

Exhibit A



Shawn Musgrave <smusgrave@revealnews.org>

Fwd: FOIA request

Shoshana Walter <swalter@revealnews.org>

Mon, Jun 24, 2019 at 12:05 PM

To: Shawn Musgrave <smusgrave@revealnews.org>, Victoria Baranetsky <vbaranetsky@revealnews.org>

Hi Shawn,

Here is my original DOL request. Please let me know if I can provide any additional information.

Shoshana

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

From: **Shoshana Walter** <swalter@revealnews.org>

Date: Mon, May 6, 2019 at 5:46 PM

Subject: FOIA request

To: <WHD-FOIA@dol.gov>, FOIARequests <foiarequests@dol.gov>

Cc: Laura Starecheski <lstarecheski@revealnews.org>, Ike Sriskandarajah <ike@revealnews.org>

To Whom It May Concern:

This is a request under the Freedom of Information Act. I am a reporter with The Center for Investigative Reporting (henceforth "CIR") seeking records of any wage and hour complaints filed against the employer "Synanon" from 1960 through 1989.

I also request any response by the Department of Labor to this complaint, including but not limited to correspondence with the complainant(s), internal correspondence about the case(s), case notes, and investigative reports.

This case(s) likely originated out of California, but there may be other cases that originated from other wage and hour offices throughout the country.

As an employee of the nation's oldest nonprofit investigative news organization seeking this information for dissemination to the general public as part of an effort to examine the governmental response to drug rehab programs that require participants to work for free, I request a fee waiver. 5 U.S.C. § 552(a)(4)(A)(iii). This request is made in the public interest and not for commercial use.

These records will be published by The Center for Investigative Reporting, the oldest nonprofit investigative newsroom in the country.

Founded in 1977 as the nation's first nonprofit investigative journalism organization, The Center for Investigative Reporting has developed a reputation for being among the most innovative, credible and relevant media organizations in the country. Reveal – our website, public radio program, podcast and social media platform – is where we publish our multiplatform work. Our Reveal radio show airs weekly on more than 400 radio stations nationwide, and is downloaded by more than one million podcast listeners per month.

CIR is nationally respected for setting the highest journalistic standards, and for our signature approach to investigative reporting and collaboration. We partner with numerous other media organizations, prioritize impact over exclusivity, engage with the public and track results. To reach a broad and diverse audience worldwide, we publish our stories online, as well as for print, television, radio/audio, video and live events.

Our work has been recognized for its excellence, groundbreaking creativity and impact. Recent awards include: News Emmy awards, a George Foster Peabody Award, a Webby award, a Military Reporters and Editors Award, a Barlett & Steele Gold Award for investigative business journalism, a Robert F. Kennedy Award, an Alfred I. DuPont- Columbia University awards, a George Polk Award, a Sigma Delta Chi award, IRE Awards for multiplatform journalism and an Edward R. Murrow Award for investigative reporting. We were a finalist for the Pulitzer Prize in 2012, 2013 and 2018, an Academy Award nominee in 2018, and a recipient of the 2012 MacArthur Award for Creative and Effective Institutions.

If possible, I would prefer the documents in electronic format. Please notify me before incurring any photocopying costs over \$100.

I am also requesting expedited processing on this request. 5 U.S.C. § 552(a)(6)(E)(v)(II); see also *Al-Fayed v. CIA*, 254 F.3d 300, 306 (D.C.

Cir. 2001). These records will show how the Department of Labor has responded to rehab programs engaged in these activities, and will shed light on the legality of this business model. We have written extensively on these types of programs, which have led to numerous lawsuits and state government investigations, all centered around the question of whether or not this type of operation is legal. You can read our coverage, which was a 2018 finalist for the Pulitzer Prize, here: <https://www.pulitzer.org/finalists/amy-julia-harris-and-shoshana-walter-reveal-center-investigative-reporting>

These Department of Labor records will provide an answer to this question, making it of interest to thousands of people who have attended these programs, to hundreds of thousands of readers, families and people actively struggling with addiction, and to the many governmental authorities who are currently and actively investigating. Any information obtained from this request will be used for the public's interest in news stories written for CIR.

I certify that the above information is true and correct to the best of my knowledge.

