



DEPARTMENT OF THE NAVY  
OFFICE OF THE JUDGE ADVOCATE GENERAL  
1322 PATTERSON AVENUE SE SUITE 3000  
WASHINGTON NAVY YARD DC 20374

IN REPLY REFER TO:  
5720  
Ser 14/297  
May 24, 2017

Mr. David Gotfredson  
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SUBJECT: FREEDOM OF INFORMATION ACT (FOIA) REQUESTS DON-NAVY-2017-003672 AND 004491; FOIA APPEALS DON-NAVY-2017-006330 AND 006332

This letter is a combined response to both of your FOIA appeals concerning documents relating to the Navy Marine Mammal Program (MMP) you requested from Space and Naval Warfare Systems Command (SPAWAR). In DON-NAVY-2017-003672, you requested information detailing the daily care of marine mammals in the MMP from January 1, 2016 to present including records of daily behavior, food consumption, diet, physical condition/characteristics, health of the mammals, training, and accomplishments. SPAWAR partially granted this request on March 23, 2017 and April 3, 2017, providing you copies of the requested documents for indirect support animals, but subsequently denied your request for documentation as it related to direct support animals in a final response on May 8, 2017, on the grounds the requested information was classified and therefore exempt under FOIA pursuant to 5 U.S.C. § 552(b)(1). In DON-NAVY-2017-004491, you requested copies of completed necropsy reports concerning animals that died in the MMP, specifically: 1) TT844, TUC, Bottlenose Dolphin, approximate date of death May 29, 2014; 2) TT846, JUN, Bottlenose Dolphin, approximate date of death September 26, 2014; and 3) TT860, MOK, Bottlenose Dolphin, approximate date of death February 6, 2015. SPAWAR denied this request completely on the grounds all of the requested information was classified and therefore also exempt under FOIA exemption (b)(1). In your separate appeals received in our office on May 9, 2017, you challenge SPAWAR's assertion of FOIA exemption (b)(1), contending 1) that the requested information in 003672 relating to the direct support animals cannot be properly exempt for purposes of national security, and that if some of it is, SPAWAR did not narrowly redact and segregate as required by law; and 2) that the requested information in 004491 cannot be properly exempt for purposes of national security, and that if some of it is, SPAWAR did not narrowly redact and segregate as required by law.

Your appeals are requests for final determinations under the FOIA. For the following reasons, I must deny both of your appeals.

Federal agencies must withhold information that is "properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by Executive Order and implemented by regulations." See 5 U.S.C. § 552(b)(1); 32

C.F.R. § 701.59(a). Pursuant to relevant portions of Executive Order 13,526, information regarding military plans, weapon systems, or operations; programs for safeguarding nuclear materials or facilities; or vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans or protection services relating to the national security are properly classified. 3 C.F.R. 13,526. If potentially responsive information qualifies as exemption (b)(1) information, there is “no discretion” regarding its release. 32 C.F.R. § 701.59 (a)(2). However, when invoking exemption b(1), denial authorities must comply with the FOIA's general requirement that agencies segregate and release nonexempt information, unless the segregated information would have no meaning.

When an agency relies on exemption (b)(1), the agency is afforded wide deference by the courts. *Students Against Genocide v. Dep't of State*, 257 F.3d 828, 837 (D.C. Cir. 2001); *Doherty v. DOJ*, 775 F.2d 49, 52 (2d Cir. 1985). As such, to support citing this exemption, “little proof or explanation is required beyond a plausible assertion that information is properly classified.” *James Madison Project v. CIA*, 605 F. Supp. 2d 99, 110 (D.D.C. 2009). Additionally, when the information withheld implicates national security concerns, “[the court] has concluded that it is generally not in a position to second-guess agency decisions related to the segregability of non-exempt information.” *Makky v. Chertoff*, 489 F. Supp. 2d 421, 441 n.23 (D.N.J. 2007).

After a careful review, I find SPAWAR properly withheld relevant documents related to both of your requests under FOIA exemption (b)(1), as all of the requested information withheld was classified ‘CONFIDENTIAL.’ Furthermore, after reviewing the information, and contrary to the assertion in your appeals, I am in agreement with SPAWAR that none of what you requested that is contained within the classified system of records is reasonably segregable.

Moreover, even if SPAWAR improperly withheld the information under exemption (b)(1) or did not conduct a proper segregability analysis, I have independently determined that the information would also properly be withheld from release under 5 U.S.C. § 552 (b)(3). Exemption (b)(3) authorizes the withholding of records or information specifically exempted from disclosure by a separate statute. In this case, under 10 U.S.C. § 130e, the Secretary of Defense has specifically exempted DoD critical infrastructure security information from disclosure, which includes the identification of initial response force personnel and the location and capabilities of incident response force personnel, assets, and equipment. The withheld information you requested also falls within the ambit of this exemption; thus, release is unauthorized.

As the Department of the Navy's designated adjudication official for this FOIA appeal, I am responsible for the denial of this appeal. You may seek judicial review of this decision by filing a complaint in an appropriate U.S. District Court. My office represents the U.S. government and is therefore unable to assist you in this process.

If you would like to seek dispute resolution services, you have the right to contact the Department of the Navy's FOIA public liaison, Mr. Chris Julka, at christopher.a.julka@navy.mil or (703) 697-0031.

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If you have further questions or concerns for my office, my point of contact is LCDR Adam Yost, JAGC, USN, who may be reached at adam.yost@navy.mil or (202) 685-5398.

Sincerely,

A handwritten signature in cursive script, appearing to read "G. E. Lattin". The signature is written in black ink and is positioned above the typed name.

G. E. LATTIN  
Director  
General Litigation Division

Copy to:  
SPAWAR  
DNS-36  
DON CIO