

F-2014-01935

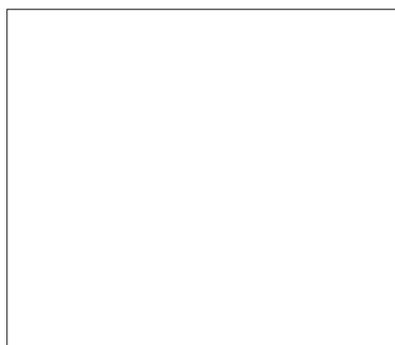
FOIA Request ID: 3049

FOIA Request submitted by:

Mr. Jason Leopold

Submitted on: July 1, 2014 : 13:28 - America/New_York

Investigative Journalist



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JUL - 2 2014

United States

Request:

This is a request for records under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 and the Privacy Act, 5 U.S.C. § 552a. This request should be considered under both statutes to maximize the release of records.

Further, please note that this request seeks expedited processing pursuant to 32 C.F.R. 1900.34(c)(2) because there is a "compelling need" for the records.

REQUESTER INFORMATION

Name: Jason Leopold

Affiliation: Investigative Reporter

Address:

(b)(6)

Email:

(b)(6)

Phone

RECORDS SOUGHT

I request disclosure of any and all leak investigation referrals the CIA has made to the Department of Justice between January 1, 2009 and the date the search for responsive records begins. Moreover, I request any and all records that refer to these leak investigation referrals and any and all records used as the basis to prepare the leak investigation referrals to the Justice Department.

ADDITIONAL DESCRIPTIVE INFORMATION

The New York Times reported in a June 27, 2014 report that the CIA "refers possible leak cases to the Justice Department on an almost weekly basis. A vast majority are never investigated."

REQUEST FOR EXPEDITED PROCESSING

Under 32 C.F.R. 1900.34(c)(2), a "compelling need" is deemed to exist "[w]hen 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."

I am seeking expedited treatment for this request.

1. The information is relevant to a subject of public urgency concerning an actual or alleged Federal government activity.

Pulitzer Prize winning reporter James Risen is currently facing jail time as a result of a information he published a decade ago in his book, State of War, which was allegedly based on leaked information from the CIA. The investigation and subsequent investigations has a direct impact on the newsgathering process as potential sources of information may be unwilling to speak about potential wrongdoing for fear they will be investigated and prosecuted.

2. I am primarily engaged in disseminating information to inform the public about the federal government's activities.

3. Certification pursuant to 32 C.F.R. 1900.34(c) I certify the foregoing to be true and correct to the best of my knowledge and belief, and that a compelling need exists for the requested records.

Jason Leopold

INSTRUCTIONS REGARDING SEARCH

1. Instructions Regarding "Leads":

As required by the relevant case law, the CIA should follow any leads it discovers during the conduct of its searches and perform additional searches when said leads indicate that records may be located in another system.

Failure to follow clear leads is a violation of FOIA.

2. Request for Public Records:

Please search for any records even if they are already publicly available.

3. Request for Electronic and Paper/Manual Searches:

I request that searches of all electronic and paper/manual indices, filing systems, and locations for any and all records relating or referring to the subject of my request be conducted. I further request that the CIA conduct a search of its "soft files."

4. Request for Search of Filing Systems, Indices, and Locations:

I request that the CIA conduct a search of all of its directorates.

Specifically, I request that the search conducted by the CIA include, but not be limited to, the following filing systems, indices, and locations: Training Records; Center for the Study of Intelligence (CSI) Records; CIA Declassifications Center (CDC) External Liaison Records; Manuscript Review Records; Security Operations Records; Information Release Records; Official Personnel Files; Personnel Security Records; Polygraph Records; Office of the Director Action Center Records; Office of General Counsel Records; Congressional Liaison Records; Public Affairs Records; Inspector General Research Records; Inspector General Investigation and Interview Records; Office of the Deputy Director of Central Intelligence (DDCI) for Community Management Records; Directorate of Science & Technology (DS&T) Private Sector Contact Information; Alumni Communications Records; Directorate of Operations Records; Academic and Business Contact Records; Customer Relations Records; Research System Records; Intelligence Analysis Records; Guest Speaker Records; National Intelligence Council (NIC) Records; Arms Control Records; CREST; employees' official files; CIA's daily diary of its activity; and monthly progress reports.

Additionally, please search all of your indices, filing systems, and locations, including those I have not specified by name and those of which I may not be aware.

