

COMPLAINT
EXHIBIT I

LAW OFFICES OF JERRY C. EFFREN

Jerry C. Effren

Neal J. Bingham

Paralegals

Margaret L. Burchard
Adrienne Cormier

25 West Union Street
Ashland, Massachusetts 01721
(508) 881-4950 – Telephone
(508) 881-7563 – Telecopier
E-Mail Address: nbingham@effren.net

March 10, 2021

VIA FEDERAL EXPRESS

Office of the Judge Advocate General
ATTN: General Litigation Division (Code 14)
1322 Patterson Ave., SE, Suite 3000
Washington Navy Yard, DC 20374-5066

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

Dear Sir or Madam:

This is a third appeal under the Freedom of Information Act. The procedural history of this matter is as follows:

1. This office submitted an initial 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.
2. After MSC failed to produce responsive documents, this office filed the first appeal by a letter dated November 9, 2020. *(A copy of the first appeal letter is attached as Exhibit B.)*
3. On November 17, 2020, this office received correspondence from Terri Blair the FOIA Coordinator for MSC, regarding their response to my initial FOIA request. This response included a single page of a multi-page document - a redacted copy of the same Certificate of Capacity I attached to my initial request, thus providing zero additional information. *(A copy of the November 17, 2020 response to my initial FOIA request is attached as Exhibit C.)* I immediately responded that this was not sufficient. *(A copy of my response letter from November 17, 2020 is attached as Exhibit D.)* Subsequent efforts to get a response from MSC proved fruitless.
4. 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 E.)* 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.
5. Twenty (20) working days from December 3, 2020 was January 5, 2021. No information or

documents were received from MSC, despite two emails to MSC requesting status updates. Five (5) months since MSC received my initial request, and after MSC failed to produce responsive documents again, this office filed the second appeal by a letter dated January 5, 2021. *(A copy of the second appeal letter is attached as Exhibit F.)*

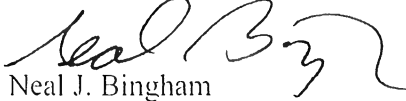
6. The only correspondence I received after the response, and my second appeal, was a series of e-mails attempting to explain DON perceived complications regarding the processing of my second appeal. Correspondence on March 1, 2021 between Lieutenant Alyssa Williams and I claim that they were not aware of the November 17, 2020 communication to MSC. Further correspondence from Lieutenant Alyssa Williams suggests that a firewall may have prevented any of my emails from reaching their office, but this still does not satisfy any of my requests for documents. *(A copy of the March 1, 2021 email correspondence is attached as Exhibit G.)*
7. Lastly, on March 3, 2021 I received correspondence from Terri Blair the FOIA Coordinator for MSC, advising that they have re-opened DON-NAVY-2020-011031. As has been the case since the original filing, MSC has done nothing to respond to my FOIA request. *(A copy of the March 3, 2021 email correspondence is attached as Exhibit H.)*

This FOIA application process with the MSC and DON has been unfair and costly, and in violation of my client's Constitutional rights. I hereby request that all documents in the file of MSC be identified within 24 hours of any decision on this appeal or any of the other prior pending appeals, and that those documents be produced without redaction by MSC no later than three (3) days from the issuance of such a decision.

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

Very truly yours,

LAW OFFICES OF JERRY C. EFFREN



Neal J. Bingham

cc: Client

EXHIBIT A

LAW OFFICES OF JERRY C. EFFREN

Jerry C. Effren

Neal J. Bingham

Paralegals

Margaret L. Burchard
Samantha Libby

25 West Union Street
Ashland, Massachusetts 01721
(508) 881-4950 – Telephone
(508) 881-7563 – Telecopier
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, L.L.C. (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.

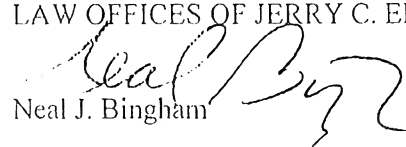
In order to assist MSC in determining fees, please be advised that my client is willing to pay fees up to \$250.00 for your services in responding to this request. If you expect the fees will exceed this, please contact me before proceeding.

