

Central Intelligence Agency



Washington, D.C. 20505

15 June 2004

James H. Lesar, Esquire
Attorney at Law
1003 K. Street, N.W., Suite 640
Washington, DC. 20001

Reference: No. F-2003-00449

Dear Mr. Lesar:

This is in response to your 7 February 2003 letter, which was received on 14 February 2003, requesting records under the provisions of the Freedom of Information Act (FOIA). We delayed responding to this request because it concerned subject matter and issues presented in the litigation, Roger Hall v. Central Intelligence Agency, Civil Action No. 98-1319.

Specifically, your 7 February 2003 request is for records pertaining to:

1. **Southeast Asia POW/MIAs (civilian or military) and detainees, who have not returned, or whose remains have not been returned, to the United States, regardless of whether they are currently held in prisoner status, and regardless of whether they were sent out of Southeast Asia.**
2. **POW/MIAs sent out of Southeast Asia (for example, to China, Cuba, North Korea, Russia).**
3. **Prepared by and/or assembled by the CIA between January 1, 1960 and December 31, 2002, relating to the status of any United States POWs or MIAs in Laos, including but not limited to any reports, memoranda, letters, notes or other documents prepared by Mr. Horgan or any other officer, agent or employee of the CIA for the Joint Chiefs of Staff, the President, or any federal agency.**
4. **Records of the Senate Select Committee on POW/MIA Affairs which were withdrawn from the collection at the National Archives and returned to the CIA for processing.**

5. **Records relating to 47 individuals who allegedly are Vietnam era POW/MIAs, and whose next-of-kin have provided privacy waivers to Roger Hall, provided by you as (Attachment 1), and those persons who are on the Prisoner of War/Missing Personnel Office's list of persons whose primary next-of-kin (PNOK) have authorized the release of information concerning them, provided by you as (Attachment 2).**
6. **All records on or pertaining to any search conducted for documents responsive to Roger Hall's requests dated January 5, 1994, February 7, 1994, and April 23, 1998, including but not limited to all instructions and descriptions of searches to be undertaken by any component of the CIA and all responses thereto, and all records pertaining to the assessment of fees in connection therewith, including but not limited to any itemizations or other records reflecting the time spent on each search, the rate charged for the search, the date and duration and kind of search performed, etc.**
7. **All records on or pertaining to any search conducted regarding any other requests for records pertaining to Vietnam War POW/MIAs, including any search for such records conducted in response to any request by any Congressional Committee or executive branch agency.**

For identification purposes we have assigned your request the number referenced above. Please refer to this number in future correspondence.

With respect to items 1, 2, and item 3 to the extent the dates requested are coextensive with the dates for which this information was requested in the prior litigation, the court in that case, Roger Hall v. Central Intelligence Agency, Civil Action No. 98-1319, ruled that the Central Intelligence Agency had properly invoked the relevant FOIA exemptions in response to Mr. Hall's requests for the same or similar information. For that reason, we cannot accept those items as part of this new request.

With respect to item 4, the court in the cited litigation concluded that the Senate documents are not "agency records" subject to the FOIA. For that reason, we cannot accept this item.

In order to conduct the searches requested in item 5, we require, at a minimum, the date and place of birth and the full name of all individuals listed in attachments 1 and 2 included in item 5. We cannot accept this item until we receive this additional information. In accordance with CIA policy, we will hold this aspect of your request in abeyance for forty-five (45) days pending receipt of this additional information and will thereafter deem this aspect of your request closed.

Based on information available to the CIA at this time, your client has failed to demonstrate that he meets the criteria for the "representative of the news media" fee category outlined in the CIA's FOIA regulations found at part 1900 of title 32 of the Code of Federal Regulations, specifically subsection 1900.02(h)(3) (copy enclosed). Therefore, your client's request to be considered a "representative of the news media" for FOIA fee category purposes is denied. We will reconsider his request, however, upon the submission of additional information sufficient to demonstrate that he meets the criteria of a "representative of the news media," as defined in the CIA's FOIA regulations. We note that courts have ruled that the "representatives of the news media" category excludes private libraries or private repositories of government records, or middlemen such as information vendors or data brokers that request records for use by others.

Pending receipt of information sufficient to demonstrate that your client qualifies as a "representative of the news media," we have made a preliminary and partial calculation, based on the placement of your client in the "all other" fee category, we have estimated costs of conducting searches for all the documents you have requested in items 5, 6 and 7 above, would amount to \$606,950.00 for the searches alone. This estimate does not include either copying fees or that part of item 3 not requested in prior litigation.

The CIA views portions of the request—particularly item 7—as imposing such overly burdensome search requirements as not to require a search under the Freedom of Information Act. This letter does not waive the CIA's right to make that determination once you have clarified the scope of your client's request and evidenced a willingness to pay fees.

Please feel free to contact me if you would like to discuss narrowing your search to reduce this fee estimate. In any event, because there is evidence from the prior litigation that your client may refuse to pay the fees associated with the processing of this request, we are requiring, in accordance with the CIA's FOIA regulations, that you submit an advance deposit in the amount of \$50,000.00 before we would begin to process this request, as presently drafted by you. See 32 C.F.R. § 1900.13(f) (copy enclosed). Furthermore, should we proceed with the searches, we may require you to make additional advance

payments as the actual costs associated with processing this request become known.

You have the right to consider this a denial and may appeal to the Agency Release Panel, in my care. Should you choose to do this, please explain the basis for your appeal.

Sincerely,

A handwritten signature in black ink that reads "Alan W. Tate". The signature is written in a cursive style with a large, looped initial "A".

Alan W. Tate
Acting Information and Privacy Coordinator

Enclosure