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**From:** Jason Leopold [redacted] (b)(6)  
**Sent:** Monday, January 4, 2021 10:09 PM  
**To:** DNI-FOIA  
**Subject:** Freedom of Information Act appeal ODNI Case DF-2020-00342

Chief FOIA Officer,  
c/o Director, Information Management Office  
Office of the Director of National Intelligence  
Washington, DC, 20511

To Whom It May Concern,

I appeal the integrity of the search that was conducted by the agency associated with this request. I believe there are other records that would be responsive to this request, including emails from the Office of the Director and talking points. My request sought all responsive records associated with the decision by ODNI to cancel all election security verbal briefings for Congress. I request that a new search be conducted to locate other responsive records.

Best,  
Jason

Jason Leopold  
BuzzFeed News  
Senior Investigative Reporter

[redacted] (b)(6)

Send me documents and tips, securely and anonymously: [tips.buzzfeed.com](https://tips.buzzfeed.com)

PGP fingerprint: [redacted] (b)(6)

<https://www.buzzfeednews.com/author/jasonleopold>

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**From:** Jason Leopold [redacted] (b)(6)  
**Sent:** Thursday, October 14, 2021 2:07 PM  
**To:** DNI-FOIA  
**Cc:** DNI-FOIA-Liaison  
**Subject:** Re: Request for records under the Freedom of Information Act-DF-2016-00214

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Hi Sally,  
Yes I am still interested in filing the appeal.

Best,  
Jason

On Thu, Oct 14, 2021 at 11:01 AM DNI-FOIA <[DNI-FOIA@dni.gov](mailto:DNI-FOIA@dni.gov)> wrote:

Jason,

As I stated in my previous email regarding DF-2015-00276, prior to processing this appeal I wanted to respond to your comment about "no indication that the agency conducted a page by page review to determine the segregability of records. ". When conducting review of documents we do not make our determination based on the overall classification of the document. ODNI conducts a thorough review of the entire document to determine if there is any material at all that can be released. I also conduct a final review myself prior to signing off on any response. No document is denied in full if there are any meaningful portions that can be released.

Let me know if you are still interested in filing this appeal.

Thanks again for your consideration,

*-Sally*

Sally A. Nicholson  
Chief, Information Review &  
Release Group

FOIA Public Liaison

ODNI/COO/IMO

703-275-3500

[redacted] (b)(3)

**From:** Jason Leopold [redacted] (b)(6)  
**Sent:** Monday, September 27, 2021 8:24 PM  
**To:** DNI-FOIA <[DNI-FOIA@dni.gov](mailto:DNI-FOIA@dni.gov)>  
**Subject:** Re: Request for records under the Freedom of Information Act-DF-2016-00214

Information Management Office,

I appeal this decision in its totality. The exemptions applied are improper and there is no indication that the agency conducted a page by page review to determine the segregability of records.

Best,

Jason

On Thu, Aug 5, 2021 at 10:29 PM DNI-FOIA <[DNI-FOIA@dni.gov](mailto:DNI-FOIA@dni.gov)> wrote:

Good afternoon,

Please see attached final response.

Sincerely,

DNI-FOIA

**From:** Jason Leopold [redacted] (b)(6)  
**Sent:** Thursday, April 28, 2016 8:32 PM  
**To:** DNI-FOIA <DNI-FOIA@dni.gov>  
**Subject:** Request for records under the Freedom of Information Act

This is a request for records under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 and the Privacy Act, 5 U.S.C. § 552a. This request should be considered under both statutes to maximize the release of records.

REQUESTER INFORMATION

Name: Jason Leopold

Position: Investigative Reporter

Address: [redacted] (b)(6)

Email: [redacted] (b)(6)

RECORDS SOUGHT

I request disclosure from the National Counterterrorism Center (NCTC) any and all intelligence products, be it a Roll Call Release, Fire Line, Joint Intelligence Bulletin or similar product, prepared by or for NCTC that identifies and/or summarizes the deaths of Americans by former Guantanamo detainees.

Additionally, I request any and all responses to Questions for the Record NCTC sent to a congressional committee in 2015 mentioning or referring to Americans killed by former Guantanamo detainees and/or any intelligence products identified above that mentions or refers to the deaths of Americans by former Guantanamo detainees.

