

**COMPLAINT  
EXHIBIT F**

**LAW OFFICES OF JERRY C. EFFREN**

Jerry C. Effren  
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Neal J. Bingham

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Margaret L. Burchard  
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25 West Union Street  
Ashland, Massachusetts 01721  
(508) 881-4950 – Telephone  
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E-Mail Address: nbingham@effren.net

January 5, 2021

**Via Federal Express**

Office of the Judge Advocate General  
Department of the Navy  
Attn: FOIA Appeals, Code 14 1322  
Patterson Avenue, SE, Suite 3000  
Washington Navy Yard, D.C. 30271-5066

**Re: SECOND ADMINISTRATIVE APPEAL  
FREEDOM OF INFORMATION ACT REQUEST  
FOIA REQUEST: DON-NAVY-2020-011031**

Dear Sir or Madam:

This is a second appeal under the Freedom of Information Act. This office submitted a request under the Freedom of Information Act to the Military Sealift Command (“MSC”) on August 5, 2020. (*A copy of the FOIA request is attached as Exhibit A.*) The request was assigned the following identification number: DON-NAVY-2020-011031.


After MSC failed to produce responsive documents, this office filed an appeal by a letter dated November 9, 2020. (*A copy of the appeal letter is attached as Exhibit B.*) On December 3, 2020 the Department of the Navy granted the appeal with the subject reference: FREEDOM OF INFORMATION ACT (FOIA) REQUEST DON-NAVY-2020-011031; FOIA APPEAL DON-NAVY-2021-001128. (*A copy of the letter is attached as Exhibit C.*)

The letter of December 3, 2020 directed the IDA (MSC) to inform this office of the status of the request within 20 working days of the date of that letter. Twenty (20) working days from December 3, 2020 is January 5, 2021. I have received no information or documents from MSC, despite two emails to MSC requesting status updates. It is now five (5) months since MSC received my request. There has been no substantive response or any explanation for the delay.

If you need to discuss this request, I can be reached at the telephone number and the email address set forth above. Thank you for your consideration.

Very truly yours,

LAW OFFICES OF JERRY C. EFFREN

  
Neal J. Bingham

cc: Client

# EXHIBIT A

**LAW OFFICES OF JERRY C. EFFREN**

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E-Mail Address: nbingham@effren.net

August 5, 2020

**Via Facsimile (757-341-5565)**  
Commander, Military Sealift Command  
ATTN: N00L/FOIA  
471 E. C Street, Building SP-64  
Norfolk, VA 23511

**Re: FREEDOM OF INFORMATION ACT REQUEST**

Dear Sir or Madam:

This is a request under the Freedom of Information Act directed to the Military Sealift Command (“MSC”). I hereby request that a copy of the following documents be provided to me on an expedited basis:

1. All documents evidencing the certification status the Floating Dry Dock “Alabama” (the “Dry Dock”) at the shipyard owned and/or operated by Alabama Shipyard, LLC. (the “Shipyard”) in Mobile, Alabama as of November 26, 2019.
2. All documents evidencing the certification or re-certification of the Dry Dock on or after November 26, 2019.
3. All documents concerning the “self-certification” of the Dry Dock by MSC, or at the direction of MSC, if any, undertaken or completed on or after November 26, 2019.
4. All documents concerning United States Navy certifications of the Dry Dock, if any, undertaken or completed on or after November 26, 2019.
5. All communications between MSC, on the one hand, and the Shipyard, on the other hand, concerning the status of the certification of the Dry Dock as of or after November 26, 2019.
6. All communications between MSC, on the one hand, and any other person or entity, including without limitation representatives of the engineering company known as Heger Dry Dock, Inc. of 77 Main St, Hopkinton, MA 01748 concerning the certification of the Dry Dock at any time on or after November 26, 2019.

Note: In an effort to assist you in identifying documents responsive to this FOIA request, I am attaching for your convenience the last known “Certification of Capacity” for the Dry Dock,

which was prepared by Wally Sayed, PE, formerly of HDD.

