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1 August 2010

Jay Olin
FOIA Officer
National Archives and Records Administration
Office of the General Counsel
Room 3110
8601 Adelphi Road
College Park, MD 20740-6001

Re: FOIA Request – SF-311 forms

Dear Mr. Olin:

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 **all SF-311 forms submitted to the National Archives and Records Administration (“NARA”) since 2005 by the following federal agencies: Office of the Director of National Intelligence (“ODNI”); Central Intelligence Agency (“CIA”); Department of Defense (“DOD”); National Security Agency (“NSA”); Defense Intelligence Agency (“DIA”); National Geospatial-Intelligence Agency (“NGA”); Army; Navy; Air Force; Department of State (“DOS”); Department of the Treasury (“DOT”); Department of Justice (“DOJ”); Federal Bureau of Investigation (“FBI”); Department of Homeland Security (“DHS”); Office of Personnel Management (“OPM”); Executive Office of the President (“EOP”); Office of Special Counsel (“OSC”); Office of Management and Budget (“OMB”); and National Aeronautics and Space Administration (“NASA”).** We understand that some of the above agencies (NSA, DIA, NGA, Army, Navy, Air Force, FBI, OSC, OMB) may be included in the SF-311 forms of parent agencies (DOD, DOJ, EOP), but if that is the case, the SF-311 forms from those parent agencies should *not* be redacted to provide only the information relevant to the above listed child agencies, but should instead be released in full.

In line with the guidance issued by the DOJ on 9 September 2008 to all federal agencies with records subject to FOIA, agency records that are currently in the possession of a U.S. Government contractor for purposes of records management remain subject to FOIA. In addition, NARA should not interpret this request to exclude correspondence sent to outside third parties. Please also consider this letter an affirmative rejection of any limitation of your search to NARA-originated records.

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 “merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or 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.

Please ensure that, in accordance with the DC Circuit’s ruling in *Chambers v. Dep’t 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.

NARA 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", written in a cursive style.

Kel McClanahan
Executive Director