)(B) of the FOIA, an agency must provide records in any format that is requested if they are "readily reproducible" in that format, which digital documents are.

Thank you for your consideration.

Sincerely,

(b)(6)

Russ Kick

*"Starting today, every agency and department should know that this administration stands on the side not of those who seek to withhold information, but those who seek to make it known."
—President Barack Obama*



DEPARTMENT OF DEFENSE
DEFENSE FREEDOM OF INFORMATION POLICY OFFICE
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

Ref: 04-A-2766

SC 04-097

FEB 11 2009

Mr. Russ Kick

(b)(6)

Dear Mr. Kick:

This is in response to your February 13, 2009, Freedom of Information Act (FOIA) appeal.

Due to an extremely heavy FOIA workload, we are unable to complete your appeal within the statutory time requirement. In fairness to the general public, we make every effort to treat all requesters equally. Accordingly, responses are made on a first-in, first-out, easy-hard basis, and controlled in response queues. When the appellate review of your case is complete, you will be notified by the appellate authority, the Deputy Director of Administration and Management, Office of the Secretary of Defense, of the final decision. You may direct any questions concerning this appeal to Mr. Michael Bell at (b)(6) or (b)(6)

Sincerely,

(b)(6)

James P. Hogan
Chief

Russ Kick

(b)(6)

29 April 2004

Freedom of Information Office
US Southern Command
3511 NW 91st Ave
Miami FL 33172-1217

Dear Sir or Madam:

Under the Freedom of Information Act, I hereby request the following photos from the base at Guantanamo Bay:

- 1) All photographs showing interior areas of Camp X-Ray and Camp Delta.
- 2) All photographs of detainees who are being kept, or who were kept, at Camp X-Ray and Camp Delta from 11 Jan 2002 to the present.

This request includes photos that *have not yet been released* to the press/public or posted on the JTFG website. If you feel it is necessary to obscure the faces of the detainees, this condition is acceptable.

I am a freelance writer and journalist making this request for noncommercial purposes. I agree to pay up to \$100 for this request. If it will be more than this, please let me know in advance.

Thank you for your consideration of my request.

Sincerely,

(b)(6)

Russ Kick

REPLY TO
ATTENTION OF

DEPARTMENT OF DEFENSE
UNITED STATES SOUTHERN COMMAND
3511 NW 91ST AVENUE
MIAMI, FL 33172-1217

September 09, 2004

Directorate of Manpower, Personnel
and Administration

Ref: SC 04-097

Mr. Russ Kick

(b)(6)

Dear Mr Kick:

This is our final response to your Freedom of Information Act request, dated 29 April 2004, wherein you are requesting information related to photographs of detainees at Camp X-Ray and Camp Delta from 11 January 2002 to the present.

We completed our review of the located documents responsive to your Freedom of Information Act request. However, we forwarded your request and responsive documents to the Office of Freedom of Information and Security Review for further review and response to you.

The appeal authority for this decision is the Director, Administration and Management (DA&M), Office of the Secretary of Defense (OSD). The appellate address is Office of Freedom of Information and Security Review, ATTN: Room 2C757, 1155 Defense - Pentagon, Washington, DC 20301-1155. Your appeal should be filled within 60 days of receipt of this letter. Both your letter and envelope should be clearly marked "Freedom of Information Act Appeal." Also, a copy of this letter should be enclosed with your appeal. Please refer to the above case control number.

Sincerely

(b)(6)

Lieutenant, U.S. Navy
Adjutant General



**DEPARTMENT OF DEFENSE
OFFICE OF FREEDOM OF INFORMATION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155**

JAN 06 2009

Ref: 04-F-2766
SC 04-097

Mr. Russ Kick

(b)(6)

Dear Mr. Kick:

This is the final response to your Freedom of Information Act (FOIA) request dated April 29, 2004, which you submitted to the U.S. Southern Command (SOUTHCOM). Your request seeks access to "all photographs showing interior areas of Camp X-Ray and Camp Delta," and "all photographs of detainees who are being kept, or who were kept, at Camp X-Ray and Camp Delta from 11 Jan 2002 to the present." SOUTHCOM referred your request to this Office for processing and direct response to you. We received your request on September 21, 2004, and assigned it FOIA case number 04-F-2766.

Lieutenant Colonel Michael P. Boehman, U.S. Army, Staff Judge Advocate, an Initial Denial Authority for SOUTHCOM, has determined that approximately 5537 photographs of detainees who were or are kept at Camp X-Ray and Camp Delta are denied in their entirety pursuant to 5 U.S.C. § 552(b)(1), which concerns information that is currently and properly classified in the interest of national security pursuant to Executive Order 12958, as amended, section 1.4(c), which concerns intelligence activities (including special activities), intelligence sources or methods, or cryptology. A search conducted by SOUTHCOM located no photographs of the interior areas of Camp X-Ray or Camp Delta. The search cutoff date for this response is May 11, 2004. As you may be aware, photographs of Camp X-Ray and Camp Delta are available on the Joint Task Force Guantanamo website at: <http://www.jtftgmo.southcom.mil/>. Please note that these photographs were taken subsequent to the search conducted for your request.

If you are not satisfied with this action, you may submit an administrative appeal to James Hogan, Chief, Defense Freedom of Information Policy Office, 1155 Defense Pentagon, Washington, DC 20301-1155. Your appeal should be postmarked within 60 calendar days of the date of this letter, should cite to case number 04-F-2766, and should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

(b)(6)

Will Kammer
Chief



DEPARTMENT OF DEFENSE
DEFENSE FREEDOM OF INFORMATION POLICY OFFICE
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

AUG 10 2012

Ref: 04-A-2766
SC 04-097

MEMORANDUM FOR: U.S. SOUTHERN COMMAND
SCJI-A (FOIA)
3511 NW 91ST AVENUE
MIAMI, FL 33172-1217

SUBJECT: Freedom of Information Act (FOIA) Appeal – Russ Kick

Attached are copies of the appeal and initial FOIA request for the case referenced above. In order for the Deputy Director, Administration and Management to fulfill responsibilities as the appellate authority, we ask that do the following:

Please, provide this office with copies of the photographs of detainees kept at Camp X-Ray and Camp Delta from January 11, 2002 to April 2004. We have attached internal JTF-GTMO memorandum, which chronicles their search procedures to assist in the acquisition of these records. Also, please review the photographs and bracket any information which you recommend not be released. Cite the FOIA exemption(s) invoked for any recommended withholding, and provide your rationale for denial. Finally, please make sure to include a clean copy of the photographs, with no markings or brackets.

Forward your response to this office by August 31, 2012. Our action officer is Danaeka Spear at (b)(6) or (b)(6)

Sincerely

(b)(6)

for James P. Hogan
Chief

Attachments:

- (1): Appeal
- (2): FOIA request
- (3): Dec 2008, JTF-GTMO memo



**DEPARTMENT OF DEFENSE
FREEDOM OF INFORMATION DIVISION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155**

Ref: 04-A-2766
SC 04-097

MEMORANDUM FOR: U.S. SOUTHERN COMMAND
SCJ1-A (FOIA)
3511 NW 91ST AVENUE
MIAMI, FL 33172-1217

SUBJECT: Freedom of Information Act (FOIA) Appeal – Russ Kick

Attached are copies of the appeal and initial FOIA request and JTF-GTMO memo for the case referenced above. In order for the Director, Compliance and Policy to fulfill responsibilities as the appellate authority, we ask that do the following:

Please, provide this office with copies of the photographs of detainees kept at Camp X-Ray and Camp Delta from January 11, 2002 to April 2004. We have attached internal JTF-GTMO memorandum, which chronicles their search procedures to assist in the acquisition of these records. Also, please review the photographs and bracket any information which you recommend not be released. Cite the FOIA exemption(s) invoked for any recommended withholding, and provide your rationale for denial. Finally, please make sure to include a clean copy of the photographs, with no markings or brackets.

Forward your response to this office by August 31, 2016. Our action officer is Donald Nicholson at (b)(6) or (b)(6)

Sincerely,

(b)(6)

Danaekā Spear
Chief, Appellate Office

Attachments:

- (1): Appeal
- (2): FOIA request
- (3): Dec 2008, JTF-GTMO memo

The National Security Archive

The George Washington University
Gelman Library, Suite 701
2130 H Street, N.W.
Washington, D.C. 20037

Phone: 202/994-7000
Fax: 202/994-7005
nsarchiv@gwu.edu
<http://www.nsarchive.org>

Freedom of Information Act Appeal

July 13, 2007

James Hogan
Chief, Policy, Appeals and Litigation Branch
Office of Freedom of Information
1155 Defense Pentagon
Washington, D.C. 20301-1155

Re: 04-F-2823 / 20041074DOD133

Dear Mr. Hogan:

This letter is an administrative appeal under the Freedom of Information Act, regarding a FOIA request submitted on September 29, 2004, for documents concerned with Defense Secretary Richard Cheney's August 1990 trip to Saudi Arabia. In a letter dated March 19, 2007, Will Kammer informed me that MENA director Paul JC Hulley had determined that two responsive documents would be withheld in their entirety under exemption (b)(1).

I ask that you reconsider your decision to withhold this material. Sixteen years have passed since Secretary Cheney's trip. The policies of the first Bush administration regarding the Persian Gulf in general and the intent of Cheney's trip in particular have, during ensuing years, been extensively described and analyzed in press accounts, books, articles, and congressional reports. The purpose of the visit included rallying the Saudis in opposition to Iraq's invasion of Kuwait and persuading that country's leadership of the necessity of military cooperation with the U.S., including the prepositioning of forces. It is extremely doubtful that release of documents responsive to this request could in reality have negative consequences for national security. These documents do, however, have historical significance and their release would contribute to the public's understanding American foreign policy. I therefore ask that you review withheld information again in order to ensure maximum disclosure of information

Thank you for your attention to my request. I look forward to receiving your response.

Sincerely,

(b)(6)

Joyce Battle
Analyst



**DEPARTMENT OF DEFENSE
OFFICE OF FREEDOM OF INFORMATION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155**

Ref: 04-A-2823
20041074DOD133

Ms. Joyce Battle
The National Security Archive
The George Washington University
Gelman Library, Suite 701
2130 H Street, NW
Washington, DC 20037

Dear Ms. Battle:

This is in response to your July 13, 2007, Freedom of Information Act (FOIA) appeal.

Due to an extremely heavy FOIA workload, we are unable to complete your appeal within the statutory time requirement. In fairness to the general public, we make every effort to treat all requesters equally. Accordingly, responses are made on a first-in, first-out, easy-hard basis, and controlled in response queues. When the appellate review of your case is complete, you will be notified by the appellate authority, the Deputy Director of Administration and Management, Office of the Secretary of Defense, of the final decision. You may direct any questions concerning this appeal to Nick Cormier at nicholas (b)(6) [REDACTED]

Sincerely,

James P. Hogan
Chief, FOIA Policy, Appeals and Litigation

04-F-2823

The National Security Archive

The George Washington University
Gelman Library, Suite 701
2130 H Street, N.W.
Washington, D.C. 20037

Phone: 202/994-7000
Fax: 202/994-7005
nsarchive@gwu.edu
www.nsarchive.org

Wednesday, September 29, 2004

Will Kammer
Directorate for Freedom of Information
Room 2C757
1155 Defense Pentagon
Washington, DC 203101155

Re: Request under the FOIA, in reply refer to Archive# 20041074DOD133

Dear Mr. Kammer :

Pursuant to the Freedom of Information Act (FOIA), I hereby request disclosure of the following documents for inspection and possible copying:

All documents including but not limited to analyses, background papers, cables, electronic records, memoranda, estimates, notices, intelligence reports, letters, memoranda of conversation, notes, policy papers, position papers, reports, presentations, situation reports, or summaries compiled or prepared for, resulting from, or otherwise concerned in whole or in part with:

Secretary of Defense Richard Cheney's August 1990 trip to Saudi Arabia, beginning about August 6, to discuss Iraq's August 2 invasion of Kuwait, Iraqi objectives, and U.S.-Saudi military cooperation. Cheney was accompanied by General Norman Schwarzkopf, head of CENTCOM; Under Secretary for Defense Policy Paul Wolfowitz; Deputy National Security Advisor Robert Gates; regional experts and intelligence personnel. U.S. delegation members met with Saudi King Fahd, Crown Prince Abdallah, Defense Minister Sultan, and other members of the Saudi royal family.

Please include records of the offices of the secretary; under secretary for policy; deputy under secretary for policy; assistant secretary for international security affairs; assistant secretary for international security policy; and the joint chiefs of staff among the materials reviewed in response to this request.

If you regard any of these documents as potentially exempt from the FOIA's disclosure requirements, I request that you nonetheless exercise your discretion to disclose them. As the FOIA requires, please release all reasonably segregable non exempt portions of documents. To permit me to reach an intelligent and informed decision whether or not to file an administrative appeal of any denied material, please describe any withheld records (or portions thereof) and explain the basis for your exemption claims.

As you know, the National Security Archive qualifies for a waiver of search and review fees as a representative of the news media. This request is made as part of a scholarly and news research project and not for commercial use. For details on the Archive's research and publication activities, please see our Web site at the address above. Please notify me before incurring in photocopying costs over \$100.

To expedite the release of the requested documents, please disclose them on an interim basis as they become available to you, without waiting until all the documents have been processed. If you have any questions regarding the identity of the records, their location, the scope of the request or any other matters, please call me at (202) 994-7000. I look forward to receiving your response within the twenty day statutory time period.

