

Complaint Exhibit R



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Yale Law School

December 5, 2022

VIA EMAIL

James R. Bradbury
FOIA Officer
United States Military Academy
Building 646, Room 1
West Point, New York 10996
usarmy.westpoint.id-training.mbx.foia-pa@army.mil

Abigail Howard
Senior Associate Athletics Director and Corporate Counsel
Army West Point
639 Howard Rd.
West Point, NY 10996
abigail.howard@westpoint.edu

**Re: Appeal of November 15, 2022 and November 21, 2022 Denials of Daniel Libit's
Freedom of Information Requests**

Dear Mr. Bradbury and Ms. Howard:

We represent reporter Daniel Libit with regard to the two above-referenced Freedom of Information Act ("FOIA") requests, made via email: the first to the United States Military Academy ("West Point") on October 7, 2022, and the second, to the Army West Point Athletic Association ("Athletic Association") on November 15, 2022 (the "Requests").¹ As detailed below, West Point denied a portion of Libit's request on the false justification that the sought-after records would fall under the Athletic Association and that the Athletic Association was a private entity not subject to FOIA.² The Athletic Association offered the same grounds to deny outright a request for those same records. Pursuant to 5 U.S.C. § 552(a)(6), Libit appeals both denials and requests that both agencies produce, without delay, copies of all records responsive to the Requests.

Background

West Point's Control Over the Athletic Association

¹ See Ex. A.; Ex. B. When Libit submitted his request, Bradbury responded to Libit's email requesting that he use an attached FOIA request template. See Ex. A. Libit did so and resubmitted the request via the template that same day.
Id.

² *Id.*



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On October 14, 2015, three West Point Lifetime Giving Society donors and alumni, retirees Jodie K. Glore, Carl Roland “Rollie” Stichweh, and Elliot Guthrie “Gus” Fishburne III, filed documents in New York for the incorporation of the “Army West Point Athletic Association.”³ On November 25, 2015, Congress passed a National Defense Authorization Act granting the Secretary of the Army authority to “enter into contracts and cooperative agreements with the Army West Point Athletic Association for the purpose of supporting the athletic programs of the Academy.”⁴ West Point then began the process of “[r]estructuring [its] Army Athletic Association (AAA) to a 501(c)3 non-federal entity (NFE), the Army West Point Athletic Association,” explaining to its Board of Congressional overseers that “[t]his 501(c)3 entity would be managed by a Board of Directors run by the West Point Command.”⁵

West Point publicized this decision in a February 17, 2017 press release, announcing that the Department of the Army and the Army West Point Athletics Association had “officially entered into a cooperative agreement that allow[ed] the AWPAA to provide support to the intercollegiate athletics program at the U.S. West Point.”⁶ The press release explained that the Athletic Association, “as a 501(c)(3) organization, has the ability to manage personnel actions, negotiate contracts, engage in sponsorship opportunities and oversee the athletic facilities” of West Point. Further, “the agreement [between West Point and the AWPAA]” would “ensure[] the AWPAA remains compliant with auditing and accountability requirements, NCAA rules and regulations and, most importantly, academy standards and mission.”⁷

During the following two years, West Point reported its plans to shift at least 243 personnel from “contractor” and “Non-appropriated Fund” employment with West Point into the Athletic Association.⁸ West Point also shifted the large majority, if not all of its “29 NCAA Division I teams” and their “coaches (and programs)... to the AWPAA.”⁹ And on May 30, 2019, West Point Superintendent Lt. Gen. Darryl A. Williams announced “Mike Buddie as the academy’s athletic director to lead West Point’s intercollegiate athletic department” and the “28-sport Division I intercollegiate athletic program” that “Army operates.”¹⁰ The Athletic Association’s Chief Financial Officer, Wen-Kang Chang later registered the Association with New York State as a “charitable organization,” noting in its registration statement that it is either a “government

³ *Certificate of Incorporation of Army West Point Athletic Association, Inc.*, New York State Department of State, Division of Corporations (filed Oct. 14, 2015), https://charitiesnys.com/RegistrySearch/show_details.jsp?id={B0C4107F-0000-C83E-8CE1-F53756F0DFBF}; see *Lifetime Giving Societies*, West Point Association of Graduates, <https://www.westpointaog.org/lifetime-giving-society>.

⁴ Public Law 114-92 § 557(a).

⁵ *2016 Annual Report*, United States Military Academy Board of Visitors, 5-6 (Jan. 30, 2017).

⁶ *Athletic Association Improves Function Under New Agreement*, USMA Public Affairs Office, Release No. 01-17 (Feb. 13, 2017).