Please furnish all responsive records in electronic, searchable format delivered to my email address swalter@revealnews.org. If that's not possible, please send records either CD-ROM or paper to the following address:

Shoshana Walter
C/O The Center for Investigative Reporting
1400 65th St., Suite 200
Emeryville, CA 94608

Further Correspondence:

All correspondence regarding this request can be directed to me at swalter@revealnews.org.

Please be aware that under 5 U.S.C. § 552(a)(6)(A), a FOIA request is considered constructively denied after twenty business days and is subject to litigation on that basis. If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. As the law requires, I will also expect you to release all segregable portions of otherwise exempt material.

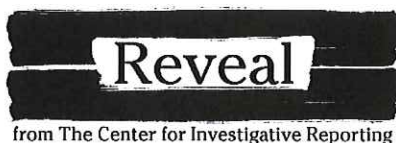
I reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

If you have any questions, do not hesitate to contact me at 973-768-4767.

Thank you for your prompt attention to this request.

Sincerely,
Shoshana Walter

--
Shoshana Walter
Reporter
[415-508-8276]
[@shoeshine](#), [@facebook](#)



--
Shoshana Walter
Reporter
[415-508-8276]
[@shoeshine](#), [@facebook](#)

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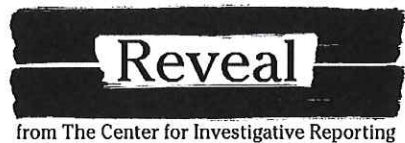
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Shoshana Walter

Reporter

[415-508-8276]

[@shoeshine](#), [@facebook](#)



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Shoshana Walter

Reporter

[415-508-8276]

[@shoeshine](#), [@facebook](#)

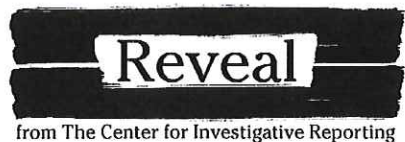


Exhibit B

Shawn Musgrave <smusgrave@revealnews.org>

Fwd: Acknowledgment

1 message

Shoshana Walter <swalter@revealnews.org>
To: Shawn Musgrave <smusgrave@revealnews.org>

Thu, Jun 27, 2019 at 10:16 AM

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

From: **Miller, Darlene - SOL** <Miller.Darlene@dol.gov>

Date: Tue, May 7, 2019 at 11:08 AM

Subject: Acknowledgment

To: Shoshana Walter <swalter@revealnews.org>Cc: Oliver, Ramona - SOL <Oliver.Ramona@dol.gov>, Moreno, Michelle - WHD <Moreno.Michelle@dol.gov>, Coleman, Genise E - WHD <Coleman.Genise@dol.gov>

Ms. Walter:

Your request has been assigned to Wage and Hour today with tracking number **877627**. After 48 hours of this assignment, you should be able to track the progress of your request at www.dol.gov/foia. If you need to contact Wage and Hour about it for any reason, please submit your inquiry through whd-foia@dol.gov or phone 202-693-1004. In addition, it would be helpful to include the tracking number in the Subject line of any submission to the agency or to have it available at the time of a call.

Sincerely,

Darlene Miller | Government Information Specialist, Office of Information Services

Division of Management and Administrative Legal Services (MALS) | Office of the Solicitor

U S Department of Labor | 200 Constitution Avenue NW N2420 | Washington DC 20210

Phone: 202-693-5442 | Fax: 202-693-5389 | Email: miller.darlene@dol.gov | e-FOIAs:
foiarequests@dol.gov**From:** Shoshana Walter <swalter@revealnews.org>**Sent:** Monday, May 6, 2019 8:46 PM**To:** WHD-FOIA <WHD-FOIA@DOL.gov>; FOIARequests <FOIARequests@dol.gov>**Cc:** Laura Starecheski <lstarecheski@revealnews.org>; Ike Sriskandarajah <ike@revealnews.org>**Subject:** FOIA request

To Whom It May Concern:

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CIR is nationally respected for setting the highest journalistic standards, and for our signature approach to investigative reporting and collaboration. We partner with numerous other media organizations, prioritize impact over exclusivity, engage with the public and track results. To reach a broad and diverse audience worldwide, we publish our stories online, as well as for print, television, radio/audio, video and live events.