Sincerely yours,

(b)(6)

Joyce Battle



DEPARTMENT OF DEFENSE
OFFICE OF FREEDOM OF INFORMATION AND SECURITY REVIEW
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

Ref: 04-F-2823

Ms. Joyce Battle
The National Security Archive
The George Washington University
Gelman Library, Suite 701
2130 H Street, N.W.
Washington, D.C. 20037

OCT 9 1 2004

Dear Ms. Battle:

This is an interim response to your Freedom of Information Act (FOIA) request of September 29, 2004. Searches have been tasked within the Office of the Secretary of Defense/Joint Staff. A final response to your request will be provided when the search and/or review of responsive information has been completed. We request that you withhold any appeal for the denied information until our final response.

We have also determined that documents, should they exist, might also be found at United States Central Command. Therefore, the Office of the Secretary of Defense has additionally referred your case to them for response directly to you, address as follows:

U.S. Central Command
ATTN: MSG (b)(6)
CCJAGR
MacDill AFB, FL 33608-7001

There are no assessable fees for this response in this instance.

Sincerely,

(b)(6)

CY. Talbott
Chief





**DEPARTMENT OF DEFENSE
OFFICE OF FREEDOM OF INFORMATION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155**

Ref: 04-F-2823

MAR 19 2007

Ms. Joyce Battle
The National Security Archive
Gelman Library, Suite 701
2130 H Street, N.W.
Washington, DC 20037

Dear Ms. Battle:

This is in response to your Freedom of Information Act (FOIA) request dated September 29, 2004, Archive # 20041074DOD133, and our interim reply of October 1, 2004. Your request was for all documents relating in whole or in part to, "Secretary of Defense Richard Cheney's August 1990 trip to Saudi Arabia, beginning about August 6, to discuss Iraq's August 2 invasion of Kuwait, Iraqi objectives, and U.S.-Saudi military cooperation." Please be advised that we have referred your request and two additional document totaling 5 pages, to the Department of State (DOS) for processing and direct response to you. The DOS address is provided below.

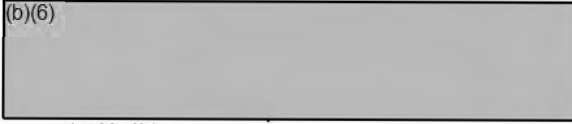
Mr. Paul JC Hulley, Director, Middle East and North African Affairs, has determined that two responsive documents totaling 10 pages in their entirety are exempt from release because they are currently and properly classified in accordance with Executive Order 12958, as amended. Specifically Section 1.4 (d) concerning foreign relations or foreign activities of the United States, including confidential sources. Accordingly, this information is denied pursuant to 5 USC § 552 (b)(1).

If you are dissatisfied with this action you may submit an appeal to this Office, by writing to the James Hogan, Chief, Policy, Appeals and Litigation Branch, Office of Freedom of Information, 1155 Defense Pentagon, Washington, D.C. 20301-1155. Your appeal letter should be postmarked within 60 calendar days of the date of this letter and should cite case number 04-F-2823.

Department of State
Director, Information Programs and Services
Room 8113 SA-2
Washington, DC 20522-8113

Sincerely,

(b)(6)



for

Will Kammer
Chief

FOI/PA CASE ASSIGNMENT WORKSHEET

Case No: **04-A-2823-A1**

ACTION ASSIGNED TO _____ TEAM: A B C PMB REVIEWER ☒ CARD _____
 TYPE REQUEST: *Appeal Commercial Educational News/Media NonCom/Scientific Other*
 EXPEDITED RESPONSE REQUESTED _____ GRANT? Y N DCII CHECK _____
 UP-FRONT DOCUMENT SEARCH _____ FEE WAIVER REQUESTED _____ DATE RECEIVED: _____
 REMARKS:

CLOSED WITHDRAWN

(ASBCA) Armed Services Board of Contract Appeals
(AT&L) Acquisition, Technology, & Logistics
(A&T) Acquisition & Technology
(DAU) Defense Acquisition University
(DPAP) Defense Procurement & Acquisition Policy
(DARC) Defense Acquisition Regulation Council
(PSA) Portfolio Systems Acquisition
(TC) Treaty Compliance
(SBP) Small Business Programs
(BT) Business Transformation
(BTA) Business Transformation Agency
(DDR&E) Defense Research and Engineering
(AS&C) Advanced Systems & Concepts
(DARPA) Defense Advanced Research Projects Agency
(DMEA) Defense Micro Electronics Activity
(DSB) Defense Science Board
(I&E) Installations & Environment
(ECOADJ) Economic Adjustment
(L&MR) Logistics & Material Readiness
(IC) International Cooperation
(MDA) Missile Defense Agency
(NCB) Nuclear, Chemical, & Biological Defense Programs
(SPPGMS) Special Programs
(ATSDIO) Assistant to the Secretary of Defense (Intelligence Oversight)
(COMP) Comptroller
(PA&E) Program Analysis & Evaluation
(DPO) Defense Privacy Office
(EXSEC) The Exec. Secretariat

E-FOIA REPLY

(I) Intelligence
(CIFA) Counterintelligence Field Activity
(JS) Joint Staff
(LA) Legislative Affairs
(NDU) National Defense Univ.
(NII) Networks and Information Integration
(NSPS) National Security Personnel System
(NSSG) National Security Study Group
(ODNA) Office of the Director, Net Assessment
(OGC) Office of General Counsel
(DOHA) Director, Office of Hearings and Appeals
(OSAWHL) Office of the Special Assistant to the Secretary of Defense for White House Liaison
(PA) Public Affairs
(DVIC) Defense Visual Information Center
(P&R) Personnel & Readiness
(CPMS) Civilian Personnel Management Service
(DEOMI) Defense Equal Opportunity Management Institute
(DMDC) Defense Manpower Data Center
(SIAD) Statistical Information Analysis Division
(FVAP) Federal Voting Assistance Program
(HA) Health Affairs
(DHSD) Deployment Health Support
(RA) Reserve Affairs
(USUHS) Uniformed Services University of Health Sciences
(PFFA) Pentagon Force Protection Agency
(USDP) USD (Policy)
(AP) Asian & Pacific Security Affairs
(CEN) Central Asia

(EAS) East Asia
(SEA) South and Southeast Asia
(IS) International Security Affairs
(AFR) Africa
(EUR) Europe & NATO
(MID) Middle East
(GS) Global Security Affairs
(CMO) Coalition Affairs
(GTS) Counternarcotics, Counterproliferation, and Global Threats
(DPO) Detainee Affairs
(MPA) Defense POW Missing Personnel Affairs Office
(DSCA) Defense Security Cooperation Agency
(DTSA) Defense Technology Security Administration
(PRT) Partnership Strategies
(HD) Homeland Defense and America's Security Affairs
(CMC) Crisis Management & Defense Support for Civil Authorities
(HLD) Homeland Def.
(HSI) Homeland Security Integration
(WHA) Western Hemisphere Affairs
(PDUSDP) Policy Director
(PPO) Policy Planning
(SPD) Support for Public Diplomacy
(SO/LIC) Special Operations and Low Intensity Conflict
(FT&R) Forces Transformation & Resources
(SOC) Special Operations
(STB) Stability Operations
(STR) Strategic Capabilities

(WHMO) W. H. Military Office
(WHS) Washington Headquarters Service
(A&P) Acquisition & Procurement
(ESD) Executive Services Directorate
(GC) General Counsel
(HRD) Human Resources
(PENREN) Pentagon Renovation
No Nexus Response
Not a Proper Request Reply
Not Reasonably Described
No Records Response
Not an Agency Record
Verification Response

ARMY	OTRA
NAVY	NGA
USAF	NGB
USMC	NSA
	NSC
CENTCOM	SHAPE
EUCOM	TRICARE
JFCOM	
NORTHCOM	
PACOM	CIA
SOCOM	C. GUARD
SOUTHCOM	DEA
STRATCOM	DHS
TRANSCOM	DOE
	DOJ
DCAA	DOL
DCMA	FAA
DECA	FBI
DFAS	FEMA
DIA	GSA
DISA	NARA
DLA	NPRC
DoDIG	OPM
DoDEA	SEC. SVC.
DSS	STATE
DTIC	VA



~~SECRET~~
DEPARTMENT OF DEFENSE
OFFICE OF FREEDOM OF INFORMATION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

JS
MAY 31 2012

Ref: 04-A-2823

MEMORANDUM FOR JOINT STAFF
ATTN: DECLASSIFICATION BRANCH

SUBJECT: Freedom of Information Act (FOIA) Appeal – Ms. Joyce Battle

Attached is an appeal of the case referenced above. In order for the Deputy Director, Administration and Management to fulfill responsibilities as the appellate authority, the following is requested:

Please conduct a review of the attached documents previously denied in their entirety to the requester. USD Policy has conducted an appellate review of the documents and recommends the information shaded in gray continue to be withheld. If you do not agree with these recommendations, state your rationale for continued denial in your response. For any information that you recommend continued to be withheld, enclose that information in brackets, cite the FOIA exemption(s) invoked for any recommended withholding and your rationale for denial.

Please forward your response to this office by June 15, 2012. Our action officer is Danaeka Spear at (b)(6) or (b)(6)

Sincerely,

(b)(6)

James P. Hogan
Chief, FOIA Policy, Appeals and Litigation

Attachments:
As stated

UNCLASSIFIED WHEN SEPARATED
FROM CLASSIFIED ENCLOSURE

~~SECRET~~

~~SECRET~~



**DEPARTMENT OF DEFENSE
DEFENSE FREEDOM OF INFORMATION POLICY OFFICE
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155**

NOV 12 2013

Ref: 04-A-2823

MEMORANDUM FOR: USD POLICY

(ATTN: (b)(6))

SUBJECT: Freedom of Information Act (FOIA) Appeal – Ms. Joyce Battle

Attached are copies of the appeal, initial FOIA request, and the responsive documents to the case referenced above. In order for the Deputy Director, Administration and Management to fulfill responsibilities as the appellate authority, we ask that you do the following:

On February 11, 2009, Policy completed an appellate review of the attached document. This document was initially withheld in its entirety. During this review, Policy recommended that some information be released on appeal. Due to the passage of time, we are asking that Policy take a second look at this responsive document. The information shaded in gray was recommended by Policy for continued denial. If Policy concurs with their first appellate review, we are asking that your office complete a new form 472, citing the FOIA exemption(s) invoked, and provide your rationale for continued denial.

Please forward your response to this office by November 29, 2013. You may direct any questions concerning this appeal to Ms. Danaeka Spear at (b)(6) or

(b)(6)

Sincerely,

(b)(6)

James P. Hogan
Chief

Attachments:

- (1): Ms. Battle's FOIA Appeal
- (2): Policy's 2009 appellate 472
- (3): Responsive Document

~~SECRET~~

UNCLASSIFIED WHEN SEPARATED FROM ENCLOSURES



~~SECRET~~

DEPARTMENT OF DEFENSE
OFFICE OF FREEDOM OF INFORMATION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

JS DCM

07 NOV 2008

Ref: 04-A-2823

MEMORANDUM THRU: USD POLICY EXECUTIVE SECRETARIAT

ATTN: (b)(6)

FOR OFFICE OF THE DUSD MIDDLE EAST (MID)

SUBJECT: Freedom of Information Act (FOIA) Appeal – Ms. Joyce Battle

Attached is an appeal of your determination in the case referenced above. In order for the Deputy Director, Administration and Management to fulfill responsibilities as the appellate authority, the following is requested:

Conduct another review of the attached documents previously denied in their entirety to the requester. We have conducted an initial appellate review of the documents and we recommend the information shaded in gray remain withheld. However, we recommend releasing the unshaded information because we do not believe releasing this information will harm national security. If you do not agree with this recommendation, please state your rationale for continued denial in your response. For any information which you recommend still not be released, enclose that information in brackets. Cite the FOIA exemption(s) invoked for any recommended withholding and your rationale for denial.

Forward your response to this office 20 business days from the date of this memo. Our action officer is (b)(6) at (b)(6) or (b)(6)

(b)(6)

James P. Hogan
Chief, FOIA Policy, Appeals and Litigation

Attachments:
As stated

~~SECRET~~

UPON REMOVAL OF ATTACHMENT(S)
DOCUMENT BECOMES UNCLASSIFIED



DEPARTMENT OF DEFENSE
DEFENSE FREEDOM OF INFORMATION POLICY OFFICE
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

1⁰ JUL 2009

Ref: 04-A-1433

**MEMORANDUM FOR: DEPUTY UNDER SECRETARY OF DEFENSE FOR
INSTALLATIONS & ENVIRONMENT (I&E)**
ATTN: (b)(6)

SUBJECT: Freedom of Information Act (FOIA) Appeal – Mr. Russell Carollo

Attached is a copy of the appeal in the case referenced above that was originally tasked to I&E on August 20, 2004. We searched our files, but we are unable to locate an I&E response. Therefore, in order for the Acting Deputy Director, Administration and Management to fulfill responsibilities as the appellate authority, the following is requested:

Conduct a current review of the database entries previously denied to the requester. Provide your recommendations as to the release of the information within the database entries. For any information that you recommend not be released, enclose the information in brackets on one copy of the entry and return it to this office. Cite the FOIA exemption(s) invoked for any recommended withholding, and provide your rationale for denial. Also, please provide a "clean" copy with no markings or brackets.

Please forward your response to this office by August 7, 2009. You may direct any questions concerning this appeal to Ms. (b)(6) at (b)(6) or (b)(6)

(b)(6)

For
-
James P. Hogan
Chief

Attachments:
As stated

cc: (b)(6)



DEPARTMENT OF DEFENSE
OFFICE OF FREEDOM OF INFORMATION AND SECURITY REVIEW
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

20 AUG 2004
Ref: 04-F-1433 (A)

MEMORANDUM FOR: DEPUTY UNDER SECRETARY OF DEFENSE
(INSTALLATIONS & ENVIRONMENT)

SUBJECT: Freedom of Information Act (FOIA) Appeal – Russell Carollo

Attached is an appeal of your determination pertaining to the response to the requester in the case referenced above.

