

F-2009-00421

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27 January 2009

Delores M. Nelson
Central Intelligence Agency
Information and Privacy Coordinator
Washington, D.C. 20505

APPROVED FOR RELEASE
DATE: 18-Aug-2010

Re: FOIA Request – CIA “Airbridge” program

Dear Ms. Nelson:

This is a request on behalf of the James Madison Project (“JMP”) under the Freedom of Information Act, 5 U.S.C. § 552, *et seq.*, for copies of all Central Intelligence Agency (“CIA”) documents, including cross-references, pertaining to:

1. The 20 April 2001 shoot down of a small plane carrying Baptist missionaries by the Peruvian Air Force (“the shoot down”);
2. The Department of Justice (“DOJ”) investigation into the shoot down, concluded in 2005;
3. The CIA Inspector General’s report regarding the shoot down and the “Airbridge” program as a whole, concluded in August 2008 (“the IG report”); and
4. Any other investigations performed by other federal agencies into any of the above topics.

Enclosed please find copies of news articles from the *Washington Post* and *CQ Today* referring to the “Airbridge” program, the shoot down, the IG report, and the resulting agency investigations.

You are hereby instructed that the term “record” includes, but is not limited to, all e-mail communications to or from any individual within your office, memoranda, inter-agency communications, sound recordings, tape recordings, video or film recordings, photographs, notes, note-books, indices, jottings, message slips, letters or correspondence, telexes, telegrams, facsimile transmissions, statements, policies, manuals or binders, books, handbooks, business records, personnel records, ledgers, notices, warnings, affidavits, declarations under penalty of perjury, unsworn statements, reports, diaries or

“Knowledge will forever govern ignorance, and a people who mean to be their own Governors, must arm themselves with the power knowledge gives.”

James Madison, 1822

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calendars, regardless of whether they are hand-written, printed, typed, mechanically or electronically recorded or reproduced on any medium capable of conveying an image, such as paper, computer discs, or diskettes. Furthermore, in line with the guidance issued by the DOJ on 9 September 2008 to all federal agencies with records subject to FOIA, agency records that are currently in the possession of a U.S. Government contractor for purposes of records management remain subject to FOIA. Please ensure that your search complies with this clarification on the effect of Section 9 of the OPEN Government Act of 2007 of the definition of a "record" for purposes of FOIA. Please also consider this letter an affirmative rejection of any limitation of your search to CIA-originated records.

If you deny all or part of this request, please cite the specific exemptions you believe justify your refusal to release the information or permit the review and notify us of your appeal procedures available under the law. In excising material, please "black out" rather than "white out" or "cut out."

We are hereby requesting a waiver of all fees in accordance with our status as a representative of the news media. JMP is a non-profit organization under the laws of the District of Columbia, has the ability to disseminate information on a wide scale, and intends to use information obtained through FOIA in original works. Stories concerning our activities have received prominent mention in many publications including, but not limited to, the *Washington Post*, *Washington Times*, *St. Petersburg Tribune*, *San Diego Union Tribune*, *European Stars & Stripes*, *Christian Science Monitor*, *U.S. News and World Report*, *Mother Jones*, and *Salon Magazine*. Our website, where much of the information received through our FOIA requests is or will be posted for all to review, can be accessed at <http://www.jamesmadisonproject.org>, and information published there has previously been used by third parties in published works. In addition, we also intend to use information obtained through FOIA in our own published opinion editorials, journal articles, and the like. JMP's Director of FOIA Operations Kel McClanahan has already published information received through FOIA in this manner. Therefore, according to the ruling of *National Security Archive v. Department of Defense*, 800 F.2d 1381 (D.C. Cir. 1989), codified by the 2008 FOIA amendments, defining a representative of the news media as "a person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience," JMP should be considered a representative of the news media according to 5 U.S.C. § 552(a)(4)(A)(ii)(II). Similarly, our request for a public interest fee waiver should be granted. Most prior requests submitted by our organization have received fee waivers.

We are also asking for expedited processing. The 1996 amendments to the Freedom of Information Act permit expedited processing when a "compelling need" exists. 5 U.S.C. § 552 (a)(6)(E)(v). Specifically, "compelling need" means "with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity." *Id.* at § 552(a)(6)(E)(v)(II). The CIA has adopted internal regulations governing expedited processing and has determined that a "compelling need" is deemed to exist where the "request is made by a person primarily engaged in disseminating information and the information is relevant to a subject of public urgency concerning an actual or alleged Federal government activity." See 32 C.F.R. § 1900.34(c)(2).

