

Exhibit A



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

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December 16, 2015

VIA FACSIMILE

FREEDOM OF INFORMATION ACT REQUEST

Stephanie Carr
FOIA Contact
OSD/JS FOIA Requester Service Center
Office of Freedom of Information
Office of the Secretary and Joint Staff
Department of Defense
1155 Defense Pentagon
Washington, DC 20301-1155
Fax: (571) 372-0500

Re: FOIA REQUEST

Dear Ms. Carr:

This is a request under the Freedom of Information Act (5 U.S.C. § 552, as amended).

By this letter the State of Kansas, by and through the Office of the Kansas Attorney General, hereby requests any and all documents (including any and all written or electronic correspondence or other records, financial records in any form, audiotapes, electronic records, videotapes, photographs, telephone messages, voice mail messages, e-mails, facsimiles, daily agendas and calendars, information about meetings and/or discussions, whether in-person or over the telephone, agendas, minutes and a list of participants for those meetings and/or discussions, and transcripts and notes of any such meetings and/or discussions) from December 26, 2013, to the date of this letter that discuss or in any way relate to:

- (a) the implementation of Executive Order 13492 or Executive Order 13493, of January 22, 2009, concerning the disposition of individuals detained at the Guantanamo Bay Naval Base and the closure of the detention facilities located there;
- (b) the transfer or potential transfer to the United States mainland of individuals currently detained at the Guantanamo Bay Naval Base;

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- (c) site visits to military bases or detention facilities in Kansas or any other State as part of, or related to, an effort to find a facility to house individuals currently detained at the Guantanamo Bay Naval Base;
- (d) the modification or construction of any military base or federal or state-owned prison, penitentiary, or other detention facility for the purpose of housing individuals currently detained at the Guantanamo Bay Naval Base;
- (e) any assessment of the suitability of any location at Fort Leavenworth, Kansas, or elsewhere within the State of Kansas, as a site for potentially housing individuals currently detained at the Guantanamo Bay Naval Base;
- (f) surveys or questionnaires regarding potential transfer sites on the United States mainland for individuals currently detained at the Guantanamo Bay Naval Base;
- (g) any expenditures of funds related to (a) through (f), including any travel or personnel costs related to surveying potential transfer sites on the United States mainland for individuals currently detained at the Guantanamo Bay Naval Base;
- (h) the legal basis for any violation of the funding restrictions Congress has imposed. *See, e.g.*, National Defense Authorization Act for Fiscal Year 2014, Pub. L. 113-66, §§ 1033, 1034 (enacted Dec. 26, 2013); Consolidated Appropriations Act, 2014, Pub. L. 113-76, Div. B., §§ 528, 529 (enacted Jan. 15, 2014), extended through December 17, 2014, by Pub. L. 113-164, Pub. L. 113-202, and Pub. L. 113-203; Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. 113-235, Div. B §§ 528, 529 (enacted Dec. 16, 2014), extended through December 16, 2015, by Pub. L. 114-53 and Pub. L. 114-53; National Defense Authorization Act for Fiscal Year 2015, Pub. L. 113-291, §§ 1033, 1034 (enacted Dec. 19, 2014); National Defense Authorization Act for Fiscal Year 2016, Pub. L. 114-92, §§ 1031, 1032 (enacted Nov. 25, 2015).

Request for Public Interest Fee Waiver

We respectfully request that you waive any applicable fees since disclosure is in the public interest. *See* 5 U.S.C. § 552(a)(4)(A)(iii); 32 C.F.R. §§ 286.28(d)(3)(i)(A)-(D), 1900.13(b)(2). Specifically, the records requested are “likely to contribute significantly to public understanding of the operations or activities of the government” and the State has no commercial interest in their disclosure—the State’s interest is to facilitate and promote the public interest. *See Id.*

FOIA’s fee waiver provision imposes a non-discretionary duty to provide documents without any charge if the disclosed information satisfies a two-prong test. *See* 5 U.S.C. § 552(a)(4)(A)(iii) (“Documents *shall* be furnished without any charge or at a [reduced] charge . . .”). First, the disclosed information must be likely to significantly contribute to public understanding of governmental operations and activities. 5 U.S.C. § 552(a)(4)(A)(iii). Second, the disclosed