In order for the Director, Administration and Management to fulfill responsibilities as the appellate authority, the following is requested:

- Conduct a review of the database entries previously denied to the requester. Provide your recommendations as to the release of the information within the database entries. For any information that you recommend not be released, enclose the information in brackets on one copy of the entry and return it to this office. Also include another copy which is "clean," with no markings or brackets.
- On the SD Form 472 provided, cite the FOIA exemption(s) invoked for any recommended withholding, and your rationale for denial. Provide any additional comments which will assist in evaluating the appeal.

Copies of forms SD 472 and DD 2086 are also attached. Forward your response, including a copy of the documents to this office by ~~August 27~~ ^{SEP 10}, 2004. Please direct any questions concerning this appeal to David Maier on (b)(6) or (b)(6)

(b)(6)

C. V. Talbott
Chief

Attachments:
As stated



Dayton Daily News

04-F-1433/A

THRU:

(b)(6)

(b)(6)

Phone:

(b)(6)

Fax:

Email:

July 14, 2004

C.Y. Talbott
Department of Defense

RE: 04-F-1433

This is an appeal under the Freedom of Information Act, 5 U.S.C. 552. On May 6, 2004, I filed the attached request. The response is attached.

The response was not correct for the following reasons:

1) Information on unexploded military munitions is available in other forms through EPA environmental impact statements and a variety of other sources, including the U.S. General Accounting Office. "A Guide to Military Installations in the U.S." published by the Army, Navy and Air Force Times and Jane's Defense publications also offer similar information by providing locations of former ranges. Hundreds of claims and suits filed under the Federal Tort Claims Act also specifically identify installations, munitions, dates, etc. — all information freely provided by the government during discovery. I have obtained hundreds of pages of these documents. An Internet search of media reports identified dozens of locations where military munitions have been found at former range sites, the types of munitions found and when the munitions were buried. Any teenage boy within 10 miles of a former military range likely knows where they are, too. Having done two series of stories on lost and stolen military weapons, I can tell you that some of those teenage boys have been injured by UXO.

If ranges — many decades old — containing unexploded military ordinance are such a threat to national security and the agency's operation, why then does the government make their locations public, allow media officers to speak about them openly, conduct town hall-type meetings all over the country to explain environmental cleanup plans, provide hundreds of thousands of pages of records to hundreds of private attorneys across the country? These locations are not only unclassified, they are openly identified and discussed by the military. In fact, people are building subdivisions and schools over these locations, quite aware — through laws requiring disclosure — that they exist and exactly where they exist and exactly what is buried. In fact, the military has deemed them safe for human habitation and encouraged development.

To deny the press the same information in a different form only serves to prevent the public from learning the extent of the dangers and only serves to protect the department from potentially embarrassing information. Terrorists face greater danger trying to dig them up than their potential victims would ever face. Besides, no terrorist or other criminal has ever committed a crime using an unexploded device dug up from a former military range — not that releasing this information would help them at all.

2) Thus, the response offered no concrete evidence or even possibility how release of information – nearly all of which is available in another form – could in any way impede future investigations, impede the agency in the conduct of its mission or lead to the circumvention of an agency rule.

3) There are virtually no privacy concerns related to buried military munitions, and if there were, the information could be edited out of the release material, as I requested. Again, much of the information about these locations is available in other forms and even required to be disclosed by law. Real estate laws in many states require disclosure of such hazards, and federal law requires disclosure via environmental impact statements. Even if there were some privacy concerns – which, again, could be edited out easily – they would be outweighed by the intense public interest in this issue, which involves not only public health and safety but also billions in potential tax dollars and environmental concerns. Even the response acknowledged that only "some" of the information involved privacy concerns.

4) I asked for a complete record layout (data dictionary) and only received the name of some fields. No exemption was cited for denying me a complete record layout. The response doesn't certify that these are all the fields, and even if it did, this is not a complete record layout (data dictionary). Since I will need the complete record layout to know all of what was denied, I reserve the right to file a further appeal once I receive the complete record layout I requested. In addition, the response doesn't – as I specifically requested – say which fields are related to which exemptions. The date field, for example: Which exemption does that fall under? Location? Which exemption is that covered by? Not knowing these things hampers my ability to file an appeal.

I respectfully ask that you consider that this request and appeal are made by a journalist working for a newspaper in this country and that the information I seek is sought under a law intended by Congress to keep our citizens informed about the activities of government – a law our government and many others feel is vital to a free nation. I also respectfully ask that you consider that this response is not in keeping with the spirit or the letter of that law or with your own policies.

In any case, I expect to receive your decision no later than by 20 business days, as the statute requires.

Yours very truly,
Russell Carollo, reporter

The First **COX** Newspaper



DEPARTMENT OF DEFENSE
OFFICE OF FREEDOM OF INFORMATION AND SECURITY REVIEW
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

20 AUG 2004
Ref: 04-F-1433 (A)

Mr. Russell Carollo
Dayton Daily News

(b)(6)


Dear Mr. Carollo:

This acknowledges receipt of your July 14, 2004, Freedom of Information Act (FOIA) appeal, as referenced above.

Due to an extremely heavy FOIA workload, we may be unable to complete your appeal within the statutory time requirement. In fairness to the general public, we make every effort to treat all requesters equally. Accordingly, responses are made on a first-in, first-out, easy-hard basis, and controlled in response queues. We have tasked the appropriate DoD component to conduct an additional review of the database responsive to your FOIA request. Once their review is complete, they will forward the case to this Office for further appellate processing, where they will be handled on a first-in, first-out basis, as explained above. When the appellate review is complete, you will be notified by the appellate authority of the final decision.

Sincerely,

(b)(6)

 W. Talbott
Chief



Acting Officer
CHRIS MARY

Received MR. Chapman

Dayton Daily News

THRU:

(b)(6)

(b)(6)

Phone:

(b)(6)

Fax:

Email:

(b)(6)

May 6, 2004

Charles Talbott
Department of Defense

Pursuant to the federal Freedom of Information Act, 5 U.S.C. 552, I request access to and copies of the Department of Defense Explosives Safety Board (DDESB) Accident Database or, if this is not the exact name, a database of a similar name containing similar information.

I've attached two pages that should assist you in your search.

I also request that you include a record layout (data dictionary) describing all database fields, including withheld fields. I need raw computer data in an electronic form (CD Rom, 3.5 diskette or Jazz disk/Excel format is OK) with field delimiters, not a text dump, printout or directions to a website. Also, please include definitions for any codes used in the databases.

Please justify each deletion (including individual computer fields) separately by reference to specific exemptions of the Act, and release all reasonably segregable portions of otherwise exempt material. I, of course, reserve the right to appeal any decisions.

Include information contained in the material that otherwise would be considered non-responsive to the specific request. Let me know if similar requests have been filed.

Notify me prior to incurring more than \$150 of expenses. The information is intended for a newspaper series that, as the fee waiver requires, is "likely to contribute significantly to public understanding of the operations or activities of the government." Several projects about government operations written by me were distributed by Cox to its own newspapers and to papers serviced by its wire operation. Those projects resulted in network news magazine shows on ABC, NBC, CBS and cable networks, Congressional hearings, federal legislation, policy changes and numerous national awards, including three presented personally by U.S. Presidents Ford, Clinton and George W. Bush. I ask that you waive all fees.

This information is of timely value, so please communicate questions by telephone rather than by mail. I look forward to your reply within 20 business days, as the statute requires.

Thanks for your assistance.

(b)(6)

Russell Carollo, reporter

The First **COX** Newspaper

Att'd



DEPARTMENT OF DEFENSE
OFFICE OF FREEDOM OF INFORMATION AND SECURITY REVIEW
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

Ref: 04-F-1433

JUL 08 2004

Mr. Russell Carollo
Dayton Daily News

(b)(6)

Dear Mr. Carollo:

This is in response to your May 6, 2004, Freedom of Information Act (FOIA) request, which was received in this Office on May 6, 2004.

Ms. Sarah Hagan, Program Analyst for the Deputy Under Secretary of Defense for Installations and Environment, an Initial Denial Authority, has determined that the database with entries responsive to this request is denied in its entirety. This information is exempt from release because its release would allow circumvention of an agency rule, policy, or statute, thereby impeding the agency in the conduct of its mission. Release of this information would impair the integrity of the process whereby mishap information is obtained and evaluated, thereby impeding any future investigations. Release of the accident information could lead to determinations of locations of specific weapons and would potentially assist terrorists or other enemies of the U. S. in exploiting vulnerabilities of the security procedures associated with the storage of weapons. Additionally, some of this information is exempt from release because it pertains to personal information which, if released, would constitute a clearly unwarranted invasion of the personal privacy of the individuals concerned. Therefore, this information is withheld pursuant to 5 USC § 552 (b)(2) (High) and (b)(6).

Concerning the portion of your request for the database fields, the following are available fields: Location, Installation, Command, Type of Explosives or Munitions, Operation, Narrative, and Date.

You may appeal Ms. Hagan's decision to withhold the information by submitting your rationale to reverse the initial decision. Any such appeal should be postmarked within 60 calendar days of the date of this letter to the address on the letterhead above, and cite our case file number 04-F-1433.

There are no assessable fees for this response in this instance.

Sincerely,

(b)(6)

W. Talbott
Chief



FREEDOM OF INFORMATION / PRIVACY ACT WORKSHEET

Case Number: 04-F-1433 / A1

Date Received 22-JUL-2004

Action Officer:



Requestor Name: CAROLLO, RUSSELL

Type Requestor: NEWS

Subject: COPIES OF DOD EXPLOSIVE SAFETY BOARD ACCIDENT DATABASE

Letterhead: DAYTON DAILY NEWS

Source:

Type Action: DIRECT

Typist: BTUCKER

Disposition: ☐ GRANTED ☐ PARTIAL ☐ DENIED ☐ OTHER (Select Below)

☐ NO RECORD ☐ REFERRED/TRANSFERRED

☐ WITHDRAWN ☐ NONPAYMENT OF FEES

☐ RECORD INSUFFICIENTLY ID'ED ☐ NOT PROPER FOIA REQUEST

☐ NOT AN AGENCY RECORD ☐ DUPLICATE REQUEST

☐ OTHER (Specify): _____

Date Completed:

Charged: ☐ Yes ☐ No

Documents Copied to Reading Room: ☐ Yes ☐ No

Agency Name	Routed Date	Due Date	Action Taken	Remarks
-------------	-------------	----------	--------------	---------

Notes:

Comments: (continue on reverse side if necessary)

APPEAL OF 04-F-1453

04-F-1433/A1

ACTION ASSIGNED TO: MAIER

DATE RECEIVED: CARD:

TYPE REQUEST: Commercial Educational News/Media NonCom/Scientific Other

Expedited Response Requested Yes No

Expedited Response Granted Yes No

Up-front Document Search Yes No

REMARKS:

David - History of litigation on database requests with this requester, say on top of this one and make sure our OSD component is educated. suggest a meeting with applicable action officer, WK

'04 JUL 22 P 1:33

Activity	Send To
EXSEC	
OATSD(CivSup)	
DHSD	
OSA/WHL	
JS	
USDP	
ODNA	
PS	
DTSA	
CPA	
ISP	
NF&MDP	
NS&S	
SFO	
RP&CP	
CPP	
Strategy	
RUE	
EURNATO	
SACP	
CTR	
NNAC	
NPP	
ISA	
WHA	
FMRA	
APA	
AFRA	
NESAA	
DPMO	
DSCA	
SOLIC	
TERR SEC	
CT	
CN	

Activity	Send To
StabOps	
PROG & RES	
AT&L	
MDA	
SPPGMS	
DSB	
AR&A	
DUSDAR	
DSMC	
DDP	
DARC	
DDR&E	
NCB	
HRECC	
S&TS	
AS&C	
DARPA	
DUSD(Ins&Env)	
ECOADJ	
L&MR	
DMEA	
DUSD(IC)	
SADBU	
JSFPO	
USD(P&R)	
DMDC	
CFMS	
DEOMI	
DoDEA	
HA	
USUHS	
RA	
USD(I)	
NII	
USD(COMP)	

Activity	Send To
PAGE	
ASD(PA)	
ASD(LA)	
ATSDIO	
OGC	
DOHA	
OT&E	
NDU	
WHS	
B&F	
C&D	
DIOR	
DPO	
GC	
P&S	
RE&F	
PENREN	
PFFA	
All remaining agencies require a MEMO, and, unless otherwise stated, will be a direct response.	
ARMY	
NAVY	
AIR FORCE	
MARINE	
DISA	
DCAA	
DFAS	
DIA	
DSS	
DLA	
DODIG	
NGA	
NSA	

Activity	Send To
IG	
NGB	
DTRA	
DCMA	
ASBCA	
TRICARE	
DECA	
EUCOM	
SOUTHCOM	
PACOM	
SOCOM	
JFCOM	
CENTCOM	
NORTHCOM	
TRANSCOM	
STRATCOM	
CIA	
COASTGUARD	
DOE	
DEA	
FBI	
FEMA	
DOJ	
DHS	
DOL	
NARA	
NSC	
ONDCP	
SECRETSVC	
SHAPE	
STATE	
WHITEHOUSE	

The National Security Archive

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February 4, 2008

National Security Archive Number 20041263DOD145
Department of Defense Number 05-F-0238