Since the Office of Director of National Intelligence (ODNI) handles the processing of FOIA requests for NCTC I am referring to both agencies by their acronyms pertaining to the instructions on searches and the processing of responsive records.

INSTRUCTIONS REGARDING SEARCH

1. Instructions Regarding "Leads":

As required by the relevant case law, NCTC/ODNI should follow any leads it discovers during the conduct of its searches and perform additional searches when said leads indicate that records may be located in another system. Failure to follow clear leads is a violation of FOIA.

2. Request for Public Records:

Please search for any records even if they are already publicly available.

3. Request for Electronic and Paper/Manual Searches:

I request that searches of all electronic and paper/manual indices, filing systems, and locations for any and all records relating or referring to the subject of my request be conducted.

4. Request for Search of Filing Systems, Indices, and Locations:

I request that the NCTC/ODNI search all of its offices and components which are likely to contain responsive records.

5. Request regarding Photographs and other Visual Materials:

I request that any photographs or other visual materials responsive to my request be released to me in their original or comparable forms, quality, and resolution. For example, if a photograph was taken digitally, or if the NCTC/ODNI maintains a photograph digitally, I request disclosure of the original digital image file, not a reduced resolution version of that image file nor a printout and scan of that image file. Likewise, if a photograph was originally taken as a color photograph, I request disclosure of that photograph as a color image, not a black and white image. Please contact me for any clarification on this point.

6. Request for Duplicate Pages:

I request disclosure of any and all supposedly "duplicate" pages. Scholars analyze records not only for the information available on any given page, but also for the relationships between that information and information on pages surrounding it. As such, though certain pages may have been previously released to me, the existence of those pages within new context renders them functionally new pages. As such, the only way to properly analyze released information is to analyze that information within its proper context. Therefore, I request disclosure of all "duplicate" pages.

7. Request to Search Emails:

Please search for emails relating to the subject matter of my request.

8. Request for Search of Records Transferred to Other Agencies:

I request that in conducting its search, the NCTC/ODNI disclose releasable records even if they are available publicly through other sources outside the NCTC/ODNI, such as NARA.

9. Regarding Destroyed Records

If any records responsive or potentially responsive to my request have been destroyed, my request includes, but is not limited to, any and all records relating or referring to the destruction of those records. This includes, but is not limited to, any and all records relating or referring to the events leading to the destruction of those records.

INSTRUCTIONS REGARDING SCOPE AND BREADTH OF REQUESTS

Please interpret the scope of this request broadly. The ODNI is instructed to interpret the scope of this request in the most liberal manner possible short of an interpretation that would lead to a conclusion that the request does not reasonably describe the records sought.

#### EXEMPTIONS AND SEGREGABILITY

I call your attention to President Obama's 21 January 2009 Memorandum concerning the Freedom of Information Act, in which he states:

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA [...] The presumption of disclosure should be applied to all decisions involving FOIA.

In the same Memorandum, President Obama added 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."

Finally, President Obama ordered that "The Freedom of Information Act should be administered with a clear presumption: In the case of doubt, openness prevails."

Nonetheless, if any responsive record or portion thereof is claimed to be exempt from production, FOIA/PA statutes provide that even if some of the requested material is properly exempt from mandatory disclosure, all segregable portions must be released. If documents are denied in part or in whole, please specify which exemption(s) is (are) claimed for each passage or whole document denied. Please provide a complete itemized inventory and a detailed factual justification of total or partial denial of documents. Specify the number of pages in each document and the total number of pages pertaining to this request. For "classified" material denied, please include the following information: the classification (confidential, secret or top secret); identity of the classifier; date or event for automatic declassification or classification review or downgrading; if applicable, identity of official authorizing extension of automatic declassification or review past six years; and, if applicable, the reason for extended classification beyond six years.

In excising material, please "black out" the material rather than "white out" or "cut out." I expect, as provided by FOIA, that the remaining non-exempt portions of documents will be released.

Please release all pages regardless of the extent of excising, even if all that remains are the stationery headings or administrative markings.

In addition, I ask that your agency exercise its discretion to release records which may be technically exempt, but where withholding serves no important public interest.

#### ADDITIONAL INSTRUCTIONS REGARDING REQUEST

Please produce all records with administrative markings and pagination included.