⁷ *Id.*

⁸ *2017 Annual Report*, United States West Point Board of Visitors Annual Report, 12 (Dec. 20, 2017).

⁹ *Id.*

¹⁰ *Buddie to Lead Army West Point Athletics* (May 29, 2019), <https://goarmywestpoint.com/news/2019/5/29/general-buddie-to-lead-army-west-point-athletics.aspx>.



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agency” or “controlled by a government agency, the U.S. Congress or New York State Legislature.”¹¹

The Requests

On October 7, 2022, Libit submitted a request to West Point via its FOIA public email address, seeking, among other things:

Any agreements (MOU’s, MOA’s, etc.) signed by or behalf of AWPAA or any of its employees, board members, or officers, since Jan. 1, 2021. This includes, but is not limited to:

- a. Agreements with any sports broadcasters
- b. Any licensing, marketing, and sponsorship agreement
- c. Documents concerning AWPAA’s use of West Point “support services,” including utilities, office furnishings and equipment, communications services, records staging and archiving, audio and video support, and security systems
- d. Contracts for facility enhancements and capital projects including the \$95 million Michie Stadium Preservation Project
- e. All other contracts with AWPAA or AWPAA personnel signed by West Point students or personnel, including the Superintendent¹²

After several follow-ups, on November 15, 2022 West Point’s Management Assistant/FOIA Officer James J. Bradbury denied this part of the request, claiming that it did not fall within FOIA and instead “belongs to the AWPAA and is subject to their response.”¹³

That same day (November 15, 2022), Libit submitted a FOIA request via email to Wen-Kang Chang at AWPAA, seeking the records described in item two of his request to West Point (the part West Point denied).¹⁴ On November 21, 2022, Abigail Howard wrote back to acknowledge receipt of the request on behalf of AWPAA, but added that, as “a registered New York nonprofit corporation[,] AWPAA is not subject to” FOIA and “will not provide the requested records.”¹⁵

Basis for Appeal

Libit appeals the denial of the Requests on the following grounds as they apply to the Athletic Association and West Point respectively.

¹¹ *Army West Point Athletic Association*, CHAR410: Registration Statement for Charitable Organizations, New York State Office of the Attorney General, Charities Bureau (filed 11/15/2019), https://charitiesnys.com/RegistrySearch/show_details.jsp?id={B0C4107F-0000-C83E-8CE1-F53756F0DFBF}.

¹² See Ex. A.

¹³ See *id.* Bradbury had previously indicated that West Point would process documents responsive to the other items of the request. To date, it has not done so.

¹⁴ See Ex. B.

¹⁵ See Ex. C.

From: USARMY West Point ID-Training Mailbox FOIA-PA
To: Daniel Libit
Subject: RE: [URL Verdict: Neutral]Re: [Non-DoD Source] FOIA request
Date: Tuesday, November 15, 2022 12:18:21 PM
Attachments: ~WRD0001.jpg

Sir,

Good morning, I am just returning to the office and reviewing all of my emails hence the delay in my reply. I have determined that the previous sections listed (1, 3, and 4) in your request do fall under the purview of the FOIA office to research while section 2 belongs to the AWPAA and is subject to their response.

With regard to the email address, the individuals who are tasked with searching the databases are not at West Point as they are part of the Army's data at large and has to be tasked to a specific IT department to ascertain the correct individual for whom you are requesting records. I understand that one can assume, based on indicators described, of whose records you are requesting but to avoid any confusion a memorandum was sent to FOIA offices detailing how searches conducted.

If you have any questions or concerns, please let me know.

V/R,

James J. Bradbury
Management Assistant/FOIA Officer
Installation Management Command
Building 646, Room 1
West Point ,NY
DESK: 845-938-7313
DSN: 688-7313
HOURS: Monday-Friday 0800-1200 , 1300-1600

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From: Daniel Libit <djlubit@gmail.com>

Sent: Wednesday, November 9, 2022 4:43 PM

To: USARMY West Point ID-Training Mailbox FOIA-PA <usarmy.westpoint.id-training.mbx.foia-pa@army.mil>

Subject: Re: [URL Verdict: Neutral]Re: [Non-DoD Source] FOIA request

All active links contained in this email were disabled. Please verify the identity of the sender, and confirm the authenticity of all links contained within the message prior to copying and pasting the address to a Web browser.

Mr. Bradbury,

I have already made a FOIA request for these records in the perfected form that you advise, and do not seek to further delay their production by resubmitting the exact same request.

I do not possess the email address for Lt. Gen. Williams, so I cannot provide that information to you. However, I believe it is fair to assume that this is information West Point's IT department could readily ascertain on its own, given that I have described with reasonable particularity the sender/recipient whose electronic communications I seek.

