

NATIONAL SECURITY COUNSELORS

1200 SOUTH COURTHOUSE ROAD
SUITE 124
ARLINGTON, VA 22204

TELEPHONE: (301) 728-5908
FACSIMILE: (240) 681-2189

KEL MCCLANAHAN, ESQ., EXECUTIVE DIRECTOR (admitted in NY, DC)
EMAIL: [REDACTED] NATIONALSECURITYLAW.ORG

BRADLEY P. MOSS, ESQ., DEPUTY EXECUTIVE DIRECTOR (admitted in IL, DC)
EMAIL: [REDACTED] NATIONALSECURITYLAW.ORG

5 July 2010

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

Re: FOIA Request – Prolific FOIA Requesters

Dear Ms. Nelson:

This is a request on behalf of National Security Counselors (“NSC”) under the Freedom of Information Act, 5 U.S.C. § 552, *et seq.*, for copies of **a record that would indicate the ten individuals responsible for the most FOIA requests submitted (each) in Fiscal Years 2008, 2009, and 2010.** In other words, we seek a list, index, printout, or similar document from which we could determine which individual submitted the most FOIA requests each year, which individual submitted the second most FOIA requests each year, and so forth down to the tenth most prolific requester. We attempted to glean this information from released FOIA Case logs, but those logs do not mention the identities of the requesters. Therefore, we need whatever index file, database printout, or spreadsheet printout your office possesses that *does* include the identities of the requesters *and* the request numbers (so that if you redact the names of the requesters we will still know which request numbers were submitted by them). Note: by “submitted” we mean submitted directly to the CIA. We do not desire to receive any records regarding requests referred to the CIA from another agency.

Alternatively, we will accept a full printout of this index file for these three Fiscal Years, from which we can determine the ten most prolific requesters ourselves. Barring that, but less preferably, we will accept copies of the actual FOIA request letters submitted by these ten individuals. Barring that, but least preferably by far, we will accept copies of all of the FOIA request letters submitted directly to the CIA for these three Fiscal Years. We can determine what we need from any one of these alternatives, but we definitely prefer some over others. In short, we will accept in fulfillment of this request any *one* of the following responses, listed from first preference to last preference:

1. An index including only the ten most prolific requesters for each year
2. An index including all requesters for each year

3. FOIA request letters from the ten most prolific requesters for each year
4. All FOIA request letters submitted to the CIA for each year

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, we 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 “because of speculative or abstract fears.”

We are hereby requesting classification as a representative of the news media. NSC is a non-profit organization under Virginia law, has the ability to disseminate information on a wide scale, and intends to use information obtained through FOIA in original works. According to 5 U.S.C. § 552(a)(4)(A)(ii), codifying 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.

NSC has 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)). Our website, where much of the information received through our FOIA requests is posted for all to review, can be accessed at <http://www.nationalsecuritylaw.org>. In addition, we also intend to use information obtained through FOIA in our own published opinion editorials, journal articles, and the like. I personally have already published information received through FOIA in this manner (Kel McClanahan, *A Perception Based Model for Comparing Intelligence Communities*, 25(2) AMER. INTELLIGENCE J. 46 (Winter 2007/2008) (includes material obtained through a CIA FOIA request)). Therefore, in accordance with the Freedom of Information Act and relevant case law, NSC should be considered a representative of the news media.

We are also requesting a public interest fee waiver. 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. We are filing this request as part of a three-step process. The first step was the filing of the pending requests #F-2010-00306, F-2010-00464, F-2010-00465, F-2010-00466, F-2010-00467, F-2010-00468, F-2010-00665, F-2010-00666, F-2010-00667, F-2010-00668, F-2010-00780 for FOIA processing notes for requests submitted by ten specified requesters. However, since submitting those requests we have learned that our research

methodology was flawed because we had no way of knowing how representative a sample those requesters constituted for the requesting population as a whole. This step serves to identify the ten most prolific requesters so as to ensure that our next request for processing notes will constitute a truly representative sample. Once we receive these records, we will request specific records regarding the processing of the indicated requests. What factors are considered and what weight is assigned them will significantly contribute to the public's understanding of government operations and activities, and by analyzing this representative sampling of FOIA requests NSC will be able to synthesize this information into a form that current and future FOIA requesters will hopefully find useful. Because fee waivers were granted for the first step of this process (with the exception of two requests for which fee waivers were denied on the basis of a factor not present in this request, which is currently under appeal), we expect that a fee waiver will similarly be granted for this request, serving as it does as merely an intermediate step designed to minimize the amount of work done by your office over the course of this project by allowing us to do much of the data crunching ourselves.

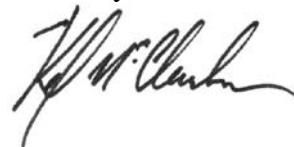
In addition, with respect to the specific requirement that NSC must demonstrate an expertise in the subject area in order to satisfy the fee waiver criterion that disclosure of the requested information must contribute to the understanding of the public at large, I personally have worked for a national security law firm and served as Director of FOIA Operations for the James Madison Project for two years, have litigated several FOIA/PA cases, teach National Security Law at the University of the District of Columbia, and recently received an LLM in National Security Law from Georgetown University Law Center.

The CIA 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 United States District Court.

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, .doc, .jpg, .gif, .tif. Please provide soft-copy records by email or on a CD if email is not feasible. However, NSC does not agree to pay an additional fee to receive records on a CD, and in the instance that such a fee is required, NSC will accept a paper copy of responsive records.

Your cooperation in this matter would be appreciated. If you wish to discuss this request, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Kel McClanahan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kel McClanahan
Executive Director