

The James Madison Project
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6 November 2007

Brian S. Kinsey
Chief, FOIA Staff, DAN-1A
Defense Intelligence Agency
Washington, D.C. 20340-5100

Re: FOIA Request - DIA Personnel Special Security Background Investigation

Dear Mr. Kinsey:

This is a request on behalf of The James Madison Project under the Freedom of Information Act, 5 U.S.C. § 552, *et seq.*, for copies of all current internal Defense Intelligence Agency (“DIA”) documentation pertaining to and describing:

(1) the procedures for conducting a “Personnel Special Security Background Investigation” (DIA Employment Criteria, item 1, line 1, <http://www.dia.mil/employment/Policies/index.html>, accessed November 6, 2007) to ensure compliance with DIA’s employment criteria,” including, but not limited to, types of information and factors considered in determining an applicant’s “character, conduct, and discretion . . . [and] unquestioned loyalty to the U.S.” (*Id.* at item 1, line 5-6);

(2) commonly implemented “other procedures deemed necessary to assure that the agency's security, suitability, and overall qualifications standards are met” (*Id.* at item 6, line 1-2);

(3) the factors and considerations that constitute DIA’s “overall employment

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criteria” (Id. at item 6, line 7); and

(4) the regulation(s) or statute(s) that authorize(s) withholding from applicants specific information detailing the justification for a negative employment determination. See id. at item 6, line 8-9. (“[N]ormally no specific reasons regarding non-selection will be made.”).

If you deny all or part of this request, please cite the specific exemptions you believe justifies 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. The James Madison Project is a non-profit organization under the laws of the District of Columbia and has the ability to disseminate information on a wide scale. 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>. Prior requests submitted by our organization have all 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. See 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 Department of Defense has adopted internal regulations governing expedited processing and has determined that a “compelling need” is deemed to exist where the requester can demonstrate “the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity.” See 32 CFR § 286.4(d)(3)(ii).

Furthermore, 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. Most of the DIA’s regulations remain publicly unavailable. The manner in which the DIA regulates consideration of job applicants, particularly in terms of the factors and considerations that underlie employment determinations, is clearly in the public interest.

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Understanding these processes 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 harm that has been caused and continues to be caused to job applicants who are granted Conditional Offers of Employment with the DIA and then, prior to any security investigation taking place, are summarily rejected by the Office of Personnel for undisclosed "derogatory information" that makes the applicant's background incompatible with DIA's employment criteria. Failure to disseminate the information identifying what factors are considered will result in the continued exclusion of otherwise qualified candidates from the employment rolls of the DIA for unknown reasons that could be remedied were the applicant to be informed of the problem.

Please respond to this request within 20 working days as provided for by law. 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. Your cooperation in this matter would be appreciated. If you wish to discuss this request, please do not hesitate to contact me at either (202) 498-0011 or my law office at (202) 454-2809.

Finally, please have all return correspondence addressed specifically to my attention to ensure proper delivery.

Sincerely,

/s/

Mark S. Zaid
Executive Director

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