Based on your last message, it appears you have determined category Nos. 1, 3 and 4 from my Oct. 7 request are subject to FOIA, barring specific exemptions. As such, I ask that West Point produce, as soon as possible, the records that are responsive to this request and not otherwise exempt from the Act. For records West Point believes are exempt, I ask that you cite the specific FOIA exemption(s) you are relying on.

Thank you for your cooperation in this matter.

Best,

Daniel Libit



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1. *The Athletic Association Violated its Production Obligations as an "Agency" Subject to FOIA*

Congress enacted FOIA with the intent of "increasing public access to governmental records."¹⁶ Agencies could have thwarted this purpose by outsourcing their functions to private entities, or "by simply resorting to the corporate form."¹⁷ To avoid this result, Congress provided that FOIA applies to government-controlled corporations. The Athletic Association is such a corporation. So it violated FOIA by disclaiming its statutory obligations.

a) *Government Controlled Corporations Are "Agencies" Subject to FOIA*

FOIA defines "agency" to include any ... Government controlled corporation."¹⁸ Under the Supreme Court's decision in *Forsham v. Harris*, a corporation is "government controlled" if the government exerts "extensive, detailed, and virtually day-to-day supervision" over it.¹⁹

In fleshing out this standard, the lower courts have put forward a series of cumulative but not individually dispositive factors, while holding generally that "each new arrangement must be examined anew and in its own context."²⁰ Such factors include the following: *First*, the "intent of Congress" and the government generally in establishing or directing the corporation.²¹ *Second*, that the organization "perform[s an] executive" or other "government function"²² *Third*, the corporation's "independent legal authority to make decisions for [the] agency that allegedly controls it."²³ *Fourth*, the corporation's "organizational structure."²⁴ *Fifth*, the "close[ness] of governmental supervision and control over its business transactions" and finances.²⁵ *Sixth*, the extent to which "its operations are[] controlled by statute" or other regulation.²⁶ *Seventh*, the extent of a federal agency's control over policy decisions.²⁷

b) *The Athletic Association Is a "Government-Controlled Corporation"*

The Athletic Association clearly meets the standard of "government control" developed by the courts under *Forsham* through these seven factors. For all intents and purposes, West Point treats

¹⁶ *Forsham v. Harris*, 445 U.S. 169, 182 (1980).

¹⁷ *Lebron v. National Railroad Passenger Corporation*, 513 U.S. 374, 397 (1995).

¹⁸ 5 U.S.C. § 552 (f)(1).

¹⁹ 445 U.S. 169 (1980).

²⁰ *Burch v. Pioneer Credit Recovery*, 551 F.3d 122, 124 (2d Cir. 2008); see also *Irwin Memorial Blood Bank of San Francisco Medical Society v. American National Red Cross*, 640 F.2d 1051 (9th Cir. 1980) ("It must be recognized that the requisite degree of federal control, however, is manifested in various forms and usually consists of a confluence of several "federal" characteristics.").

²¹ *Rocap v. Indiek*, 539 F.2d 174, 177-78 (D.C. Cir. 1976)

²² *Irwin*, 640 F.2d at 1055-56; see also *Birch v. Pioneer Credit Recovery, Inc.*, No. 06-CV-6497T, 2007 U.S. Dist. LEXIS 41834, 3 (W.D.N.Y. June 8, 2007) (including "[p]erformance of a government function" in its government control analysis).

²³ *Birch* at 4.

²⁴ *Rocap* at 180.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Ralis v. RFE/RL*, 770 F.2d 1121, 1125 (D.C. Cir. 1985).



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“the Academy intercollegiate athletic department and the AWPAA” as forming one single “West Point Intercollegiate Athletics program,” an understanding that the Army has recognized in its own regulations.²⁸

First, the Athletic Association was created and chartered and is organized specifically to be controlled by the government. West Point “submitted a legislative proposal” to Congress to allow it to enter into a “cooperative agreement” with the Athletic Association,²⁹ and Congress empowered the Athletic Association to do so, provided any such agreements “contain a provision that allows the Secretary [of the Army], at the Secretary’s discretion, to review the financial accounts of the Association to determine whether the operations of the Association ... will ... compromise the integrity or appearance of integrity of any program of the Department of the Army.”³⁰ A “Director of Athletics” sought and selected by West Point³¹ would be made the President and CEO of the Athletic Association,³² and three of the organization’s board positions would be filled by West Point’s “Commandant,” “Dean,” and “Director of Admissions”³³ in addition to the three further board positions reserved for active “members of the Armed Forces.”³⁴ The Athletic Association is subject to an ODIA headed by Director of Athletics Mike Buddie, who himself is subordinate directly to the Office of the Superintendent.³⁵ The organization’s corporate bylaws declare that the West Point Superintendent “exercises final authority over all athletic policy decisions at the USMA and is responsible for institutional control of the USMA’s varsity athletics program[.]”³⁶ And its corporate filings indicate that the Athletic Association is a “government agency” or “controlled by a government agency, the U.S. Congress or New York State Legislature.”³⁷

²⁸ Intercollegiate athletics, Army Regulation 150-1-11-11 (January 12, 2021).

