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DF-2018-00285 APPEAL

sh

From: Jason Leopold (b)(6)
Sent: Friday, January 04, 2019 4:25 PM
To: DNI-FOIA
Subject: Freedom of Information Act APPEAL DF-2018-00285.

Office of Director of National Intelligence Management Division,

I appeal the response to my FOIA request in its totality. Specifically, I appeal the integrity of the search that was undertaken to locate responsive records to each part of my request. I believe records exist and are in the possession of ODNI that would be responsive to my request.

As an example, I noted that the White House issued a public statement stating that President Trump "directed" ODNI to undertake the specific task. Yet ODNI says it cannot locate responsive records to that specific portion of my request. Additionally, I do not believe ODNI took the time to search for records in the form of emails and other correspondence that I have requested.

As provided in the Freedom of Information Act, I will expect to receive a reply to this administrative appeal letter within twenty working days or I will file a lawsuit in federal court.

Please do not hesitate to contact me if you have any questions concerning this appeal.

Thank you greatly. I appreciate your time and attention to this matter.

Kind Regards,
Jason Leopold

On Fri, Jan 4, 2019 at 10:31 AM DNI-FOIA <DNI-FOIA@dni.gov> wrote:

Good afternoon,

Please see enclosed document. Your original request is shown below. Your assigned case number is DF-2018-00285.

Thank you.

DNI/FOIA

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(b)(6)

From: Scott Amey (b)(6)
Sent: Friday, February 5, 2021 1:52 PM
To: DNI-FOIA
Subject: Re: Freedom of Information Act Appeal
Categories: For Sally

Ms. Nicholson,

Yes, please proceed with the appeal. and realize that this will end up in litigation because there is no way that such topline data can be exploited.

Scott H. Amey
General Counsel

(b)(6)

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On Fri, Feb 5, 2021 at 1:45 PM DNI-FOIA <DNI-FOIA@dni.gov> wrote:

Mr. Amey,

I wanted to touch base with you to clarify a couple things before moving forward any further with your appeal.

My apologies for the mistype in the response letter. The incorrect (b)(3) statute was cited. The numbers were not withheld to protect intelligence sources and methods.

There are multiple statutes that allow for the withholding of organizational information, which includes numbers of personnel, for agencies within the IC; specifically, 10 USC 424 for DIA, NRO, and NGA; 50 USC 3605, formerly 50 USC 402 Note Sec 6, P.L. 86-36 for NSA; and 50 USC 3507 for CIA, ODNI, and the IC at large.

Although in previous years the information was released, it has been determined that this information requires protection moving forward to avoid it being exploited.

Top line numbers are released in the charts; just not broken down by agency and/or personnel type.

Let me know if you would like me to continue processing your appeal or if this explanation is sufficient.

V/r,

- Sally

Sally A. Nicholson

Chief, Information Review &

Release Group

FOIA Public Liaison

ODNI/COO/IMO

From: Scott Amey (b)(6)
Sent: Monday, December 21, 2020 11:07 AM
To: DNI-FOIA <DNI-FOIA@dni.gov>
Subject: Freedom of Information Act Appeal

Chief FOIA Officer

c/o Director

Information Management Office

Office of the Director of National Intelligence

Washington, DC 20511

Freedom of Information Act Appeal: ODNI Case DF-2018-00157

This is an administrative appeal of Freedom of Information Act ODNI Case DF-2018-00157. In April, 2018, POGO made the following request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552:

- 1) The number of individuals who held and who were approved for a security clearance as of October 1, 2016, broken down by personnel type: i.e. "government," "contractor," and "other." For reference, see the information contained in the "Employee Type" column in tables 1 and 2 in the 2015 Annual Report on Security Clearance Determinations, Office of the Director of National Intelligence, National Counterintelligence and Security Center.
- 2) The names of the agencies listed in tables 3 through 7 of Fiscal Year 2016 Annual Report on Security Clearance Determinations, Office of the Director of National Intelligence, National Counterintelligence and Security Center. For reference, see the information contained in the "Agency" column in tables 3 through 8 in the 2015 Annual Report on Security Clearance Determinations.

Simply stated, POGO requested certain top-line numbers of security clearances held by government and non-government personnel. This information has been released in the past, as recent as ODNI's FY 2015 report. Starting in FY 2016, ODNI released overall numbers, but it stopped breaking them out by personnel and agency categories.

ODNI's FOIA reply to POGO stated that the records were withheld pursuant to exemption (b)(3), citing the National Security Act of 1947, as amended, 50 U.S.C. § 3024(i)(1), which protects information pertaining to intelligence sources and methods. That decision to withhold the top-line numbers from the public is absurd.