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There can be no question that the information sought would contribute to the public's understanding of government operations or activities and is in the public interest. In this case, the CIA's own Inspector General concluded that the CIA had acted unlawfully, and that the shoot down may not have been an isolated incident. Release of any documents pertaining to this program and any subsequent investigations will clearly contribute to the public's understanding of government operations or activities.

With respect to expedited processing, as explained above, JMP has been and continues to be primarily engaged in disseminating information on a wide scale and clearly falls within the scope of the statute. A "compelling need" exists due to the clear CIA misconduct already acknowledged by the CIA Inspector General, the details of which will be critically important as the Intelligence Community is being evaluated and reformed by a new administration. I certify this statement to be true and correct to the best of my knowledge and belief.

The CIA is required by law to respond to this request within 20 working days. However, the CIA is required to issue a determination on the request for expedited processing "within 10 days after the date of the request." 5 U.S.C. § 552 (a)(6)(E)(ii)(I). Therefore, the CIA's response is due on or before 6 February 2009. Failure to timely comply may result in the filing of a civil action against your agency in the United States District Court for the District of Columbia. Please note that the denial of expedited processing should not interfere with the normal processing of these requests.

We request that any documents or records produced in response to this request be provided in electronic (soft-copy) form wherever possible. Acceptable formats are .pdf, .jpg, .gif, .tif. Please provide soft-copy records by email, or on a CD if email is not feasible.

Your cooperation in this matter would be appreciated. If you wish to discuss this request, please do not hesitate to contact my Director of FOIA Operations Kel McClanahan at Kel@JamesMadisonProject.org or 301-728-5908.

Please respond to this request by email to Kel@JamesMadisonProject.org or by fax to 240-681-2189.

Sincerely,



Mark S. Zaid
Executive Director

MSZ/km

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James Madison, 1822

CQ TODAY ONLINE NEWS - INTELLIGENCE
Nov. 20, 2008 - 5:08 p.m.

Hoekstra Charges CIA Broke the Law and Misled Congress

By Jonathan Broder and Tim Starks, CQ Staff

A senior member of the House Intelligence Committee charged Thursday that CIA officials were operating outside the law in the 2001 downing of a small plane carrying U.S. missionaries by the Peruvian Air Force and then deliberately misled Congress and withheld information from the White House and Justice Department.

Peter Hoekstra of Michigan, the ranking Republican on the House Intelligence panel, demanded that the agency declassify portions of the CIA inspector general's report about the incident, in which a Michigan woman and her infant daughter were killed. Her husband, son and the pilot of the plane survived the crash in the Amazon jungle.

Hoekstra also said he would press for the Justice Department to consider criminal investigations.

"We cannot have a community that operates outside the law and covers up what it does and lies to Congress," Hoekstra said at a news conference.

A spokeswoman for Silvestre Reyes, D-Texas, chairman of the House Permanent Select Committee on Intelligence, said the committee will continue to do "due diligence in matters requiring accountability and oversight."

"The committee is charged with conducting oversight of the Intelligence community, and the chairman takes this issue very seriously," said committee spokeswoman Courtney Littig.

A senior intelligence official accused Hoekstra of "grandstanding" and trying to discredit CIA leadership.

The classified report, written up in August, examines the events surrounding the 2001 shootdown as part of the CIA's so-called "Airbridge" counternarcotics program, which paired CIA spotter planes with Peruvian Air Force jets to identify and intercept drug smuggling aircraft.

Under the program's rules of engagement, Peruvian warplanes were supposed to intercept suspected drug-running planes and force them to land using a series of signals. If the planes didn't comply, the Peruvians pilots could shoot them down.

Routine Disregard Of Procedures

A State Department report issued soon after the missionary plane was downed said the CIA initially suspected it as a drug smuggling aircraft and then had second thoughts.

But in the atmosphere of urgency that arose as the Peruvian pilots feared the plane would escape, the CIA officials erroneously gave the order to fire, the State Department report said.

According to declassified portions of the report released by Hoekstra, the CIA had characterized the downing of the missionaries' plane as a "one-time mistake in an otherwise well-run program." But the CIA inspector general concluded that "in fact, this was not the case."