²⁹ *2015 Annual Report*, United States Military Academy Board of Visitors, 73 (Jan. 16, 2016).

³⁰ 10 U.S.C. § 7462 (a)(2).

³¹ *Buddie Selected to Lead West Point Athletics*, Collegiate Sports Associates (May 30, 2019), <https://collegiatesportsassociates.com/news-blog/buddie-selected-to-lead-west-point-athletics/>; see also *Buddie to Lead Army West Point Athletics* (May 29, 2019), <https://goarmywestpoint.com/news/2019/5/29/general-buddie-to-lead-army-west-point-athletics.aspx>.

³² *Army West Point Athletic Association*, CHAR410: Registration Statement for Charitable Organizations, New York State Office of the Attorney General, Charities Bureau (filed 11/15/2019), https://charitiesnys.com/RegistrySearch/show_details.jsp?id={B0C4107F-0000-C83E-8CE1-F53756F0DFBF}.

³³ *2015 Annual Report*, United States Military Academy Board of Visitors, 73 (Jan. 16, 2016).

³⁴ Department of the Army Notice: Appointment to the Board of Directors of the Army West Point Athletic Association, 87 Federal Register 1, James W. Satterwhite, Jr. (Jan. 18, 2022).

³⁵ *Task Organization*, United States Military Academy West Point, <https://www.westpoint.edu/about/west-point-staff>. Compare “Intercollegiate Athletics, Directorate of,” *2016 West Point, The United States Military Academy Telephone Directory*, with “Mike Buddie, Director of Athletics,” *Staff Directory*, <https://goarmywestpoint.com/staff-directory> (listing the same phone number for the ODIA Director of Intercollegiate Athletics and the Athletic Association’s Director of Athletics Mike Buddie).

³⁶ Role of the Superintendent, Amended and Restated Bylaws of Army West Point Athletic Association, Inc., Art. II, § 1 (filed Jun. 20, 2018), https://charitiesnys.com/RegistrySearch/show_details.jsp?id={B0C4107F-0000-C83E-8CE1-F53756F0DFBF}.

³⁷ *Army West Point Athletic Association*, CHAR410: Registration Statement.



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Second, the Athletic Association “perform[s an] executive” or other “government function”:³⁸ that of “operating exclusively to support the athletic programs” of the Army’s premier military-run and publicly funded officer-training academy.³⁹ The Athletic Association shares its mission statement with West Point’s Office of the Director of Intercollegiate Athletics (“ODIA”)⁴⁰: “[t]o provide an extraordinary Division I athletic experience that develops leaders of character committed to the values of Duty, Honor, Country at the United States West Point.”⁴¹ The Athletic Association similarly exercises “independent legal authority to make decisions for” West Point.⁴² It has reportedly negotiated and overseen the \$95 million reconstruction of Michie Stadium, as well as television and marketing deals for the Academy’s sports teams.⁴³ The Athletic Association is entrusted “to manage personnel actions, negotiate contracts, engage in sponsorship opportunities and oversee the athletic facilities” on behalf of West Point.⁴⁴

Third, West Point and the Army retain day-to-day control over the business transactions and finances of the Athletic Association, as required by federal law, including retaining control to ensure the Athletic Association’s contracts include “appropriate financial controls to account for Academy and Association resources.”⁴⁵ These resources reach “support services” deemed “essential” for the Athletic Association to administer West Point’s athletic programs, including “utilities, office furnishings and equipment, communications services, records staging and archiving, audio and video support, and security systems in conjunction with the leasing or licensing of property.”⁴⁶ Indeed, the Athletic Association’s office is the same building as West Point’s ODIA, and Athletic Association staff use West Point email addresses and telephone numbers.⁴⁷ Day-to-day oversight over these resources and the terms of the cooperative agreement is delegated to the Superintendent and a “military deputy athletic director,” Colonel Gretchen Nunez, who is part of the Athletic Association’s organizational structure.⁴⁸ And “all aspects of the athletics programs of the United States Military Academy,” including their

³⁸ *Irwin Memorial Blood Bank of San Francisco Medical Society v. American National Red Cross*, 640 F.2d 1051, 1055-56 (9th Cir. 1980).