Nothing in the requested data identifies "intelligence" source or method, as required by the cited law. Nothing in the requested data identifies any specific person who holds a security clearance, not alone anyone who is a protected or confidential source. Nothing in the requested data identifies any national security method for which must remain secret to preserve the confidentiality and integrity of Federal systems. In fact, the annual reports released each year state:

The Intelligence Authorization Act (IAA) for Fiscal Year (FY) 20101 requires the President to submit an annual report on Security Clearance Determinations to Congress. The IAA directs this report to include the number of United States Government (USG) employees who held a security clearance at

each level as of October 1 of the preceding year and the number of USG employees who were approved for a security clearance at each level during the preceding fiscal year. Similar data pertaining to USG contractors is also required. Also, for each element of the Intelligence Community (IC), in-depth security clearance timeliness determination metrics are required.

See 50 U.S.C. § 3104.

To withhold records under the National Security Act, ODNI must establish that the materials discuss "intelligence sources and methods" as required by 50 U.S.C § 3024(i)(1). The requested top-line information could not provide clues about intelligence sources or methods that must be protected and ODNI can't identify any particularized harm caused by releasing the information, which has been publicly released for years.

For the foregoing reasons, I respectfully request that ODNI reverse its decision to withhold the requested data.

Sincerely,

Scott H. Amey
General Counsel

 (b)(6)

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(b)(3)

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From: Bill Marshall [redacted] (b)(6)
Sent: Friday, August 13, 2021 2:24 PM
To: DNI-FOIA
Subject: Appeal - Case # ODNI DF-2020-00106
Attachments: 5793_ODNII Appeal.pdf

Dear Sir / Madam,

Please find attached an appeal of the referenced FOIA case.

Thank you.

Respectfully,

William F. Marshall
Senior Investigator
Judicial Watch, Inc.

C: [redacted] (b)(6)



**Judicial
Watch**
*Because no one
is above the law!*

August 13, 2021

VIA EMAIL (DNI-FOIA@DNI.GOV)

Office of the Director of National Intelligence
Information Management Office
Washington, D.C. 20511

Re: Freedom of Information Act Appeal – Case # ODNI DF-2020-00106

Dear Sir/Madam:

Judicial Watch, Inc. (“Judicial Watch”) respectfully appeals the determination made by your letter of 22 July 2021 (copy attached) in regards the referenced case and responding to my FOIA request submitted to your office on 22 January 2020.

Your determination letter asserts that you have elected to withhold one of the two responsive documents located that are responsive to my request, based upon:

- *“(b)(3), which applies to information exempt by statutes; specifically, 50 U.S.C. § 3033(g)(3)(A), which protects the identity of employees or contractors who come to the ICIG with complaints of violations of laws, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health and safety.*
- *(b)(7)(D), which provides protection for confidential sources, specifically in law enforcement and investigatory documents.”*

Based on these claimed exemptions, the withheld document should have been released to me with merely personal identifying information of employees, contractors and/or confidential sources withheld, not the entire document. The withholding was overly broad and I request that all segregable, non-exempt information be released to me.

Should you require additional information, I may be contacted at or via email at .

Thank you for your continued assistance in this matter.

Very respectfully,

/Signature/

William F. Marshall
Judicial Watch, Inc.

Enclosures

(b)(3)

(b)(6)

From: Bradley P. Moss, Esq. (b)(6)
Sent: Saturday, May 8, 2021 4:09 PM
To: DNI-FOIA
Subject: ODNI Case DF-2017-00288

ATTN: Chief FOIA Officer

We are administratively appealing the final response issued by ODNI on May 7, 2021, in the above-identified FOIA request. ODNI stated it had located no responsive records.

We are challenging the adequacy of ODNI's search. At a minimum, the release of the Mueller Report provided official disclosures of information regarding discussions between President Trump and ODNI Director Coats with respect to the then-pending investigation into alleged collusion between the Russian Government and President Trump's campaign. Mueller report reveals how Donald Trump pushed Coats, Pompeo, Rogers (usatoday.com). The notion that ODNI conducted a lawfully adequate search and did not even find the records of discussions previously officially disclosed in the Mueller Report defies logic.