5. Request regarding Photographs and other Visual Materials:

I request that any photographs or other visual materials responsive to my request be released to me in their original or comparable forms, quality, and resolution. For example, if a photograph was taken digitally, or if the CIA maintains a photograph digitally, I request disclosure of the original digital image file, not a reduced resolution version of that image file nor a printout and scan of that image file. Likewise, if a photograph was originally taken as a color photograph, I request disclosure of that photograph as a color image, not a black and white image. Please contact me for any clarification on this point.

6. Request for Duplicate Pages:

I request disclosure of any and all supposedly "duplicate" pages.

Scholars analyze records not only for the information available on any given page, but also for the relationships between that information and information on pages surrounding it. As such, though certain pages may have been previously released to me, the existence of those pages within new context renders them functionally new pages. As such, the only way to properly analyze released information is to analyze that information within its proper context. Therefore, I request disclosure of all "duplicate" pages.

7. Request for Search of Operational Files:

I request that in conducting its search, the CIA include "operational files," as that term is defined in 50 U.S.C. § 431(b).

8. Request to Search Emails:

Please search for emails relating to the subject matter of my request.

9. Request for Search of Records Transferred to Other Agencies:

I request that in conducting its search, the CIA disclose releasable records even if they are available publicly through other sources outside the CIA, such as NARA.

10. Regarding Destroyed Records

If any records responsive or potentially responsive to my request have been destroyed, my request include, but is not limited to, any and all records relating or referring to the destruction of those records. This includes, but is not limited to, any and all records relating or referring to the events leading to the destruction of those records.

INSTRUCTIONS REGARDING SCOPE AND BREADTH OF REQUESTS Please interpret the scope of this request broadly. The CIA is instructed to interpret the scope of this request in the most liberal manner possible short of an interpretation that would lead to a conclusion that the request does not reasonably describe the records sought.

EXEMPTIONS AND SEGREGABILITY

I call your attention to President Obama's 21 January 2009 Memorandum concerning the Freedom of Information Act, in which he states:

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA [....] The presumption of disclosure should be applied to all decisions involving FOIA.

In the same Memorandum, President Obama added that government information should not be kept confidential "merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears."

Finally, President Obama ordered that "The Freedom of Information Act should be administered with a clear presumption: In the case of doubt, openness prevails."

Nonetheless, if any responsive record or portion thereof is claimed to be exempt from production, FOIA/PA statutes provide that even if some of the requested material is properly exempt from mandatory disclosure, all segregable portions must be released. If documents are denied in part or in whole, please specify which exemption(s) is (are) claimed for each passage or whole document denied. Please provide a complete itemized inventory and a detailed factual justification of total or partial denial of documents.

Specify the number of pages in each document and the total number of pages pertaining to this request. For "classified" material denied, please include the following information: the classification (confidential, secret or top secret); identity of the classifier; date or event for automatic declassification or classification review or downgrading; if applicable, identity of official authorizing extension of automatic declassification or review past six years; and, if applicable, the reason for extended classification beyond six years.

In excising material, please "black out" the material rather than "white out" or "cut out." I expect, as provided by FOIA, that the remaining non-exempt portions of documents will be released.

Please release all pages regardless of the extent of excising, even if all that remains are the stationery headings or administrative markings.

In addition, I ask that your agency exercise its discretion to release records which may be technically exempt, but where withholding serves no important public interest.

Fee Waiver:

FEE CATEGORY AND REQUEST FOR A FEE WAIVER I am willing to pay any reasonable expenses associated with this request, however, as the purpose of the requested disclosure is in full conformity

with the statutory requirements for a waiver of fees, I formally request such a waiver. I request a waiver of all costs pursuant to 5 U.S.C.

§552(a)(4)(A)(iii) ("Documents shall be furnished without any charge ...

if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."). Disclosure in this case meets the statutory criteria, and a fee waiver would fulfill Congress's legislative intent in amending FOIA. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers for noncommercial requesters.'"). I incorporate by reference the explanation and attached materials in the above sections which demonstrates why the requested information is in the public interest.

Under 32 C.F.R. 1900.13(b), "Records will be furnished without charge or at a reduced rate whenever the Agency determines . . . (2) That it is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the United States Government and is not primarily in the commercial interest of the requester."

Should my request for a fee waiver be denied, I request that I be categorized as a member of the news media for fee purposes pursuant to 32 C.F.R.

1900.02(h)(3). According to 5 U.S.C. § 552(a)(4)(A)(ii), which codified the ruling of *Nat'l Security Archive v. Dep't of Defense*, 880 F.2d 1381 (D.C.