³⁹ 10 U.S.C. § 7462 (g)(2).

⁴⁰ ODIA is undeniably part of the West Point agency structure that continues to oversee the Athletic Association’s execution of West Point’s athletic program.

⁴¹ *Compare Army West Point Athletic Association*, CHAR410: Registration Statement, with *ODIA Mission*, https://goarmywestpoint.com/sports/2015/3/6/GEN_2014010140?prl=635709102070416366.

⁴² *Birch v. Pioneer Credit Recovery, Inc.*, No. 06-CV-6497T, 2007 U.S. Dist. LEXIS 41834, 4 (W.D.N.Y. June 8, 2007).

⁴³ *Mike Buddie, Director of Athletics*, <https://goarmywestpoint.com/staff-directory/mike-buddie/560>; see also *Army West Point Athletic Association Announces \$95 Million Michie Stadium Preservation Project* (July 15, 2021), <https://goarmywestpoint.com/news/2021/7/15/general-army-west-point-athletic-association-announces-95-million-michie-stadium-preservation-project.aspx>.

⁴⁴ *Athletic Association Improves Function Under New Agreement*, USMA Public Affairs Office, Release No. 01-17 (Feb. 13, 2017).

⁴⁵ 10 U.S.C. § 7462(a)(2).

⁴⁶ *Id.* at § 7462(b)(2).

⁴⁷ *Staff Directory*, <https://goarmywestpoint.com/staff-directory>; compare with “Intercollegiate Athletics, Directorate of,” *2016 West Point, The United States Military Academy Telephone Directory* (listing the same phone numbers for Athletic Association and West Point athletic department staff positions).

⁴⁸ *Army West Point Athletic Association, Inc. Independent Auditors’ Report and Statements of Financial Position*, PKF O’Connor Davies, 20 (Dec. 22, 2020); Military deputy athletic director, Army Regulations 150-1-1-19 (Jan. 12, 2021).



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“administration” are subject by federal law to annual review by an “Independent Review Board” appointed by the Secretary of Defense.⁴⁹ The Secretary of the Army must ensure that contributions the Athletic Association makes to West Point, and licensing, marketing, sponsorship, and trademark agreements it enters into, do “not reflect unfavorably on the ability of the Department of the Army, any of its employees, or any member of the armed forces to carry out any responsibility or duty in a fair and objective manner, or compromise the integrity or appearance of integrity of any program of the Department of the Army, or any individual involved in such a program.”⁵⁰

In sum, the Athletic Association is a government-controlled corporation subject to FOIA. It violated FOIA by disclaiming that fact to deny Libit’s request.

2. *West Point Violated its FOIA Obligations*

West Point’s denial also violates FOIA. It denied the portion of Libit’s request seeking any agreements signed by or behalf of AWPAA, on the ground that this category of records “belong to the AWPAA and is subject to their response,” under New York’s Freedom of Information Law, but not to the federal government’s response under FOIA.⁵¹ It is irrelevant that another entity might possess the records. This follows from the Supreme Court’s decision in *DOJ v. Tax Analysts*, which held that FOIA required an agency to produce copies of district court opinions also held by the judicial branch.⁵² It is also irrelevant that the records might be subject to disclosure under another statute. *Tax Analysts* held this, too: “If Congress had intended to enact the ... proposition—that an agency may refuse to provide disclosure of materials whose disclosure is *mandated* by another statute—it was free to do so. Congress, however, did not take such a step.”⁵³

The only relevant question is whether the requested records are “agency records” under FOIA. According to *Tax Analysts*, a record is an “agency record” if two conditions are met. First, the agency must “either create or obtain” it. Second, the agency must be “in control of the requested materials at the time the FOIA request is made.”⁵⁴ An agency has “control” over the materials if they “have come into the agency’s possession in the legitimate conduct of its official duties.”⁵⁵

These conditions are met here, and West Point has not shown otherwise. First, West Point never showed that it did not “obtain” the records. It must have. As explained above, the Secretary of the Army, West Point’s Superintendent, and the military deputy athletic director are each required by law to supervise the Athletic Association’s operations, including the licensing, marketing, sponsorship, and trademark agreements Libit specifically sought in the request.⁵⁶ And the

⁴⁹ 10 U.S.C. 180.

⁵⁰ 10 U.S.C. §§ 7462(c)(3), (d)(2).

⁵¹

⁵² *DOJ v. Tax Analysts*, 492 U.S. 136 (1989).

⁵³ *Id.* at 154. Never mind that the Association has disclaimed any obligations under FOIL in response to prior requests by Libit.