Our work has been recognized for its excellence, groundbreaking creativity and impact. Recent awards include: News Emmy awards, a George Foster Peabody Award, a Webby award, a Military Reporters and Editors Award, a Barlett & Steele Gold Award for investigative business journalism, a Robert F. Kennedy Award, an Alfred I. DuPont- Columbia University awards, a George Polk Award, a Sigma Delta Chi award, IRE Awards for multiplatform journalism and an Edward R. Murrow Award for investigative reporting. We were a finalist for the Pulitzer Prize in 2012, 2013 and 2018, an Academy Award nominee in 2018, and a recipient of the 2012 MacArthur Award for Creative and Effective Institutions.

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Cir. 2001). These records will show how the Department of Labor has responded to rehab programs engaged in these activities, and will shed light on the legality of this business model. We have written extensively on these types of programs, which have led to numerous lawsuits and state government investigations, all centered around the question of whether or not this type of operation is legal. You can read our coverage, which was a 2018 finalist for the Pulitzer Prize, here: <https://www.pulitzer.org/finalists/amy-julia-harris-and-shoshana-walter-reveal-center-investigative-reporting>

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Any information obtained from this request will be used for the public's interest in news stories written for CIR.

I certify that the above information is true and correct to the best of my knowledge.

Please furnish all responsive records in electronic, searchable format delivered to my email address swalter@revealnews.org. If that's not possible, please send records either CD-ROM or paper to the following address:

Shoshana Walter
C/O The Center for Investigative Reporting
1400 65th St., Suite 200
Emeryville, CA 94608

Further Correspondence:

Exhibit C

U.S. Department of Labor

Wage and Hour Division
Washington, D.C. 20210



June 24, 2019

Shoshana Walter
The Center for Investigative Reporting
1400 65th Street, Suite 200
Emeryville, California 94608

Sent via email to swalter@revealnews.org

RE: Freedom of Information Act Response
FOIA Tracking Number **877627**

Dear Ms. Walter:

The National Office of the US Department of Labor (DOL), Wage and Hour Division is responding to your request made under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, dated May 6, 2019. Specifically, you asked for any WHD complaints filed against the employer Synanon, from 1960 through 1989, including any response by the Department of Labor to this complaint.

WHD can neither confirm nor deny that we do or did maintain the records you requested. As such, we are providing a Glomar response to your FOIA request. The processing costs incurred did not exceed the chargeable minimum. You have not been assessed related processing fees and; therefore, your request for fee waiver is moot.

Pursuant to 29 CFR § 70.25 (d)(1)(i-iv), DOL will evaluate requests for expedited processing against how the lack of expedited treatment could reasonably be expected to:

- 1). pose an imminent threat to the life or physical safety of an individual;
- 2). pose a loss of substantial due process rights;
- 3). involve a matter of widespread and exceptional media interest involving questions about the government's integrity, which affect public confidence; or
- 4). involve an urgency to inform the public about an actual or alleged Federal Government activity, if made by a person primarily engaged in disseminating information.

In your request for expedited process, you state that these records will show how the Department of Labor has responded to rehab programs engaged in these activities, and will shed light on the legality of this business model. Your justification does not meet the above threshold to grant expedited processing. Therefore, your request for expedited treatment is denied.

If you consider this an adverse determination, you have the right to file an administrative appeal by writing to the Solicitor of Labor within 90 days from the date of this letter. The appeal must state in writing the grounds for the appeal, and it may include any supporting statements or arguments, but such statements are not required. In order to facilitate processing of the appeal, please include your mailing address and daytime telephone number, as well as a copy of the

initial request and copy of this letter. The envelope and letter of the appeal should be clearly marked "Freedom of Information Act Appeal." Any amendment to the appeal must be made in writing and received prior to a decision. The appeal should be addressed to the Solicitor of Labor, Division of Management and Administrative Legal Services, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N2420, Washington, DC 20210. Appeals may also be submitted by email to foiaappeal@dol.gov. Appeals submitted to any other email address will not be accepted.