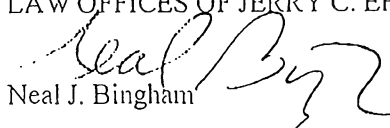
In order to assist MSC in determining fees, please be advised that my client is willing to pay fees up to \$250.00 for your services in responding to this request. If you expect the fees will exceed this, please contact me before proceeding.

If you need to discuss this request, I can be reached at the telephone number set forth above during regular business hours. Thank you for your consideration of this request.

Very truly yours,

LAW OFFICES OF JERRY C. EFFREN

Neal J. Bingham

A handwritten signature in black ink, appearing to read "Neal Bingham", is written over the printed name "Neal J. Bingham". The signature is fluid and cursive.

cc: Waleed Sayed

# HEGER DRY DOCK, INC



## CERTIFICATE of CAPACITY

FLOATING DRY DOCK "ALABAMA"  
ALABAMA SHIPYARD, LLC  
MOBILE, ALABAMA

ISSUED: NOVEMBER 26, 2019  
EXPIRES: JULY 17, 2021

Heger Dry Dock, Inc. has inspected the subject dry dock and found it safe and adequate for dry-docking vessels displacing up to 46,400 long tons at 12 inches pontoon deck freeboard and with a maximum keel line load not to exceed the load per foot limit as shown in the attached Table 1 – ALABAMA FDD Line Load as of Nov. 26, 2019.

This certification is contingent on the following conditions:

- A) The vessel's weight and adjusted vertical center of gravity (KG) must fall within acceptable limits of ship / dock stability.
- B) A safe and adequate blocking system must be used for all dockings.
- C) Maximum allowed head pressure limitation of 31-feet must not be exceeded.
- D) Normal acceptable dry-docking procedures must be followed at all times.
- E) Starboard wing wall crane shall not travel aft of Frame 44.

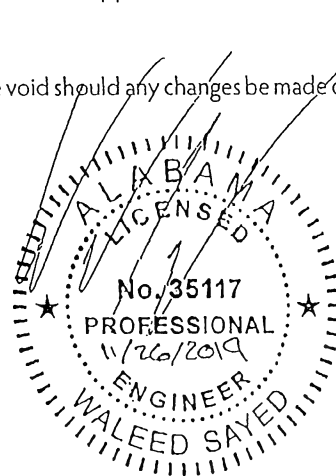
Please note that the certification is for the safety of the vessel in the dry dock only. It does not address the safety of personnel in and around the dry dock, potential pollution spills, or transfers. Faulty handrails, stairs, tripping hazards, exposed equipment or any other hazard not specifically related to the safety of the vessel in the dry dock are not covered by this certification. Transfers must be reviewed and approved in advance on a case by case basis.

This certification expires on July 17, 2021. It shall automatically become void should any changes be made or damage occur to the basic dock structure or equipment.

REFERENCE: Heger Inspection Report, July 2019

HEGER DRY DOCK, Inc.

Waleed Sayed, PE  
Registration: Alabama  
Certificate No. 35117





# **EXHIBIT B**



**LAW OFFICES OF JERRY C. EFFREN**

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November 9, 2020

**Via Federal Express**

Office of the Judge Advocate General  
Department of the Navy  
Attn: FOIA Appeals, Code 14 1322  
Patterson Avenue, SE, Suite 3000  
Washington Navy Yard, D.C. 30271-5066

**Re: ADMINISTRATIVE APPEAL  
FREEDOM OF INFORMATION ACT REQUEST  
FOIA REQUEST: DON-NAVY-2020-011031**

Dear Sir or Madam:

This is an appeal under the Freedom of Information Act. This office submitted a request under the Freedom of Information Act to the Military Sealift Command (“MSC”) on August 5, 2020. (*A copy of the FOIA request is attached as Exhibit A.*) The request was assigned the following identification number: DON-NAVY-2020-011031.