The report said "routine disregard of the required intercept procedures. . . led to the rapid shooting down

of target aircraft.” The report said suspect aircraft in many cases were “shot down within two to three minutes of being sighted by the Peruvian fighter — without being properly identified, without being given the required warnings to land, and without being given the time to respond to such warnings.”

Hoekstra said more than 10 aircraft had been shot down under the CIA program since it began in 1995, and that the inspector general’s report “opens the door to the possibility that there were other innocent people who may have been shot down.”

The report also said the CIA did not fulfill its legal obligation to keep Congress and the National Security Council fully informed about the “Airbridge” program, incorrectly reporting that from 1995 to 2001, the program complied with the law and policies governing it.

Internal CIA investigations of the 2001 shutdown documented “sustained and significant violations of required intercept procedures” going back to 1995, “yet the Agency denied Congress, the NSC and the Department of Justice access to these findings.”

Hoekstra Holds Hayden Accountable

Hoekstra said he would press the Justice Department to determine whether criminal charges were warranted. A Justice Department spokesman declined to comment.

Hoekstra also said he would urge Reyes to examine ways to improve congressional oversight of the intelligence agencies.

Hoekstra released an Oct. 6 letter he had sent to CIA Director Michael V. Hayden, in which he demanded “aggressive follow-up” and warned Hayden that “you are now fully accountable for ending the duplicitous behavior of those under your charge. . . I will not let this matter rest as it stands.”

CIA Spokesman Mark Mansfield said Hayden would wait to consult with an outside expert on air interceptions before deciding further steps. A senior intelligence official identified the expert as former Chairman of the Joint Chiefs of Staff, retired Air Force Gen. Richard Myers.

A senior intelligence official, speaking on background, characterized Hoekstra’s remarks as “irresponsible.”

“Raising this now is irresponsible,” the official said. “It’s an attempt to discredit the agency’s leadership.”

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CQ WEEKLY REPORT

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THE DIRECTOR
CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

9 October 2008

The Honorable Peter Hoekstra
Ranking Minority Member
Permanent Select Committee on Intelligence
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Hoekstra:

When I was alerted by my staff of your desire to talk to me on 3 October and that the subject was the CIA IG report on the Peru shoot down, I directed my folks to talk to your staff and explain that any discussion you and I might have before we adjudicated the findings in the report might be problematic. I trust that your staff passed that message to you.

In short, I feared that our discussion would give any individuals, who might ultimately be disciplined, grounds for challenging my action because of undue outside influence. I have since received your letter of 6 October which lays out forcefully the course of action you believe I must take. We have repeatedly tried to re-contact your staff but have had no success so I have taken the liberty of responding to you personally.

Following internal consultations, I have been advised that, to the best of my ability, I should remove your letter from any future considerations I might make in order to preserve the appearance of fairness critical to this process and thus better protect the Agency from litigation.

I share your view that the shoot down was a great tragedy. It and its aftermath were also very complex, as witnessed by the seven and a half years required to complete the IG report. Therefore, to assist me in my review of this matter, I have turned the IG report and related documents over to General (USAF, Retired) Dick Myers, former Chairman of the Joint Chiefs of Staff, for his review. General Myers is a member of our External Advisory Board and I will weigh his advice heavily before taking action. As an aviator and a career military officer, General Myers has—I believe—a valuable perspective to offer.

I will, of course, keep the Committee informed as we move forward.

Sincerely,

Handwritten signature of Michael V. Hayden in black ink.
Michael V. Hayden

washingtonpost.com

CIA Withheld Details On Downing, IG Says

Shooting in Peru Killed Missionary, Infant

By Joby Warrick
Washington Post Staff Writer
Friday, November 21, 2008; A08

An internal CIA probe has concluded that agency officials deliberately misled Congress, the White House and federal prosecutors about key details of the 2001 downing of an airplane carrying U.S. missionaries in Peru, according to a senior lawmaker who called yesterday for a new criminal inquiry into the case.

The agency's inspector general said CIA officers repeatedly ignored rules of engagement in a joint U.S.-Peruvian campaign to halt airborne drug smugglers, resulting in the downing of at least 10 other aircraft without proper warnings. Afterward, CIA managers concealed the problems from lawmakers and the Justice Department, the agency watchdog said.