Mr. James Hogan
Chief - Policy, Appeals and Litigation Branch
Office of Freedom of Information
1155 Defense Pentagon
Washington, DC 20301-1155

Re: Freedom of Information Act Appeal (05-F-0238)

Dear Mr. Hogan,

This letter constitutes an administrative appeal under the Freedom of Information Act (FOIA), 5 U.S.C. Sec. 552, of a determination by the Department of Defense on a FOIA request filed on November 5, 2004. By letter of December 27, 2007 the Department advised that seven documents were withheld in full under exemption (b)(1) of the FOIA and two documents could not be located. (12/27/07 Letter Enclosed)

The following documents were withheld in full:

- 1) DOD memo, "Chronology of Planning," Dec. 14, 1998 [38, 137]
- 2) DOD memo, Slocumbe to Cohen, Aug. 27, 1998 [60]
- 3) DOD memo, "Towards a More Aggressive Counterterrorism Posture," undated [61]
- 4) DOD memo, "UBL Campaign: Talking Points for Qandahar Attack," Jan. 11, 1999 [115]
- 6) DOD memo, Headquarters SOC, "Planning Directive for Infinite Resolve," Dec. 23, 1998 [141]
- 7) DOD memo, "Summary of Conclusions: AC-130 Deployment Decision Paper," Jan. 12, 1999 [141]
- 9) DOD briefing materials, UBL JCS Focused Campaign, undated [180]

The following documents were not located:

- 5) DOD order, Execute Order (EXORD), Dec. 18, 1998 [116]
- 8) DOD order, MOD 001 to CJCS warning order, Feb. 8, 1999 [153]

Each document is directly referenced in the 9/11 Commission Report, Chapter 4, *Responses to Al-Qaeda's Initial Assaults* which discusses pre-9/11 U.S. policies that attempted to combat the growing threat al-Qaeda was posing to the safety and security of U.S. assets and interests. Firstly, I ask the Policy, Appeals and Litigation Branch to reconsider the initial determination to withhold these seven documents in full. Although I understand the sensitivity of the materials, the overwhelming public interest in these documents and the fact that the fundamental discussion of these documents has already been released to the public through the 9/11 Commission Report, including the release of quotations and summaries directly from the documents themselves, provides strong justification for further review and release.

For example, the 9/11 Commission Report provides the following specific details regarding documents 6-7:

"After the decision — in which fear of collateral damage was an important factor — not to use cruise missiles against Kandahar in December 1998, Shelton and officers in the

Pentagon developed plans for using an AC-130 gunship instead of cruise missile strikes. Designed specifically for the special forces, the version of the AC-130 known as "Spooky" can fly in fast or from high altitude, undetected by radar; guided to its zone by extraordinarily complex electronics, it is capable of rapidly firing precision-guided 25, 40, and 105 mm projectiles. Because this system could target more precisely than a salvo of cruise missiles, it had a much lower risk of causing collateral damage. After giving Clarke a briefing and being encouraged to proceed, Shelton formally directed Zinni and General Peter Schoomaker, who headed the Special Operations Command, to develop plans for an AC-130 mission against Bin Ladin's headquarters and infrastructure in Afghanistan. The Joint Staff prepared a decision paper for deployment of the Special Operations aircraft.¹⁴¹

Additionally, the information contained in these withheld documents is almost certainly immaterial and outdated for current national security purposes due to the tremendous changes that have since taken place in related U.S. counterterrorism and foreign policies. At this date, almost 10 years since the creation of most of the documents requested, and over five years since 9/11 and the elemental change 9/11 had on every debate related to al-Qaeda and U.S. national security policy, the material contained in these pre-9/11 documents on bin Laden, al-Qaeda, U.S. allies and U.S. interests, seem almost certainly primarily limited to interesting historical information, irrelevant for current policies or security concerns.

Furthermore, I would argue that the use of the (b)(1) exemption to withhold documents such as these that would elucidate the policy decisions made by the U.S. government in the years preceding 9/11, or documents relating to what information the U.S. government had on the threat of al-Qaeda before 9/11 is inappropriate considering it is the duty of the U.S. government to be transparent regarding such a matter of public safety when it relates to an event so far past, with little contemporary operational sensitivity. Classification should not be used as a barrier to public access to primary source government materials that may serve to empower the public debate and heighten government accountability on these issues. Considering the eventual impact the al-Qaeda threat on public safety and the importance of these documents to public debate on security policies before 9/11, releasing these documents, at least in part, is entirely appropriate, especially in light of the enormous changes in U.S. counterterrorism policy since the creation of these documents in 1998-1999.

Regarding the two documents that were not located - (5) DOD order, Execute Order (EXORD), Dec. 18, 1998 [116] 8) DOD order, MOD 001 to CJCS warning order, Feb. 8, 1999 [153]) Although we greatly appreciate the Department's initial efforts to locate the requested documents and do not wish to further burden the Department, by this letter I request an additional search be conducted to locate these two documents. The National Security Archive has reason to believe that the documents were cited correctly in the initial request, that the documents are important to locate, review and release under the FOIA in order to better inform the public on an issue of overwhelming public interest and that the requested materials are under the control of the Department of Defense. We request the Department search all locations reasonably expected to contain the requested documents.

Again, it is not my goal to create extra work for the Department, but I do feel the documents were reasonable and accurately described and if located and released would be highly valuable to the public record. It is important to keep in mind that the Department's obligation is to "conduct a search reasonably calculated to uncover all relevant documents." *Truitt v. Department of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). This means that the search must be conducted in good faith using methods that are likely to produce the information requested. See *Campbell v. United States Dep't of Justice*, 164 F.3d 20, 27 (D.C. Cir. 1998). The Department "cannot limit its search to only one record system if there are others that are likely to turn up the information

¹ 9/11 Commission Report, Chapter 4, "Responses to Al-Qaeda's Initial Assaults," p135.

requested.” *Department of Justice FOIA Guide* (May 2004).² Rather, the obligation of the Department to search other sources likely to contain responsive records includes contacting former employees where necessary. *See, e.g., Comer v. IRS*, No. 97-76329, 2001 U.S. Dist. LEXIS 16996 (E.D. Mich. Sept. 25, 2001) (finding an agency search inadequate when the agency made no attempt to contact a former employee familiar with the information sought). Stated another way, an agency search meets the requirements of FOIA only where the agency “can demonstrate beyond material doubt that its search was ‘reasonably calculated to uncover all relevant documents.’” *Valencia-Lucena v. United States Coast Guard*, 180 F.3d 321, 325-326 (D.C. Cir. 1999) (quoting *Truitt*, 897 F.2d at 542 (D.C. Cir. 1990) (emphasis added)).³ The fact that a search may require extensive effort on the part of an agency is not, in and of itself, dispositive of undue burden. *See, e.g., Pub. Citizen v. Dep’t of Educ.*, 292 F. Supp. 2d 1, 7-8 (D.D.C. 2003) (rejecting adequacy of agency search of computerized database and instead ordering agency to manually review 25,000 paper files).

The fact that additional responsive records exist and were not located by the Department in its search demonstrates that the search was not adequate. *Cf. Cooper v. DOJ*, No. 2004 U.S. App. LEXIS 8135 (D.C. Cir. April 23, 2004) (relying on FOIA requester’s affidavit demonstrating the existence of a type of record that was not produced by the search and finding the search, therefore, inadequate). *See also Truitt*, 897 F.2d at 543 (holding grant of summary judgment for agency inappropriate since requester’s discovery in the National Archives of relevant records generated by agency, but never disclosed to him, cast doubt upon the adequacy of the agency’s search). Where, as here, it is clear that the responsive records exist that were never located, courts usually require not only a detailed explanation of the search conducted but also a convincing explanation of why further searches would be unreasonably burdensome. *See, e.g., Weisberg v. Department of Justice*, 627 F.2d 365, 370-71 (D.C. Cir. 1980).

In conclusion, as advised by the 9/11 Commission Report, our existing classification system “implicitly assumes that the risk of inadvertent disclosure outweighs the benefits of wider sharing. Those Cold War assumptions are no longer appropriate. The culture of agencies feeling they own the information they gathered at taxpayer expense must be replaced by a culture in which the agencies instead feel they have a duty to the information—to repay the taxpayers’ investment by making that information available.”⁴ In light of such advice, and the passage of time since the creation of these documents, I ask the Policy, Appeals and Litigation Branch to consider releasing additional portions of these documents initially withheld in full.

I appreciate your consideration of this appeal and I look forward to your response. If you have any questions or concerns, please contact me at (202) 994-7000 or at (b)(6). Thank you.

Sincerely,

(b)(6)

Barbara Elias
Research Fellow

² *See e.g., Juda v. United States Customs Serv.*, No. 99-5333, 2000 WL 1093326, at **1-2 (D.C. Cir. June 19, 2000) (per curiam) (reversing grant of summary judgment where agency “fail[ed] to pursue clear leads in other existing records”); *Conch v. FBI*, No. 01-1330, slip op., ** 4-5 (D.D.C. Apr. 1, 2002) (concluding search inadequate where agency uncovered reference to other sources likely to contain responsive information); *Comer v. IRS*, No. 97-76329, 1999 WL 1922219 at *1 (E.D. Mich. Sept. 30, 1999) (doubting the adequacy of an agency’s search where the agency failed to justify why it was not feasible to search those locations brought to its attention by the requester), subsequent opinion, 2000 WL 1566279 (E.D. Mich. Aug. 17, 2000), motion for reconsideration denied, 2000 WL 172771 (E.D. Mich. Oct. 5, 2000).

³ Reasonably calculated searches oftentimes include resort to off site locations where the agency stores its records. In *Valencia-Lucena*, *supra*, the D.C. Circuit determined that, “pursuant to the regulations of the National Archives and Records Administration . . . agency records stored at a federal record center are deemed to be maintained by the agency which deposited the record.” *Id.* at 327 (quoting 36 C.F.R. § 1229.162 (1998)).

⁴ Chapter 13 “How to do it? A Different Way of Organizing Government,” p. 417.



DEPARTMENT OF DEFENSE
OFFICE OF FREEDOM OF INFORMATION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

15 FEB 2000

Ref: 05-A-0238
20041263DOD145

Ms. Barbara Elias
The National Security Archive
The George Washington University
Gelman Library, Suite 701
2130 H Street, NW
Washington, DC 20037

Dear Ms. Elias:

This is in response to your February 4, 2008, Freedom of Information Act (FOIA) appeal.

Due to an extremely heavy FOIA workload, we are unable to complete your appeal within the statutory time requirement. In fairness to the general public, we make every effort to treat all requesters equally. Accordingly, responses are made on a first-in, first-out, easy-hard basis, and controlled in response queues. When the appellate review of your case is complete, you will be notified by the appellate authority, the Deputy Director of Administration and Management, Office of the Secretary of Defense, of the final decision. You may direct any questions concerning this appeal to Mr. Michael Bell at (b)(6) or

(b)(6)

Sincerely,

(b)(6)

James P. Hogan
Chief, FOIA Policy, Appeals and Litigation
Branch

The National Security Archive

The George Washington University
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Washington, D.C. 20037

05-F-0238
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November 5, 2004

Will Kammer
Directorate for Freedom of Information and Security Review
Department of Defense
Room 2C757
1155 Defense Pentagon
Washington, D.C. 20301-1155

Re: Request under the FOIA, in reply please refer to Archive # 20041263DOD145

Dear Mr. Kammer,

Pursuant to the Freedom of Information Act (FOIA), I hereby request copies of the following:

The following documents referenced in Chapter 4, The 9/11 Commission Report, "Responses to Al Qaeda's Initial Assaults."

[Please note, the number following each document citation in parentheses is the endnote of that document as referenced in the 9/11 Commission Report.]

1. • DOD memo, "Chronology of Planning," Dec. 14, 1998 [38,137]
2. • DOD memo, Slocumbe to Cohen, Aug. 27, 1998 [60]
3. • DOD memo, "Towards a More Aggressive Counterterrorism Posture," undated [61]
4. • DOD memo, "UBL Campaign: Talking Points for Qandahar Attack," Jan. 11, 1999 [115]
5. • DOD order, Execute Order (EXORD), Dec. 18, 1998 [116]
6. • DOD memo, Headquarters SOC, "Planning Directive for Infinite Resolve," Dec. 23, 1998 [141]
7. • DOD memo, "Summary of Conclusions: AC-130 Deployment Decision Paper," Jan. 12, 1999 [141]
8. • DOD order, MOD 001 to CJCS warning order, Feb. 8, 1999 [153]
9. • DOD briefing materials, UBL JCS Focused Campaign, undated [180]

It is difficult to imagine materials that are of greater interest to the public. These documents would increase public understanding of al-Qaeda, Usama bin Laden, and terrorist threats against the United States. Additionally, the substance of these documents has already been released to the public by way of the 9/11 Commission Report. Without compromising sensitive materials, the Commission's Report directly quotes these documents, paraphrases information from these materials and summarizes their findings. If the substance can be released, then it is certain that portions of the documents themselves can also be shared.

If you regard any of these documents as potentially exempt from the FOIA's disclosure requirements, I request that you nonetheless exercise your discretion to disclose them. As the FOIA requires, please release all reasonably segregable nonexempt portions of documents. To permit me to reach an intelligent and informed decision whether or not to file an administrative appeal of any denied material, please describe any withheld records (or portions thereof) and explain the basis for your exemption claims.

The National Security Archive qualifies for waiver of search and review fees as a representative of the news media. For details on the Archive's research and publication activities, please see our Web site at the address above. Please notify me before incurring photocopying costs over \$100. To expedite the release of the

An independent non-governmental research institute and library located at the George Washington University, the Archive collects and publishes declassified documents obtained through the Freedom of Information Act. Publication royalties and tax deductible contributions through The National Security Archive Fund, Inc. underwrite the Archive's Budget.

requested documents, please disclose them on an interim basis as they become available to you, without waiting until all the documents have been processed.