Please send a memo (copy to me) to the appropriate units in your office to assure that no records related to this request are destroyed. Please advise of any destruction of records and include the date of and authority for such destruction.

#### FORMAT

I request that any releases stemming from this request be provided to me in digital format (soft-copy) on a compact disk or other like media.

#### FEE CATEGORY AND REQUEST FOR A FEE WAIVER

I am an investigative reporter for VICE News covering a wide-range of issues, including Guantanamo, national security, counterterrorism, civil liberties, human rights, and open government. Additionally, my reporting has been published in the The Guardian, The Wall Street Journal, The Financial Times, Salon, CBS Marketwatch, The Los Angeles Times, The Nation, Truthout, Al Jazeera English and Al Jazeera America.

I am willing to pay any reasonable expenses associated with this request, 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 demonstrates why the requested information is in the public interest.

DoD 5400.7-R C6.1.4.1 provides that “documents shall be furnished without charge, or at a charge reduced below fees assessed to the categories of requesters in subsection C6.1.5., below, when the Component determines that waiver or reduction of the fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the Department of Defense and is not primarily in the commercial interest of the requester.”

Should my request for a fee waiver be denied, I request that I be categorized as a member of the news media for fee purposes pursuant to DoD 5400.7-R C6.1.5.7. According to 5 U.S.C. § 552(a)(4)(A)(ii), which codified 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. This is consistent with the definition provided in DoD 5400.7-R C6.1.5.7.1.

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, Jason Leopold, should be considered a representative of the news media.

I have the intent and ability to disseminate this significant expansion of public understanding of government operations. The public interest in this significant expansion of public understanding of government operations far outweighs any commercial interest of my own in the requested release. Accordingly, my fee waiver request amply satisfies the rules of DoD 5400.7-R C6.1.4.1. Legislative history and judicial authority emphatically support this determination. For these reasons, and based upon their extensive elaboration above, I request a full waiver of fees be granted. I will appeal any denial of my request for a waiver administratively and to the courts if necessary.

Please do not hesitate to contact me if you have any questions concerning this request.

Thank you. I appreciate your time and attention to this matter.

--

**JASON LEOPOLD**

Senior Investigative Reporter, VICE News

**VICE MEDIA LLC**

589 Venice Blvd

Los Angeles, CA 90291

p: [redacted] (b)(6)  
e: [redacted]

t: @JasonLeopold

PGP

Muck Rack

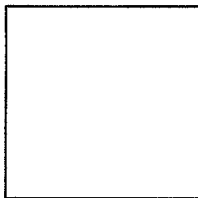
Articles

Books

Exclusive Investigative series: The Abu Zubaydah Diaries

Subscribe to me on Beacon

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Jason Leopold | **BuzzFeed News** | Senior Investigative Reporter | [Redacted]

Signal: [Redacted] (b)(6)

Send me documents and tips, anonymously and securely: [tips.buzzfeed.com](https://tips.buzzfeed.com)

My personal PGP

My BuzzFeed PGP fingerprint: [Redacted] (b)(6)

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## **BuzzFeed News**

Jason Leopold | **BuzzFeed News** | Senior Investigative Reporter | [Redacted] (b)(6)

Signal: [Redacted] (b)(6)

Send me documents and tips, anonymously and securely: [tips.buzzfeed.com](https://tips.buzzfeed.com)

My personal PGP

My BuzzFeed PGP fingerprint: [Redacted] (b)(6)



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**From:** Joyce Battle [REDACTED] (b)(6)  
**Sent:** Friday, November 5, 2021 2:36 PM  
**To:** DNI-FOIA  
**Cc:** FOIA mail  
**Subject:** Appeal of Denial of FOIA Request, Archive Case 20200913DNI015 || ODNI Case DF-2021-00006  
**Attachments:** 20200913DNI015-Appeal.pdf

Dear Appellate Officer,

Please find an attached appeal pertaining to ODNI Case DF-2021-00006; National Security Archive Case # 20200913DNI015.

