

Exhibit A

Jonathan Richard Jones
316 San Carlos Street, San Francisco, CA 94110
(510) 501 -5957

November 30, 2015

David M. Hardy
Chief, Record/Information Dissemination Section, Records Management Division
Department of Justice
Federal Bureau of Investigation
170 Marcel Drive
Winchester, VA 22602-4843

FOIA REQUEST

Fee waiver requested

Dear FOIA Officer:

Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request access to and copies of all records, files, interviews, reports, memos, letter, emails, and documents concerning the death of two American citizens, Ricky Lynn Spier and Leon Edwin "Ted" Burgon after an attack that occurred on August 31, 2002, when 10 schoolteachers and a 6-year-old child were ambushed while they were returning from a picnic to their residences in Tembagapura, Papua Province, Indonesia, including but not limited to all records in the central records system, field offices, investigative case management, electronic case files, and/or universal index of cases. In making this request, I also request all records relating to the Indonesian citizen, Anthonius Wamang, in connection to the attack on August 31, 2002 as referenced above.

I would like to receive the information in electronic format.

Please waive any applicable fees. Release of the information is in the public interest because it will contribute significantly to public understanding of government operations and activities. As a freelance journalist, I am working on limited funds. The information I seek is sought in the public interest and is intended to enhance my understanding of the FBI's criminal investigation into the murders of two U.S. citizens in the Papua Province of Indonesia, in August 2002, and the eventual indictment of Indonesian citizen Anthonius Wamang.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

As I am making this request as a journalist and this information is of timely value, I would appreciate your communicating with me by telephone, rather than by mail, if you have questions regarding this request.

I look forward to your reply within 20 business days, as the statute requires.

Thank you for your assistance.

Sincerely,

Jonathan Richard Jones

Exhibit B

Final-Recipient: rfc822; foiparequest@ic.fbi.gov
Action: failed
Status: 5.0.0
Remote-MTA: dns; mx-east-ic.fbi.gov. (153.31.119.142, the server for the domain ic.fbi.gov.)
Diagnostic-Code: smtp; 550 #5.1.0 Address rejected.
Last-Attempt-Date: Mon, 03 Dec 2018 14:39:17 -0800 (PST)

----- Forwarded message -----

From: Jonathan Jones <jonathanrichardjones@gmail.com>
To: foiparequest@ic.fbi.gov, FOIPAQUESTIONS <foipaquestions@ic.fbi.gov>
Cc:
Bcc:
Date: Mon, 3 Dec 2018 14:38:49 -0800
Subject: FOIA STATUS REQUEST UPDATE - 2014 1340904-000
Dear FOIA officer,

I am writing to inquire about the status of FOIA request I made on November 20, 2014 - 1340904-000.

Please let me know the status of this request, and whether it is still being processed or been canceled. If it makes sense, I would be happy to speak with the analyst handling this request.

Considering the time that has passed, I kindly request an expedited review and processing of the request. I can be reached at 510-501-5957.

Thank you for your assistance.

Best,

Jonathan Jones

--
Jonathan Jones | Investigative Reporter
Mobile: (510) 501-5957
www.jonathanrichardjones.com
@jonathanrjones | email: jonathanrichardjones@gmail.com

FOIPAQUESTIONS <FOIPAQUESTIONS@fbi.gov>
To: Jonathan Jones <jonathanrichardjones@gmail.com>

Mon, Dec 3, 2018 at 2:45 PM

Thank you for contacting foipaquestions@fbi.gov. By letter dated January 4, 2016, the FBI responded to your request advising authorization if living/proof of death if deceased is required in order to move forward with your request. To date, the FBI has not received a response. Your request was closed.

If you now have the requested information, please feel free to submit a new request. You may submit your request electronically at <https://efoia.fbi.gov> (available 24 hours a day), fax it to 540-868-4391/4997, or mail it to FBI, Attn: FOIPA Request, 170 Marcel Drive, Winchester, VA 22602-4843. Please be sure to include your contact information, to include complete mailing address, on any correspondence.

Additional information about the FOIPA can be found at <http://www.fbi.gov/foia>.

Exhibit C



Jonathan Jones <jonathanrichardjones@gmail.com>

Question regarding proof of death - FOIPA Request 1340904-000

5 messages

Jonathan Jones <jonathanrichardjones@gmail.com>
To: foiaquestions@ic.fbi.gov

Fri, Jan 8, 2016 at 10:16 AM

Dear FOIA officer,

I am writing regarding a FOIA request I made on Nov. 30, 2014, regarding records pertaining to the murders of two American citizens in Indonesia on August 31, 2002. As part of that request, I attached a copy of a FBI press release on an indictment as proof of death of the two American citizens (link below).

<https://www.fbi.gov/news/pressrel/press-releases/papuan-separatist-charged-with-the-murders-of-two-americans-attempted-murders-of-others-during-2002-ambush-in-indonesia>

Yesterday, I received an acknowledgement from the FBI of that request -- FOIPA Request 1340904-000. It was a form letter but suggested that I may receive greater access to these records by providing proof of death.

