

Lockwood, Chris

From: Lockwood, Chris
Sent: Wednesday, December 27, 2023 5:32 PM
To: WINN, BEATRICE B CIV USAF AFMC 78 ABW/SCPDK
Cc: usaf.pentagon.saf-cio-a6.mbx.af-foia@mail.mil; SAF/AA HAF FOIA workflow
Subject: RE: ATECH FOIA Request Feb. 16, 2023

Ms. Winn:

Thank you for your December 27th email, which unfortunately compels a response to clarify and correct the record in this matter.

First and foremost, your December 18th email was a denial of ATECH's request, from which we filed a timely appeal of the denial. The appeal itself was denied today with no additional regulatory or factual support.

The appeal was predicated on a long and continuous effort to seek the release of an unredacted version of the previously requested and released redacted report. Significantly, those efforts included email communications to you on February 16, 2023; February 22, 2023; March 1, 2023; March 21, 2023, November 17, and December 14, 2023. All e-mails were sent to this same address. Additionally, the responses received to our numerous communications were inconsistent and arbitrary, and necessarily suggest a capricious basis for the refusal to provide the report. In particular, the basis for your December 18th denial was based on Exemption 5 (which does not apply, as explained in ATECH's appeal). On December 26th, you incorrectly averred that the information requested was owned by the Navy -- which had previously been determined not to be the case -- and on that basis asserted that ATECH had to file a new FOIA request with the Navy. This morning, December 27th, you incorrectly asserted that ATECH's appeal is untimely -- even though it was filed within three days of your denial. Later the same day, you asserted that the Air Force did not receive the initial February request -- even though it has been the focus of our exchanges for the past two weeks and in all the afore referenced email exchanges.

To further clarify the record for appeal, there was no appeal for Request 2022-01470-F, which was a request for a clearly releasable version. Rather, ATECH sent the February 16, 2023 FOIA request as a new request for the full version of the report. You received the February 16, 2023 FOIA request and denied it on December 18, 2023 asserting FOIA exemption 5. You did not assert at the time of the December 18th denial that you had not received the February request. ATECH had the right to appeal that denial, and did so on December 21, 2023. You denied the appeal this morning.

ATECH has followed the Air Force's FOIA procedures and submitted its FOIA request through the proper channel. ATECH received a denial, filed a timely appeal of the denial, and received a denial of the appeal today. While ATECH would welcome production of the unredacted report, ATECH is not procedurally required to do anything further at this point to exhaust its administrative remedies within the Air Force.

Best regards,

Chris Lockwood

From: WINN, BEATRICE B CIV USAF AFMC 78 ABW/SCPDK <beatrice.winn@us.af.mil>
Sent: Wednesday, December 27, 2023 8:47 AM
To: Lockwood, Chris <Chris.Lockwood@wbd-us.com>
Subject: RE: ATECH FOIA Request Feb. 16, 2023

Sir,

I stated I would process your FOIA and it will receive a new number.

I never received your email from February 2023.

The appeal I was speaking of was your original request, 2022-01470-F for that report. That request was closed 12-7-2022.

Beatrice Winn

Base FOIA/Privacy Manager
78 ABW/SCPDK
205 Perry Street, Ste 100
RAFB, GA 31098
DSN 468-2875, COMM 478-926-2875

***Currently teleworking. Please send me an email with any questions, concerns, and/or issues and I will respond accordingly.

From: Lockwood, Chris <Chris.Lockwood@wbd-us.com>
Sent: Wednesday, December 27, 2023 8:34 AM
To: WINN, BEATRICE B CIV USAF AFMC 78 ABW/SCPDK <beatrice.winn@us.af.mil>
Cc: usaf.pentagon.saf-cio-a6.mbx.af-foia@mail.mil; SAF/AA HAF FOIA workflow <SAF.AA.HAF.FOIA.workflow@us.af.mil>
Subject: [Non-DoD Source] Re: ATECH FOIA Request Feb. 16, 2023

Ms. Winn,

I take your email as a denial of the appeal.

Respectfully, you are incorrect about the appeal being untimely. ATECH has 90 days from your denial to appeal. ATECH filed its FOIA request on February 16, 2023. You did not respond until December 18, 2023, at which point you denied the request and asserted FOIA exemption 5. ATECH promptly appealed within three days, on December 21, 2023.

The appeal was timely. Again, however, I understand you have denied the appeal.

