

HOYT & BLEWETT PLLC

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December 18, 2014

Freedom of Information Appeal
Stephanie J. Courtney
Chief Information Release Branch
U.S. Air Force Office of Special Investigations
27130 Telegraph Rd
Quantico, VA 22134

Re: Our Client: Kenneth Russell Davis Jr.
Tracking #: AF 2014-04667-F
Freedom of Information Appeal

Dear Ms. Courtney:

I am writing to appeal the decision of the Air Force OSI in which it refused to produce the information pertaining to OSI's investigation of my client, Kenneth R. Davis, Jr., for allegations of espionage against the U.S. Government. This request included but is not limited to any and all statements, reports, notes, memoranda, or other documentation, whether or not electronically stored, pertaining to OSI's investigation of Mr. Davis.

It is absolutely critical we acquire the information from the OSI's investigation because we have filed a lawsuit against Thomas and Jennifer Missel alleging they falsely accused Mr. Davis of engaging in espionage against the US Government, an offense which carries the death penalty. Thomas and Jennifer Missel's baseless allegations caused Mr. Davis severe emotional distress with physical manifestations, damage to his reputation, shame, humiliation and other damages. We know these allegations of espionage were groundless as confirmed by a report we were able to acquire from the US Office of Personnel Management, but it is imperative we acquire the information from the OSI investigation so we know precisely what misrepresentations were made and what actions OSI took in investigating these serious allegations.

Both the FBI and the National Guard Bureau have agreed to release the information pertaining to their investigations, and thus there is zero justification for the OSI to refuse to do the same. Enclosed are copies of the letters from the FBI and the National Guard Bureau confirming that they have agreed to produce the requested information. Also enclosed are signed Certification of Identity Forms completed by Thomas and Jennifer Missel which authorized the FBI to release any and all information pertaining to the investigation to me and/or our law firm, Hoyt and Blewett PLLC. Please confirm by January 2, 2015 that OSI will produce any and all information

EXHIBIT

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December 18, 2014

pertaining to its investigation of Mr. Davis for allegations of espionage against the U.S. Government. OSI's continued delay is greatly prejudicing my client.

Sincerely,

A handwritten signature in black ink, appearing to read "Drew Blewett". The signature is written in a cursive style with a long horizontal stroke extending from the end of the name.

Drew Blewett

DB:tjm
Enclosure



NATIONAL GUARD BUREAU
111 SOUTH GEORGE MASON DRIVE, AH2
ARLINGTON VA 22204-1373

RECEIVED

SEP 15 2014

Office of Information and Privacy

SEP 10 2014

Mr. Drew Blewett
Hoyt & Blewett PLLC
501 Second Avenue North
PO Box 2807
Great Falls, Montana 59403-2807

Dear Mr. Blewett:

This letter is to acknowledge receipt of your Freedom of Information Act (FOIA) request on behalf of your client, Mr. Kenneth Russell Davis Jr, dated August 21, 2014 for records on any and all information contained in Montana Air National Guard's federal system of records to include and all statements, reports, notes, memoranda, or other documentation, whether or not electronically stored, pertaining to the investigation of your client, Mr. Davis. Your request was received by the Air National Guard FOIA Requester Service Center on August 27, 2014 and assigned case #2014-06192-F.

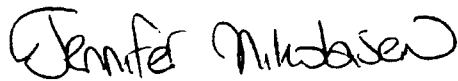
Your request is in the complex queue for processing as it involves records that are at a separate location. This request is currently at position #207 in our queue for processing with a preliminary estimated completion date of August 29, 2015; however, we will make every effort to provide the responsive records as soon as possible. Please be advised that due to budget cuts, decreased manpower, and past furloughs of existing employees the FOIA backlog has increased and there may be longer than usual delays in processing your request. The above estimated date is being given based on our best judgment as to when all requests received during this month may expect to be completed and is not a guaranteed date of completion. All communications concerning this request should be identified with the above reference number and addressed to the address shown above.

The FOIA provides for the collection of fees based on the costs of processing a FOIA request and your fee category. Based on the information in your request, we have placed you in the "all other" fee category which allows you to receive the first 2 hours of search time and first 100 pages of reprographics at no cost. While we do not anticipate there will be fees for processing, we will cease a search for records after the first 2 hours have been exhausted and will provide only records located within that search timeframe, unless a fee agreement is in place to allow for a greater search time.

If you wish to create a fee agreement with our office to allow for greater search time, please write to our office indicating the amount of fees you are willing to pay for processing, or indicate that you are willing to pay all processing costs for the record search.

If you have questions regarding your request, please contact my office at (844) 573-2939 or by e-mail: ngb.foia@mail.mil.

Sincerely,

A handwritten signature in black ink that reads "Jennifer Nikolaisen". The signature is written in a cursive, flowing style.