Thank you for your attention,

Joyce E. Battle  
Analyst

# The National Security Archive

The George Washington University  
Gelman Library, Suite 701  
2130 H Street, N.W.  
Washington, D.C. 20037



Phone: 202.994.7000  
Fax: 202.994.7005  
nsarchiv@gwu.edu  
<http://www.nsarchive.org>

November 05, 2021

Defense Intelligence Agency  
7400 Pentagon  
ATTN: FAC-2C (FOIA)  
Washington, D.C. 20301-7400

**Re: Appeal of Denial of FOIA Request, Archive Case 20200913DNI015 || ODNI Case DF-2021-00006**

Dear Appellate Officer:

I am writing to appeal a decision in response to my FOIA request of October 06, 2020, which asked for *"All documents from 01 January 2009 through 01 April 2009 including but not limited to agenda, briefing papers, memos, memcons, notes, summaries of conclusions, and talking points associated with or referring to February 2009 meetings of the Principals Committee that included discussion of options regarding Iraq. According to Defense Secretary Robert Gates' memoir "Duty", the principals and deputies committees met to discuss Iraq several times during February 2009."*

By letter of November 03, 2021, Information Review & Release Group Chief Sally A. Nicholson informed me that the Office of the Director of National Intelligence had identified one document as responsive to my request and had withheld it in its entirety under exemptions (b)(1), (b)(3), and (b)(5) of the Freedom of Information Act.

Regarding portions of the document withheld under exemptions (b)(1) and (b)(3), I would argue that any harm to national security likely to result from disclosure of Principals Committee discussions is outweighed by the public and historical interest in information on the evolution on U.S. policy toward Iraq. As to portions withheld under the (b)(5) exemption, as you know, application of this exemption is discretionary, and the public trust calls for the government to use it sparingly and only in cases where harm to a specific deliberative process can be identified, where the public's interest in these activities is outweighed by the need to protect the process, and finally, where there is actual harm in release. It is unlikely that any hypothetical adverse consequence outweighs the public benefit to be gained from the disclosure of information concerning this discussion.

I ask that you conduct a line-by-line review and release all reasonably segregable portions of this document. At a minimum, please review the withheld record to determine whether any factual or otherwise unprotected material may be released.

Sincerely,

Joyce E. Battle, Analyst

An independent non-governmental research institute and library located at the George Washington University, the Archive collects and publishes declassified documents obtained through the Freedom of Information Act. Publication royalties and tax deductible contributions through the National Security Archive Fund, Inc. underwrite the Archive's budget.

DF-2014-00246

June 15, 2014

Jennifer Hudson  
Director, Information Management Office  
Office of the Director of National Intelligence  
Washington, DC 20511

To whom it may concern:

I request a copy of the following records under the provisions of 5 U.S.C. 552, as amended (the Freedom of Information Act).

I request a copy of each response to a Question for the Record (QFR) provided to Congress by the Office of the Director of National Intelligence. (By responses to QFRs, I mean the responses to formal questions posed in association with testimony before a Congressional Committee.) These records are most likely maintained in the Office of Congressional Affairs, Office of Legislative Affairs, Office of Intergovernmental Affairs, or equivalent, or in the executive secretariat.

You may limit this request to records created since January 1, 2009. If this request will require extensive searches, please contact me so we can discuss narrowing of the request. If this will produce voluminous records, please limit the request to records created since January 1, 2012.

This is a noncommercial individual request that falls into the fee category "all other requesters". Please note that this fee category does not pay for review time. I agree to pay up to \$30 if necessary. Please notify me in advance if fees are expected to exceed this amount.

Please release all segregable portions. Please apply the foreseeable harm test. Please apply the presumption of openness in processing this request.

I prefer to receive records in digital/electronic format if practicable.

Sincerely,



Michael Ravnitzky

(b)(6)

(b)(3)  
(b)(6)

**From:** 30820-25652456@requests.muckrock.com on behalf of '30820-25652456@requests.muckrock.com' <30820-25652456@requests.muckrock.com>  
**Sent:** Wednesday, September 21, 2022 7:53 AM  
**To:** DNI-FOIA  
**Subject:** RE: Freedom of Information Act Request #DF-2017-00091  
**Attachments:** DF-2017-00091\_Best.pdf

September 21, 2022

This is a follow up to request number DF-2017-00091:

I am appealing the integrity of the search, including but not limited to the failure to perform searches regarding the referenced briefing request.