I am a writing to confirm that the press release published by the agency is considered and submitted is considered, "another recognized reference source," and that it was received by the FBI.


Any guidance on this matter would greatly be appreciated. Please let me now how best to proceed.

Thanks so much for your time and assistance.

Sincerely,

Jonathan Jones

--
Jonathan Jones
(510) 501-5957
jonathanrichardjones@gmail.com
www.jonathanrichardjones.com
[@jonathanrjones](https://twitter.com/jonathanrjones)

 2015_11_30_FBIFOI_letter_SpierBurgon.pdf
55K

Mail Delivery Subsystem <mailer-daemon@googlemail.com>
To: jonathanrichardjones@gmail.com

Fri, Jan 8, 2016 at 10:16 AM

Delivery to the following recipient failed permanently:

foiaquestions@ic.fbi.gov

Technical details of permanent failure:
Google tried to deliver your message, but it was rejected by the server for the recipient domain ic.fbi.gov by mail.ic.fbi.gov.
[2001:4801:7903:100:6969:2b9e:0:3].

Exhibit D

The error that the other server returned was:
550 #5.1.0 Address rejected.

----- Original message -----

DKIM-Signature: v=1; a=rsa-sha256; c=relaxed/relaxed;
d=gmail.com; s=20120113;
h=mime-version:from:date:message-id:subject:to:content-type;
bh=Q7/fTH5OAZjH7SoSSJph7mD0XE0Gvmjrhk2PQfh0kKc=;
b=ss29EecrqCjnXRPFBAG2xsmT7ZNGRfit2Mi+dlvXI6TJdkdsMj1RJLN/F2JpSPCTk6
HFp5vEQv6ethyn+P4fEGjG++Rjr99d3ODf0AZPu3ZX8LOSKwxkgW4K1M.JvsJV6JMM/07
51awoMUHYyqGGAGKzw3S0yzTWWj0C36FC4yQQYzJauWEIVAXBbq4XbOCHfuTruKkDFNJ
bbGUUKOdLIM0wvOkafScR+gDtYjsQ/AD/AJ5nW5zcXfDjJFZJoXwxagIFKWBUxr/1Ovp
ifwiS1XqdgAoS0m94qAdKdFM80EVzn0kZfVAl0MjYq62WquaNL4teyCKASyv44kFPYnB
V+bQ==

X-Received: by 10.50.155.102 with SMTP id vv6mr370616igb.0.1452277017960; Fri,
08 Jan 2016 10:16:57 -0800 (PST)

MIME-Version: 1.0

Received: by 10.107.182.214 with HTTP; Fri, 8 Jan 2016 10:16:38 -0800 (PST)

From: Jonathan Jones <jonathanrichardjones@gmail.com>

Date: Fri, 8 Jan 2016 10:16:38 -0800

Message-ID: <CAFgPVu+1GhdqPqvUytHq+6y1TBu2WLpgX-R1Fy+oQ64dZWfyFQ@mail.gmail.com>

Subject: Question regarding proof of death - FOIPA Request 1340904-000

To: foiaquestions@ic.fbi.gov

Content-Type: multipart/mixed; boundary=001a11347d9ac5f3310528d6977d


[Quoted text hidden]

@[jonathanrjones](https://twitter.com/jonathanrjones) <<https://twitter.com/jonathanrjones?lang=en>>

Jonathan Jones <jonathanrichardjones@gmail.com>
To: foipaquestions@ic.fbi.gov

Fri, Jan 8, 2016 at 10:20 AM

[Quoted text hidden]

 2015_11_30_FBIFOI_letter_SpierBurgon.pdf
55K

FOIPAQUESTIONS <FOIPAQUESTIONS@ic.fbi.gov>
To: Jonathan Jones <jonathanrichardjones@gmail.com>

Fri, Jan 8, 2016 at 11:02 AM

Dear Mr. Jones,

The FBI has received your additional correspondence regarding your Freedom of Information Act/Privacy (FOIPA) request and it has been forwarded to the assigned analyst for review. If appropriate, a response will be forthcoming.

Additional information regarding the FOIPA may be accessed at <http://www.fbi.gov/> or <http://www.fbi.gov/foia/>.

If you require additional assistance please contact me.

Exhibit E

Jonathan Jones <jonathanrichardjones@gmail.com>

FOIA STATUS REQUEST UPDATE - 2014 1340904-000

28 messages

Mon, Dec 3, 2018 at
2:38 PM

Jonathan Jones <jonathanrichardjones@gmail.com>

To: foiparequest@ic.fbi.gov, FOIPAQUESTIONS <foipaquestions@ic.fbi.gov>

Dear FOIA officer,

I am writing to inquire about the status of FOIA request I made on November 20, 2014 - 1340904-000.

Please let me know the status of this request, and whether it is still being processed or been canceled. If it makes sense, I would be happy to speak with the analyst handling this request.

Considering the time that has passed, I kindly request an expedited review and processing of the request. I can be reached at 510-501-5957.

Thank you for your assistance.