Chris Lockwood

From: WINN, BEATRICE B CIV USAF AFMC 78 ABW/SCPDK <beatrice.winn@us.af.mil>
Sent: Wednesday, December 27, 2023 6:30 AM
To: Lockwood, Chris <Chris.Lockwood@wbd-us.com>
Cc: usaf.pentagon.saf-cio-a6.mbx.af-foia@mail.mil <usaf.pentagon.saf-cio-a6.mbx.af-foia@mail.mil>; SAF/AA HAF FOIA workflow <SAF.AA.HAF.FOIA.workflow@us.af.mil>
Subject: RE: ATECH FOIA Request Feb. 16, 2023

Sir,

I cannot process it as an appeal. According to the regulation you have 90 days to appeal and those 90 days have expired.

The request will have to be processed as a new FOIA request.

Once it is entered into the system and a case number is generated, I will send you an Acknowledgement email with the case number and estimated closed date.

Bernice Winn

Base FOIA/Privacy Manager
78 ABW/SCPDK
205 Perry Street, Ste 100
RAFB, GA 31098
DSN 468-2875, COMM 478-926-2875

***Currently teleworking. Please send me an email with any questions, concerns, and/or issues and I will respond accordingly.

From: Lockwood, Chris <Chris.Lockwood@wbd-us.com>
Sent: Tuesday, December 26, 2023 12:30 PM
To: WINN, BEATRICE B CIV USAF AFMC 78 ABW/SCPDK <beatrice.winn@us.af.mil>
Cc: usaf.pentagon.saf-cio-a6.mbx.af-foia@mail.mil; SAF/AA HAF FOIA workflow <SAF.AA.HAF.FOIA.workflow@us.af.mil>
Subject: [Non-DoD Source] RE: ATECH FOIA Request Feb. 16, 2023

Ms. Winn –

Thank you for the quick response. I genuinely do not understand the basis for the continued argument that the report is “owned” by the Navy, when the Navy itself has said it doesn’t own it, and when the face of the report says it’s a U.S. Air Force test effort. In any event, the ownership issue was not provided as a basis for denying the request. Rather, the denial was based on the asserted application of a FOIA exemption.

ATECH maintains its administrative appeal regarding the denial of its FOIA request. Can you please confirm what office will be processing the appeal, and the approximate time frame for a decision?

Chris Lockwood

From: WINN, BEATRICE B CIV USAF AFMC 78 ABW/SCPDK <beatrice.winn@us.af.mil>
Sent: Tuesday, December 26, 2023 11:11 AM
To: Lockwood, Chris <Chris.Lockwood@wbd-us.com>
Cc: usaf.pentagon.saf-cio-a6.mbx.af-foia@mail.mil; SAF/AA HAF FOIA workflow <SAF.AA.HAF.FOIA.workflow@us.af.mil>
Subject: RE: ATECH FOIA Request Feb. 16, 2023

Sir,

I am not denying your request. I know from processing your last request for the same information, our OPR had to reach out to the Navy for their input and redactions because the report is owned and created by the Navy.

I will be glad to process but my previous response was based on the responses based to me from our OPR and the Navy.

Bernice Winn

Base FOIA/Privacy Manager
78 ABW/SCPDK
205 Perry Street, Ste 100
RAFB, GA 31098
DSN 468-2875, COMM 478-926-2875

***Currently teleworking. Please send me an email with any questions, concerns, and/or issues and I will respond accordingly.

From: Lockwood, Chris <Chris.Lockwood@wbd-us.com>
Sent: Tuesday, December 26, 2023 12:00 PM
To: WINN, BEATRICE B CIV USAF AFMC 78 ABW/SCPDK <beatrice.winn@us.af.mil>
Cc: usaf.pentagon.saf-cio-a6.mbx.af-foia@mail.mil; SAF/AA HAF FOIA workflow <SAF.AA.HAF.FOIA.workflow@us.af.mil>
Subject: [Non-DoD Source] RE: ATECH FOIA Request Feb. 16, 2023

Ms. Winn and Ms. Trinh:

Please confirm whether ATECH's administrative appeal is being denied by the USAF FOIA Appeal Authority.