⁵⁴ *U.S. Dep’t of Just. v. Tax Analysts*, 492 U.S. 136, 144, 145 (1989)

⁵⁵ *Id.* at 145.

⁵⁶ *See* 10 U.S.C. § 7462.



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Secretary of the Army “may provide support services” only after “determin[ing] that the provision of such services is essential for the support of” West Point’s athletic programs.⁵⁷ So it is inconceivable that West Point did not obtain documents concerning AWPAA’s use of its support services—other records Libit sought.

Second, West Point never showed that it lacked control over the records, and plainly came to possess them in the legitimate conduct of its official duties. Again, the Secretary of the Army is statutorily required to give his “approval” to the licensing, marketing, and sponsorship agreements sought by the Request.⁵⁸ And it defies belief that West Point could lack control over an agreement with AWPAA signed by West Point students or personnel—another class of records Libit sought.

Libit requested “agency records.” West Point did not produce them. This violates FOIA.

We look forward to your prompt response.

Sincerely,

A handwritten signature in black ink that reads 'Kelsey Eberly'.

Kelsey Eberly
Stephen Stich
M. Henry Ishitani (law student intern)
Julia Peoples (law student intern)
Samantha Stroman (law student intern)
Counsel for Daniel Libit

⁵⁷ *Id.*

⁵⁸ 10 U.S.C. § 7462(d)(1).

Ex. A

On Nov 9, 2022, at 8:01 AM, USARMY West Point ID-Training Mailbox FOIA-PA <usarmy.westpoint.id-training.mbx.foia-pa@army.mil < Caution-mailto:usarmy.westpoint.id-training.mbx.foia-pa@army.mil > > wrote:

Good morning Mr. Libit,

The acknowledgement of your FOIA request is within the 20 working-day timeline afforded under FOIA. As far as your request is concerned, you will have to separate your search (one for the federal gov.t. and one for AWPAA) into a FOIA and FOIL as AWPAA is a private entity and West Point garrison falls under the federal government, respectively.

The portions of your request that fall under the federal government are in the following bullet points

- 1. The most recent employment contract(s) for the following Army Athletics employees: Mike Buddie, COL Gretchen Nunez, Dan McCarthy, Kristine Fowler, Wen-Kang Chang, Gene McIntyre, John Nawoichyk, Andy Base, Tim Kelly, Scot Robson, Sydney Griffin, Kathy Mirance, Ben Russell, Mike Rubbino, Rudy Samir Aguilar, Randall Baglieri, Scott Dursley, Jason Foti, Tyler Harris, Chris Perry, Nick DeGennaro, Nancy Smith-Jennings, Jose Quezada, Christine Ramos, and George Ramus.
- 3. Any email communications, inclusive of attachments, sent to/from West Point Superintendent Lt. Gen. Darryl A. Williams, between Jan. 1, 2019 and June 1, 2019, which contains the search terms: "Buddie," "athletic director," or "athletics." Please exclude any emails received by Lt. Gen. Williams that are SPAM, from list servs or subscription servs.
- 4. Any emails, inclusive of attachments, sent to/from West Point Superintendent Lt. Gen. Darryl A. Williams and any sender or recipient with College Sports Associates, from Dec. 1, 2018 to June 1, 2019, which contains the search terms: "Buddie," "athletic director," or "athletics."

Please note that the request must clearly identify the target mailboxes by their army.mil address so that the IT department can reasonably filter the results to the correct individual whom you are requesting.

Please utilize the template sent in previous emails for a "perfected" request so that the FOIA office won't have to require additional clarification.

V/R,
James J. Bradbury
Management Assistant/FOIA Officer
Installation Management Command
Building 646, Room 1

West Point ,NY
DESK: 845-938-7313
DSN: 688-7313
HOURS: Monday-Friday 0800-1200 , 1300-1600

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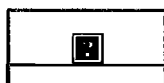
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From: Daniel Libit <djlubit@gmail.com < Caution-mailto:djlubit@gmail.com > >
Sent: Tuesday, November 8, 2022 8:46 PM
To: USARMY West Point ID-Training Mailbox FOIA-PA <usarmy.westpoint.id-training.mbx.foia-pa@army.mil < Caution-mailto:usarmy.westpoint.id-training.mbx.foia-pa@army.mil > >
Subject: Re: [URL Verdict: Neutral]Re: [Non-DoD Source] FOIA request

All active links contained in this email were disabled. Please verify the identity of the sender, and confirm the authenticity of all links contained within the message prior to copying and pasting the address to a Web browser.