Best,

Jonathan Jones

--

Jonathan Jones | Investigative Reporter

Mobile: (510) 501-5957

www.jonathanrichardjones.com

@jonathanrjones | email: jonathanrichardjones@gmail.com

Mon, Dec 3, 2018 at
2:45 PM

FOIPAQUESTIONS <FOIPAQUESTIONS@fbi.gov>

To: Jonathan Jones <jonathanrichardjones@gmail.com>

Thank you for contacting foipaquestions@fbi.gov. By letter dated January 4, 2016, the FBI responded to your request advising authorization if living/proof of death if deceased is required in order to move forward with your request. To date, the FBI has not received a response. Your request was closed.

If you now have the requested information, please feel free to submit a new request. You may submit your request electronically at <https://efoia.fbi.gov> (available 24 hours a day), fax it to 540-868-4391/4997, or mail it to FBI, Attn: FOIPA Request, [170 Marcel Drive, Winchester, VA 22602-4843](#). Please be sure to include your contact information, to include complete mailing address, on any correspondence.

Additional information about the FOIPA can be found at <http://www.fbi.gov/foia>.

- Should you have questions about preparing or submitting your request, please feel free to contact foipaquestions@fbi.gov.

Respectfully,

Public Information Officer

Record/Information Dissemination Section (RIDS) FBI-Information Management
Division

[170 Marcel Drive, Winchester, VA 22602-4843](#)

Direct: (540) 868-4593

Fax: (540) 868-4391

Questions E-mail: foipaquestions@fbi.gov

Do you have further questions about the FOI/PA process? Visit us
at <http://www.fbi.gov/foia>

Please check the status of your request online at <https://vault.fbi.gov/fdps-1/@@search-fdps> Status updates are performed on a weekly basis.

Note: This is a non-emergency email address. If this is an emergency, please call 911 directly. If you need to report a tip for immediate action, please contact FBI Tips at <http://tips.fbi.gov/> or reach out to your local field office.

[Quoted text hidden]

Jonathan Jones <jonathanrichardjones@gmail.com>

Mon, Dec 3,
2018 at 2:53 PM

To: FOIPAQUESTIONS@fbi.gov

Hello,

Thank you for your reply. My original request did show proof of death. I also responded in a timely matter for clarification on January 8, 2016, which was received by the FBI and confirmed in an email. I am attaching that email thread and response for reference. As such, it was inappropriate to close my request. I respectfully request that the original request is re-opened and processed through an expedited review as soon as possible.


In addition I am attaching additional records of the deaths for the persons in question. This is only to supplement the original documentation I submitted in order to expedite the review and processing.

Thank you,


Jonathan Jones

[Quoted text hidden]

3 attachments

 **FBI - FOIA REQUEST 2014 - Question regarding proof of death - FOIPA Request 1340904-000.pdf**
409K

 **Obituaries Published 09-14-2002;.pdf**
79K

 **Rick L. Spier | August 31, 2002 Obituary | NewspaperArchive@.pdf**
317K

Jonathan Jones <jonathanrichardjones@gmail.com>

Tue, Dec 4, 2018
at 9:16 AM

To: FOIPAQUESTIONS@fbi.gov

Hello,

I just wanted to follow up on our correspondence regarding my 2014 FOIA request 1340904-000. As mentioned I submitted supporting documentation and followed up on my request. Unfortunately, it appears that the request was closed erroneously. As such, I am requesting an expedited review of my original FOIA request and ask that it be processed in the order it was originally received. I am happy to discuss to this with your FOIA officer at

510-501-5957 as soon as possible to make sure that this request does not fall through the cracks again. Please let me know when I should expect a response from your office.

Thank you,

Jonathan Jones

FOIPAQUESTIONS <FOIPAQUESTIONS@fbi.gov>

Fri, Dec 7, 2018 at 8:05
AM

To: Jonathan Jones <jonathanrichardjones@gmail.com>

Dear Mr. Jones,

The original correspondence that you provided did not provide identifiers for the individual you had asked to be searched. Now that you have submitted proof of deaths for the requested individuals, containing dates of births, your request will be re-opened. Correspondence is forthcoming.

Respectfully,

Public Information Officer

Record/Information Dissemination Section (RIDS) FBI-Information Management
Division

[170 Marcel Drive, Winchester, VA 22602-4843](#)

Direct: (540) 868-4593

Fax: (540) 868-4391

Questions E-mail: foipaquestions@fbi.gov

Do you have further questions about the FOI/PA process? Visit us at <http://www.fbi.gov/foia>

Please check the status of your request online at <https://vault.fbi.gov/fdps-1/@@search-fdps> Status updates are performed on a weekly basis.

Note: This is a non-emergency email address. If this is an emergency, please call 911 directly. If you need to report a tip for immediate action, please contact FBI Tips at <http://tips.fbi.gov/> or reach out to your local field office.