Respectfully, Ms. Winn is incorrect about the report and the data being owned by the Navy. This issue is addressed in our appeal letter. When ATECH submitted a FOIA request to the Navy for test reports, the Navy asserted that the information is owned by the Air Force. The SmartArrest testing was an Air Force test effort conducted by the AAS Program Office at Robins AFB, and it was the Air Force that ordered and paid for the testing. The Air Force owns the data and report. The title of the redacted copy of the report is "USAF Smart Arrest Deadline Test Program." ATECH is not required to pursue further FOIA requests through the Navy for this Air Force document.

Ms. Winn and I previously exchanged e-mails on November 8, 2022 about this same issue before the Air Force provided the redacted version of the SmartArrest test report. At that time, I provided Ms. Winn with a copy of the attached FOIA response from the Navy which explains the USAF's ownership of the data.

Please advise as to the status of the appeal.

Chris

From: WINN, BEATRICE B CIV USAF AFMC 78 ABW/SCPDK <beatrice.winn@us.af.mil>
Sent: Tuesday, December 26, 2023 9:40 AM
To: Lockwood, Chris <Chris.Lockwood@wbd-us.com>
Cc: usaf.pentagon.saf-cio-a6.mbx.af-foia@mail.mil; SAF/AA HAF FOIA workflow <SAF.AA.HAF.FOIA.workflow@us.af.mil>
Subject: RE: ATECH FOIA Request Feb. 16, 2023

Sir,

The information you request is owned by the Navy. The OPR that worked your original had to reach out to them for the information. They were the ones that sent the redacted requests.

I believe you should submit your new request to the Navy at usn.ncr.dns.mbx.don-foia-pa@us.navy.mil, therefore if they once again send you redacted information then you can appeal to them and their Legal office will have to get involved.

If we process your request then we will have to go back to the Navy seeing as they own the information and they will send us the same redacted information.

Bernice Winn

Base FOIA/Privacy Manager
78 ABW/SCPDK
205 Perry Street, Ste 100
RAFB, GA 31098
DSN 468-2875, COMM 478-926-2875

***Currently teleworking. Please send me an email with any questions, concerns, and/or issues and I will respond accordingly.

From: Lockwood, Chris <Chris.Lockwood@wbd-us.com>
Sent: Thursday, December 21, 2023 5:08 PM
To: WINN, BEATRICE B CIV USAF AFMC 78 ABW/SCPDK <beatrice.winn@us.af.mil>
Cc: usaf.pentagon.saf-cio-a6.mbx.af-foia@mail.mil; SAF/AA HAF FOIA workflow <SAF.AA.HAF.FOIA.workflow@us.af.mil>
Subject: [Non-DoD Source] RE: ATECH FOIA Request Feb. 16, 2023

Ms. Winn:

ATECH respectfully appeals your denial of its referenced FOIA request for the SmartArrest test report. Please confirm receipt of the attached appeal and supporting documents.

Chris Lockwood

From: WINN, BEATRICE B CIV USAF AFMC 78 ABW/SCPDK <beatrice.winn@us.af.mil>
Sent: Monday, December 18, 2023 9:44 AM
To: Lockwood, Chris <Chris.Lockwood@wbd-us.com>
Subject: RE: ATECH FOIA Request Feb. 16, 2023

Sir,

The information that was redacted fell under FOIA exemption b5.

Also, The test report has been redacted by the Navy for public release due to the documented performance information could potentially provide an undue or unfair competitive advantage to private personal interests of competitors, and would impede legitimate U.S. Government functions for an upcoming solicitation.

The information that was released to you will be the only releasable information.

Bernice Winn

Base FOIA/Privacy Manager
78 ABW/SCPDK
205 Perry Street, Ste 100
RAFB, GA 31098
DSN 468-2875, COMM 478-926-2875

***Currently teleworking. Please send me an email with any questions, concerns, and/or issues and I will respond accordingly.

From: Lockwood, Chris <Chris.Lockwood@wbd-us.com>
Sent: Thursday, December 14, 2023 5:25 PM
To: WINN, BEATRICE B CIV USAF AFMC 78 ABW/SCPDK <beatrice.winn@us.af.mil>
Subject: [Non-DoD Source] ATECH FOIA Request Feb. 16, 2023

Ms. Winn:

I am writing to inquire about the attached FOIA request which has been pending since February. I have written to you on February 16, February 22, March 1, March 21, and November 17. I have called a left you a voicemail today. Please advise.

Chris Lockwood

Christopher L. Lockwood
Partner
Womble Bond Dickinson (US) LLP

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