It is now three (3) months since MSC received my request. I have still not received any documents. I have also spoken to the MSC FOIA Coordinator on several occasions over the last three (3) months about when MSC would be producing documents but have not received a substantive response or any explanation for the delay. I hereby appeal the failure or refusal of MSC to respond to my request.

If you need to discuss this request, I can be reached at the telephone number and the email address set forth above. Thank you for your consideration of this appeal.

Very truly yours,

LAW OFFICES OF JERRY C. EFFREN

  
Neal J. Bingham

cc: Client

# **EXHIBIT C**



**DEPARTMENT OF THE NAVY**  
OFFICE OF THE JUDGE ADVOCATE GENERAL  
1322 PATTERSON AVENUE SE SUITE 3000  
WASHINGTON NAVY YARD DC 20374

IN REPLY REFER TO:

5720

Ser 14/048

December 3, 2020

Mr. Neal J. Bingham  
Law Offices of Jerry C. Effren  
25 West Union Street  
Ashland, MA 01721

**SUBJECT: FREEDOM OF INFORMATION ACT (FOIA) REQUEST DON-NAVY-2020-011031; FOIA APPEAL DON-NAVY-2021-001128**

This letter responds to your FOIA appeal received by my office on November 10, 2020 and given the tracking number DON-NAVY-2021-001128. Your underlying FOIA request, DON-NAVY-2020-011031, sought records evidencing the certification status of the floating dry dock "Alabama" (the "Dry Dock") owned and/or operated by Alabama Shipyard, LLC (the "Shipyard") as of November 26, 2019; all documents evidencing the certification or re-certification of the Dry Dock on or after November 26, 2019; all documents concerning the "self-certification" of the Dry Dock completed on or after November 26, 2019; all communications between the Military Sealift Command (MSC) and the Shipyard on or after November 26, 2019; and all communications between MSC and any other person or entity concerning the certification of the Dry Dock on or after November 26, 2019. In your appeal, you contend that you have not received a response to your request, which you submitted last year.

Your appeal is a request for a final determination under the FOIA. For the reasons stated below, I am granting your appeal.

Though there has been no denial of your request, I find that the Commander, Military Sealift Command, the initial denial authority (IDA), has exceeded the statutory time limit to respond to your request.

By copy of this letter, I am directing the IDA to inform you of the status of its search for and review of any responsive documents, and to complete its search and review within 20 working days of the date of this letter. If the IDA is unable to complete its search or review of all documents within that time, then I am directing the IDA to provide a rolling release of documents to you as of the date of the 20-working-day deadline after this letter, and to make subsequent releases every 15 days thereafter. Upon final release of all the documents to you, if you are dissatisfied with the response, you

5720

Ser 14/048

December 3, 2020

still retain the right to appeal that response to this office on whatever grounds you deem appropriate, to include adequacy of the search.

As the Department of the Navy's designated adjudication official for this FOIA appeal, I am responsible for the denial of your appeal. You may seek judicial review of this decision by filing a complaint in an appropriate U.S. District Court. My office represents the U.S. Government and is, therefore, unable to assist you in this process.

You have the right to seek dispute resolution services by contacting the Department of the Navy's FOIA public liaison, Mr. Christopher Julka, at [christopher.a.julka@navy.mil](mailto:christopher.a.julka@navy.mil) or at (703) 697-0031. You may also seek dispute resolution services from the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, at (202) 741-5770 or [ogis@nara.gov](mailto:ogis@nara.gov).

If you have further questions or concerns for my office, my point of contact is Lieutenant Alyssa Williams, USN, who may be reached at [alyssa.e.williams1@navy.mil](mailto:alyssa.e.williams1@navy.mil) or (202) 685-5398.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. D. Schrock', with a long horizontal line extending to the right.

S. D. SCHROCK

Director

General Litigation Division

Copy to:  
MSC  
DNS-36  
DON OCIO