View request history, see one related attachment, upload responsive documents, and report problems here:

(b)(6)

If prompted for a passcode, please enter:

(b)(6)

Attachments:

- DF-2017-00091 Best

Filed via MuckRock.com

E-mail (Preferred): 30820-25652456@requests.muckrock.com

PLEASE NOTE OUR NEW ADDRESS

For mailed responses, please address (see note):

MuckRock News  
DEPT MR 30820  
263 Huntington Ave  
Boston, MA 02115

PLEASE NOTE: This request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests. Also note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.

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On May 25, 2022:

Subject: RE: Freedom of Information Request: Electoral College ODNI DF-2017-00091

Good morning Mr. Best,

Please see attached final response.

Sincerely,  
DNI-FOIA

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On Feb. 26, 2020:

Subject: RE: Freedom of Information Act Request #DF-2017-00091

To Whom It May Concern:

I wanted to follow up on the following request, copied below. Please let me know when I can expect to receive a response.

Thanks for your help, and let me know if further clarification is needed.

---

On Nov. 13, 2017:

Subject: RE: Freedom of Information Request #DF-2017-00091

Good morning Mr. Best,

Your request is currently in our queue to be worked. Please note there are 250 cases ahead of yours, until the status of your request changes, we will not provide any further updates. Thank you.

Sincerely,  
DNI-FOIA

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On Jan. 13, 2017:

Subject:

An interim response, stating the request is being processed.

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On Jan. 11, 2017:

Subject: RE: Freedom of Information Request: Electoral College ODNI

Mr. Best,

Thank you for contacting us. Your request, case number DF-2017-00091, is currently #331 in our queue. Thank you for your patience.

DNI-FOIA

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On Dec. 12, 2016:

Subject: Freedom of Information Request: Electoral College ODNI

To Whom It May Concern:

This is a request under the Freedom of Information Act. I hereby request the following records:

Materials relating to or discussing the Electoral College, members of the Electoral College, or "faithless electors," as well as materials relating to the briefing request from Electoral College members. According to the letter sent by the Electoral College "Trump's willingness to disregard conclusions made by the intelligence community and his continuing defense of Russia and Russian President Vladimir Putin demand close scrutiny and deliberation from the Electoral College. The Electors require to know from the intelligence community whether there are ongoing investigations into ties between Donald Trump, his campaign or associates, and Russian government interference in the election, the scope of those investigations, how far those investigations

may have reached, and who was involved in those investigations. We further require a briefing on all investigative findings, as these matters directly impact the core factors in our deliberations of whether Mr. Trump is fit to serve as President of the United States." This has been widely discussed by the media. See [http://www.huffingtonpost.com/entry/electoral-college-intelligence-briefing-russia-election\\_us\\_584ee466e4b0e05aded4da1b?](http://www.huffingtonpost.com/entry/electoral-college-intelligence-briefing-russia-election_us_584ee466e4b0e05aded4da1b?)

I am a member of the news media and request classification as such. I have previously written about the government for AND Magazine, MuckRock and Glomar Disclosure and have an open publishing arrangement with all three outlets. My articles have been widely read, with some reaching over 100,000 readers. As such, as I have a reasonable expectation of publication and my editorial and writing skills are well established. The requested documents will be made freely available to the general public through the non-profit Internet Archive, and this request is not being made for commercial purposes.

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 20 business days, as the statute requires.

Sincerely,

Michael Best

View request history, see one related attachment, upload responsive documents, and report problems here:

(b)(6)

If prompted for a passcode, please enter:

(b)(6)

Attachments:

- DF-2017-00091 Best

Filed via MuckRock.com

E-mail (Preferred): [30820-25652456@requests.muckrock.com](mailto:30820-25652456@requests.muckrock.com)

PLEASE NOTE OUR NEW ADDRESS

For mailed responses, please address (see note):

MuckRock News  
DEPT MR 30820  
263 Huntington Ave  
Boston, MA 02115

PLEASE NOTE: This request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests. Also note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.

(b)(3)  
(b)(6)

**From:** Eric Geller (b)(6)  
**Sent:** Wednesday, January 27, 2021 9:22 AM  
**To:** DNI-FOIA  
**Subject:** RE: Appealing ODNI response to FOIA # DF-2018-00013

I want to continue with my appeal.