If you need further assistance, please contact this office via email at whd-foia@dol.gov or call 202-693-1004. If we cannot assist you in your concerns, you may also contact the Departmental FOIA Public Liaison, Thomas Hicks, at 202-693-5427 or email at hicks.thomas@dol.gov. Alternatively, you may contact the Office of Government Information Services National Archives and Records Administration regarding available mediation services at: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. You can also reach that office by email at ogis@nara.gov, by phone at 202-741-5770, by fax at 202-741-5769, or by calling toll-free at 877-684-6448.

Sincerely,



Genise E. Coleman
Chief, Branch Document Management

Exhibit D

the
center for
investigative
reporting

Solicitor of Labor, Division of Management
and Administrative Legal Services
U.S. Department of Labor
200 Constitution Ave, NW Room N2420
Washington, D.C. 20210
foiaappeal@dol.gov

July 2, 2019

VIA U.S. MAIL AND ELECTRONIC DELIVERY

Re: Freedom of Information Act Appeal FOIA No. 877627

To Whom It May Concern:

The Center for Investigative Reporting (“CIR”) hereby writes to appeal on behalf of the requester, Ms. Shoshana Walter, pursuant to the Freedom of Information Act, 5 U.S.C. § 552, from a denial sent by the Wage and Hour Division (WHD), a division of the Department of Labor (DOL), on June 24, 2019, involving complaints against Synanon and any subsequent WHD investigation(s).

I. Factual Background

WHD’s mission is “to promote and achieve compliance with labor standards to protect and enhance the welfare of the Nation’s workforce.” WHD, *Mission Statement*.¹ As part of its mandate, WHD conducts employer investigations, many of which are prompted by complaints from employees and/or third parties. WHD, *Fact Sheet #44: Visits to Employers*.²

The Synanon organization, was founded in 1958, and initially offered drug rehabilitation programs at several locations in California and in other states.³ In 1974,

¹ Available at <https://www.dol.gov/whd/about/mission/whdmiss.htm> (last accessed July 1, 2019).

² Available at <https://www.dol.gov/whd/regs/compliance/whdfs44.htm> (last accessed July 1, 2019).

³ See, generally, Matt Novak, *Synanon's Sober Utopia: How a Drug Rehab Program Became a Violent Cult*, Gizmodo, Apr. 15, 2014, <https://paleofuture.gizmodo.com/synanons-sober-utopia-how-a-drug-rehab-program-became-1562665776> (last accessed July 1, 2019).

Synanon sought recognition from the Internal Revenue Service as a religious organization, and in 1980, the group changed its name to The Synanon Church. *Synanon Church v. Comm’r*, 57 T.C.M. (CCH) 602 (T.C. 1989); see also *Synanon Found., Inc. v. Bernstein*, 503 A.2d 1254 (D.C. 1986). Synanon residents “were given work assignments they were required to perform,” including in its Advertising Gift and Premiums (“Adgap”), which the IRS determined was a business “unrelated to [Synanon’s] charitable activities.” *Id.* Synanon at one point indicated that “Adgap is operated by individuals serving without compensation.” *Id.*

II. Procedural History

On May 6, 2019, Ms. Walter sent a FOIA request (hereinafter “the Request”) to WHD requesting documents about Synanon. A true and correct copy of the Request is attached as Exhibit A. Specifically, Ms. Walter requested “records of any wage and hour complaints filed against employer ‘Synanon’ from 1960 through 1989,” as well as “any response by the Department of Labor . . . including but not limited to correspondence with the complainant(s), internal correspondence about the case(s), case notes, and investigative reports.” *Id.* Ms. Walter added that relevant cases “likely originated out of California, but there may be other cases that originated from other wage and hour offices throughout the country.” *Id.*

On May 7, 2019, Ms. Walter received an email from DOL acknowledging the Request and assigning it tracking number 877627. A true and correct copy of that email is attached as Exhibit B. On June 24, 2019, Ms. Walter received a denial of her request (hereinafter “the Denial”) from WHD. A true and correct copy of the Denial is attached as Exhibit C. The Denial indicated that “WHD can neither confirm nor deny that we do or did maintain the records [Ms. Walter] requested” and that WHD was “providing a Glomar response.” *Id.*

CIR now appeals WHD’s Denial. This appeal is timely according to 29 C.F.R. § 70.