Jonathan Jones <jonathanrichardjones@gmail.com>

Mon, Dec 10,
2018 at 1:48
PM

To: FOIPAQUESTIONS <FOIPAQUESTIONS@fbi.gov>
Cc: Victoria Baranetsky <VBaranetsky@revealnews.org>

Dear FOIA officer -

Thank you for your attention to this matter - 1340904-000. As stated earlier, my original request provided the necessary proof of death and was closed improperly. I await your additional correspondence to my request as soon as possible and again request an expedited review and release of materials. I would be happy to discuss my request with you over the phone at 510-501-5957 if that would be helpful.

As a matter of clarification, my request is being made as part of a project for the Center for Investigative Reporting. Please see attached counsel for reference. Please also provide an estimated time for delivery of requested materials.

Your prompt assistance in this matter is greatly appreciated.

Respectfully submitted,

FOIPAQUESTIONS <FOIPAQUESTIONS@fbi.gov>

Tue,
Dec
11,
2018
at
5:31
AM

To: Jonathan Jones <jonathanrichardjones@gmail.com>

Dear Mr. Jones,

Thank you for contacting foipaquestions@fbi.gov. Your request will now be re-opened, accordingly.

Pursuant to the U. S. Department of Justice (DOJ) standards permitting expedition, expedited processing can only be granted when it is determined that a FOIPA request involves one or more of the below categories:

1. 28 C.F.R. § 16.5 (d) (1) (i): "Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to life or physical safety of an individual."
2. 28 C.F.R. §16.5(d) (1) (ii): "An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information."
3. 28 C.F.R. § 16.5 (d) (1) (iii): "The loss of substantial due process of rights."
4. 28 C.F.R. § 16.5 (d) (1) (IV): "A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence."

Requesters must submit a request for Expedited Processing and upon receipt and review, written notification will be mailed to the requester notifying them that Expedited Processing has been "granted" or "denied". If approved, the Record/Information Dissemination Section will process the request "as soon as practicable."

Additional information regarding Expedited Processing can be viewed by accessing the following: <http://www.fbi.gov/foia/> and click on the U. S. Department of Justice Reference Guide link (Section VI: Expedited Processing).

If you require further assistance, please contact foipaquestions@fbi.gov.

Thank you,

Public Information Officer

Record/Information Dissemination Section (RIDS) FBI-Information
Management Division

[170 Marcel Drive, Winchester, VA 22602-4843](#)

Direct: (540) 868-4593

Fax: (540) 868-4391

Questions E-mail: foipaquestions@fbi.gov

Do you have further questions about the FOI/PA process? Visit us
at <http://www.fbi.gov/foia>

Please check the status of your request online at <https://vault.fbi.gov/fdps-1/@@search-fdps> Status updates are performed on a weekly basis.

Note: This is a non-emergency email address. If this is an emergency, please call 911 directly. If you need to report a tip for immediate action, please contact FBI Tips at <http://tips.fbi.gov/> or reach out to your local field office.

[Quoted text hidden]

To: FOIPAQUESTIONS <FOIPAQUESTIONS@fbi.gov>
Cc: Victoria Baranetsky <VBaranetsky@revealnews.org>

Dear FOIA officer,

This is a formal request to expedite processing for my request filed in 2015 and erroneously closed before being processed.

In addition, I am making this request under 28 C.F.R. §16.5(d) (1) (ii): "An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information," and 28 C.F.R. § 16.5 (d) (1) (IV): "A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence."

Without a doubt, there have been widespread and exceptional media in this case. I am attaching a ProPublica story by Raymond Bonner, a former NY Times reporter, regarding how federal agents violated Department of Justice rules and privacy while he was investigating the murder of the two Americans in West Papua in 2002. This story, in of itself, falls under this category. In his book on West Papua, Freedom in Entangled Worlds, anthropologist Eben Kirksey also questioned the government's integrity regarding this case which affects public confidence.

<https://www.propublica.org/article/how-a-telecom-helped-the-government-spy-on-me>

In addition, the case has received widespread media attention and remains a matter of controversy among human rights groups and West Papua advocates. I will attach a few articles. More can be accessed upon request.

<https://www.motherjones.com/politics/2004/03/murder-she-said/>
<https://www.wsj.com/articles/SB10563068165052600>
http://www.washingtonpost.com/wp-dyn/articles/A28639-2004Mar3_2.html?noredirect=on
<https://www.theage.com.au/world/ambush-suspicion-falls-on-militants-20020904-gduk1v.html>

In addition, I maintain that I submitted proper documentation when I originally made this request and followed up promptly to correspondence from the DOJ and that the department made an error in closing the case. As such, I respectfully request expedited processing of this request.

Respectfully submitted,

Jonathan Jones

FOIPAQUESTIONS <FOIPAQUESTIONS@fbi.gov>

Wed,
Dec
12,
2018
at
6:12
AM

To: Jonathan Jones <jonathanrichardjones@gmail.com>

The FBI has received your additional correspondence regarding your Freedom of Information/Privacy Act (FOIPA) request and it has been forwarded to the assigned analyst for review.