Mr. Bradbury,

Would you please clarify for me whether the Oct. 27, 2022 email you reference was West Point's FOIA-mandated, within-20-working-days response to my Oct. 7 public records request? Or is it West Point's position that the 20-working-days clock does not start until/unless you have first received sufficient clarification from the AWPAA?

Many thanks,

Daniel Libit

On Nov 7, 2022, at 7:54 AM, USARMY West Point ID-Training Mailbox FOIA-PA <usarmy.westpoint.id-training.mbx.foia-pa@army.mil> <Caution-<mailto:usarmy.westpoint.id-training.mbx.foia-pa@army.mil>> <Caution-<mailto:usarmy.westpoint.id-training.mbx.foia-pa@army.mil>><%C2%A0<%C2%A0Caution-<mailto:usarmy.westpoint.id-training.mbx.foia-pa@army.mil>>> >> wrote:

Good morning Sir,

On Oct, 27th 2022, I sent you an email regarding your potential FOIA request to wit I explained that I am awaiting clarification from the AWPAA as to which parts of your request fall under their purview and which belong to West Point. This was 14 business days after your initial request for information. I am still waiting for clarification and once I have that I will provide you with a status update from there.

Thank you for your continued support.

V/R,

James J. Bradbury
Management Assistant/FOIA Officer
Installation Management Command
Building 646, Room 1
West Point ,NY
DESK: 845-938-7313
DSN: 688-7313
HOURS: Monday-Friday 0800-1200 , 1300-1600

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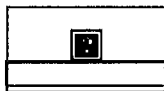
From: Daniel Libit <djlibit@gmail.com < [Caution-mailto:djlibit@gmail.com](mailto:djlibit@gmail.com) < Caution-mailto:djlibit@gmail.com%C2%A0<%C2%A0Caution-mailto:djlibit@gmail.com%C2%A0 > > >

Sent: Monday, November 7, 2022 7:00 AM

To: USARMY West Point ID-Training Mailbox FOIA-PA <usarmy.westpoint.id-training.mbx.foia-pa@army.mil < [Caution-mailto:usarmy.westpoint.id-training.mbx.foia-pa@army.mil](mailto:usarmy.westpoint.id-training.mbx.foia-pa@army.mil) < Caution-mailto:usarmy.westpoint.id-training.mbx.foia-pa@army.mil%C2%A0<%C2%A0Caution-mailto:usarmy.westpoint.id-training.mbx.foia-pa@army.mil%C2%A0 > > >

Subject: Re: [URL Verdict: Neutral]Re: [Non-DoD Source] FOIA request

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Dear Mr. Bradbury,

I am writing to seek a status update for this request, which was submitted on Oct. 7. The 20-working-day response deadline to the request, per FOIA, would have been on Friday, Nov. 4.

Please advise at your earliest opportunity.

Many thanks,

Daniel Libit

On Oct 27, 2022, at 8:37 AM, USARMY West Point ID-Training Mailbox FOIA-PA <usarmy.westpoint.id-training.mbx.foia-pa@army.mil < Caution-
<mailto:usarmy.westpoint.id-training.mbx.foia-pa@army.mil> < Caution-
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mailto:usarmy.westpoint.id-training.mbx.foia-pa@army.mil">C2%A0 > >](mailto:usarmy.westpoint.id-training.mbx.foia-pa@army.mil) wrote:

Good morning Sir,

Thank you for your patience as this FOIA office works to open your request, at this time I have sought information regarding specific portions of your request to see which points fall under the purview of the United States Military Academy/West Point and what points fall under the AWPAA. As soon as I have clarification, I will provide you with an update, open your request, and provide you with an update.

In the meantime, if you have any questions or concerns – please let me know.

V/R,

James J. Bradbury
Management Assistant/FOIA Officer
Installation Management Command
Building 646, Room 1
West Point ,NY
DESK: 845-938-7313
DSN: 688-7313
HOURS: Monday-Friday 0800-1200 , 1300-1600

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From: Daniel Libit <djlibit@gmail.com < Caution-<mailto:djlibit@gmail.com> < Caution-
<mailto:djlibit@gmail.com> < Caution-
<mailto:djlibit@gmail.com> > > >

Sent: Friday, October 7, 2022 2:04 PM

To: USARMY West Point ID-Training Mailbox FOIA-PA <usarmy.westpoint.id-

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sent to/from West Point Superintendent Lt. Gen. Darryl A. Williams, between Jan. 1, 2019 and June 1, 2019, which contains the search terms: "Buddie," "athletic director," or "athletics." Please exclude any emails received by Lt. Gen. Williams that are SPAM, from list servs or subscription servs.

