

# **EXHIBIT G**



DEPARTMENT OF THE NAVY  
OFFICE OF THE JUDGE ADVOCATE GENERAL  
1322 PATTERSON AVENUE SE SUITE 3000  
WASHINGTON NAVY YARD DC 20374

IN REPLY REFER TO:  
5720  
Ser 14/059  
January 16, 2020

Mr. Eric E. Westervelt  
NPR News  
2815 Acton Street  
Berkeley, CA 94702

SUBJECT: FREEDOM OF INFORMATION ACT (FOIA) REQUEST NUMBER DON-  
USMC-2019-009636 AND FOIA APPEAL DON-NAVY-2020-000887

This letter responds to your appeal dated October 17, 2019, and received in our office on October 28, 2019. Your underlying FOIA request, DON-USMC-2019-009636, submitted to U.S. Marine Corps Forces, Central Command, I Marine Expeditionary Force, and 1<sup>st</sup> Marine Division, sought administrative investigations related to actions taken or ordered by then-Marine Captain Duncan Hunter in Fallujah, Iraq in 2004. These commands were unable to locate responsive records, and your appeal contends that the searches were inadequate.

Your appeal is a request for a final determination under the FOIA. For the reasons set forth below, your appeal is denied.

The adequacy of an agency's search for information requested under the FOIA is determined by a "reasonableness" test. *Meeropol v. Meese*, 790 F.2d 942, 956 (D.C. Cir. 1986); *Weisberg v. United States Dep't of Justice*, 705 F.2d 1344, 1350-51 (D.C. Cir. 1983). Generally, an agency must undertake a search that is reasonably calculated to locate the requested information. *Kowalczyk v. Department of Justice*, 73 F.3d 386, 388 (D.C. Cir. 1996). The mere speculation that requested documents exist does not undermine the finding that the agency conducted a reasonable search. *Wilbur v. C.I.A.*, 355 F.3d 675, 678 (D.C. Cir. 2004) ("Likewise, the agency's failure to turn up a particular document, or mere speculation that as yet uncovered documents might exist, does not undermine the determination that the agency conducted an adequate search for the requested records.").

After receiving your appeal, my office contacted the I MEF FOIA office, the initial denial authority (IDA), to determine whether the searches for records were adequate. The IDA coordinated a comprehensive search of electronic files containing the keywords "Fallujah" or "Duncan Hunter." The IDA also searched its physical files, but did not find the requested records. This was not surprising, as document retention policies generally only require commands to retain their administrative investigations for two years after completion. After this two-year period, investigations are sent to the Office of the Judge Advocate General (OJAG), Code 15, the Claims and Tort Litigation Division, for archiving. Because any responsive record from 2004 would likely have been archived, the IDA also contacted OJAG, Code 15, but no responsive records were listed on its database of archived investigations or found in the archives using the same search terms. Accordingly, I find that these searches were adequate, and therefore your appeal is denied.

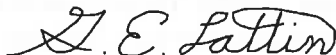
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As the Department of the Navy's designated adjudication official for this FOIA appeal, I am responsible for the denial of your appeal. You may seek judicial review of this decision by filing a complaint in an appropriate U.S. District Court. My office represents the U.S. government and is therefore unable to assist you in this process.

If you would like to seek dispute resolution services, you have the right to contact the Marine Corps FOIA public liaison, Ms. Sally Hughes, at [hqmcfoia@usmc.mil](mailto:hqmcfoia@usmc.mil) or (703) 614-4008, or the Department of the Navy's FOIA public liaison, Mr. Chris Julka, at [christopher.a.julka@navy.mil](mailto:christopher.a.julka@navy.mil) or (703) 697-0031. You may also seek dispute resolution services from the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, at (202) 741-5770 or [ogis@nara.gov](mailto:ogis@nara.gov).

If you have further questions or concerns for my office, my point of contact is Major James McKeon, USMC, who may be reached at (202) 685-4596, or [james.mckeon@navy.mil](mailto:james.mckeon@navy.mil).

Sincerely,



G. E. LATTIN  
Director  
General Litigation Division

Copy to:  
US MARCENT  
I MEF  
1<sup>st</sup> MARDIV  
HQMC (ARSF)  
DON OCIO