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 typed 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

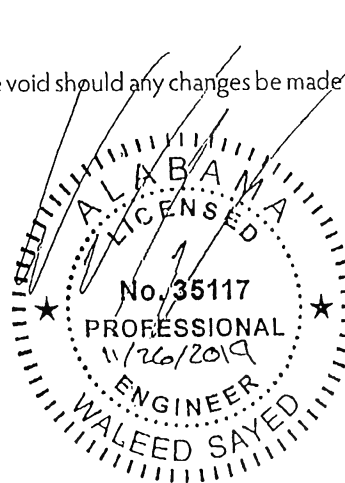


EXHIBIT B

LAW OFFICES OF JERRY C. EFFREN

Jerry C. Effren

Neal J. Bingham

Paralegals

Margaret L. Burchard
Samantha Libby

25 West Union Street
Ashland, Massachusetts 01721
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(508) 881-7563 – Telecopier
E-Mail Address: nbingham@effren.net

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




Adrienne Cormier

From: Blair, Terri L CIV USN COMSC NORFOLK VA (USA) <terri.blair@navy.mil>
Sent: Tuesday, November 17, 2020 1:55 PM
To: Neal Bingham
Cc: Kallenbach, Mark J CIV USN COMSC NORFOLK VA (USA); Thornley, Donald J CIV USN USFFC (USA)
Subject: FOIA REQUEST DON-NAVY-2020-011031
Attachments: DON-NAVY-2020-011031 - RESPONSE.pdf; DON-NAVY-2020-011031 - DRY DOCK CERTIFICATE_Redacted.pdf

Mr. Bingham:

Please see attached. Thank you.

Sincerely,

Terri L. Blair
Freedom of Information Act Coordinator
Privacy Act Coordinator
Military Sealift Command Norfolk (N00L)
471 E. C Street, Bldg. SP-30, Room 103
Norfolk, VA 23511
 terri.blair@navy.mil
Office  : 757-443-2359
DSN  : 646-2359

This communication may contain individually identifiable information the disclosure of which, to any person or agency not entitled to receive it, is or may be prohibited by the Privacy Act, 5 U.S.C. § 552a. Improper disclosure of protected information could result in civil action or criminal prosecution. Please immediately telephone me if you have received this e-mail in error and then permanently delete or destroy all copies of this e-mail and any attachments.



DEPARTMENT OF THE NAVY
COMMANDER MILITARY SEALIFT COMMAND
471 EAST C STREET
NORFOLK VA 23511-2419

5720
N00L/009
November 17, 2020

Mr. Neal J. Bingham (nbingham@effren.net)
Law Offices of Jerry C. Effren
25 West Union Street
Ashland, Massachusetts 01721

Subj: FOIA REQUEST (DON-NAVY-2020-011031)

This responds to your Freedom of Information Act (FOIA) request of August 5, 2020, assigned tracking number DON-NAVY-2020-011031, requesting the following:

1. All documents evidencing the certification status [of] 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.

In a phone discussion with me, you indicated that you might be willing to accept a response to the first paragraph above in full satisfaction of your request. As such, we are providing a document responsive to the first paragraph of your request, with redactions made pursuant to FOIA provision 5 U.S.C. § 552(b)(4), which permits the government to withhold certain trade secrets and commercial or financial information that is privileged or confidential.

5720
N00L/009
November 17, 2020

This is an interim response to your request. Please respond to this letter **on or before December 29, 2020** advising whether the document provided satisfies your request. If I do not receive your written response by that deadline, I will assume that the document provided satisfies your request in full. Please address your response to FOIA Coordinator, Terri Blair, 471 East C Street, SP-30, Norfolk, VA 23518 or terri.blair@navy.mil. In your written response, please cite the reference number indicated in subject line of this letter.

If you have any questions regarding this matter, please contact me.



T.L. Blair
By direction

HEGER DRY DOCK, INC

CERTIFICATE of CAPACITY

FLOATING DRY DOCK "ALABAMA"

MOBILE, ALABAMA

ISSUED

EXPIRES

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

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 blockline system must be used for all dockings.
- C)
- D) Normal acceptable dry-docking procedures must be followed at all times.
- E)

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.