If you have any questions regarding the identity of these records, their location, the scope of the request or any other matters, please call me at (202) 994-7045 or e-mail (b)(6) I look forward to your response, thank you.

Sincerely (b)(6)

(b)(6)

Barbara Elias

Freedom of Information Coordinator



**DEPARTMENT OF DEFENSE
OFFICE OF FREEDOM OF INFORMATION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155**

DEC 27 2007

Ref: 05-F-0238
20041263DOD145

Ms. Barbara Elias
National Security Archive
Gelman Library, Suite 701
2130 H. St., NW
Washington, DC 20037

Dear Ms. Elias:

This is the final response to your Freedom of Information Act request dated November 5, 2004, for the following documents from Chapter 4 of the 9/11 Commission Report, "1) DOD memo, 'Chronology of Planning,' Dec. 14, 1998 [38, 137]; 2) DOD memo, Slocombe to Cohen, Aug. 27, 1998 [60]; 3) DOD memo, 'Towards a More Aggressive Counterterrorism Posture,' undated [61]; 4) DOD memo, 'UBL Campaign: Talking Points for Qandahar Attack,' Jan. 11, 1999 [115]; 5) DOD order, Execute Order (EXORD), Dec. 18, 1998 [116]; 6) DOD memo, Headquarters SOC, 'Planning Directive for Infinite Resolve,' Dec. 23, 1998 [141]; 7) DOD memo, 'Summary of Conclusions: AC-130 Deployment Decision Paper,' Jan. 12, 1999 [141]; 8) DOD order, MOD 001 to CJCS warning order, Feb. 8, 1999 [153], 9) DOD briefing materials, UBL JCS Focused Campaign, undated [180]."

A search of the records systems maintained by the Department of Defense Office of the General Counsel located documents #1-4, 6, 7, and 9 of your request. Mr. Michael E. Reheuser, Associate Deputy General Counsel for Legal Counsel, has determined that the documents, totaling 58 pages, are exempt from release in their entirety pursuant to 5 U.S.C. § 552(b)(1), which pertains to information that is properly classified in the interest of national security pursuant to Executive Order 12958, as amended, section 1.4(a), which concerns military plans, weapons systems, or operations; (c), which concerns intelligence activities (including special activities), intelligence sources or methods, or cryptology; and (g), which concerns vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans or protection services relating to the national security, which includes defense against transnational terrorism.

The Joint Staff conducted a search of their records systems for documents #5 and 8 of your request and did not locate any responsive records. If you are not satisfied with this action, you may submit an administrative appeal to James Hogan, Chief, Policy, Appeals, and Litigation Branch, Office of Freedom of Information, 1155 Defense

Pentagon, Washington, DC 20301-1155. Your appeal should be postmarked within 60 days of the date of this letter, should cite to case number 05-P-0238, and should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

(b)(6)

for Will Kammer
Chief



DEPARTMENT OF DEFENSE
OFFICE OF FREEDOM OF INFORMATION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

19 FEB 2008

Ref: 05-A-0238
20041263DOD145

MEMORANDUM FOR: EXECUTIVE SERVICES DIRECTORATE
ATTN: (b)(6)

SUBJECT: Freedom of Information Act (FOIA) Appeal – Ms. Barbara Elias

Attached is an appeal of the determination pertaining to the response to the requester in the case referenced above. In order for the Deputy Director, Administration and Management to fulfill responsibilities as the appellate authority, the following is requested:

We request that you conduct a search for records responsive to items 5 and 8 of the attached appeal. If, upon your search responsive records are found, please forward those records to this office. Also note the Joint Staff and Office of the General Counsel previously conducted searches for these two documents but located no records responsive to items 5 and 8. We have attached the initial request to assist with your search.

If upon your search, responsive documents were not found, we request details on how the search was conducted. In your memo, please advise which offices and file systems were searched and provide specific instructions on how the search was performed.

Please forward your response to this office by March 19, 2008. You may direct any questions concerning this appeal to Mr. Michael Bell at (b)(6) or

(b)(6)

(b)(6)

James P. Hogan
Chief, FOIA Policy, Appeals and Litigation
Branch

Attachments:
As stated



DEPARTMENT OF DEFENSE
OFFICE OF FREEDOM OF INFORMATION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

19 FEB 2008

Ref: 05-A-0238

MEMORANDUM FOR: OFFICE OF THE GENERAL COUNSEL (OGC)
ATTN: (b)(6)

SUBJECT: Freedom of Information Act (FOIA) Appeal – Ms. Barbara Elias

Attached is an appeal of your denial of information in the case referenced above.

We note from your initial response, that the responsive documents all originated with components outside of OGC. Therefore, please forward to this office copies of these responsive documents so that we can consult with the originating components for the appellate review. We have attached a copy of your initial response to assist you. If you would like to provide a release recommendation for any of the responsive documents, please annotate such in your response. If your office marks any of the documents with release recommendations, please include a copy of the documents which are “clean,” with no markings or brackets. Please note that this office is cleared to handle this material.

Please forward your response to this office by March 19, 2008. You may direct any questions concerning this appeal to Mr. Michael Bell at (b)(6) or

(b)(6)

(b)(6)

James P. Hogan
Chief, FOIA Policy, Appeals and Litigation
Branch

Attachments:
As stated

The National Security Archive

The George Washington University
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<http://www.nsarchive.org>

28 September 2011

Mr. James Hogan
Chief, Policy, Appeals and Litigation Branch (FOIA)
1155 Defense Pentagon
Washington, D.C. 20301-1155

Re: case 05-F-0467

Dear Mr. Hogan:

This is an administrative appeal under the Freedom of Information Act. Through a letter dated 24 August 2011, the Defense Department released excised versions of two reports that had been referred to your office by the State Department. I ask for further review of the withheld portions so that it may be determined whether additional information can be declassified.

One of the documents is a "Posture Statement" for FY 1981 by the Chairman of the Joint Chiefs of Staff. Excisions concern a number of issues, including strategic and theater nuclear forces, warhead numbers, conventional forces in the European theater, and the Chinese ballistic missile arsenal. The availability of previously declassified and public record documentation should enable the reviewers of this appeal to declassify significant and substantive information from the withheld portions of the "Posture Statement." With this I enclose excerpts from Secretary of Defense Brown's annual reports from 1979 and 1980 which include detailed discussion of Minuteman vulnerability and the role of the MX as a solution to that problem, the U.S.-Soviet strategic balance, and NATO-Warsaw Pact conventional and theater nuclear issues (see enclosures 1 and 2). Also relevant are previously declassified Department documents on Minuteman survivability and the U.S.'s "diminishing lead" in strategic warheads (see enclosures 3 and 4) as well as a White House document on Minuteman vulnerability (see enclosure 5). Moreover, the CIA has declassified reports on Soviet/Warsaw Pact theater nuclear forces (see enclosures 6 and 7) while DIA has declassified most of a report from 1977 on Chinese ballistic missiles (see enclosure 8). In light of these previous declassifications, it should be possible to declassify more information from the "Posture Statement" without harm to national security.

Also excised is a Defense Department "HLG Threat Assessment Paper" from 1981. The availability of previously declassified information on U.S. strategic and theater nuclear force cited above (in enclosures 1, 2, 5, and 6) should make it possible for the Defense Department to release more information from this document.

With respect to information withheld under the (b) (5) predecisional exemption, I question the legitimacy of withholding "deliberative process" information from documents that are now thirty years old or older. It is difficult to believe that the declassification of the (b) (5) information would have a "chilling" impact on deliberative processes within the U.S. government, including the Pentagon's relationships with other agencies. Moreover, withholding the information on (b) (5) grounds is also inconsistent with President Obama's January 2009 directives which specified that

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"[t]he Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears."

With respect to any names withheld on (b) (6) grounds, I question the decision to invoke personal privacy as a justification for exempting the name of a civilian or military official, living or dead, from government records that are 30 years old or older. This is a misuse of the privacy exemption because these individuals were working in their official capacity as public servants and privacy claims are irrelevant. There is no invasion of privacy as would be the case if an official's home address, or home phone, or social security number were cited.

Sincerely, (b)(6)

William Burr



DEPARTMENT OF DEFENSE
DEFENSE FREEDOM OF INFORMATION POLICY OFFICE
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

SEP 29 2011

Ref: 05-A-0467-A1

Mr. William Burr
The National Security Archive
The George Washington University
Gelman Library, Suite 701
2130 H Street, NW
Washington, DC 20037

Dear Mr. Burr:

This is in response to your September 28, 2011, Freedom of Information Act (FOIA) appeal. We received your appeal in this office on September 29, 2011.

Due to an extremely heavy FOIA workload, we are unable to complete your appeal within the statutory time requirement. In fairness to the general public, we make every effort to treat all requesters equally. Accordingly, responses are made on a first-in, first-out, easy-hard basis, and controlled in response queues. When the appellate review of your case is complete, you will be notified by the appellate authority, the Deputy Director of Administration and Management, Office of the Secretary of Defense, of the final decision. You may direct any questions concerning this appeal to Ms. Alisa Turner at (b)(6) or (b)(6)

Sincerely,

(b)(6)

For James P. Hogan
Chief

F200400424

The National Security Archive

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05-F-0467

4 February 2004

Ms. Margaret P. Grafeld,
Director, Office of IRM Programs and Services
SA-2, 5th Floor
U.S. Department of State
Washington, D.C. 20522-6001

Re: Request under the FOIA, in reply refer to Archive #FOIA Sequence Number 20040110DOS045

Dear Ms. Grafeld:

Pursuant to the Freedom of Information Act (FOIA), I hereby request disclosure of the following documents from accession 383-99-0162, records of the former Arms Control and Disarmament Agency, held at the Washington National Records Center, Suitland, MD:

A. Box 14:

1. NSSM-95 Follow-on Study, Tactical Nuclear Weapons in NATO, 7/71
2. General Advisory Committee on Arms Control, Transcripts of Meetings:
 - a. August 1971
 - b. October 1971
 - c. November 1971 (2 sessions)
 - d. February 1972
 - e. March 1972
 - f. April 1972
 - g. July 1972
 - h. September 1972, including 15 September
3. Memo to the President, SALT Position--Minuteman Vulnerability, 3/71

3 boxes

B. Box 28:

1. ACDA memo on U.S. Strategic Objectives, 11/1978
2. Mathtec (sp?) Inc. Report Prepared for CIA on Soviet Strategic Interests, 9/78
3. Overview by Chairman, JCS, on U.S. Military Posture FY 81
4. ACDA Memo on Soviet Strategic Forces Review of NIE 11-3/8-79, 5/80
5. CIA Report on Status of Soviet Strategic Offensive Forces, 7/80

C. Box 29:

1. NSC Report on Agenda for SCC Meeting on TFN, 3/79
2. Secretary of Defense Memo on HLG Threat Assessment Paper, 6/81
3. White House Report on NSSD 3-82 on U.S. Policy and Negotiating Position for START, 3/82
4. Department of State Report on Strategic Intelligence Meeting on START, 4/82
5. ACDA Report on Views of START Negotiators, 4/82

If you regard any of these documents as potentially exempt from the FOIA's disclosure requirements, I request that you nonetheless exercise your discretion to disclose them. As the FOIA requires, please release all reasonably segregable nonexempt portions of documents. To permit me to reach an intelligent

and informed decision whether or not to file an administrative appeal of any denied material, please describe any withheld records (or portions thereof) and explain the basis for your exemption claims.

As you know, the National Security Archive qualifies for waiver of search and review fees as a representative of the news media. This request is made as part of a scholarly and news research project and not for commercial use. For details on the Archive's research and publication activities, please see our Web site at the address above. Please notify me before incurring photocopying costs over \$100.

To expedite the release of the requested documents, please disclose them on an interim basis as they become available to you, without waiting until all the documents have been processed. If you have any questions regarding the identity of the records, their location, the scope of the request or any other matters, please call me at (202) 994-7032. I look forward to receiving your response within the twenty-day statutory time period.

Sincerely Yours,

(b)(6)

William Burr



~~RESTRICTED DATA~~

United States Department of State

Washington, D.C. 20520

NOV 26 2004

~~TOP SECRET~~

(UNCLASSIFIED WHEN SEPARATED FROM ATTACHMENTS)

05-F-0467

Case No. 200400424

Requester: William Burr

TO:

(b)(6)

Deputy,
Office of FOIA and Security Review
Room 2C757
1155 Defense Pentagon
Washington, DC 20301-1155

FROM:

Margaret P. Grafeld, Director *[Signature]*
Office of Information Programs and Services

SUBJECT: FOI/PA Referral for Direct Reply

In processing this request, we have located the attached documents which originated with your agency. Please review this material and reply directly to the requester.

There are no perceived State Department equities in documents numbered 1 and 3. We defer to your judgment on those. We note that there is RD material in document 3.