Respectfully,

Public Information Officer

Record/Information Dissemination Section (RIDS) FBI-Information
Management Division

170 Marcel Drive, Winchester, VA 22602-4843

Direct: (540) 868-4593

Fax: (540) 868-4391

Questions E-mail: foipaquestions@fbi.gov

Do you have further questions about the FOI/PA process? Visit us
at <http://www.fbi.gov/foia>

Please check the status of your request online at <https://vault.fbi.gov/fdps-1/@@search-fdps> Status updates are performed on a weekly basis.

Note: This is a non-emergency email address. If this is an emergency, please call 911 directly. If you need to report a tip for immediate action, please contact FBI Tips at <http://tips.fbi.gov/> or reach out to your local field office.

Exhibit F



U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

February 12, 2019

JONATHAN RICHARD JONES
316 SAN CARLOS STREET
SAN FRANCISCO, CA 94110

FOIPA Request No.: 1340904-001
Subject: WAMANG, ANTHONIUS
(INDONESIAN ATTACK/AUGUST 31, 2002)

Dear Mr. Jones:

This responds to your Freedom of Information/Privacy Acts (FOIPA) request. The FBI has completed its search for records responsive to your request. Below you will also find informational paragraphs relevant to your request. Please read each item carefully.

The material you requested is located in an investigative file which is exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A). 5 U.S.C. § 552(b)(7)(A) exempts from disclosure:

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information ... could reasonably be expected to interfere with enforcement proceedings...

The records responsive to your request are law enforcement records; there is a pending or prospective law enforcement proceeding relevant to these responsive records, and release of the information in these responsive records could reasonably be expected to interfere with enforcement proceedings. Therefore, your request is being administratively closed. For a further explanation of this exemption, see the enclosed Explanation of Exemptions.

Please be advised per standard FBI practice and pursuant to FOIA exemption (b)(7)(E) / Privacy Act exemption (j)(2) [5 U.S.C. § 552/552a (b)(7)(E)/(j)(2)], this response neither confirms nor denies the existence of your subject's name on any watch lists.


For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the Freedom of Information Act (FOIA). See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request Number listed above has been assigned to your request. Please use this number in all correspondence concerning your request.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIA online portal by creating an account on the following web site: <https://www.foiaonline.gov/foiaonline/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days from the date of this letter in order to be considered timely. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS) at 877-684-6448 or by emailing ogis@nara.gov. Alternatively, you may contact the FBI's FOIA Public Liaison by emailing foipaquestions@fbi.gov. If you submit your dispute resolution correspondence by email, the subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so it may be easily identified.

Sincerely,



David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Information Management Division

Enclosure(s)

Exhibit G

the
center for
investigative
reporting

Director, Office of Information Policy
U.S. Department of Justice
Suite 11050
1425 New York Avenue, NW
Washington, D.C. 20530-0001

March 11, 2019

Via U.S. mail

Re: FOIA Appeal for FOIPA Request No. 1340904-001

To Whom It May Concern:

The Center for Investigative Reporting (“CIR”) hereby writes on behalf of reporter, Mr. Jonathan Jones regarding a Freedom of Information Act request submitted by Mr. Jones to the U.S. Department of Justice (“DOJ”), Federal Bureau of Investigation (“FBI”) for records involving an investigation from nearly two decades ago.

I. Factual and Procedural History

According to a Congressional report, on August 31, 2002, two American schoolteachers were killed in a deadly attack near Tembagapura in Papua, Indonesia.¹ Thereafter, the FBI opened a joint U.S.-Indonesia investigation.² In 2006, after the suspects surrendered themselves to the FBI, the agency handed them over to Indonesian authorities.³ The case resolved with one suspect, Anthonius Wamang being sentenced to life imprisonment in Indonesia.⁴ Upon the conclusion of his trial, the Bush Administration “signaled a new era of military co-operation.”⁵ Following the sentencing, FBI agents and the Department of Justice made no request to extradite Wamang or the other suspects to face indictments in the United States. In a U.S. State Department wire,

¹ Redacted, *Papua, Indonesia: Issues for Congress*, CONGRESSIONAL RESEARCH SERVICE, Jan. 19, 2006, <https://bit.ly/2Ch3KXV>.

² FBI, Press Release: *Papuan Separatist Charged with the Murders of Others During 2002 Ambush in Indonesia*, June 24, 2004, <https://bit.ly/2TKVlpy>.

³ See Ellen Nakashima, *FBI Said Involved in Arrest of 8 Indonesians*, THE WASHINGTON POST, Jan. 14, 2006.

⁴ Achmad Sukarsono, *Papuans jailed for murder of Americans, Indonesian*, REUTERS, Jan. 19, 2007.

