

14-A-0683-A2

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Attachment 14

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September 29, 2014

FOIA APPEAL

Mr. James Hogan
Office of the Director of Administration and Management
Office of the Secretary of Defense
1155 Defense Pentagon
Washington, DC 20301-1155

Re: March 31, 2014 FOIA Request
September 19, 2014 Denial
Case number 14-F-0683

Dear Mr. Hogan:

This is an appeal of the captioned denial. The letter denying the FOIA Request was emailed at 11:00 a.m. on September 19. On the morning of September 19, 2014, I filed a lawsuit seeking a court order to disclose the records. I do not recall whether the Complaint was filed before, or after, 11:00 a.m. If DOD counsel asserts that plaintiffs failed to exhaust their administrative remedies, and the court holds that the lawsuit was filed after the DOD response was emailed, this Administrative Appeal will be part of the Administrative record.

The March 31, 2014 FOIA request had four items. Request 1 sought "Maps depicting all assets that could have been dispatched to the Benghazi mission or the CIA annex on September 11th and 12th, 2012..." The DOD wrote that it had located 12 pages of records as responsive to Request 1, but that they were all being withheld under 5 USC § 552 (b)(1). This provision exempts "matters that are... specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign [if they] are in fact properly classified pursuant to such Executive order." The DOD cites Executive Order 13526, Sections 1.4 (a) (concerning military plans, weapons, or operations), Section 1.4 (d) (regarding foreign relations or foreign activities of the United States, including confidential sources), and Section 1.4 (g) (concerning vulnerabilities or capability of systems, installations, infrastructures, projects, plans or protection services relating to the national security).

However, EO 13526 requires that information withheld under it "could reasonably be expected to cause identifiable or describable damage," and we do not see how maps depicting assets that could have been dispatched to Benghazi could reasonably be expected to damage national security. The location of NATO and Navy bases is public information, and, to the extent that there were assets whose location or existence are not public information, these matters could be redacted or otherwise withheld.

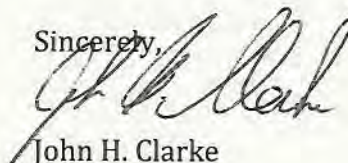
Request 2 sought "[r]ecords of requests for help" from allies, Request 3 sought "[r]ecords concerning joint military contingency plans," and Request 4 sought military assets prepositioned off the coast of Tripoli on October 18, 2011. The Office of Secretary of Defense and Joint Staff ("OSD/JS") responded that, after thorough searches, it could find no records responsive to these requests.

We do believe that the OSD/JS is the DOD office that maintains military contingency plans, if not records responsive to the two other requests. In any event, to the extent that another DOD component is likely to have the records sought, kindly forward the requests to those components, to the extent that we did not seek the records from those offices. In this regard, please note that the March 31, 2014 FOIA Request states:

Request No. 2, for records of requests for assistance from the Turkish or Italian Consulates or the U.K. Security Team, as well as Request No. 4, regarding records of military assets pre-positioned in October 2011 off Tripoli on October 18, 2011, is also being submitted to (a) the Secretary of the Navy Chief of Naval Operations (SECNAV/CNO), and (b) HQ U.S. AFRICOM (U.S. Africa Command).

Thank you.

Sincerely,



John H. Clarke

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