REFERENCE:

HEGER DRY DOCK, Inc

Waleed Sayed, PE
Registration: Alabama

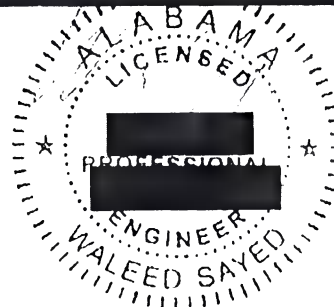


EXHIBIT D

LAW OFFICES OF JERRY C. EFFREN

Jerry C. Effren

Neal J. Bingham

Paralegals

Margaret L. Burchard
Samantha Libby

25 West Union Street
Ashland, Massachusetts 01721
(508) 881-4950 – Telephone
(508) 881-7563 – Telecopier
E-Mail Address: nbingham@effren.net

November 17, 2020

Via Email (terri.blair@navy.mil)

FOIA Coordinator
Terri Blair
471 East C Street, SP-30
Norfolk, VA 23518

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

Dear Ms. Blair:

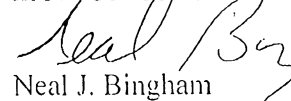
I write in response to your interim response dated November 17, 2020 to the above-referenced Request. The single page of the Certificate of Capacity that you sent me does not satisfy my request relative to Request Nos. 1 or 2. Please forward the entirety of the Certificate of Capacity, which must include the page titled "Table 1 – Alabama FDD Line Load Rating and Maximum Allowed Head Pressure on Pontoon Deck". If HDD submitted an amended or revised Table 1 at any time during the 2020 calendar year, or if it re-certified the dock, I need those documents as well.

The delay in response has made it very difficult for my client. Given the passage of time, I cannot wait any longer for documents responsive to Requests Nos. 3 to 6. Please forward those documents as well.

Please confirm receipt of this letter.

Very truly yours,

LAW OFFICES OF JERRY C. EFFREN


Neal J. Bingham

cc: Client

EXHIBIT E



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 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.

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 or (202) 685-5398.

Sincerely,



S. D. SCHROCK
Director
General Litigation Division

Copy to:
MSC
DNS-36
DON OCIO

EXHIBIT F

LAW OFFICES OF JERRY C. EFFREN

Jerry C. Effren

Neal J. Bingham

Paralegals

Margaret L. Burchard
Samantha Libby

25 West Union Street
Ashland, Massachusetts 01721
(508) 881-4950 – Telephone
(508) 881-7563 – Telecopier
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 G

Neal J. Bingham, Attorney at Law

Law Offices of Jerry C. Effren

25 West Union Street

Ashland, MA 01721

Office (508) 881-4950

Cell Phone (617) 852-6003

Telecopier (508) 881-7563

E-Mail: nbingham@effren.net

THIS E-MAIL TRANSMISSION CONTAINS INFORMATION THAT IS CONFIDENTIAL AND PRIVILEGED AND IS INTENDED TO BE DISCLOSED SOLELY TO THE ADDRESSEE(S). IF YOU ARE NOT AN INTENDED RECIPIENT, PLEASE BE AWARE THAT ANY DISCLOSURE, COPYING, DISTRIBUTION OR OTHER USE OF THIS E-MAIL MESSAGE AND/OR ITS ATTACHMENTS IS UNAUTHORIZED. IF YOU HAVE RECEIVED THIS E-MAIL TRANSMITTAL IN ERROR, PLEASE NOTIFY THE SENDER BY RETURN E-MAIL IMMEDIATELY AND DELETE THIS MESSAGE AND ITS ATTACHMENTS FROM YOUR COMPUTER SYSTEM.

From: Williams, Alyssa E LT USN NAVCIVLAWSUPPACT DC (USA) <alyssa.e.williams1@navy.mil>

Sent: Monday, March 1, 2021 11:40 AM

To: Neal Bingham <nbingham@effren.net>

Cc: Winston, Wendy A CIV USN (USA) <wendy.winston@navy.mil>; Degner-Lopez, Alyssa D LT USN NAVY JAG WASH DC (USA) <alyssa.degner-lopez1@navy.mil>

Subject: RE: Final adjudication response ICO Neal J. Bingham DON-NAVY-2021-001128

Good Afternoon Mr. Bingham,

I received your call while in a training this morning, which is going on today. I've cc'd to this email my colleague, LT Alyssa Degner Lopez, who may be able to assist you while I am out of pocket today.

Unfortunately, I did not receive an email from you after our call. However, I dug through our hard copy mail and was able to find this letter to our office in January, which details that you had not received a response to your prior FOIA request/appeal. I reached out to Military Sea Lift Command (MSC) regarding your inquiry. Their FOIA POC provided the attached two documents (dry dock certificate and the 011031 Response).

Looking at the dates of your request, your original request was submitted August 5, 2020. You did not receive records, and appealed to our office on November 9, 2020. While your appeal was pending with us, the command responded to you on November 17, 2020. We were not aware of the response and signed out our appeal to you on December 3, 2020. It looks like your initial FOIA request had been responded to at that time, however, and we aren't tracking any additional objections to exemptions or search.