If you have any questions, please call

(b)(6)

Attachments:

Copy of request letter
Two documents

~~TOP SECRET~~

(UNCLASSIFIED WHEN SEPARATED FROM ATTACHMENTS)

Case No: 05-A-0467-A1

REMARKS:

Highlighted = Task Directly

(AT&L) Acquisition, Technology, & Logistics	
(A&T) Acquisition & Technology	
(SBP) Small Business Prgrms	
(DARS) Defense Acquisition Regulation System	
(DARPA) Defense Advanced Research Projects Agency	
(DAU) Defense Acquisition University	
(DDR&E) Defense Research and Engineering	
(DMEA) Defense Micro Electronics Activity	
(DPAP) Defense Procurement & Acquisition Policy	
(DSB) Defense Science Board	
(I&E) Installations & Environment	
(L&MR) Logistics & Material Readiness	
(MDA) Missile Defense Agency	
(NCB) Nuclear, Chemical, & Biological Defense Programs	
(BTA) Business Transformation Agency	
(COMP) Comptroller	
(DPO) Defense Privacy Office	
(EXSEC) The Exec. Secretariat	
(DGC-LA) Prior to EXSEC	
(I) USD - Intelligence	
(JS) Joint Staff	
(LA) Legislative Affairs	
(NDU) National Defense Univ.	
(NII) Networks and Information Integration	
(ODNA) Office of the Director, Net Assessment	

(OGC) Office of General Counsel	
(OMC) Office of Military Commissions	
(DOHA) Director, Office of Hearings and Appeals	
(OT&E) Office Test & Evaluation	
(PA) Public Affairs	
(DMA) Defense Media Activity	
(P&R) Personnel & Readiness	
(CPMS) Civilian Personnel Management Service	
(DMDC) Defense Manpower Data Center	
(DTMO) Defense Travel Management Office	
(FVAP) Federal Voting Assistance Program	
(RA) Reserve Affairs	
(CAPE - PA&E) Program Analysis & Evaluation	
(PFPA) Pentagon Force Protection Agency	
(USDP) (Policy)	
(AP) Asian & Pacific Security Affairs	
(IS) International Security Affairs	
(GS) Global Security Affairs	
(DPO) Detainee Affairs	
(DPMO) POW/MIA	
(DSCA) Defense Security Cooperation Agency	
(DTSA) Defense Technology Security Administration	
(HD) Homeland Defense and America's Security Affairs	
(SO/LIC) Special Operations and Low Intensity Conflict	

[illegible]

No Nexus Response	
Not a Proper Request Reply	
Not Reasonably Described	
Not an Agency Record	
No Records Response	
Withdrawn	
DCII Check	
Letter or E-mail Interim	
In-House	

Use Referral Letter/Memo for:

ARMY	DTRA
NAVY	NGA
USAF	NGB
USMC	NRD
	NSA
CENTCOM	NSC
EUCOM	TRICARE
JFCOM	
NORTHCOM	CIA
PACOM	C. GUARD
SOCOM	DEA
SOUTHCOM	DHS
STRATCOM	DOE
TRANSCOM	DDJ
	DOL
CITF	FAA
DCAA	FBI
DCMA	FEMA
DECA	GSA
DFAS	NARA
DIA	NPRC
DISA	OPM
DLA	SEC. SVC.
DoDIG	STATE
DoDEA	VA
DSS	



**DEPARTMENT OF DEFENSE
OFFICE OF FREEDOM OF INFORMATION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155**

25 SEP 2007

Ref: 05-A-0564

MEMORANDUM FOR: OFFICE OF THE GENERAL COUNSEL (OGC)
ATTN: (b)(6)

SUBJECT: Freedom of Information Act (FOIA) Appeal – Ms. Barbara Elias

Attached is an appeal of your denial of information in the case referenced above. In order for the Deputy Director, Administration and Management to fulfill responsibilities as the appellate authority, the following is requested:

Conduct another review of the information previously denied to the requester, and provide your recommendations as to the release of the information. For any information which you recommend not be released, enclose that information in brackets on one copy of the documents and send it to this office. Cite the FOIA exemption(s) invoked for any recommended withholding, and your rationale for denial. Also, include another copy of the documents which are “clean,” with no markings or brackets.

Please forward your response to this office by October 23, 2007. You may direct any questions concerning this appeal to Mr. Michael Bell at (b)(6) or

(b)(6)

(b)(6)

James P. Hogan
Chief, FOIA Policy, Appeals and Litigation
Branch

Attachment:
As stated



DEPARTMENT OF DEFENSE
DEFENSE FREEDOM OF INFORMATION POLICY OFFICE
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

SEP 12 2012

Ref: 05-A-0564-A1

MEMORANDUM FOR: OFFICE OF THE GENERAL COUNSEL (OGC)

ATTN: (b)(6)

SUBJECT: Freedom of Information Act (FOIA) Appeal – Ms. Barbara Elias

Attached is an appeal of your denial of 71 pages in the case referenced above. In order for the Deputy Director, Administration and Management to fulfill responsibilities as the appellate authority, the following is requested:

Conduct another review of the information previously denied to the requester, and provide your recommendations as to the release of the information. For any information which you recommend not be released, enclose that information in brackets on one copy of the documents and send it to this office. Cite the FOIA exemption(s) invoked for any recommended withholding, and your rationale for denial. These documents were never provided upon initial request, but we are attaching the document list that was provided to Office of Freedom of Information. Also, include a copy of the documents which are “clean,” with no markings or brackets.

Please forward your response to this office by September 26, 2012. You may direct any questions concerning this appeal to Ms. Mary Roundy at (b)(6) or

(b)(6)

(b)(6)

for James P. Hogan
Chief

Attachment:

Appeal

OFOI final response

Initial request

Original tasking to OGC for appellate review

OGC SD Form 72 from initial review

Responsive document list provided by OGC during initial processing



DEPARTMENT OF DEFENSE
FREEDOM OF INFORMATION DIVISION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

MAY 17 2016

Ref: 05-A-0564-A1
05-F-0564

MEMORANDUM FOR: OFFICE OF GENERAL COUNSEL

ATTN: (b)(6)

SUBJECT: Freedom of Information Act (FOIA) Appeal – Ms. Joyce Battle

Attached is a copy of the FOIA request, final response and Appeal in the case referenced above. During the initial determination, four documents totaling 71 pages were denied in full. We have attached the previous decision (Form 472) from your office, dated July 19, 2007. In order for the Director, Oversight and Compliance to fulfill responsibilities as the appellate authority, the following is requested:

Please conduct a line-by-line review of the information previously denied. If you determine any of the previously denied information should remain exempt from release, enclose that information in RED brackets, cite the FOIA exemption(s) invoked, and provide your rationale for continued denial on SD Form 472. Please provide a copy of the bracketed documents and a clean copy of the documents in your response.

Please forward your response to this office by July 5, 2016. You may direct any questions concerning this appeal to Ms. Jeanne Moretti (b)(6) or at

(b)(6)

(b)(6)

for Danaeka Spear
Chief, Appellate Office

Attachments:

1. Tab A - FOIA request
2. Tab B - Response letter
3. Tab C - Appeal letter
4. Tab D - OGC SD Form 472 with document list
5. Tab E - OGC tasking memorandums (2)
6. Tab F - SD Form 472

The National Security Archive

The George Washington University
Gelman Library, Suite 701
2130 H Street, N.W.
Washington, D.C. 20037

Phone: 202/994-7000
Fax: 202/994-7005
nsarchiv@gwu.edu
www.nsarchive.org

September 24, 2007

National Security Archive Number 20041423DOS519
Department of Defense Number 05-F-0564

Mr. James Hogan
Chief – Policy, Appeals and Litigation Branch
Office of Freedom of Information
1155 Defense Pentagon
Washington, DC 20301-1155

Re: Freedom of Information Act Appeal (05-F-0564)

Dear Mr. Hogan,

This letter constitutes an appeal under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, of a determination by the Department of Defense (DOD) on a Freedom of Information Act (FOIA) request filed on December 15, 2004. By letter of August 30, 2007, the Department of Defense withheld four requested documents in their entirety under exemption (b)(1) of the FOIA. (8/30/07 Letter Attached)

The following documents referenced in the *9/11 Commission Report* remain the subject of this appeal:

1. DOD briefing materials, "Evolution of Infinite Resolve Planning (AQ, UBL)," undated (provided to the Commission on Mar. 19, 2004)
2. DOD notes, Victoria Clarke notes, Sept. 11, 2001
3. DOD memo, Office of the Under Secretary of Defense for Policy, "War on Terrorism: Strategic Concept," Sept. 14, 2001
4. DOD memo, Wolfowitz to Rumsfeld, "Preventing More Events," Sept. 17, 2001

According to the August 30, 2007 letter these four documents have been withheld because they 1.4(a) concern military plans weapons systems, or operations, (c) concern intelligence activities or (g) concern vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to national security, which includes defense against transnational terrorism.

However, by the date, title and description of the documents as provided to the public in the *9/11 Commission Report*, it remains highly doubtful that the release of these documents would pose a credible threat to current U.S. national security interests. Although al-Qaeda's terrorist networks are unfortunately very much still active, and the war on terrorism likewise remains an ongoing effort, it is evident that the structure of both al-Qaeda and the war on terrorism have undergone enormous changes since the creation of these documents in September 2001. It is inconceivable that the strategic concept for the war on terrorism drafted in September 2001 is the war on terrorism that is in current operation in September 2007.

The *9/11 Commission Report* describes "DOD memo, Office of the Under Secretary of Defense for Policy, "War on Terrorism: Strategic Concept,"" in some detail. "...the strategic concept for the war on

An independent non-governmental research institute and library located at the George Washington University, the Archive collects and publishes declassified documents obtained through the Freedom of Information Act. Publication royalties and tax deductible contributions through The National Security Archive Fund, Inc. underwrite the Archive's Budget.

terrorism specified three priority targets for initial action: al Qaeda, the Taliban, and Iraq. It urged that of the three, al-Qaeda and Iraq posed a strategic threat to the United States. Iraq's long-standing involvement in terrorism was cited, along with its interest in weapons of mass destruction."¹ Six years later, the Taliban has been removed from power in Afghanistan, Saddam Hussein is dead, Iraq is largely under U.S. military control and al-Qaeda has been forced to massively change its strategy and behavior in response to U.S. and worldwide efforts to thwart its activities. To put it succinctly, we are long past whatever the September 14, 2001 document had planned for. Similarly, the requested document "Evolution of Infinite Resolve Planning (AQ, UBL)," is cited in the 9/11 Commission Report as advising significant use of ground troops in Afghanistan. Operation Enduring Freedom, which commenced almost six years ago, did just that as it put significant U.S. and allied ground troops in Afghanistan. "Evolution of Infinite Resolve Planning (AQ, UBL)," is hardly an operationally significant military plan as it has already been largely implemented and/or obviated by the drastically altered political and military situation in Afghanistan. Neither of these documents continue to be relevant to (a) military plans or operations, (c) intelligence activities or (g) system vulnerabilities.

Additionally, in the very highly unlikely event that there is any information contained in such documents that remains operationally relevant, the Department has a duty to excise that specific piece of information without blanketing the entire document in classification. Just because a document is noteworthy or interesting does not mean it is sensitive. Similarly, just because a document was once very sensitive does not mean that it is entitled to indefinite classification. Although six years may not seem like a lot of time, the world as it is relevant to these documents is a completely transformed place. The nature of America's enemy has changed and the U.S. military and political reaction to this threat has changed. The information contained in these documents is irrelevant for current U.S. national security operations.

I also ask that the Policy, Appeals and Litigation Branch reconsider the initial decision to withhold "DOD notes, Victoria Clarke notes, Sept. 11, 2001." This document is described by the *9/11 Commission Report* as discussing the role of Saddam Hussein in 9/11 and considers possible strikes against Iraq in retaliation. The public already knows from the *9/11 Commission Report* and from the release of Stephen Cambone's notes from September 11, that on September 11, the Secretary of Defense was considering retaliation against Iraq as well as Osama bin Laden in Afghanistan. The Department's August 30, 2007 decision to withhold Ms. Clarke's notes is excessive, as the information contained in the document is confirmed in the *9/11 Commission Report* and in the released Cambone notes. Furthermore it is difficult to see how these notes relate to any of the criteria the August 30, 2007 letter provides as justification for withholding. These notes are not (a) military plans, unless the Department takes the untenable position that a note saying "Hit Saddam Hussein at the same time," counts as a war strategy for military operations in Iraq, nor do they (c) concern intelligence activities as these are policy notes, not intelligence information or (g) concern vulnerabilities or capabilities of systems, as we know from the *9/11 Commission Report* that these notes concern taking action in retaliation for the attacks, not assessing system vulnerabilities.

Regarding the last document, "DOD memo, Wolfowitz to Rumsfeld, "Preventing More Events," Sept. 17, 2001," it is fairly difficult to believe that if released, the information contained in document would pose new risks to security that have not already been exploited and made obvious to the public, or obviated by subsequent overhauls to security systems and/or the destruction of threats. Additionally, as with the other three documents, the *9/11 Commission Report* describes this document in substantive detail. "Deputy Secretary Wolfowitz continued to press the case for dealing with Iraq. Writing to Rumsfeld on September 17 in a memo headlined, "Preventing More Events," he argued that if there was even a 10 percent chance that Saddam Hussein was behind the 9/11 attack, maximum priority should be placed on eliminating that

¹ 9/11 Commission Report, Chapter 10, Wartime. (335)

threat. Wolfowitz contended that the odds were "far more" than 1 in 10, citing Saddam's praise for the attack, his long record of involvement in terrorism, and theories that Ramzi Yousef was an Iraqi agent and Iraq was behind the 1993 attack on the World Trade Center."²

It is difficult to understand the Department's position that the release of these documents would pose a threat to U.S. national security when the specific substance of each of these documents has already been known by the public for over three years, as it was released by *9/11 Commission Report*, an official government publication cleared for release by the U.S. Department of Defense. The public release of this information by the *9/11 Commission Report* has not created any threat or resulting compromise of U.S. national security, as is claimed would be the result of such disclosure by the August 30, 2007 denial letter. Why can the *9/11 Commission Report*, again an official government publication cleared for release by the DOD, provide the substance of the information contained in these documents, and indeed *even quote* document four, "DOD memo, Wolfowitz to Rumsfeld," yet the Department of Defense cannot undertake what is seemingly logical and release the same information, this time in the original documents that are quoted and summarized by the *9/11 Commission Report*?