Jennifer Nikolaisen
Chief, Office of Information and Privacy
Freedom of Information Act/Privacy Officer
National Guard Bureau



U.S. Department of Justice
Office of Information Policy
Suite 11050
1425 New York Avenue, NW
Washington DC 20530-0001



Telephone: (202) 514-3642

September 10, 2014

Drew Blewett, Esq.
Hoyt & Blewett PLLC
501 Second Avenue North
Post Office Box 2807
Great Falls, MT 59403-2807
h&b@hoytandblewett.com

Re: Appeal No. AP-2014-04253
Request No. 1278993
CDT:JMB

VIA: E-mail

Dear Mr. Blewett:

You appealed on behalf of your client, Kenneth Russell Davis, Jr., from the action of the Federal Bureau of Investigation on his request for access to records concerning the FBI's investigation of allegations against him made by Jennifer and Thomas Missel.

As a result of discussions between FBI personnel and this Office, the FBI has agreed to conduct a search for responsive records. While the FBI properly informed your client that it could not process his request until he submitted notarized signatures or certifications of identification under penalty of perjury, I note that you have provided such certifications with your appeal. If the FBI locates releasable records, it will send them to you directly, subject to any applicable fees. Your client may appeal any future adverse determination made by the FBI. If you would like to inquire about the status of your client's request, please contact the FBI directly.

If your client is dissatisfied with my action on your appeal, the Freedom of Information Act permits him to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552 (a)(4)(B).

Sincerely,

Sean R. O'Neill
Chief
Administrative Appeals Staff

By:

Christina D. Troiani
Attorney-Advisor
Administrative Appeals Staff

U.S. Department of Justice

Certification of Identity



FORM APPROVED OMB NO. 1103-0016
EXPIRES 10/31/13

Privacy Act Statement. In accordance with 28 CFR Section 16.41(d), personal data sufficient to identify the individuals submitting requests by mail under the Privacy Act of 1974, 5 U.S.C. Section 552a, is required. The purpose of this solicitation is to ensure that the records of individuals who are the subject of U.S. Department of Justice systems of records are not wrongfully disclosed by the Department. Requests will not be processed if this information is not furnished. False information on this form may subject the requester to criminal penalties under 18 U.S.C. Section 1001 and/or 5 U.S.C. Section 552a(i)(3).

Public reporting burden for this collection of information is estimated to average 0.50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Suggestions for reducing this burden may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Public Use Reports Project, 103-8816, Washington, DC 20503.

Full Name of Requester¹ Jennifer Elizabeth Mussel

Citizenship Status² USA Social Security Number³ [REDACTED]

Current Address [REDACTED]

Date of Birth [REDACTED] Place of Birth [REDACTED]

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above, and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. Section 1001 by a fine of not more than \$10,000 or by imprisonment of not more than five years or both, and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of 5 U.S.C. §52a(i)(3) by a fine of not more than \$5,000.

Signature Jennifer E. Mussel Date 7/30/14

OPTIONAL: Authorization to Release Information to Another Person

This form is also to be completed by a requester who is authorizing information relating to himself or herself to be released to another person. Further, pursuant to 5 U.S.C. Section 552a(b) I authorize the U.S. Department of Justice to release any and all information relating to me to

Print or Type Name

¹ Name of individual who is the subject of the record(s) sought
² Individual submitting a request under the Privacy Act of 1974 must be either "a citizen of the United States or an alien lawfully admitted for permanent residence," pursuant to 5 U.S.C. Section 552a(a)(2). Requests will be processed as Freedom of Information Act requests pursuant to 5 U.S.C. Section 552 rather than Privacy Act requests, for individuals who are not United States citizens or aliens lawfully admitted for permanent residence.
³ Providing your social security number is voluntary. You are asked to provide your social security number only to facilitate the identification of records relating to you. Without your social security number, the Department may be unable to locate any or all records pertaining to you.
⁴ Signature of individual who is the subject of the record sought

U.S. Department of Justice

Certification of Identity



FORM APPROVED OMB NO 1103-0016
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Full Name of Requester ¹ Thomas Kenneth Missel

Citizenship Status ² USA Social Security Number ³ _____

Current Address _____

Date of Birth _____ Place of Birth _____

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above, and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. Section 1001 by a fine of not more than \$10,000 or by imprisonment of not more than five years or both, and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of 5 U.S.C. 552a(a)(3) by a fine of not more than \$5,000.

Signature ⁴ [Signature] Date 7-30-2014

OPTIONAL: Authorization to Release Information to Another Person

This form is also to be completed by a requester who is authorizing information relating to himself or herself to be released to another person. Further, pursuant to 5 U.S.C. Section 552a(b) I authorize the U.S. Department of Justice to release any and all information relating to me to _____

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⁴ Signature of individual who is the subject of the record sought