Please let me know if this clears up your request or if you still have items outstanding from the command. They also informed me that they were aware of additional appeals you submitted to our OGC counterpart. I wouldn't have SA over those items, but I can let our OGC appeals POC know if you are pending response on other items.

V/r,

Alyssa Williams

LT, JAGC, USN

General Litigation (Code 14)

Office of the Judge Advocate General

Phone: (202) 685-5398

Email: alyssa.e.williams1@navy.mil

This email may contain privacy sensitive information which is "FOR OFFICIAL USE ONLY - PRIVACY SENSITIVE: Any misuse or unauthorized disclosure may result in both civil and criminal penalties."

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THAT ANY DISCLOSURE, COPYING, DISTRIBUTION OR OTHER USE OF THIS E-MAIL MESSAGE AND/OR ITS ATTACHMENTS IS UNAUTHORIZED. IF YOU HAVE RECEIVED THIS E-MAIL TRANSMITTAL IN ERROR, PLEASE NOTIFY THE SENDER BY RETURN E-MAIL IMMEDIATELY AND DELETE THIS MESSAGE AND ITS ATTACHMENTS FROM YOUR COMPUTER SYSTEM.

From: Neal Bingham
Sent: Monday, March 1, 2021 12:06 PM
To: Williams, Alyssa E LT USN NAVCIVLAWSUPPACT DC (USA) <alyssa.e.williams1@navy.mil>
Cc: Winston, Wendy A CIV USN (USA) <wendy.winston@navy.mil>; Degner-Lopez, Alyssa D LT USN NAVY JAG WASH DC (USA) <alyssa.degner-lopez1@navy.mil>
Subject: RE: Final adjudication response ICO Neal J. Bingham DON-NAVY-2021-001128

Lieutenant,

This does not clear up anything. MSC has failed to follow the order concerning the foia production. It produced one redacted document (which appears to be nothing more than a copy of the document I provided with my original foia request to assist MSC in identifying responsive documents). It was ordered to make to complete its search within 20 days and provide a rolling release ever 15 days. It didn't. MSC then continued in what appear to be its ordinary course of business by ignoring my demands for those documents responsive to my request – all of which were order to be produced by the Navy Department on December 3, 2020. It is now another 3 months with literally nothing.

Additionally, did you direct MSC to respond, contact me, anything as you told me you'd do during our telephone conversation? Based on your response your answer is no. Please advise.

Finally, the Second Appeal is the result of the frustration that caused by MSC and now your department resulting from unexplainable failures to comply with federal law. I note that the second appeal was delivered on January 6, 2021 with no response from your office – now nearly a month overdue. Please confirm that I'll have the responsive documents today or I will be left with no option by to appeal to the federal district court.

If you'd like to discuss, my number is below.

Adrienne Cormier

From: Williams, Alyssa E LT USN NAVCIVLAWSUPPACT DC (USA) <alyssa.e.williams1@navy.mil>
Sent: Monday, March 1, 2021 4:04 PM
To: Neal Bingham
Cc: Winston, Wendy A CIV USN (USA); Degner-Lopez, Alyssa D LT USN NAVY JAG WASH DC (USA)
Subject: RE: Final adjudication response ICO Neal J. Bingham DON-NAVY-2021-001128
Attachments: Bingham FOIA appeal response signed.pdf; foia bingham.pdf

Good Afternoon Mr. Bingham,

Thank you for taking my call today. Unfortunately, as noted on the telephone, I have not received any email from you regarding the appeals. It could be an error with the systems or firewalls, but nothing has come through.

As noted in our call, we have received two appeals from you regarding your initial FOIA request. The first appeal was received by our office on November 10, 2020, asserting that MSC had failed to respond to your command. During the pendency of your appeal, and unknown to us, MSC responded to your request on November 17, 2020. After discussions with their FOIA coordinator, they understood you may be satisfied with a record that met the first paragraph of your request, and supplied such a record. They state they have not received a response from you since their submission to you.

Our online system also shows that your appeal was also submitted to the Office of General Counsel, who responded to you on November 17, 2020. OGC mooted your appeal per the office having responded at that time. Our office, not recognizing either of these items took place, granted your appeal on December 3, 2020, instructing the office to respond to you within 20 days (and to provide records on a rolling basis, if they could not all be provided in 20 days). You then submitted a second appeal to our office in January (also attached) asserting the command failed to provide any records to you in response to our December 3, 2020 letter. Unfortunately, this appeal did not appear to be logged in our system, and remained pending. However, after receiving your call, we were able to determine the above timeline of events.