As I'm sure the Policy, Appeals and Litigation Branch appreciates, excessive secrecy only undermines the very security it is designed to protect because it obscures truly sensitive information with the mundane and weakens protection for all, in addition to creating a vast bureaucratic burden for the DOD. The vast amount of documentation that is already available, including official testimonies and declassified documents, suggests that it was overwhelmingly poor choices based on spotty information and a failure to communicate, rather than openness or declassification that compromised the national security of the United States on September 11. A lack of discussion, coordination, and disclosure, not the release of information, proved detrimental to our security. As I have stated previously, it is exceedingly difficult to see how the release of these documents – whose content has already been largely released by other official U.S. government publications – would pose a threat to the safety and security of the nation, or to the continued success of U.S. military or intelligence operations.

In conclusion, I respectfully ask for a further review of these documents, as I find it difficult to accept that all requested information, regardless of age or relevance, pose an ongoing threat to U.S. security. I appreciate your consideration of this appeal and I look forward to your response. If you have any questions or concerns, please contact me at (202) 994-7000 or at (b)(6)

Thank you

Sincerely,

(b)(6)

Barbara Elias
Research Fellow

CC: Meredith Fuchs
General Counsel, The National Security Archive

² 9/11 Commission Report, Chapter 10, Wartime. (335 - 336)



DEPARTMENT OF DEFENSE
OFFICE OF FREEDOM OF INFORMATION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

25 SEP 2007

Ref: 05-A-0564
20041289DOD149

Ms. Barbara Elias
The National Security Archive
The George Washington University
Gelman Library, Suite 701
2130 H Street, NW
Washington, DC 20037

Dear Ms. Elias:

This is in response to your September 24, 2007, Freedom of Information Act (FOIA) appeal.

Due to an extremely heavy FOIA workload, we are unable to complete your appeal within the statutory time requirement. In fairness to the general public, we make every effort to treat all requesters equally. Accordingly, responses are made on a first-in, first-out, easy-hard basis, and controlled in response queues. When the appellate review of your case is complete, you will be notified by the appellate authority, the Deputy Director of Administration and Management, Office of the Secretary of Defense, of the final decision. You may direct any questions concerning this appeal to Mr. Michael Bell at (b)(6) or

(b)(6)

Sincerely,

(b)(6)

James P. Hogan
Chief, FOIA Policy, Appeals and Litigation
Branch

The National Security Archive

The George Washington University
Gelman Library, Suite 701
2130 H Street, N.W.
Washington, D.C. 20037

Phone: 202/994-7000
Fax: 202/994-7005
nsarchive@gwu.edu
www.nsarchive.org

December 15, 2004

Will Kammer
Directorate for Freedom of Information and Security Review
Department of Defense
Room 2C757
1155 Defense Pentagon
Washington, D.C. 20301-1155

Re: Request under the FOIA, in reply please refer to Archive # 20041289DOD149

Dear Mr. Kammer,

Pursuant to the Freedom of Information Act (FOIA), I hereby request copies of the following:

The following 4 documents referenced in Chapter 10, The 9/11 Commission Report, "Wartime."

[Please note, the number following each document citation in parentheses is the endnote of that document as referenced in the 9/11 Commission Report.]

1. DOD briefing materials, "Evolution of Infinite Resolve Planning (AQ, UBL)," undated (provided to the Commission on Mar. 19, 2004) [48]
2. DOD notes, Victoria Clarke notes, Sept. 11, 2001 [63]
3. DOD memo, Office of the Under Secretary of Defense for Policy, "War on Terrorism: Strategic Concept," Sept. 14, 2001 [65]
4. DOD memo, Wolfowitz to Rumsfeld, "Preventing More Events," Sept. 17, 2001 [73]

If you regard any of these documents as potentially exempt from the FOIA's disclosure requirements, I request that you nonetheless exercise your discretion to disclose them. As the FOIA requires, please release all reasonably segregable nonexempt portions of documents. To permit me to reach an intelligent and informed decision whether or not to file an administrative appeal of any denied material, please describe any withheld records (or portions thereof) and explain the basis for your exemption claims.

The National Security Archive qualifies for waiver of search and review fees as a representative of the news media. For details on the Archive's research and publication activities, please see our Web site at the address above. Please notify me before incurring photocopying costs over \$100. To expedite the release of the requested documents, please disclose them on an interim basis as they become available to you, without waiting until all the documents have been processed.

If you have any questions regarding the identity of these records, their location, the scope of the request or any other matters, please call me at (202) 994-7045 or e-mail (b)(6) I look forward to your response, thank you.

Sincerely,

(b)(6)

Barbara Elias

Freedom of Information Coordinator



DEPARTMENT OF DEFENSE
OFFICE OF FREEDOM OF INFORMATION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

AUG 30 2007

Ref: 05-F-0564
20041289DOD149

Ms. Barbara Elias
National Security Archive
Gelman Library, Suite 701
2130 H. St., NW
Washington, DC 20037

Dear Ms. Elias:

This is the final response to your Freedom of Information Act request dated December 15, 2004, for the following documents from Chapter 10 of the 9/11 Commission Report, "1) DOD briefing materials, 'Evolution of Infinite Resolve Planning (AQ, UBL),' undated (provided to the Commission on Mar. 19, 2004); 2) DOD notes, Victoria Clarke notes, Sept. 11, 2001; 3) DOD memo, Office of the Under Secretary of Defense for Policy, 'War on Terrorism: Strategic Concept,' Sept. 14, 2001; 4) DOD memo, Wolfowitz to Rumsfeld, 'Preventing More Events,' Sept. 17, 2001."

The DoD Office of the General Counsel conducted a search of the archive of DoD documents that were collected for the 9-11 Commission and the documents you requested were located. Mr. Michael E. Reheuser, Associate Deputy General Counsel for Legal Counsel, has determined that the documents, a total of 71 pages, are exempt from release in their entirety pursuant to 5 U.S.C. § 552(b)(1), which pertains to information that is properly classified in the interest of national security pursuant to Executive Order 12958, as amended, section 1.4(a), which concerns military plans, weapons systems, or operations; (c), which concerns intelligence activities (including special activities), intelligence sources or methods, or cryptology; and (g), which concerns vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans or protection services relating to national security, which includes defense against transnational terrorism.

If you are not satisfied with this action, you may submit an administrative appeal to James Hogan, Chief, Policy, Appeals, and Litigation Branch, Office of Freedom of Information, 1155 Defense Pentagon, Washington, DC 20301-1155. Your appeal should be postmarked within 60 days of the date of this letter, should cite to case number 05-F-0564, and should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

(b)(6)

for Will Kammer
Chief

FOI/PA CASE ASSIGNMENT WORKSHEET

Case No:

05-A-0564-A1

ACTION ASSIGNED TO _____ TEAM: A B C PMB REVIEWER  CARD _____

TYPE REQUEST: *Appeal Commercial Educational News/Media NonCom/Scientific Other*

EXPEDITED RESPONSE REQUESTED _____ GRANT? Y N DCII CHECK _____

UP-FRONT DOCUMENT SEARCH _____ FEE WAIVER REQUESTED _____ DATE RECEIVED: _____

REMARKS:

CLOSED WITHDRAWN

(ASBCA) Armed Services Board of Contract Appeals
(AT&L) Acquisition, Technology, & Logistics
(A&T) Acquisition & Technology
(DAU) Defense Acquisition University
(DPAP) Defense Procurement & Acquisition Policy
(DARC) Defense Acquisition Regulation Council
(PSA) Portfolio Systems Acquisition
(TC) Treaty Compliance
(SBP) Small Business Programs
(BT) Business Transformation
(BTA) Business Transformation Agency
(DDR&E) Defense Research and Engineering
(AS&C) Advanced Systems & Concepts
(DARPA) Defense Advanced Research Projects Agency
(DMEA) Defense Micro Electronics Activity
(DSB) Defense Science Board
(I&E) Installations & Environment
(ECODJ) Economic Adjustment
(L&MR) Logistics & Material Readiness
(IC) International Cooperation
(MDA) Missile Defense Agency
(NCB) Nuclear, Chemical, & Biological Defense Programs
(SPPGMS) Special Programs
(ATSDIO) Assistant to the Secretary of Defense (Intelligence Oversight)
(COMP) Comptroller
(PA&E) Program Analysis & Evaluation
(DPO) Defense Privacy Office
(EXSEC) The Exec. Secretariat

E-FOIA REPLY

(I) Intelligence
(CIFA) Counterintelligence Field Activity
(JS) Joint Staff
(LA) Legislative Affairs
(NDU) National Defense Univ.
(NI) Networks and Information Integration
(NSPS) National Security Personnel System
(NSSG) National Security Study Group
(ODNA) Office of the Director, Net Assessment
(OGC) Office of General Counsel
(DOHA) Director, Office of Hearings and Appeals
(OSAWHL) Office of the Special Assistant to the Secretary of Defense for White House Liaison
(PA) Public Affairs
(DVIC) Defense Visual Information Center
(P&R) Personnel & Readiness
(CPMS) Civilian Personnel Management Service
(DEOMI) Defense Equal Opportunity Management Institute
(DMDC) Defense Manpower Data Center
(SIAD) Statistical Information Analysis Division
(FVAP) Federal Voting Assistance Program
(HA) Health Affairs
(DHSD) Deployment Health Support
(RA) Reserve Affairs
(USUHS) Uniformed Services University of Health Sciences
(PFP) Pentagon Force Protection Agency
(USDP) USD (Policy)
(AP) Asian & Pacific Security Affairs
(CEN) Central Asia

(EAS) East Asia
(SEA) South and Southeast Asia
(IS) International Security Affairs
(AFR) Africa
(EUR) Europe & NATO
(MID) Middle East
(GS) Global Security Affairs
(CMO) Coalition Affairs
(GTS) Counternarcotics, Counterproliferation, and Global Threats
(DPO) Detainee Affairs
(MPA) Defense POW Missing Personnel Affairs Office
(DSCA) Defense Security Cooperation Agency
(DTSA) Defense Technology Security Administration
(PRT) Partnership Strategies
(HD) Homeland Defense and America's Security Affairs
(CMC) Crisis Management & Defense Support for Civil Authorities
(HLD) Homeland Def.
(HSI) Homeland Security Integration
(WHA) Western Hemisphere Affairs
(PDUSDP) Policy Director
(PPO) Policy Planning
(SPD) Support for Public Diplomacy
(SO/LIC) Special Operations and Low Intensity Conflict
(FT&R) Forces Transformation & Resources
(SOC) Special Operations
(STB) Stability Operations
(STR) Strategic Capabilities

(WHMO) W. H. Military Office
(WHS) Washington Headquarters Service
(A&P) Acquisition & Procurement
(ESD) Executive Services Directorate
(GC) General Counsel
(HRD) Human Resources
(PENREN) Pentagon Renovation
No Nexus Response
Not a Proper Request Reply
Not Reasonably Described
No Records Response
Not an Agency Record
Verification Response

ARMY	DTRA
NAVY	NGA
USAF	NGB
USMC	NSA
	NSC
CENTCOM	SHAPE
EUCOM	TRICARE
JFCOM	
NORTHCOM	
PACOM	CIA
SOCOM	C. GUARD
SOUTHCOM	DEA
STRATCOM	DHS
TRANSCOM	DOE
	DOJ
DCAA	DOL
DCMA	FAA
DECA	FBI
DFAS	FEMA
DIA	GSA
DISA	NARA
DLA	NPRC
DoDIG	OPM
DoDEA	SEC. SVC.
DSS	STATE
DTIC	VA

Office of Freedom of Information and Security Review
1155 Defense Pentagon
Room 2C757
Washington, DC
20301-1155

June 13, 2005

To whom it may concern:

I am writing to appeal the denial of my Freedom of Information Act request to U.S. Special Operations Command for a copy of the 15-6 investigation report into the alleged disclosure of classified material to me during my research for my book, "Not a Good Day to Die - The Untold Story of Operation Anaconda." This document was denied in total to me by USSOCOM, in a letter dated May 3, 2005, and signed by Colonel Mark J. Meyers, USSOCOM deputy chief of staff. My FOIA request was assigned USSOCOM FOIA control number 2005-007.

I am appealing this denial on the following grounds:

- Any information shared with me pertained to events that occurred no later than March 2002, over three years ago. This information is now dated and could be released with no significant risk.
- As the professed purpose of the investigation reveals, I am already in possession of the information that USSOCOM is allegedly concerned about. No possible extra breach of security could occur by releasing to me the report of an investigation into the alleged disclosure of information I am already in possession of.
- If for some reason the investigation report includes highly classified information, it should be possible to redact that information and release the rest of the report to me.
- My FOIA request represents an attempt on my part to find out what a large and powerful arm of the federal government - the Department of Defense - said about me, a private citizen, in an investigation into events that I was allegedly at the center of. This is exactly the sort of situation that the Freedom of Information Act was designed to address. It reflects poorly on USSOCOM and the Defense Department if you cannot bring yourselves to allow a private citizen to see the results of an investigation concerning him that you have spent public funds to conduct.

