

Exhibit 6

2 UNIVERSITY PLAZA, SUITE 402, HACKENSACK, NJ 07601
T. 201.265.6400 F. 201.265.0303

1441 BROADWAY, SUITE 6022, NEW YORK, NY 10018
T. 212.354.0111

February 6, 2018

Via E-mail

Grace Agyekum
FOIA Officer and Public Liaison
United States Department of Commerce
1401 Constitution Avenue, NW
Washington, D.C. 20230

Re: BIS Tracking Number: BIS 18-022
FOIAonline Number: DOC-BIS-2018-000296

Dear Ms. Agyekum,

Further to our conversation yesterday, I am seeking clarification regarding the decision by the United States Department of Commerce, Business of Industry and Security ("BIS") to withhold all 240 pages of documents it located that were allegedly responsive to our above-referenced December 7, 2017 narrowed FOIA request.

According to the correspondence we received dated January 25, 2018, BIS based its decision to completely withhold these documents upon the following FOIA exemptions:

- i. Exemption (b)(7)(C), which protects names, titles, email addresses and contacts of law enforcement personnel;
- ii. Exemption (b)(7)(D), which provides protection for records or information compiled for law enforcement purposes which could reasonably be expected to disclose the identity of a confidential source;
- iii. Exemption (b)(7)(A), based on on-going law enforcement activities; and
- iv. Exemption (b)(3), based on information protected under Section 12(c) of the Export Administration Act.

As to exemptions listed in (i) and (ii) above, we are not seeking the names of law enforcement personnel or the names of potentially confidential sources. Accordingly, we see no reason why complete nondisclosure is justified rather than simply redacting that information from the documents. *See Bigwood v. Dept. of Defense*, 132 F. Supp. 3d 124 (D.D.C. 2015) (an agency's "obligation to release any 'reasonably segregable portion' of otherwise exempt material is, at this point, well defined in the case law").

U.S. Department of Commerce
Bureau of Industry and Security
Page 2

Regarding point (iii), as you know, this exemption applies only to the extent that the release of the documents "could reasonably be expected to interfere with enforcement proceedings." We note that BIS's General Order in this matter is 12 years old, and the indictments were handed down over a decade ago. We would expect that, by this time, at least some portion of these proceedings have concluded. To the extent that documents related to inactive proceedings can be reasonably segregated from documents related to active proceedings, they should be released.

Regarding point (iv), Section 12(c) of the Export Administration Act only permits withholding of documents obtained in enforcement proceedings obtained after June 30, 1980 if such documents were obtained "for the purpose of consideration of, or concerning, license applications under this chapter..." 50 U.S.C. § 4614(c). The action in question here regards the Defendants' *failure to seek or obtain* proper export licenses. Accordingly, we see no basis for BIS's invocation of exemption (b)(3) in this matter.

Lastly, as we discussed, this firm was charged \$1,194.29 for BIS to conduct searches that yielded only a relatively small number of documents, *all of which* the agency has withheld in their entirety.

This Firm represents over four hundred plaintiffs in litigations brought pursuant to the terrorism exception to the Foreign Sovereign Immunities Act (28 U.S.C. § 1605A) and the Anti-Terrorism Act (18 U.S.C. § 2333). Our clients are American soldiers, and the families, heirs and estates of those soldiers, most of whom were injured or killed in Iraq by Iranian-backed terrorist groups armed with Explosively Formed Penetrators that were detonated using components and such as Maxstream XT09-SINA 900 MHz radio frequency modules that were the subject of BIS investigations. In view of the gravity of the subject matter, the points made herein concerning the exemptions cited and the importance of the materials requested to the veterans and Gold Star families we represent, we ask that BIS reconsider its position. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "William A. Friedman", with a stylized flourish at the end.

William A. Friedman

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Via E-mail

Grace Agyekum
FOIA Officer and Public Liaison
United States Department of Commerce
1401 Constitution Avenue, NW
Washington, D.C. 20230

Re: BIS Tracking Number: BIS 18-021
FOIAonline Number: DOC-BIS-2018-000297

Dear Ms. Agyekum,

Further to our conversation yesterday, I am seeking clarification regarding the decision by the United States Department of Commerce, Business of Industry and Security ("BIS") to withhold all 21 pages of documents it located that were allegedly responsive to our above-referenced December 7, 2017 narrowed FOIA request.

According to the correspondence we received dated January 25, 2018, BIS based its decision to completely withhold these documents upon the following FOIA exemptions:

- i. Exemption (b)(7)(C), which protects names, titles, email addresses and contacts of law enforcement personnel;
- ii. Exemption (b)(7)(A), based on on-going law enforcement activities; and
- iii. Exemption (b)(3), based on information protected under Section 12(c) of the Export Administration Act.

As to the exemption listed in point (i), we are not seeking the names of law enforcement personnel. Accordingly, we see no reason why complete nondisclosure is justified rather than simply redacting this information from the documents. *See Bigwood v. Dept. of Defense*, 132 F. Supp. 3d 124 (D.D.C. 2015) (an agency's "obligation to release any 'reasonably segregable portion' of otherwise exempt material is, at this point, well defined in the case law").

Regarding point (ii), as you know, this exemption applies only to the extent that the release of the documents "could reasonably be expected to interfere with enforcement proceedings." We note that BIS's General Order in this matter is over 8 years old. We

U.S. Department of Commerce
Bureau of Industry and Security
Page 2

would expect that, by this time, at least some portion of these proceedings have concluded. To the extent that documents related to inactive proceedings can be reasonably segregated from documents related to active proceedings, they should be released.

Regarding point (iii), Section 12(c) of the Export Administration Act only permits withholding of documents obtained in enforcement proceedings obtained after June 30, 1980 if such documents were obtained "for the purpose of consideration of, or concerning, license applications under this chapter..." 50 U.S.C. § 4614(c). The action in question here regards the Defendants' *failure to seek or obtain* proper export licenses. Accordingly, we see no basis for BIS's invocation of exemption (b)(3) in this matter.

Lastly, as we discussed, this firm was charged \$1,194.29 for BIS to conduct searches that yielded only a relatively small number of documents, *all of which* the agency has withheld in their entirety.

This Firm represents over four hundred plaintiffs in litigations brought pursuant to the terrorism exception to the Foreign Sovereign Immunities Act (28 U.S.C. § 1605A) and the Anti-Terrorism Act (18 U.S.C. § 2333). Our clients are American soldiers, and the families, heirs and estates of those soldiers, most of whom were injured or killed in Iraq by Iranian-backed terrorist groups armed with Explosively Formed Penetrators that were detonated using components and such as Maxstream XT09-SINA 900 MHz radio frequency modules that were the subject of BIS investigations. In view of the gravity of the subject matter, the points made herein concerning the exemptions cited and the importance of the materials requested to the veterans and Gold Star families we represent, we ask that BIS reconsider its position. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read 'William A. Friedman', is written over a light blue horizontal line.

William A. Friedman