



April 10, 2018

Via FIRST CLASS MAIL

Mr. Gorka Garcia-Malene
National Institutes of Health
Freedom of Information Officer
9000 Rockville Pike
Building 31, Room 5B35
Bethesda, MD 20892

Re: Sang A Park - Auto Accident of January 22, 2018

Dear Mr. Garcia-Malene:

I am following up on our conversation today about our Freedom of Information request for the information concerning the fatal injury to our client Sang A Park on January 22, 2018.

As I understand it, you are concerned that a disclosure of the complete police report concerning the fatal collision, including the name of the driver of the vehicle that hit Ms. Park, might "constitute a clearly unwarranted invasion of personal privacy" and thus would be exempt from disclosure under section b(6) of FOIA.

I do not believe this exemption applies, for these reasons:

First, the exemption pertains to personal information in "personnel and medical files and similar files." 5 U.S.C. 552(b)6). The documents we are seeking are not personnel, medical or similar files. They are law enforcement files.

Second, the exemption, even if the police report was deemed to somehow be a "personnel, medical or similar" file, allows for withholding the identity only if its disclosure would constitute "a clearly unwarranted invasion of personal privacy." As I mentioned to you, and you are welcome to confirm with other police agencies, every police report of a fatal collision anywhere in the United States is disclosable routinely to the victim of the fatal collision or their personal representative. No driver has any legitimate expectation that his or her name be withheld from disclosure to the family of the person he has negligently killed. So there can be no legitimate expectation of privacy in the driver's identity when that would not be shielded anywhere else in the United States.

Third, the public interest far outweighs any expectation of privacy. The public has a strong interest in seeing that traffic safety laws are enforced, especially when their violation

PATRICK MALONE & ASSOCIATES, P.C.

Mr. Gorka Garcia-Malene
April 10, 2018
Page 2

leads to the death of innocent individuals. Shielding the name of the tortfeasor would put the government on the side of the wrongdoer.

Fourth, for similar reasons, exemption 7(C) for law enforcement records containing personal information also does not apply.

Finally, I note that the burden is on the government to justify non-disclosure. I don't see how the government could justify non-disclosure in this matter. There is a strong public interest in disclosure and a negligible if any interest in privacy.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to be 'P. Malone', with a long horizontal flourish extending to the right.

Patrick A. Malone

PAM:scc