III. Argument

A government agency may deny a FOIA request by stating that the agency cannot confirm or deny the very existence of the records — also known as a Glomar response — only “in that rare situation when [confirming or denying] would ‘cause harm cognizable under a FOIA exception.’” *Bartko v. United States Dep’t of Justice*, 898 F.3d 51, 63–64 (D.C. Cir. 2018) (quoting *Roth v. Dep’t of Justice*, 642 F.3d 1161, 1178 (D.C. Cir. 2011)). See also *Pickard v. Dep’t of Justice*, 653 F.3d 782, 785–86 (9th Cir. 2011). Agencies cannot provide a Glomar response “when the existence or nonexistence of the particular records covered by the Glomar response has been officially and publicly disclosed.” *Wilner v. Nat’l Sec. Agency*, 592 F.3d 60, 70 (2d Cir. 2009). The agency “bears the burden of showing that the fact of whether it possesses requested records is

protected from disclosure under a FOIA exemption.” *De Sousa v. Cent. Intelligence Agency*, 239 F. Supp. 3d 179, 190 (D.D.C. 2017).

WHD has not met its burden to justify its Glomar response in the Denial because it has not identified a relevant FOIA exemption under which confirming or denying the records’ existence would cause any cognizable harm. Further, the government cannot invoke the Glomar doctrine given that many government agencies have publicly acknowledged their investigations into Synanon’s business and labor practices.

A. WHD failed to cite any relevant FOIA exemption, much less establish that any cognizable harm might result from acknowledging the records’ existence.

Under FOIA, there is a presumption of access, so agencies must provide a detailed and “justified reason” for withholding. *See Morley v. CIA*, 508 F.3d 1108, 1122 (D.C. Cir. 2007) (quoting *King v. Dept of Justice*, 830 F.2d 210, 219 (D.C. Cir. 1987)). For example, “barren assertions that an exempting statute has been met cannot suffice to establish that fact.” *Founding Church of Scientology of Washington D.C., Inc. v. Nat’l Sec. Agency*, 610 F.2d 824, 831 (D.C. Cir. 1979). While the Glomar doctrine permits “an agency [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) (quoting *Gardels v. CIA*, 689 F.2d 1100, 1103 (D.C. Cir. 1982)), courts will not permit a Glomar response where no FOIA exemption applies in the first instance. *Bartko*, 898 F.3d at 65 (rejecting “sweeping” Glomar response because the agency failed to demonstrate the underlying FOIA exemption applied to its records).

WHD’s Denial did not provide a justified reason for withholding and did not cite a single FOIA exemption. The cursory Denial only asserts that “WHD can neither confirm nor deny” the existence of any responsive records. This is an entirely inadequate denial. At an absolute minimum the agency must have articulated at least one of the nine exemptions upon which it based its Glomar response. WHD’s Denial does not meet the initial threshold without a statutory justification. Moreover, WHD does not meet its burden to justify a Glomar response, where there is no plausible cognizable harm. Releasing historical “wage and hour complaints filed against employer ‘Synanon’ from 1960 through 1989” and documentation of WHD’s investigation into such complaints cannot justifiably create any cognizable harm.

B. Investigations into Synanon’s business practices have been publicly acknowledged by multiple federal government agencies.

Even if an agency meets the threshold burden for a Glomar response, it may easily lose its justification to issue a Glomar response when the existence or nonexistence of requested records “has been officially and publicly disclosed.” *Wilner*, 592 F.3d at 70. Courts have long recognized that agencies cannot 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.”)

Here, at least two federal investigative agencies have publicly acknowledged investigations into Synanon’s business practices, including allegations that the organization profited off of unpaid labor. In 1982, following an audit, the IRS revoked Synanon’s tax-exempt status. *Synanon Church v. Comm’r*, 57 T.C.M. (CCH) 602. In subsequent litigation it was disclosed that Synanon told the IRS that “the entire rehabilitation and training program of Synanon Adgap is operated by individuals serving without compensation.” *Id.*; see also *In re Sealed Case*, 754 F.2d 395, 397 (D.C. Cir. 1985). According to its publicly available file on Synanon, the FBI kept tabs on the organization since at least 1964 and investigated Adgap in the 1980s in cooperation with the U.S. Department of Justice.⁴ Further, two former WHD investigators separately confirmed to Ms. Walter that WHD investigated Synanon. One of the former investigators indicated that WHD received complaints from Synanon members’ families, and that Synanon was found to be in violation of the Fair Labor Standards Act.