Even the White House was kept in the dark, as agency officials and lawyers withheld key details while cautioning their staff to avoid putting anything in writing that might be used later in a criminal or civil case, the inspector general said in a report.

Unclassified excerpts from the report were released by Rep. Peter Hoekstra (Mich.), the ranking Republican on the House intelligence committee, who blasted the agency for actions that he said were tantamount to obstruction of justice.

"These are the most serious and substantial allegations of wrongdoing I've seen in my time on the committee," said Hoekstra, whose western Michigan district was home to the two Americans killed in the 2001 incident.

The White House declined to comment on the report, which was disclosed on the eve of a trip by President Bush to Peru to attend a regional summit. The CIA's current director, Michael V. Hayden, was aware of the report and had begun his own inquiry before deciding how to respond, an agency spokesman said.

The controversial anti-drug program operated from 1995 to 2001 to assist Peru in stopping drug traffickers from ferrying narcotics through the country's airspace. CIA officers in small planes would track flights by suspected drug runners before alerting Peruvian fighter pilots, who would swoop in for the kill.

The program had succeeded in bringing down numerous suspect planes when, on April 20, 2001, a Peruvian pilot mistakenly shot into a small aircraft carrying a family of Baptist missionaries from Michigan. A bullet struck and killed one of the missionaries, Veronica "Roni" Bowers, and her infant daughter, Charity. The pilot was wounded but managed to land the plane. Bowers's husband and their 6-year-old son were not injured.

Multiple investigations at the time found that the CIA had been lax in its oversight of the program and had failed to ensure that strict rules were followed in identifying the plane before calling in the Peruvian fighter. Yet, according to the inspector general's report, agency officials sought from the outset to conceal the

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program's serious problems, while portraying the 2001 shooting as an aberration.

"Within hours, CIA officers began to characterize the shoot-down as a one-time mistake in an otherwise well-run program," the report stated. "In fact, this was not the case."

Instead, in nearly every instance, CIA and Peruvian participants ignored guidelines intended to prevent innocent pilots from being shot from the sky, it said. Often, suspect planes were shot down "within two to three minutes of being sighted . . . without being properly identified, without being given adequate warnings to land," it said.

Hoekstra, citing the still-classified portions of the report, said the CIA's program was "actually operating and being implemented outside the law." The investigators found that CIA managers "knew of, and condoned" the violations and failed to properly oversee the program, he said.

Later, when asked by Justice officials and congressional overseers about the problems, CIA officials gave misleading accounts, the inspector general concluded. The agency had by late 2001 documented "sustained and significant violations . . . dating back to the first shoot-down," yet it failed to share its findings with Justice and congressional investigators, or with the White House National Security Council, the report said.

The Justice Department closed its investigation in 2005 without filing criminal charges against any of the CIA employees -- a decision Hoekstra supported at the time. But the Michigan Republican called yesterday for a new criminal probe as well as congressional hearings. "Americans deserve to know that agencies given power to operate on their behalf aren't abusing that power, or their trust," he said.

Hoekstra said he did not know how widely the problems were known within the upper ranks of the CIA's management. But he said he had personally presided over congressional hearings attended by CIA managers who knew the facts but did not speak up.

"CIA officials in front of my committee may have allowed incomplete or misleading statements to be made," he said.

Hayden, who was appointed CIA director in 2006, received a copy of the report in August and "recognized the seriousness" of the findings, agency spokesman Mark Mansfield said. Hayden is now "seeking input from a cleared outside expert -- one who knows the complex issues involved in an air interdiction program -- before making any decisions," he added. Among those reportedly advising Hayden was retired Air Force Gen. Richard B. Myers, the former Joint Chiefs of Staff chairman.

"The CIA takes very seriously questions of responsibility and accountability. To suggest otherwise does a great disservice to those who work at the agency," Mansfield said.

A senior intelligence official familiar with the internal report said the classified version presented a more nuanced account of the actions of agency officers in Peru who, he said, were placed in a difficult position.

In addition, "there are numerous facts and circumstances not laid out in the IG report that would be relevant to any decisions that would be made," the official said.

Staff writer Carrie Johnson and staff researcher Julie Tate contributed to this report.

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FAX COVER SHEET

TO *Delores Nelson*
FROM *Kel McClanahan (12406812189)*
DATE *01/27/2009*

COVER MESSAGE

Please find attached a FOIA request from the James Madison Project. Thank you.