⁵ EBEN KIRKSEY FREEDOM FROM ENTANGLED WORLDS 170, n.138 (2012).

the Administration indicated their satisfaction with the outcome of the finality of the case.⁶

On November 30, 2015, Mr. Jones submitted a request on behalf of CIR via email for all records involving a matter of grave public interest involving an international incident that occurred over 17 years ago in Indonesia (hereinafter “the Request”). A true and correct copy of the Request is attached as Exhibit A. More specifically, Mr. Jones requested documents pertaining to the well-publicized murders of two Americans citizens in Indonesia on August 31, 2002. The Request specified it was for but not limited to:

- all records, files, interviews, reports, memos, letter, emails, and documents concerning the death of two American citizens, Ricky Lynn Spier and Leon Edwin “Ted” Burgon after an attack that occurred on August 31, 2002, when 10 schoolteachers and a 6-year-old child were ambushed while they were returning from a picnic to their residences in Tembagapura, Papua Province, Indonesia, including but not limited to all records in the central records system, field offices, investigative case management, electronic case files, and/or universal index of cases.
- all records relating to the Indonesian citizen, Anthonius Wamang, in connection to the attack on August 31, 2002 as referenced above.

On Thursday, January 4, 2016, a representative of the FBI responded to the request, stating that authorization of proof of death is required in order to move forward with a request. A true and correct copy of the FBI’s acknowledgment of that correspondence is attached as Exhibit B. On Friday, January 8, 2016, Jones sent a copy of the proof of death, including an FBI press release on the killing. A true and correct copy of that correspondence is attached as Exhibit C. Jones asked for confirmation from the FBI and for any additional guidance on how best to proceed. *Id.* That same day, a public liaison for the FBI confirmed receipt. A true and correct copy of that correspondence is attached as Exhibit D.

On December 3, 2018, more than two years after filing the original request, Jones wrote and called to follow up on the status of his request. A true and correct copy of that correspondence is attached as Exhibit E. The FBI responded that same day, stating that the request had been closed because they had not received proof of death. *Id.* Jones responded that he had contacted the agency in a timely manner and respectfully requested that the original request be reopened. *Id.* In addition, Jones attached a .pdf of the entire correspondence as proof. *Id.* On December 7, 2018, the agency stated the request “will be re-opened.” *Id.*

On February 12, 2019, the FBI sent a final determination letter stating that “[t]he material you requested is located in an investigative file which is exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A)” (hereinafter the Denial). A true and correct copy of

⁶ U.S. Dept of State, *Cable: Jakarta High Court Upholds Verdicts in Timika Case*, March 28, 2007.

the Denial is attached as Exhibit F. The Denial further states, “[t]he records responsive to your request are law enforcement records; there is a pending or prospective law enforcement proceeding relevant to these responsive records, and release of the information in these responsive records could reasonably be expected to interfere with enforcement proceeds. Therefore, your request is being administratively closed.” *Id.* The Denial continued “pursuant to FOIA exemption (b)(7)(E)/Privacy Act exemption (j)(2) [5 U.S.C. § 552(b)(7)(E)/(j)(2)], this response neither confirms nor denies the existence of your subject’s name on any watch lists.” *Id.*

CIR now writes to challenge the agency’s assertion and its decision to withhold records.

II. Argument

A. The agency failed to provide a relatively detailed justification for withholding records and incorrectly gave a Glomar response.

Under FOIA, “agencies must acknowledge the existence of information responsive to a FOIA request and provide specific, non-conclusory justifications for withholding that information.” *Roth v. U.S. Dep’t of Justice*, 642 F.3d 1161, 1178 (D.C. Cir. 2011). An exception to that general rule, holds that agencies are permitted to, “refuse to confirm or deny the existence of records where to answer the FOIA inquiry would cause harm cognizable under a [] FOIA exception.” *Wilner v. NSA*, 592 F.3d 60, 68 (2d Cir. 2009) (internal citation and quotation marks omitted). But a so-called “Glomar” response cannot be used to withhold information that is no longer secret. *ACLU v. CIA*, No. 11-5320, 2013 U.S. App. LEXIS 5166 at *5 (D.C. Cir. March 15, 2013) (“[W]hen an agency has officially acknowledged otherwise exempt information through prior disclosure, the agency has waived its right to claim an exemption with respect to that information.”). Even a one instance of acknowledgment is sufficient to spoil a *Glomar* response. *See RCFP v. FBI*, No. 2017-1701, at *16 (D.D.C. Mar. 1, 2019).

Here, the FBI failed to fulfill its burden. The agency did not provide the “relatively detailed justification” required by law. Moreover, it provided a blanket *Glomar* response where a *Glomar* response is unjustified. The FBI’s *Glomar* response is unjustified where the FBI’s investigation has been well-documented. Indeed, the investigation was publicly acknowledged multiple times by various members of government – making it no secret at all. For instance, in 2006, Senator Patrick Leahy casually acknowledged it in a speech. Redacted, *Papua, Indonesia: Issues for Congress*, CONGRESSIONAL RESEARCH SERVICE, Jan. 19, 2006, <https://bit.ly/2Ch3KXV>. The FBI even released a press release on the joint investigation. FBI, Press Release: *Papuan Separatist Charged with the Murders of Others During 2002 Ambush in Indonesia*, June

24, 2004, <https://bit.ly/2TKVlpy>. These repeated instances not only call into question, but prohibit the *Glomar* response.⁷

B. Exemption 7(A) is inapplicable to the requested records.

FOIA's "basic purpose reflect[s] a general philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language." *Dep't of the Air Force v. Rose*, 425 U.S. 352, 360–61 (1976) (internal citations and quotation marks omitted). Under FOIA Exemption 7(A), an agency may only withhold information if it was "compiled for law enforcement purposes" and "only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings." 5 U.S.C. § 552(b)(7)(A).