Eric Geller  
Cybersecurity Reporter  
POLITICO

(b)(6)

**From:** DNI-FOIA <DNI-FOIA@dni.gov>  
**Sent:** Wednesday, January 27, 2021 8:26 AM  
**To:** Eric Geller (b)(6)  
**Cc:** DNI-FOIA <DNI-FOIA@dni.gov>  
**Subject:** RE: Appealing ODNI response to FOIA # DF-2018-00013  
**Importance:** High

EXTERNAL SENDER: Use caution with links and attachments.

Good morning Mr. Geller,

Prior to completing the processing of the appeal below, I wanted to reach out to provide additional information concerning our decision to withhold in full. ODNI completes a line by line review as required by the FOIA. We do not withhold documents in full based on the overall classification of the document. Other than a couple personal identifiers that identify our personnel which we withheld pursuant to exemptions (b)(3) and (b)(6), the remainder of the information in the 2 page document was determined to be classified and was withheld pursuant to exemption (b)(1). Please let me know if you still want to continue with this appeal action. Feel free to reach out to me directly any time you have a question or concern over the processing of your requests.

Thank you,

- Sally

Sally A. Nicholson  
Chief, Information Review &  
Release Group  
FOIA Public Liaison  
ODNI/COO/IMO  
301-243-2025



(b)(6)  
**From:** Eric Geller [redacted]  
**Sent:** Friday, November 20, 2020 10:54 AM  
**To:** DNI-FOIA <DNI-FOIA@dni.gov>  
**Subject:** Appealing ODNI response to FOIA # DF-2018-00013

To Whom It May Concern:

I hereby appeal ODNI's response to my FOIA request, case # DF-2018-00013. I requested a National Intelligence Council report on Kaspersky Lab. ODNI located the document but withheld it in its entirety under FOIA exemptions b1, b3, and b6. (Response letter attached.) ODNI's decision was improper, and I request that the FOIA office re-process my request.

All three of ODNI's stated objections — disclosure of sensitive classified information, endangerment of ODNI personnel, and violation of personal privacy — can be addressed with a line-by-line review of the document and the redaction of specific material that jeopardizes those interests.

ODNI acted unreasonably by withholding the entire document rather than performing this line-by-line review and redaction process. I request that ODNI FOIA staff be directed to perform this review and provide me with the redacted document.

—  
**Eric Geller**  
Cybersecurity Reporter  
POLITICO

[redacted] (b)(6)

Freedom of Information Act Appeal  
Chief FOIA Officer  
c/o Director, Information Management Office  
Office of the Director of National Intelligence  
Washington, D.C. 20511  
Email: dni-foia@dni.gov

Via Email

October 3, 2021

Re: FOIA Appeal; ODNI Foia Case number DF-2021-00121

Dear FOIA Appeals Officer:

This letter constitutes an appeal under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and is submitted to the Office of the Director of National Intelligence (ODNI) on behalf of Ken Klippenstein and Noelle Llamas.

#### **PROCEDURAL BACKGROUND**

On February 17, 2021, we submitted a FOIA request to ODNI via email with a PDF attachment which is appended to this appeal as Appendix 1. The request sought the following: "We respectfully request copies of all damage assessments and equity reviews produced, received or transmitted by your agency from January 1, 2017 to February 17, 2021."

Our request also sought a fee waiver, which was granted on March 9, 2021.

On September 1, 2021, ODNI provided a final response stating 4 documents relating to a single assessment were found and that upon review all were being withheld in their entirety under FOIA exemptions b1 and b3.

This appeal followed.

#### **APPEAL OF THE REQUEST FOR INADEQUATE SEARCH**

ODNI has a duty to construe my request liberally to ensure responsive records are found, *Nation Magazine v. United States Customs Serv.*, 71 F.3d 885, 890 (D.C. Cir. 1995), and I "need not utilize the precise jargon employed by agency officials" in my request. *Nicholls v. U.S. Office of Personnel Mgmt.*, No. 11-1654 (JEB), 2012 WL 1921396 at \*5 (D.D.C. May 29, 2012). ODNI cannot limit its search to only one or more places if there are additional sources that are likely to turn up the information requested. *Valencia-Lucenam v. United States Coast Guard, FOIA/PA Records Mgmt.*, 180 F.3d 321, 326 (D.C. Cir. 1999) (citing *Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)) (internal quotations omitted).

