

Law Office
John H. Clarke
1629 K Street, NW
Suite 300
Washington, DC 20006
(202) 332-3030
JohnHClarke@earthlink.net

Also Admitted in Virginia
and Maryland

FAX: (202) 332-3030
CELL: (202) 344-0776

September 29, 2014

FOIA APPEAL

Ms. Michele Meeks
Information and Privacy Coordinator
CENTRAL INTELLIGENCE AGENCY
Washington, DC 20505

Re: February 24, 2014 FOIA Request
September 18, 2014 Denial of FOIA Requests
Reference No. F-2014-00953

Dear Ms. Meeks:

This is an appeal of the captioned denial. Kindly note that on the morning of September 19, 2014, I filed a lawsuit seeking disclosure of the requested records. Your letter, dated September 18, was postmarked on the afternoon of September 19. Thus, unless CIA counsel asserts that plaintiffs failed to exhaust their administrative remedies, and the court holds that the lawsuit was filed only after you responded, this Administrative Appeal may be moot.

You wrote that, "[w]ith regard to those portions of Item 1 and Part 2 of Item 2 of your request pertaining to the 'Benghazi Special Mission Compound,' or 'Ambassador's compound,' or 'Benghazi Mission,' and Items 4, 9, and 11 of your request, the information you seek would fall under the auspices of the Department of State." Part 1 of Request 1 seeks various records of concerning the Special Mission Compound ("SMC"). Request 4 seeks production of radio communications emanating from the Compound's Tactical Operations Center of the SMC on September 11th and 12th, 2012. Request 9 seeks records concerning Ambassador Stevens' meetings on September 11, 2012. Request 11 seeks disclosure of records generated between January of 2007 and September 11, 2012, regarding meetings between Tripoli Embassy officials and one or nine named individuals.

Exhibit 5

Although much of this information sought does, in fact, fall under the auspices of the Department of State, the CIA is the proper Agency from which to seek disclosure. Because we believe that the SMC was established and maintained primarily to provide an excuse for CIA presence in Benghazi, we believe that the CIA is in possession of records sought in Request 1. We also believe that Ambassador Stevens' meetings on September 11 concerned CIA operations, and, so, the CIA would be the correct Agency from which to seek disclosure of records sought by Request 9. Similarly, because the meetings referenced in Request 11 were undertaken in furtherance of CIA operations to support Libyan rebels, the CIA, we believe, is in possession of records responsive to this Request.

Regarding Request 12, seeking disclosure of records shared with members of Congress regarding arms in Libya, Request 13 seeking intelligence community records of Congressional approval for CIA transport of arms to Syrian rebel forces, and Request 16 for Non-Disclosure Agreements signed by survivors of the Benghazi attacks, you responded that these records "would fall under the auspices of the Department of Defense or those specific agencies within the intelligence community." We do not believe that this is so. We agree that "the CIA is not authorized to release records held by other government agencies." However, to the extent that the CIA is in possession of these records, they are properly the subject of a FOIA request, and CIA is required to coordinate with, or refer to, other agencies prior to disclosure.

In response to Request 14, seeking "John Brennan's recommendations regarding the overthrow of Libyan leader Muammar Gaddafi," you wrote that "the information you seek would fall under the auspices of the Department of Homeland Security." Although we do not agree, we hereby withdraw Request 14.

Regarding Request 15, seeking records of the "video teleconference on the afternoon of the September 16th, 2012, between the FBI and other IC officials in Washington, regarding FBI interviews with U.S. personnel who had been on the compounds in Benghazi during the attack," you wrote that "the information you seek would fall under the auspices of the FBI or those specific agencies within the intelligence community you are interested in," and that "the CIA is not authorized to release records held by other government agencies." Please be advised that the CIA is the "specific agenc[y] within the intelligence community... [that we] are interested in." And, again, to the extent that the CIA is in possession of these records, they are properly the subject of a FOIA request, and CIA is required to coordinate with, or refer to, other agencies prior to CIA disclosure.

Lastly, you wrote that "[w]ith regard to those portions of your request pertaining to the CIA annex and the remaining items of your request, the CIA Information Act, 50 U.S.C. § 431, as amended, exempts CIA operational files from the search, review, publication, and disclosure requirements of the FOIA." While this statement is accurate, that statute, "Operational files of the Central Intelligence Agency," also contains exceptions. *See, e.g.*, 50 U.S.C. § 431(c)(3):

[E]xempted operational files shall continue to be subject to search and review for information concerning *** the specific subject matter of an investigation by the congressional intelligence committees, the Intelligence Oversight Board, the Department of Justice, the Office of General Counsel of the Central Intelligence Agency, the Office of Inspector General of the Central Intelligence Agency, or the Office of the Director of National Intelligence for any impropriety, or violation of law, Executive order, or Presidential directive, in the conduct of an intelligence activity.

We believe that much of the information requested falls within one or more exceptions under 50 U.S.C. § 431.

Sincerely,

John H. Clarke

cc: Accuracy in Media, Inc.
Roger Aronoff
Larry Bailey
Kenneth Benway
Dick Brauer
Clare Lopez
James A. Lyons, Jr.
Kevin Shipp