In order to show interference with law enforcement, the government must provide more than a conclusory statement. *Campbell v. Dep't of Health & Human Servs.*, 682 F.2d 256, 259 (D.C. Cir. 1982) (internal quotation omitted); *see also Nat'l Labor Relations Bd. v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 235 (1978) (internal citation omitted) (stating the agency cannot rely on hypothetical future proceedings). Exemption 7(A) therefore usually only applies in cases *currently* being discussed in the media. *See Cable News Network, Inc. v. Fed. Bureau of Investigation*, 298 F. Supp. 3d 124, 129 (D.D.C. 2018), appeal dismissed, No. 18-5041, 2018 WL 4619108 (D.C. Cir. July 5, 2018) ("[I]n an ongoing criminal investigation such as the Special Counsel's, the Government must be somewhat obscure in its public filings about the effect of disclosure so as not to risk spilling the very information it seeks to keep secure.") For that reason, "once enforcement proceedings are either concluded or abandoned, exemption 7(A) will likely no longer apply to prevent disclosure." *Barney v. I.R.S.*, 618 F.2d 1268, 1273-74 (8th Cir. 1980).

For example, in *Citizens for Responsibility & Ethics in Wash. v. U.S. Dep't of Justice*, the court held that the DOJ failed to show that documents could reasonably be expected to interfere with enforcement proceedings – where there were no extant proceedings. In that case, the DOJ attempted to withhold former Vice President Dick Cheney's FBI interviews from disclosure on the basis that their release could chill *future law enforcement investigations*. *Citizens for Responsibility & Ethics in Wash. v. U.S. Dep't of Justice*, 658 F.Supp.2d 217, 225, 228-29 (D.D.C. 2009). The agency conceded that there were no pending enforcement proceedings or ongoing investigations but argued that such proceedings were "reasonably anticipated" because investigations "are likely to be instituted in the future." *Id.* at 226. The court held that the DOJ did not meet its burden under Exemption 7(A), as it failed to "describe with any reasonable degree of particularity the subject matter of the hypothetical proceedings, the parties involved, when such proceedings might occur, or how the information withheld here might be used by these hypothetical parties to interfere with these hypothetical proceedings." *Id.*

⁷ Moreover, the FBI's use of the *Glomar* doctrine in this case would raise serious First Amendment concerns.

Applying these standards, it is clear that Exemption 7(A) is inapplicable in this instance where the requested records do not “relate to any ongoing investigation or . . . would jeopardize any future law enforcement proceedings.”⁸ Unlike the case in *Cable News Network*, this matter involves a nearly two-decades old case, that has since clearly closed. The FBI handed over Anthonius Wamang and the Indonesian government sentenced him to life imprisonment. After the guilty were punished, the U.S. government signaled that the trial gave closure by repairing relations with the Indonesian government. As in *Citizens for Responsibility & Ethics in Wash. v. U.S. Dep’t of Justice*, the FBI has failed to “describe with any reasonable degree of particularity the subject matter of the hypothetical proceedings, the parties involved, when such proceedings might occur, or how the information withheld here might be used by these hypothetical parties to interfere with these hypothetical proceedings.” In such circumstances, where all public documents suggest closure of the investigation long ago and the possibility of any future proceedings is merely hypothetical - withholding is improper.

C. The agency failed to release and redact all segregable portions as required by FOIA.

Under FOIA, agencies cannot withhold disclosable information merely because the record also contains exempt information. *Willamette Industries, Inc. v. United States*, 689 F.2d 865, 867 (1982) (“The focus of the FOIA is information, not documents, and the agency cannot justify withholding an entire document simply by showing that it contains some exempt material.”). FOIA requires that any “reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.” 5 U.S.C. § 552(b). Thus, agencies have a “duty to segregate” and provide releasable information through redaction. *Id.* “The burden is on the agency to establish that all reasonably segregable portions of a document have been segregated and disclosed.” *Pac. Fisheries, Inc. v. United States*, 539 F.3d 1143, 1148 (9th Cir. 2008). To satisfy its burden, the agency must provide a “detailed justification,” and not just make “conclusory statements” to support its segregability determination. *Gray v. U.S. Army Criminal Investigation Command*, 742 F. Supp. 2d 68, 75 (D.D.C. 2010).