Federal law allows many intelligence agencies files to lie outside of FOIA's search and review requirements, and ODNI has been designated as such an agency. However, ODNI must search its operational files because notification regarding the authorized public disclosure of national

intelligence is an activity that is not exempt from FOIA. See 50 U.S.C. § 431(c). ODNI must also search non-exempt operational files that “contain information derived or disseminated from exempted operational files (50 U.S.C. § 431(d)(1)) and “[r]ecords from exempted operational files which have been disseminated to and referenced in files that that are not exempted . . . and which have been returned to the exempted operational files for sole retention.” 50 U.S.C. § 431(d)(3).

ODNI located only 1 assessment totaling 4 pages for a 4 year span of time, suggesting the search was inadequate. The methods used by ODNI to carry out the search as well as the locations searched are completely unknown but appears likely to have excluded all locations.

## **APPEAL OF THE DENIAL OF RECORDS BASED ON FOIA EXEMPTIONS**

### FOIA Exemption b1

Exemption 1 states the following:

(b) This section does not apply to matters that are—  
Section 552(b)(1)

(1)

- (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and
- (B) are in fact properly classified pursuant to such Executive order

Executive Order 13526, signed by President Obama, is the appropriate executive order related to Exemption 1. It directs that information should not be classified where “there is significant doubt about the need to classify information.” Exec. Order No. 13526 § 1.1(b). Information can only be originally classified if it meets all four of the following conditions:

1. an “original classifying authority is classifying the information”;
2. “the information is owned by, produced by or for, or is under the control of the United States Government”;
3. “the information falls within one or more of the categories of information” for which classification is allowed; and
4. “the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security, which includes defense against transnational terrorism, and the original classification authority is able to identify or describe the damage.”

As provided by EO 13526, only eight categories of information may be considered for classification:

1. “military plans, weapons systems, or operations”;
2. “foreign government information”;
3. “intelligence activities (including covert action), intelligence sources or methods, or cryptology”;
4. “foreign relations or foreign activities of the United States, including confidential sources”;
5. “scientific, technological, or economic matters relating to the national security”;
6. “United States Government programs for safeguarding nuclear materials or facilities”;

7. "vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security"; or
8. "the development, production, or use of weapons of mass destruction."

"An agency may only withhold records under Exemption 1 where the document is "classified in accordance with the procedural criteria of the governing Executive Order as well as its substantive terms." *Lesar v. U.S. Dep't of Justice*, 636 F.2d 472, 483 (D.C. Cir. 1980).

### FOIA Exemption b3

Exemption 3 states the following:

- (b) This section does not apply to matters that are— [...]
- (3) specifically exempted from disclosure by statute (other than section 552b of this title), if that statute—
  - (A)
    - (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or
    - (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and
  - (B) if enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to this paragraph.

ODNI cites to the National Security Act of 1947, 50 U.S.C. 3024(i)(1) exempting this information from disclosure. That section of the U.S. Code reads as follows:

#### **50 U.S. Code § 3024 - Responsibilities and authorities of the Director of National Intelligence**

....

##### (i) Protection of intelligence sources and methods

(1) The Director of National Intelligence shall protect intelligence sources and methods from unauthorized disclosure.

(2) Consistent with paragraph (1), in order to maximize the dissemination of intelligence, the Director of National Intelligence shall establish and implement guidelines for the intelligence community for the following purposes:

(A) Classification of information under applicable law, Executive orders, or other Presidential directives.

(B) Access to and dissemination of intelligence, both in final form and in the form when initially gathered.

(C) Preparation of intelligence products in such a way that source information is removed to allow for dissemination at the lowest level of classification possible or in unclassified form to the extent practicable.

It is unknown whether ODNI has properly invoked these exemptions since the records were withheld in their entirety. While some information within the records may be properly classified, portions of the records may not be subject to classification and exclusion and thus those non-exempt portions of the records must be produced.

**CONCLUSION**

Thank you for your prompt response to this appeal. As provided in 5 U.S.C. § 552(a)(6)(A)(ii), I anticipate that you will produce responsive documents within twenty (20) working days of receipt of this appeal. If you have any questions, please feel free to contact Ken Klippenstein at

(b)(6) or our attorney Beth Bourdon at

Additionally, please note Ken Klippenstein's new mailing address below and update his information within your records.

Respectfully Submitted,

/s

Ken Klippenstein

Reporter/The Intercept

(b)(6)

/s

Noelle Llamas

(b)(6)