Given the extensive public acknowledgments about the government’s investigations into Synanon’s business practices, including into allegations of labor practice violations, WHD cannot justify a Glomar response.

IV. Conclusion

In conclusion, DOL should remand to WHD with instruction to release all relevant information immediately. Should OSHA need clarification as to any aspect of the Request, it may reach me at vbaranetsky@revealnews.org or (510) 982-2890.

Sincerely,



Victoria D. Baranetsky
General Counsel
The Center for Investigative Reporting

cc: Shoshana Walter

⁴ Available at https://www.governmentattic.org/10docs/FBIfileSYNANON_1963-1985.pdf (last accessed July 1, 2019).

Exhibit E

U.S. Department of Labor

Office of the Solicitor
Washington, D.C. 20210



Appeals Unit
Freedom of Information Act/Privacy Act
Division of Management and Administrative Legal Services
200 Constitution Avenue, N.W., Suite N-2420
Phone: (202) 693-5523
Fax: (202) 693-5538

Victoria D. Baranetsky
The Center for Investigative Reporting
1400 65th, Suite 200
Emeryville, CA 94608

SEP 10 2019

Re: FOIA Appeal No. 190181

Dear Ms. Baranetsky:

This decision is in response to your letter dated July 2, 2019, appealing on behalf of the Center for Investigative Reporting (CIR), under the Freedom of Information Act (FOIA), the June 24, 2019, determination of Genise Coleman, Chief, Branch Document Management, Wage and Hour Division (WHD). In the initial request filed by CIR, dated May 6, 2019, CIR requested records of any wage and hour complaints filed against the employer Synanon from 1960 through 1989, including correspondence with the complainant(s), internal correspondence about the case(s), case notes, and investigative reports. In its June 24, 2019 response, WHD stated that it could “neither confirm nor deny that we do or did maintain the records you requested,” and was therefore, providing a “Glomar”¹ response to the request. On appeal, you contend that WHD erred in providing a Glomar response.

Generally, an agency may provide a response refusing to confirm or deny the fact that records do or do not exist where to do so would cause a harm cognizable under a FOIA exemption, the so-called “Glomar” response. *See, e.g., Antonelli v. Federal Bureau of Investigation*, 721 F.2d 615, 617 (7th Cir. 1983). However, here, WHD’s use of the Glomar response was improper because WHD did not identify a relevant FOIA exemption under which confirming or denying the records’ existence would cause any cognizable harm. Department of Labor regulations require that FOIA responses include a brief statement of the reason or reasons for the denial, including the FOIA exemption or exemptions relied upon in denying the request. *See* 29 C.F.R. §70.21(e). Because WHD’s response did not identify the FOIA exemption(s) that it was relying upon in

¹ The name “Glomar” is derived from the facts of the decision of the United States Court of Appeals for the District of Columbia Circuit in *Phillippi v. C.I.A.*, 546 F.2d 1009 (D.C. Cir. 1976), in which the court addressed the CIA’s refusal to confirm or deny whether it had any documents relating to a ship, the Glomar Explorer, which had reputedly been used in an attempt to recover a lost Soviet submarine. *See American Civil Liberties Union v. C.I.A.*, 710 F.3d 422, 434 n.1 (D.C. Cir. 2013).

denying the request, we are remanding your request to WHD for additional evaluation. WHD will respond directly to you with a supplemental FOIA decision. On remand, if WHD concludes that a Glomar response is appropriate, it will identify the FOIA exemption under which confirming or denying the records' existence would create a cognizable harm. You will have the same right to appeal WHD's upcoming response that you would any FOIA determination. Your appeal rights will be provided in WHD's forthcoming decision.

Sincerely,

A handwritten signature in blue ink that reads "Raymond E. Mitten, Jr." The signature is written in a cursive style with a large, looping initial 'R'.

Raymond E. Mitten, Jr.
Counsel for FOIA Appeals