Yours sincerely,

(b)(6)

Sean D. Naylor

(b)(6)

USSOCOM FOIA

From: Sean Naylor (b)(6)
Sent: Monday, November 01, 2004 1:44 PM
To: USSOCOM FOIA
Subject: FOIA for Investigation

Ms. Holden,

Under the Freedom of Information Act, I am requesting ALL documents that pertain to an investigation into the alleged disclosure of classified material to Sean Naylor, the author of a forthcoming book on Operation Anaconda. This request should be understood to include - but not be limited to - the document that initiated the investigation, the document that appoints the investigating officer, any further memos pertaining to the investigation, interviews conducted during the course of the investigation and the investigating officer's report. Please send me documents as they become available. Do not wait until the investigation is completed before sending me documents that become available in the meantime. (As the investigation has already begun, I expect to be provided the initial memos immediately.)

As a member of the news media, I request that all fees associated with answering this request be waived. In the event that they are not waived, you may bill me without further correspondence up to the amount of \$200. If costs exceed \$200, please contact me immediately. I can be reached at my office at (b)(6)

Please send the documents to me at the following address:

Sean Naylor
Army Times

(b)(6)

Should you have any questions related to this request, please do not hesitate to call me.

Thank you in advance for your prompt attention to this request.

Yours sincerely,

Sean D. Naylor



UNITED STATES SPECIAL OPERATIONS COMMAND

7701 TAMPA POINT BLVD.
MACDILL AIR FORCE BASE, FLORIDA 33621-5323

MAY 3 2005

Mr. Sean D. Naylor

(b)(6)

Dear Mr. Naylor:

This responds to your Freedom of Information Act (FOIA) request for documents that pertain to an investigation into the alleged disclosure of classified material to you (U.S. Special Operations Command (USSOCOM) FOIA control number 2003-007).

The documents responsive to your FOIA request contain information concerning military plans and operations. On review, those portions were found to be properly and currently classified under Section 1.4 (a) of Executive Order 12958, as amended. The release of the information is denied under the provisions of Title 5, United States Code, Section 552 (b)(1).

You may appeal the denial of information, should you consider it an adverse determination. To do so, contact the Office of Freedom of Information and Security Review (OFOISR) in writing within 60 days of the date of this letter. Their address is OFOISR, 1155 Defense Pentagon, Room 2C757, Washington, DC 20301-1155

Sincerely,

(b)(6)

Mark J. Meyers
Colonel, U.S. Air Force
Deputy Chief of Staff

APPEAL - Need new #

FOI/PA CASE ASSIGNMENT WORKSHEET

Case No: 05-A-1026-A1

ACTION ASSIGNED TO Fisher TEAM: A B C PMB REVIEWER (b)(6) CARD
 TYPE REQUEST: Appeal Commercial Educational News/Media NonCom/Scientific Other
 EXPEDITED RESPONSE REQUESTED GRANT? Y N DMDC/DCII CHECK
 UP-FRONT DOCUMENT SEARCH DATE RECEIVED:
 REMARKS:

CLOSED

(ASBCA) Armed Services Board of Contract Appeals
(AT&L) Acquisition, Technology, & Logistics
(AS&C) Advanced Systems & Concepts
(DARPA) Defense Advanced Research Projects Agency
(DPAP) Defense Procurement & Acquisition Policy
(DARC) Defense Acquisition Regulation Council
(DDR&E) Defense Research and Engineering
(DS) Defense Systems
(DSB) Defense Science Board
(DSMC) Defense Systems Management College
(DUSDAR) DUSD Acquisition Reform
(ECOADJ) Economic Adjustment
(I&E) Installations & Environment
(JSFPO) Joint Strike Force Program Office
(L&MR) Logistics & Material Readiness
(DMEA) Defense Micro Electronics Activity
(IC) International Cooperation
(MDA) Missile Defense Agency
(NCB) Nuclear, Chemical, & Biological Defense Programs
(SADBU) Small & Disadvantaged Business Utilization
(SPPGMS) Special Programs
(ATSDIO) Assistant to the Secretary of Defense (Intelligence Oversight)
(COMP) Comptroller
(PA&E) Program Analysis & Evaluation
(DAU) Defense Acquisition University
(DPO) Defense Privacy Office
(DSO-Iraq) Defense Support Office - Iraq, formerly (CPA)

(EXSEC) The Exec. Secretariat
(I) Intelligence
(JFSC) Joint Forces Staff College
(JS) Joint Staff
(LA) Legislative Affairs
(NDU) National Defense University
(NII) Networks and Information Integration
(NSPS) National Security Personnel System
(NSSG) National Security Study Group
(OGC) Office of General Counsel
(DOHA) Director, Office of Hearings and Appeals
(OSA/WHL) Office of the Special Assistant to the Secretary of Defense for White House Liaison
(OT&E) Operational Test & Evaluation
(PA) Public Affairs
(P&R) Personnel & Readiness
(CPMS) Civilian Personnel Management Service
(DEOMI) Defense Equal Opportunity Management Institute
(DMDC) Defense Manpower Data Center
(SAID) Statistical Information Analysis Division
(FVAP) Federal Voting Assistance Program
(HA) Health Affairs
(DHSD) Deployment Health Support
(RA) Reserve Affairs
(USUHS) Uniformed Services University of Health Sciences
(PFFA) Pentagon Force Protection Agency
(USDP) USD (Policy)
(DTSA) Defense Technology Security Administration

(ISA) International Security Affairs
(AFRA) African Affairs
(APA) Asian and Pacific Affairs
(DPMO) Defense POW Missing Personnel Affairs Office
(NESAA) Near Eastern & South Asian Affairs
(WHA) Western Hemisphere Affairs
(ISP) International Security Policy
(CPP) Counter Proliferation Policy
(CTR) Cooperative Threat Reduction
(EURNATO) European and NATO Affairs
(NF&MDP) Nuclear Forces and Missile Defense Policy
(NNAC) Non-Nuclear Arms Control
(NPP) Non-Proliferation Policy
(NS&S) Nuclear Safety & Security
(RP&CP) Requirements, Plans, and Counter Proliferation Policy
(RUE) Russia, Ukraine, Eurasia
(SACP) Strategic Arms Control Policy
(SFO) Strategy, Forces, & Operations
(DSCA) Defense Security Cooperation Agency
(SO/LIC) Special Operations and Low Intensity Conflict
(CN) Counter Narcotics
(CT) Combating Terrorism
(SO) Stability Operations
(ODA) Office of Detainee Affairs
(ODNA) Office of the Director, Net Assessment

(Strategy) DASD Also Former (PS) Policy Support Records
(WHMO) White House Military Office
(WHS) Washington Headquarters Services
(A&P) Acquisition & Procurement
(APSD) Administration & Program Support
(ESD) Executive Services Directorate
(DFD) Defense Facilities
(FMD) Financial Management
(GC) General Counsel
(HRD) Human Resources
(P&E) Planning & Evaluation
(PENREN) Pentagon Renovation & Construction Program Office

ARMY	DTIC
NAVY	DTRA
USAF	NGA
USMC	N. GUARD
CENTCOM	NSA
EUCOM	NSC
JFCOM	SHAPE
NORTHCOM	TRICARE
PACOM	
SOCOM	CIA
SOUTHCOM	C. GUARD
STRATCOM	DEA
TRANSCOM	DHS
DCAA	DOE
DCMA	DOJ
DECA	DOL
DFAS	FBI
DIA	FEMA
DISA	NARA
DLA	ONDCP
DoDIG	S. SVC
DoDEA	STATE
DSS	



DEPARTMENT OF DEFENSE
OFFICE OF FREEDOM OF INFORMATION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

14 APR 2006
Ref: 05-A-1026(A)

MEMORANDUM FOR U.S. SPECIAL OPERATIONS COMMAND

ATTN: (b)(6)
SOCS-SJS-SI (FOIA)
7701 TAMPA POINT BOULEVARD
MACDILL AFB, FL 33621-5323

SUBJECT: Freedom of Information Act (FOIA) Appeal – Mr. Sean D. Naylor, SOCOM
#2005-007

Attached is an appeal of your determination pertaining to the response to the requester in the case referenced above.

In order for the Director, Administration and Management to fulfill responsibilities as the appellate authority, the following is requested:

- Conduct a review of the documents previously denied to the requester. Provide your recommendations as to the release of the information. For any information which you recommend not be released, enclose that information in brackets on one copy of the document and return it to this Office. Also include another copy which is "clean," with no markings or brackets. **Additionally, this office needs a copy of your initial response to the requester.**
- On the SD Form 472 provided, cite the FOIA exemption(s) invoked for any recommended withholding, and your rationale for denial. Provide a copy of the initial request and any additional comments which will assist in evaluating the appeal.

Copies of forms SD 472 and DD 2086 are also attached. Forward your response, including copies of all responsive records with completed legal coordination, to this office by 26 January 2005. Please direct any questions concerning this appeal to Mr. Stephen Fisher on

(b)(6)

(b)(6)

for
James P. Hogan
Chief, FOIA Policy, Appeals, and Litigation

Attachments:
As stated



DEPARTMENT OF DEFENSE
OFFICE OF FREEDOM OF INFORMATION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

FEB 12 2016

Ref: 05-A-1026-A1
Re: USSOUTHCOM 2005-07

MEMORANDUM FOR U.S. SPECIAL OPERATIONS COMMAND

ATTN: (b)(6)
SOCS-SJS-VI/FOIA SERVICE CENTER
7701 TAMPA POINT BOULEVARD
MACDILL AFB, FL 33621-5323

SUBJECT: FOIA Appeal 05-A-1026-A1 – One of Ten Oldest FOIA Appeals

The U.S. Special Operations Command (USSOCOM) possesses Freedom of Information Division's (FOID) Appeals case 05-A-1026-A1, which has also been reported as one of the Department of Defense's (DoD) ten oldest appeals. In the spirit of the Chief FOIA Officer's Backlog Reduction Plan, each FOIA Office within the DoD has the responsibility to track and prioritize the ten oldest cases in their Office and their appeals. Therefore, I am asking that you concentrate on closing this appeals case. While I do understand that USSOCOM has many cases in its queue, we ask that this case, along with any other cases your office may have that have been reported as a ten oldest Appeals case, be processed as a priority in your workload queue.

It is essential to the strategic plan of this organization that all DoD FOIA Offices adhere to the guidance set forth by the DoD Chief FOIA Officer and the Department of Justice. The Appellate Office strives to meet leadership expectations and reduce the backlog. Your office's focus on these particular cases will help the DoD achieve this goal.

If the FOID Appellate Office does not have a response from USSOCOM concerning this case by March 21, 2016, it will send the case forward to the appellate authority without release recommendations from your office. Please contact Ms. Jeanne Moretti at (b)(6) if you have any questions.

(b)(6)

Paul J. Jacobsmeyer
Chief

Attachments:

1. Initial USSOCOM tasker dated April 14, 2006
2. Status update email dated April 10, 2015



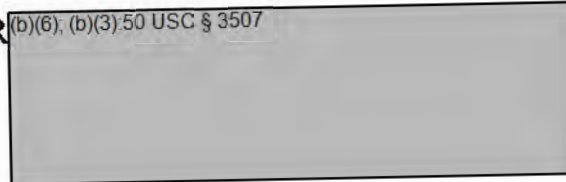
~~SECRET~~

DEPARTMENT OF DEFENSE
DEFENSE FREEDOM OF INFORMATION POLICY OFFICE
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

JUL 15 2010

Ref: 06-A-0117
F: 2005-00289

MEMORANDUM FOR (b)(6), (b)(3)-50 USC § 3507



SUBJECT: Freedom of Information Act (FOIA) Appeal – William Burr

We are forwarding the enclosed Freedom of Information Act (FOIA) initial response, appeal, and responsive document to your office for consultation. As you can see from the attached initial determination, the responsive document was partially denied based on determinations by DOE, the Department of the Air Force, Defense Threat Reduction Agency, and several offices within the Office of the Secretary of Defense.

Please conduct an appellate review of the information shaded in gray and highlighted in yellow (previously withheld from release) within the attached document. Please be advised, the Department of Energy (DOE) has completed a recent appellate review and determined that the information highlighted in yellow may be released on appeal without harm to national security. We have attached DOE's recommendations for your review. We have also attached the previous decision from your office, dated February 10, 2006. Bracket and cite the FOIA exemption(s) invoked for any information that your office wants to continue to withhold from release along with your rationale for denial.

If you have any questions pertaining to this case, please contact our action officer, Darrell Williams, at (b)(6) or (b)(6)

(b)(6)

James P. Hogan
Chief

Attachments:
As stated

~~SECRET~~

UNCLASSIFIED WHEN SEPARATED FROM ENCLOSURES

JUL 26 2010



~~SECRET~~

**DEPARTMENT OF DEFENSE
DEFENSE FREEDOM OF INFORMATION POLICY OFFICE
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155**

24 JUL 2009

Ref: 06-A-0117
96SA20B000058-HS

MEMORANDUM FOR: U.S. DEPARTMENT OF ENERGY
ATTN: (b)(6) HS-93
P.O. BOX A
GERMANTOWN, MD 20875-0963

SUBJECT: Freedom of Information Act (FOIA) Appeal – William Burr

We are forwarding the enclosed Freedom of Information Act (FOIA) initial response, appeal, and a responsive document to your office for consultation. This document was partially withheld pursuant to 5 U.S.C. § 552(b)(1) and (b)(3) at the initial stage.

Please conduct an appellate review of the information shaded in gray (previously withheld from release) within the attached document. We have attached the previous decision from your office, dated November 17, 1998. Bracket and cite the FOIA exemption(s) invoked for any information that your office wants to continue to withhold from release along with your rationale for denial.

If you have any questions pertaining to this case, please contact our action officer, Darrell Williams, at (b)(6) or (b)(6).

(b)(6)

James P. Hogan
Chief

-For-

Attachments:
As stated

~~SECRET~~

UNCLASSIFIED WHEN SEPARATED FROM ENCLOSURES

Accession 43