4. Any emails, inclusive of attachments, sent to/from West Point Superintendent Lt. Gen. Darryl A. Williams and any sender or recipient with College Sports Associates, from Dec. 1, 2018 to June 1, 2019, which contains the search terms: "Buddie," "athletic director," or "athletics."

Please provide responsive materials to me via email. This request is for noncommercial, journalistic purposes. If you have any questions, please don't hesitate to email or call me at (202) 747-4652.

Many thanks,

Daniel Libit

P.O. Box 250

Highland Park, IL 60035

djlibit@gmail.com < Caution-mailto:djlibit@gmail.com > < Caution-Caution-mailto:djlibit@gmail.com < Caution-mailto:djlibit@gmail.com > > < Caution-Caution-Caution-mailto:djlibit@gmail.com < Caution-mailto:djlibit@gmail.com > < Caution-Caution-mailto:djlibit@gmail.com < Caution-mailto:djlibit@gmail.com > > >
<FOIA Request Template.docx>

Ex. B

From: Daniel Libit
To: Chang, Wen-Kang
Subject: FOIA request

Mr. Chang —

Pursuant to the federal Freedom of Information Act, I request the following records:

Any agreements (MOU's, MOA's, etc.) signed by or behalf of Army West Point Athletic Association or any of its employees, board members, or officers, since Jan. 1, 2021. This includes, but is not limited to:

- Agreements with any sports broadcasters
- Any licensing, marketing, and sponsorship agreement
- Documents concerning AWPAA's use of West Point "support services," including utilities, office furnishings and equipment, communications services, records staging and archiving, audio and video support, and security systems
- Contracts for facility enhancements and capital projects including the \$95 million Michie Stadium Preservation Project
- All other contracts with AWPAA or AWPAA personnel signed by West Point students or personnel, including the Superintendent

Please provide responsive documents electronically. If you deny this request in part or whole, please cite the relevant exemptions or legal bases for the denial.

Thank you,

Daniel Libit
djlibit@gmail.com
P.O. Box 250
Highland Park, IL 60035
202-747-4652

Ex. C

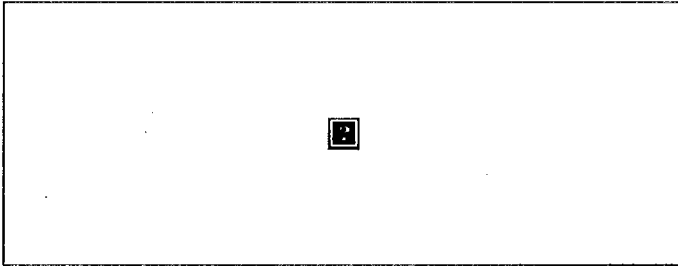
From: Howard, Abigail
To: djlibit@gmail.com
Subject: RE: FOIA request
Date: Monday, November 21, 2022 11:10:11 AM
Attachments: Image001.png

Mr. Libit,

Mr. Chang forwarded me your below communications.

On behalf of Army West Point Athletic Association, Inc. ("AWPAA"), I am acknowledging receipt of your request dated November 15, 2022. AWPAA is a registered New York nonprofit corporation. AWPAA is not subject to the requirements to respond to Freedom of Information Act requests. Accordingly, AWPAA will not provide the requested records.

Best,
Abby



From: djlibit@gmail.com <djlibit@gmail.com>
Sent: Monday, November 21, 2022 10:52 AM
To: Chang, Wen-Kang <wen-kang.chang@westpoint.edu>
Subject: Re: FOIA request



Dear Mr. Chang,

I just wanted to inquire as to the status of this request.

Thank you,

Daniel Libit

On Nov 15, 2022, at 11:41 AM, Daniel Libit <djlibit@gmail.com> wrote:

Mr. Chang —

Pursuant to the federal Freedom of Information Act, I request the following records:

Any agreements (MOU's, MOA's, etc.) signed by or behalf of Army West Point Athletic Association or any of its employees, board members, or officers, since Jan. 1, 2021. This includes, but is not limited to:

- Agreements with any sports broadcasters
- Any licensing, marketing, and sponsorship agreement
- Documents concerning AWPAA's use of West Point "support services," including utilities, office furnishings and equipment, communications services, records staging and archiving, audio and video support, and security systems
- Contracts for facility enhancements and capital projects including the \$95 million Michie Stadium Preservation Project
- All other contracts with AWPAA or AWPAA personnel signed by West Point students or personnel, including the Superintendent

Please provide responsive documents electronically. If you deny this request in part or whole, please cite the relevant exemptions or legal bases for the denial.

Thank you,

Daniel Libit

djlibit@gmail.com

P.O. Box 250

Highland Park, IL 60035

202-747-4652