Regards,

Brad Moss

Bradley P. Moss, Esq.
Partner
Mark S. Zaid, P.C.
1250 Connecticut Avenue, NW
Suite 700
Washington, D.C. 20036

(b)(6)

(b)(3)

(b)(6)

From: Claire Harvey [REDACTED] (b)(6)
Sent: Tuesday, October 19, 2021 4:51 PM
To: DNI-FOIA
Cc: National Security Archive National Security Archive
Subject: Appeal FOIA DNI Case DF-2015-00254; National Security Archive #20101090DOD117
Attachments: DF-2015-00254 Appeal.pdf

Dear FOIA Officer,
Please find the attached appeal. All future correspondence should be sent to foiamail@gwu.edu.
Thank you,
Claire Harvey



The George Washington University
Gelman Library, Suite 701
2130 H St. NW
Washington, DC 20037
Phone/Fax: (202) 994-7000/7005
Email: nsarchiv@gwu.edu
Website: www.nsarchive.org

October 19, 2021

Office of the Director Of National Intelligence
Information Management Office
Washington, DC 20511

Re: Appeal of Agency FOIA Denial (DNI Case DF-2015-00254, DoD FOIA 11-F-0047, National Security Archive#20101090DOD117).

Dear Appeals Officer:

This letter constitutes an administrative appeal under the Freedom of Information Act (Title 5 USC Section 552) for the release of certain records maintained by the Office of the Director of National Intelligence.

On October 12, 2010, Barbara Elias submitted a FOIA request to the Department of Defense for "*all documents from January 1, 2006 to the present related to Anti-Coalition Militias (ACM) in Afghanistan and Pakistan.*" The Department of Defense referred one document responsive to the request to the Office of the Director National Intelligence (ODNI) for review and release. By letter of August 19, 2021, ODNI released one document with considerable excisions under exemption b(1), b(3), and b(6). (see attachments)

Please note I am now the point of contact for this request and will respond on behalf of Barbara Elias going forward.

I find this determination adverse and am appealing it based on the following arguments; however, please note I am not appealing exemption b(3) or b(6).

It is unclear whether ODNI conducted a line by line review of the released April 2007 National Intelligence Estimate, "Afghanistan: Security and Governance Challenges Mount [Redacted]", as nearly the entirety of each page is redacted in full. The Freedom of Information Act specifically requires that agencies release all reasonably segregable, non-exempt material in a document. I ask that you conduct a line-by-line review in order to allow for the greatest possible disclosure of segregable portions of the document.

Congress amended the FOIA in 2016 to limit agency withholding of information. The central component of the FOIA improvement Act of 2016 was the addition of a foreseeable harm standard that expressly prohibits agencies from withholding information that falls within the scope of FOIA's exemptions unless "(1) the agency reasonably foresees that disclosure would harm an interest protected by the exemption, or (2) disclosure is prohibited by law." An agency cannot meet the threshold of this requirement by simply speculating that harm might result from disclosure. If an agency fails to satisfy the foreseeable harm standard, the Act makes clear the information must be

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2130 H St. NW
Washington, DC 20037
Phone/Fax: (202) 994-7000/7005
Email: nsarchiv@gwu.edu
Website: www.nsarchive.org

released. I ask that you conduct a re-review of all exempted portions of the document to see if they meet the foreseeable harm standard.

When considering this appeal, please also note that the National Intelligence Estimate is now 14 years old and relate to policy discussions and military assessments reflecting the situation at the time and are not indicative of the current state of security in Afghanistan. Seen in this light, the potential harm for disclosure should be significantly diminished.

If you have any questions, please contact me at (202) 994-7000 or by email at foiamail@gwu.edu.

Sincerely,

Lauren Harper

(b)(6)

DF-2007-00013
Appeal 516591

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>

October 15, 2014

OCT 15 2014

FOIA Officer
Office of the Director of National Intelligence
Information Management Office
Washington, D.C. 20511

RE: Appeal of Agency FOIA Denial (Archive #20062093CEN048/07-0049/DF-2007-00013)

Dear FOIA Officer:

This letter constitutes an administrative appeal under the Freedom of Information Act (Title 5 USC Section 552) for the release of certain records maintained by the Office of the Director of National Intelligence.

On November 6, 2006, I filed a FOIA request with U.S. Central Command for all records including but not limited to emails, legal opinions, letters, memoranda, and position papers discussing the legal and policy implications of posting online or otherwise making public documents seized from the government of Iraq in 2003. Documents were available on the Foreign Military Studies Office Joint Reserve Intelligence Center website -- Operation Iraqi Freedom Documents. By letter of December 4, 2006, CENTCOM informed me that this request fell under the purview of the Office of the Director of National Intelligence, and was being referred to ODNI for direct response to me. By letter of September 19, 2014, ODNI informed me that it was withholding 229 documents in full and 38 documents in part, pursuant to FOIA exemptions b(1), b(3), b(5), and b(6). (see attachment)

I find this determination adverse and am appealing it. Please note, however, that I am not appealing the b(6) privacy redactions.

