

Central Intelligence Agency



Washington, D.C. 20505

1 May 2024

John H. Clarke
1629 K Street, NW
Suite 300
Washington, DC 20006
202-344-0776

Reference: F-2023-01619; Civil Action No. 23-cv-01124

Mr. Clarke:

This correspondence replies to the 12 July 2023 Freedom of Information Act (FOIA) request submitted by your client, Michael Driggs, et al., and subsequent litigation, with regard to 28 categories of Prisoner of War (POW)/Missing in Action (MIA) information from the Korean and Vietnam Wars (hereinafter, "Letter"). Specifically, this reply addresses the request that Mark Sauter receive a news media waiver for search and duplication fees under 5 U.S.C. § 552 (A)(4)(A)(iii), reflecting public interest considerations, and a waiver for duplication costs under 5 U.S.C. § (a)(4)(A)(ii)(II), addressing records sought by a representative of the news media.

The term fee waiver means a waiver of all fees involved with a particular FOIA request and the term fee category determination, i.e., "representatives of the news media," may denote a type of requestor for whom fees are tailored. Since each determination is based on a different set of statutory guidelines, I will consider both the fee waiver request and the fee category determinations below.

Fee Waiver

With respect to the fee waiver, and to the extent you are seeking it under public interest considerations, I must determine whether disclosure would "contribute significantly to public understanding of the operations or activities of the government" and that disclosure is not "primarily in [your] ... commercial interest." 32 C.F.R. § 1900.13(b). Your petition does not meet these requirements.

I find that disclosure of documents pursuant to this FOIA request would not contribute *significantly* to public knowledge given the extensive information available in the public realm as to this subject matter (e.g., at the National Archives and Records Administration, Library of Congress, the Defense POW/MIA Accounting Agency, the CIA's FOIA Electronic Reading Room, the Department of State's FOIA Virtual Reading Room). I note that the foregoing publicly-available resources are in addition to the records that have already been provided to some or all of these requestors in previous FOIA submissions on the same subject matter. Moreover, given that some of the 28 FOIA requests seek large volumes of broadly-categorized information (e.g., Request 20: "[a]ll records relating to any of the POW/MIAs named in the attached list [of 125 names]"), and there are no details on the specific intended use of the

information, there are no grounds upon which to conclude that the disclosure of this information would have much significance whatsoever, let alone make any significant contribution to the public's understanding after disclosure. Furthermore, neither the purported choice of publication forum (i.e., simply to make the information available to the public) nor the connection of Mr. Sauter to a non-profit entity investigating government action is sufficient to meet the statutory requirements to show that disclosure is not primarily in the requesters' commercial interest. Therefore, I deny a public interest fee waiver.

Fee Category

With respect to your fee category determination, I note your request that Mr. Sauter be considered a "representative of the news media" for purpose of fees. However, based upon the information you have provided that Mr. Sauter's request is in support of his commercial interests to publish at a future unidentified time and place, I have determined that the request does not meet the definition for a representative of the news media but rather for a "commercial use" requestor. The designation of a requester as "commercial" turns on the intended use of the requested information rather than on the identity of the requester. And the definition of "representatives of the news media" is limited to "any person actively gathering information of current interest to the American public for an organization that is organized and operated to publicize or broadcast news to the general public." Thus, the term "news" is synonymous with "reports of current events or that would be of current interest to the public." 32 C.F.R. § 1900.02 (g)(2)(ii). Since none of the events underlying these requests occurred less than 25 years ago, they are not current events. The documents concerning these events are also highly duplicative of prior requests and information already made available to the public, as noted above. The reasoning provided in your Letter is also largely non-specific and conclusory (e.g., "he has concrete plans to make the information public"), quotes the statutory language as a substitution for facts (e.g., "uses his editorial skills to turn the raw materials into a distinct work"), and references Mr. Sauter's allegedly relevant publications without sufficient context or recency. Therefore, I deny your request to receive status as a representative of the news media.

Fee Calculation

The CIA has now had the opportunity to fully assess this request in light of multiple factors and has determined that it involves both unusual and exceptional circumstances for a multitude of reasons. Some of those reasons include the successive and nearly identical submissions that some or all of these requestors have filed in at least four, years-long, and heavily litigated FOIA matters. Each submission involves beginning the FOIA process anew. In this matter, the process required the duplication of effort involved in searching, collecting, and examining voluminous amounts of potentially responsive POW/MIA records, as well as the repeated and related need to consult with multiple external agencies having substantial —if not primary — interests in the final release determinations. In addition, CIA has taken into consideration the amount of classified material that must be re-reviewed, as well as the size and complexity of competing FOIA submissions both in and outside of litigation. Given the determination that this is a commercial use request, you will be responsible for search, review, and duplication fees associated with this request. *See* 32 C.F.R. § 1900.13(g)(1). Because of the unusual and exceptional circumstances arising from this request, which continue and which caused confusion from the outset as to the overlap with F-2020-00473 (Moore), there has been a

delay in calculating those fees; an accounting will be provided shortly.