Cir. 1989), the term "a representative of the news media" means any 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. This is consistent with the definition provided in 32 C.F.R. 1900.02(h)(3) As the legislative history of FOIA reveals, "It is critical that the phrase 'representative of the news media' be broadly interpreted if the act is to work as expected. . . . In fact, any person or organization which regularly publishes or disseminates information to the public . . . should qualify for waivers as a 'representative of the news media.'" 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986) (emphasis in original quotation); and 2) "A request by a reporter or other person affiliated with a newspaper, magazine, television or radio station, or other entity that is in the business of publishing or otherwise disseminating information to the public qualifies under this provision." 132 Cong. Rec. H9463 (Oct. 8,

1986) (emphasis in original quotation)). Therefore, in accordance with the Freedom of Information Act and relevant case law, I, Ryan Shapiro, should be considered a representative of the news media.

The CIA's regulations list six factors which the agency must consider in assessing whether a requester is entitled to a fee waiver: "(i) Whether the subject of the request concerns the operations or activities of the United States Government; and, if so, (ii) Whether the disclosure of the requested documents is

likely to contribute to an understanding of United States Government operations or activities; and, if so, (iii) Whether the disclosure of the requested documents will contribute to public understanding of United States Government operations or activities; and, if so, (iv) Whether the disclosure of the requested documents is likely to contribute significantly to public understanding of United States Government operations and activities; and (v) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so, (vi) Whether the disclosure is primarily in the commercial interest of the requester.” 32 C.F.R. 1900.13(b)(2). Because the disclosure of the requested documents would contribute significantly to public understanding of United States Government operations and activities and I do not have a commercial interest in the requested disclosure, my request for a fee waiver must be granted.

I. DISCLOSURE OF THE REQUESTED RECORDS IS IN THE PUBLIC INTEREST BECAUSE IT IS LIKELY TO CONTRIBUTE SIGNIFICANTLY TO THE PUBLIC UNDERSTANDING OF THE OPERATIONS AND ACTIVITIES OF THE GOVERNMENT.

A. The subject of the requested records concerns the operations and activities of the CIA and broader government. The subject of the requested records concerns identifiable operations and activities of the CIA and broader government, such as the investigation of news sources and scrutiny of the news media.

B. The disclosure is likely to contribute to an understanding of government operations and activities because the disclosable portions of the requested records will be meaningfully informative about those operations and activities. The vast majority of disclosable information is not already in the public domain, in either a duplicative or a substantially identical form, and therefore the disclosure would add substantial new information to the public’s understanding of issues including but not limited to attempts to chill the news gathering process.

The overwhelming preponderance of records I need to conduct my study are in the possession of the CIA and not in the public domain.

C. The disclosure of the requested records will contribute to the increased understanding of a broad audience of persons interested in the subject, rather than merely my own individual understanding.

i) I firmly intend to analyze the requested records in order to facilitate significant expansion of public understanding of government operations. I am well qualified to perform this analysis.

As explained herein in more detail, the audience likely to be interested in the subject is broad, and includes, historians of modern American government, politics, culture, and national security; journalists reporting on American politics, government, national security, and society; civil liberties attorneys; and the general public.

I firmly intend to analyze the requested records in order to facilitate significant expansion of public understanding of government operations. I am well qualified to perform this analysis.

I am an investigative reporter covering a wide-range of issues, including Guantanamo, national security, counterterrorism, civil liberties, human rights, and open government. I am a regular contributor to Al Jazeera America, The Guardian and VICE News and editor-at-large for The Public Record. Additionally, my reporting has been published in the The Wall Street Journal, The Financial Times, Salon, CBS Marketwatch, The Los Angeles Times, The Nation, Truthout, Al Jazeera English and numerous other domestic and international publications.

As demonstrated above, the disclosure of the requested records will significantly contribute to expanded public understanding of government operations. I have the intent and ability to disseminate this significant expansion of public understanding of government operations. The public interest in this significant expansion of public understanding of government operations far outweighs any commercial interest of my own in the requested release. Accordingly, my fee waiver request amply satisfies the rules of 28 C.F.R. 16.11(k). Legislative history and judicial authority emphatically support this determination. For these reasons, and based upon their extensive elaboration above, I request a full waiver of fees be granted. I will appeal any denial of my request for a waiver of fees to the Department of Justice Office of Information Policy, and to the courts if necessary.

As should be clear from the above, I have the ability and firm intention to disseminate to the public significant expansions of understanding of government operations based on my analysis of the requested disclosures.