When considering this appeal, please note that while these documents were withheld to prevent damage to national security, these records will be an important part of the historical record of Operation Iraqi Freedom, and their disclosure would be in the public interest. I also ask that the Director of National Intelligence exercise its discretion under the (b)(5) exemption to release the requested materials. As your office is aware, the (b)(5) exemption is discretionary, and the public trusts the government will use it sparingly and only in cases where specific harm to a specific deliberative process can be identified, where the public's interest in these activities is outweighed by the need to protect the process, and finally, where there is actual harm in release. It is unlikely that any hypothetical adverse consequences outweigh the public benefit to be gained from the release of the requested information."

Finally, please note that in his 2009 FOIA memorandum, President Obama directed agency FOIA officers to "adopt a presumption in favor of disclosure in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving the FOIA." I ask that you keep President Obama's FOIA guidance, which has been reiterated by Attorney General Eric Holder and Director of National Intelligence James

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**Phone: 202.994.7000
Fax: 202.994.7005
nsarchiv@gwu.edu
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Clapper, in mind regarding your response to this appeal. I ask that you conduct a line by line review in order to release all reasonably segregable portions of these documents.

If you have any questions regarding this appeal, please call me by phone at [redacted] or via email at foiamail@gwu.edu (b)(6)

I look forward to receiving your response.

Sincerely,

Joyce Battle

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[Redacted] (b)(3)
[Redacted] (b)(6)

From: Eric Geller [Redacted] (b)(6)
Sent: Friday, June 3, 2022 4:04 PM
To: DNI-FOIA
Cc: DNI-FOIA-Liaison
Subject: RE: Appealing ODNI response to FOIA DF-2017-00345

Yes, I still want to appeal.

—
Eric Geller
Cybersecurity Reporter
POLITICO

[Redacted] (b)(6)

From: DNI-FOIA <DNI-FOIA@dni.gov>
Sent: Friday, June 3, 2022 3:58 PM
To: Eric Geller [Redacted] (b)(6)
Cc: DNI-FOIA <DNI-FOIA@dni.gov>; DNI-FOIA-Liaison <DNI-FOIA-Liaison@dni.gov>
Subject: RE: Appealing ODNI response to FOIA DF-2017-00345
Importance: High

EXTERNAL SENDER: Use caution with links and attachments.

Mr. Geller-

I apologize if our response was unclear. When reviewing documents for release under FOIA, we always do a line-by-line review to determine if there is any segregable information. This document was reviewed by that standard, and we determined there was no segregable information.

Additionally, *Vaughn* indexes are not required prior to litigation. The failure to provide one is not an appealable decision.

Please confirm if you still wish to appeal our decision to deny the document in full. If so, you may use the same tracking number.

Thank you,

Erin Morrison
Chief/IRRG
703-275-3500

From: Eric Geller [Redacted] (b)(6)
Sent: Thursday, June 02, 2022 10:44 AM

To: DNI-FOIA <DNI-FOIA@dni.gov>

Subject: Appealing ODNI response to FOIA DF-2017-00345

To Whom It May Concern:

I hereby appeal ODNI's response to my FOIA request, case # DF-2017-00345. I requested a memo sent to then-DNI Dan Coats by the Senate Intelligence Committee in or around April 2017 regarding security concerns with Kaspersky software. On May 16, ODNI informed me that it had located the memo and was withholding it pursuant to FOIA exemptions relating to classified information and intelligence sources and methods.

In withholding the memo in its entirety, ODNI did not indicate whether it conducted a segregability analysis to determine whether portions of the document were releasable with appropriate redactions. As far as I can tell from ODNI's response, such an analysis was not conducted.

In addition, ODNI failed to comply with applicable court precedents regarding records withheld under FOIA.

Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1972), requires the production of a "Vaughn index" describing the withheld documents in enough detail "to permit a reasoned judgment as to whether the material is actually exempt under FOIA." *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979). In addition, the index must "describe each document or portion thereof withheld, and for each withholding it must discuss the consequences of supplying the sought-after information." *King v. U.S. Dep't of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987). Furthermore, "the withholding agency must supply 'a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.'" *Id.* at 224 (citing *Mead Data Central v. U.S. Dep't of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

ODNI did not produce a Vaughn index or a detailed justification of its decision to withhold the memo in question.

I hereby request that ODNI conduct a segregability analysis and release the document with any necessary redactions, or, if it determines that no portion of the document can be released, that it comply with the aforementioned court precedents regarding withheld records.

Please confirm receipt of this appeal and provide me with a tracking number.

—
Eric Geller
Cybersecurity Reporter
POLITICO

 (b)(6)