When reviewing your appeal, my understanding was that you are challenging the failure of MSC to respond to you at all, per your initial appeal of November 9, 2020, and referral to our December 3, 2020 adjudication regarding that issue. Based on your call today, I understand you are objecting that MSC has only provided you a copy of the record you had submitted to it yourself, that MSC has failed to provide a response to all of your requests. If you are arguing that additional records exist and MSC has failed to search for them, to attest to a withholding, or objections to redactions, this is not clear to me from your present appeal. You then asked that I make a phone call to MSC, to see if they would release to you the additional records you seek via the FOIA.

Although I cannot promise any records will be provided to you, as a courtesy, I did telephone MSC regarding your request, and they noted they had not heard back from you regarding their prior November 17, 2020 letter. I explained that this may be due to confusion: you subsequently received our December 3, 2020 letter, and then submitted a January letter to our office, believing that further records were going to be provided. MSC is now reviewing whether or not the request can be reopened in FOIA online, since the record provided did not satisfy your request, and I am following up with them tomorrow. After hanging up with them, I also recalled your comment that you had submitted two status requests to their office. If you have been emailing their office as well, I do not know if the firewall or system is blocking emails to them as well.

I will give your office a call after I have heard from MSC tomorrow. You are also welcome to submit any further clarification of your objections to their November 17, 2020 response, its failure to address all of your requests, what

records you believe exist that have not been provided, objections to redactions, etc. Reviewing the one record that was provided, I estimate the substantive appeal issues will be under the cognizance of the Office of General Counsel for appeals. Although I'm happy to convey your appeal to the OGC office that handles such appeals, due to the seeming inability of this account to receive your emails – even when you are replying to mine – we will have to coordinate a fax or other delivery if you elect that option.

Very respectfully,

Alyssa Williams
LT, JAGC, USN
General Litigation (Code 14)
Office of the Judge Advocate General
Phone: (202) 685-5398
Email: alyssa.e.williams1@navy.mil

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From: Williams, Alyssa E LT USN NAVCIVLAWSUPPACT DC (USA)
Sent: Monday, March 1, 2021 11:40 AM
To: nbingham@effren.net
Cc: Winston, Wendy A CIV USN (USA) <wendy.winston@navy.mil>; Degner-Lopez, Alyssa D LT USN NAVY JAG WASH DC (USA) <alyssa.degner-lopez1@navy.mil>
Subject: RE: Final adjudication response ICO Neal J. Bingham DON-NAVY-2021-001128

Good Afternoon Mr. Bingham,

I received your call while in a training this morning, which is going on today. I've cc'd to this email my colleague, LT Alyssa Degner Lopez, who may be able to assist you while I am out of pocket today.

Unfortunately, I did not receive an email from you after our call. However, I dug through our hard copy mail and was able to find this letter to our office in January, which details that you had not received a response to your prior FOIA request/appeal. I reached out to Military Sea Lift Command (MSC) regarding your inquiry. Their FOIA POC provided the attached two documents (dry dock certificate and the 011031 Response).

Looking at the dates of your request, your original request was submitted August 5, 2020. You did not receive records, and appealed to our office on November 9, 2020. While your appeal was pending with us, the command responded to you on November 17, 2020. We were not aware of the response and signed out our appeal to you on December 3, 2020. It looks like your initial FOIA request had been responded to at that time, however, and we aren't tracking any additional objections to exemptions or search.

Please let me know if this clears up your request or if you still have items outstanding from the command. They also informed me that they were aware of additional appeals you submitted to our OGC counterpart. I wouldn't have SA over those items, but I can let our OGC appeals POC know if you are pending response on other items.

V/r,

Alyssa Williams
LT, JAGC, USN
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EXHIBIT H

Adrienne Cormier

From: no-reply@foiaonline.gov
Sent: Wednesday, March 3, 2021 1:09 PM
To: Neal Bingham
Cc: terri.blair@navy.mil
Subject: FOIA Request DON-NAVY-2020-011031

Mr. Bingham,

Please be advised that we have re-opened DON-NAVY-2020-011031 and placed it back in the location it would have been had it not been closed. We will proceed with processing your case immediately. If you have any questions, please contact me at 757-443-2359 or terri.blair@navy.mil.

Sincerely,

Terri Blair

MSC FOIA Coordinator