

1-2014-00800

**FOIA Request ID: 2575**

**FOIA Request submitted by:**

**Mr. Jason Leopold**

**Submitted on: February 6, 2014 : 17:03 - America/New\_York**

**Investigative Journalist**



(b)(6)

**United States**

**Request:**

**This is a request for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552, et seq. I am seeking copies of any and all reports sent to the Senate Select Committee on Intelligence related to any authorized leaks. A provision in the 2012 Intelligence Authorization Bill requires a report to this Senate Select Committee on Intelligence of any authorized leak.**

**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." In addition, I draw your attention to President Obama's 21 January 2009 Memorandum for the Heads of Executive Departments and Agencies, directing federal agencies to adopt a presumption in favor of disclosure and stating 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."**

**I am a widely published independent investigative reporter and a current contributor to Al Jazeera America (<http://america.aljazeera.com/profiles/l/jason-leopold.html>). I have also had my journalism published in dozens of domestic and international publications.**

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According to 5 U.S.C. 552(a)(4)(A)(ii), codifying the ruling of Nat'l Security Archive v. Dept 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.

I have a clear intent to "publish[ ] or otherwise disseminate[ ] information to the public." Id. at 1386 (quoting the following legislative history: 1) 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); 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, Jason Leopold, should be considered a representative of the news media and as such I am also requesting a public interest fee waiver.

Please ensure that, in accordance with the DC Circuit's ruling in Chambers v. Dept of the Interior, 568 F.3d 998 (D.C. Cir. 2009), all records potentially responsive to this FOIA request are immediately preserved from destruction until the final resolution of this FOIA action. Destruction of potentially responsive records after the receipt of a FOIA request is considered "contumacious conduct" by the DC Circuit. See id. at 1004.

Your agency is required by law to respond to this request within 20 working days. Failure to timely comply may result in the filing of a civil action against your agency in a United States District Court.

Please provide any records produced in response to this request in electronic (soft-copy) form. Your cooperation in this matter would be appreciated. If you wish to discuss this request, please do not hesitate to contact me.

Fee Waiver:

I am willing to pay any reasonable expenses associated with this request as

permitted by law or regulation, 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 demonstrate why the requested information is in the public interest.

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 should be considered a representative of the news media.

The Department of State regulations provide, "Fees otherwise chargeable in connection with a request for disclosure of a record shall be waived or reduced where it is determined that disclosure 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." 22 C.F.R. 171.17. In determining whether the disclosure of information is likely to contribute significantly to public understanding of the operations or activities of government, Department of State regulations require consideration of the following factors: the subject of the request; the informative value of the information to be disclosed; the contribution to an understanding of the subject by the public likely to result from disclosure; and the significance of the contribution to public understanding. 22 CFR 171.17(a)(1)(i)-(iv). To determine whether disclosure is not primarily in the commercial interest of

the requester, the Department of State regulations require consideration of the following factors: the existence and magnitude of a commercial interest; and the primary interest in disclosure. 22 CFR 171.17(a)(2)(i)-(ii). As explained below these factors weigh in support of a finding that this is the type of request, and I am the type of requestor, for which courts have held that waiver of fees is required under FOIA.

Additionally, please note that no fee may be charged relating to the cost of the search and review of any record which must be disclosed under the Privacy Act even if such record is also covered another provision of law such as FOIA, pursuant to 5 U.S.C. § 552a(f)(5) and 22 CFR 171.30.