Finally, you are in arrears in the amount of \$103.00 for FOIA request F-2013-02263 (*see* attached); payment is again demanded upon receipt of this notice. As you are aware, under 32 C.F.R. § 1900.11(b), “the CIA shall not process a request for records under the FOIA ... submitted by a member of the public who owes outstanding fees ... and will terminate the processing of any pending requests submitted by such persons to the CIA.” In addition, and in accordance with law and policy, CIA will require on your future submissions an advance deposit of up to 100 percent of the estimated fees based on your previous failure to pay fees in a timely fashion. Should you fail to pay an advance deposit for subsequent FOIA demands, the CIA will deem the request closed and notify you accordingly. *See* 32 C.F.R. § 1900.13(f).

Sincerely,

A handwritten signature in blue ink, appearing to read 'Stephen Glenn', is positioned above the typed name.

Stephen Glenn
Information and Privacy Coordinator

Enclosures

Central Intelligence Agency



Washington, D.C. 20505

15 January 2014

Mr. John H. Clarke
2424 Pennsylvania Avenue, NW
Apartment 410
Washington, DC 20037

Reference: F-2013-02263

Dear Mr. Clarke:

This is to acknowledge receipt of your 8 November 2013 letter, received in the office of the Information and Privacy Coordinator on 15 November 2013, regarding your 25 July 2013 Freedom of Information Act (FOIA) request for the records identified in two cover-letters accompanying productions related to the FOIA litigation *Stalcup v. CIA*, which you attached to your request. Specifically, your request sought records from enclosures in Tabs B and C as well as the 14 documents mentioned in our 24 October 2012 letter regarding F-2010-00895. Your 8 November letter has now limited your request for "records that were not previously produced in *Lahr v. National Transp. Safety Bd. et al.*"

We must decline your request to waive fees since the material referred to above has been previously released and is already in the public domain. Its re-release would not contribute significantly to the public understanding of the operations and activities of the United States Government.

We note that you requested to be notified if fees are "to exceed fifty dollars" which we have interpreted as your willingness to pay \$50. However, even after limiting the scope of your request as described above, your request includes 1,133 pages of material. Therefore, the fees associated with your request will be \$103.30. Accordingly, we will need your commitment to pay **all applicable fees** before we can proceed. We will hold your request in abeyance for 45 days from the date of this letter pending your response.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michele Meeks".

Michele Meeks
Information and Privacy Coordinator

John H Clarke
2424 Pennsylvania Avenue, NW
Apartment 410
Washington, DC 20037
johnhclarke@earthlink.net
(202) 344-0776

March 5, 2014

FOIA REQUEST

Central Intelligence Agency
Washington, DC 20505

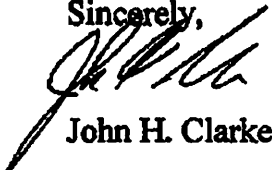
Re: F-2013-02263

Dear Information and Privacy Coordinator,

Please note that I commit to the all applicable fees associated with fulfilling my FOIA request. Kindly advise when I may expect to receive the records.

Thank you.

Sincerely,



John H. Clarke

MAR 11 2014

Central Intelligence Agency



Washington, D.C. 20505

22 April 2014

Mr. John H. Clarke
2424 Pennsylvania Avenue, NW
Apartment 410
Washington, DC 20037

Reference: F-2013-02263

Dear Mr. Clarke:

This is a final response and acknowledges receipt of your 5 March 2014 letter, received in the office of the Information and Privacy Coordinator on 11 March 2014, providing your commitment to pay all applicable fees concerning your 8 November 2013 letter narrowing the scope of your request by limiting it for records that were not previously produced in *Lahr v. National Transp. Safety Bd. Et al.*

Please be advised that we have completed a thorough and diligent search on your behalf regarding the previous request as it pertains to the subject of your request above. Therefore, we are enclosing 68 documents, consisting of 1,133 pages, which we believe to be responsive to your request. These documents were located and released in connection with the earlier request. The cost associated with processing your request amounts to \$113.30. This consists of reproduction of 1,133 pages at a rate of ten cents per page. You are responsible for the cost of processing your request for reproduction charges beyond the first 100 pages. Please send your check or money order in the amount of \$103.30 payable to the **Treasurer of the United States** citing F-2013-02263 to ensure proper credit to your account.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michele Meeks".

Michele Meeks
Information and Privacy Coordinator

Enclosures