Here, the FBI failed to meet its obligation to review, redact and release all segregable portions as required under FOIA. In this case, the FBI wholesale relies on Exemption 7 to withhold records without disclosing segregable portions but federal agencies engage in review and redaction of countless other FOIA cases, involving topics of much greater sensitivity. See Charlie Savage, *U.S. Releases Rules for Airstrike Killings of Terror Suspects*, N.Y. TIMES, Aug. 6, 2016, <http://nyti.ms/2aJTOX8>

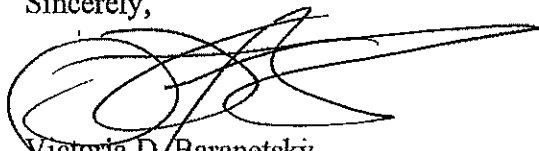
⁸ Exemption 7(A) does not apply as a threshold issue, because the documents were not compiled for a law enforcement purposes, where the U.S. did not engage in any law enforcement actions, did not extradite, and merely handed over suspects to Indonesian authorities.

(declassifying portions of documents about military drone policies). Given these circumstances, the agency should re-review its decision and release any disclosable portions of the records. To do otherwise, appears to be nothing more than a neglectful method to circumvent obligations under FOIA.

III. Conclusion

By hiding behind dubious exemptions, FBI is in violation of its obligations under law. The Center for Investigative Reporting respectfully requests that this office remand this matter with instructions to review and release the records responsive to the Request. Should this office need clarification as to any aspect of this letter, I'm available at vbaranetsky@revealnews.org or 510-982-2890. Thank you in advance for your assistance in this matter.

Sincerely,



Victoria D. Baranetsky
General Counsel
The Center for Investigative Reporting

cc: Jonathan Jones

Exhibit H



U.S. Department of Justice
Office of Information Policy
Suite 11050
1425 New York Avenue, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

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Suite 200
1400 65th Street
Emeryville, CA 94608
vbaranetsky@revealnews.org

Re: Appeal No. DOJ-AP-2019-003187
Request No. 1340904-001
MWH:DRC

VIA: U.S. Mail

Dear Victoria Baranetsky:

You appealed from the action of the Federal Bureau of Investigation on your Freedom of Information Act request for access to records concerning Anthonius Wamang and his attack on two American citizens in Indonesia on August 31, 2002. I note that your appeal pertains to the FBI's withholding of responsive records. Please note that this Office was closed due to a lapse in funding appropriations between December 22, 2018 and January 25, 2019, which resulted in a delay in responding to your appeal.

After carefully considering your appeal, I am affirming, on partly modified grounds, the FBI's action on your request. The FOIA provides for disclosure of many agency records. At the same time, Congress included in the FOIA nine exemptions from disclosure that provide protection for important interests such as personal privacy, privileged communications, and certain law enforcement activities. The FBI properly withheld this information in full because it is protected from disclosure under the FOIA pursuant to 5 U.S.C. § 552(b)(7)(A) and it is reasonably foreseeable that disclosure of this information would harm the interests protected by this provision. This provision concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to interfere with enforcement proceedings.

Regarding that aspect of your request seeking records concerning Anthonius Wamang, please be advised that to the extent that non-public responsive records exist, disclosure of law enforcement records concerning a third-party individual could reasonably be expected to constitute an unwarranted invasion of personal privacy. See 5 U.S.C. § 552(b)(7)(C). Further, it is reasonably foreseeable that releasing any non-public records, to the extent such records exist, would harm the interests protected by this exemption. Because any non-public records responsive to your request would be categorically exempt from disclosure, the FBI may properly assert Exemption 7(C) and is not required to conduct a search for the requested records. See, e.g., DOJ v. Reporters Committee for Freedom of the Press, 489 U.S. 749, 780 (1989) (holding "as a categorical matter" that release of investigatory records concerning a third party "can

- 2 -

reasonably be expected to invade" that person's privacy and that such an invasion is unwarranted in the absence of an overriding public interest).

To the extent that your request seeks access to records that would either confirm or deny an individual's placement on any government watch list, the FBI properly refused to confirm or deny the existence of any such records because their existence is protected from disclosure pursuant to 5 U.S.C. § 552(b)(7)(E). Exemption 7(E) concerns records or information compiled for law enforcement purposes the release of which would disclose techniques and procedures or guidelines for law enforcement investigations or prosecutions. Further, it is reasonably foreseeable that confirming or denying an individual's placement on any government watch list would harm the interests protected by this exemption. *See, e.g., Kalu v. IRS*, 159 F. Supp. 3d 16, 23 (D.D.C. 2016). This response should not be taken as an indication that records do or do not exist. Rather, this is the standard response made by the FBI.

Please be advised that this Office's decision was made only after a full review of this matter. Your appeal was assigned to an attorney with this Office who thoroughly reviewed and analyzed your appeal, your underlying request, and the action of the FBI in response to your request.

If you are dissatisfied with my action on your appeal, the FOIA permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).

For your information, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; email at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. If you have any questions regarding the action this Office has taken on your appeal, you may contact this Office's FOIA Public Liaison for your appeal. Specifically, you may speak with the undersigned agency official by calling (202) 514-3642.

Sincerely,

7/29/2019

X



Matthew Hurd, Associate Chief, for
Sean O'Neill, Chief, Administrative Appeals Staff
Signed by: MATTHEW HURD