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information cannot be primarily in the commercial interests of the requester. *Id.* This test is intended to be liberally construed in favor of waivers for noncommercial requesters. *Forest Guardians v. DOI*, 416 F.3d 1173, 1178 (10th Cir. 2005). It “should not be interpreted to allow federal agencies to set up roadblocks to prevent noncommercial entities from receiving a fee waiver.” *W. Watersheds Project v. Brown*, 318 F. Supp. 2d 1036, 1039 (D. Idaho 2004).

The President has stated that he intends to close the detention facility at the Guantanamo Bay Naval Base and bring to the United States mainland the detainees housed there. It has been widely reported that U.S. Disciplinary Barracks at Fort Leavenworth is one of the sites that a team led by a U.S. Department of Defense official has surveyed as a possible location for housing Guantanamo detainees. This is a matter of tremendous public concern, not just in Leavenworth, Kansas, but across the State and the Country. The intention of FOIA is to “ensure an informed citizenry, vital to the functioning of a democratic society, needed to . . . hold the governors accountable to the governed.” *Natural Res. Def. Council v. EPA*, 581 F. Supp. 2d 491, 496 (S.D.N.Y. 2008) (quoting *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978)). That is precisely how the State of Kansas intends to use the records it seeks.

Specifically, the State of Kansas intends to inform all residents of Kansas and the United States regarding the plan to bring Guantanamo detainees to the United States mainland. It will do so by making the information available on the website of the Office of the Kansas Attorney General and in other manners determined to be in the public interest. The State of Kansas will also use the records to educate state and federal lawmakers regarding the activities of the Department of Defense, Department of the Army, Department of the Navy, and the Department of Justice in connection with the potential transfer of individuals detained at the Guantanamo Bay Naval Base to a facility or facilities located on the United States mainland.

The records will provide invaluable information to these lawmakers as they consider future changes to Guantanamo Bay Naval Station and the effect those changes may have on the safety and security of all Americans as well as any potential future changes to, or in relation to, Fort Leavenworth, Kansas. The records will also significantly enhance the public’s understanding of any planned operations and activities, and ensure that the public has the information necessary to determine whether the proposed transfer of military detainees is within the public interest.

The State has no intention of using the information disclosed for financial gain. If for some reason the fee waiver request is denied, while reserving any right to appeal such a decision, the State of Kansas is willing to pay \$100.00 to cover costs of document search and duplication.

In the event that access to any portion of the requested records is denied, FOIA requires that that the portions of a requested file that are not exempted from release must be disclosed. *See* 5 U.S.C. § 552(b). We therefore request that the State of Kansas be provided with all non-exempt portions that are reasonably segregable from exempt material. *See id.* We further request that you describe the deleted material in detail and specify the statutory basis for the denial as well as your reasons for believing that the alleged statutory justification applies in this instance. Please separately state your reasons for not invoking your discretionary powers to release the requested

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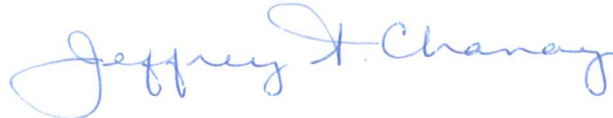
documents in the public interest. Such statements will be helpful in deciding whether to appeal an adverse determination and in formulating arguments in case an appeal is taken.

We request that access to the requested records be granted within the statutory twenty working days from the date of receipt. *See* 5 U.S.C. § 552(a)(6)(A); 32 C.F.R. § 286.4(d)(1). Failure to respond in a timely manner shall be viewed as a denial of this request and the requesters may immediately file an administrative appeal. *See* 5 U.S.C. § 552(a)(6)(C)(i).

Thank you in advance for your prompt reply. Should you need to talk by telephone as to any matter related to this request, I may be reached at (785) 296-2215.

Sincerely,

OFFICE OF KANSAS ATTORNEY GENERAL
DEREK SCHMIDT



Jeffrey A. Chanay
Chief Deputy Attorney General