

EXHIBIT E



January 14, 2020

Melissa Golden
Lead Paralegal and FOIA Specialist
Office of Legal Counsel
Room 5511, 950 Pennsylvania Avenue, NW
Department of Justice
Washington, DC 20530-0001
Submitted via: eFOIPA portal

Re: Freedom of Information Act Request

Dear Ms. Golden,

I am making this request under the Freedom Of Information Act (“FOIA”), 5 U.S.C. § 552. Please provide records that are maintained by your agency or for your agency by a government contractor in any format.

Please also note that the personal emails and text messages are not exempt from FOIA when used for official business, even if the agency requires such messages to be forwarded to official accounts. (See: *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149-50 (D.C. Cir. 2016).

Please provide the following records in a digital format:

- Any documents produced or examined by the Office of Legal Counsel analyzing the legal basis for or any legal limitations on a targeted strike against Qassem Soleimani.
- Any documents produced or examined by the Office of Legal Counsel to determine to whether and to what extent a targeted strike on Qasem Soleimani would require Congressional authorization.
- Any documents produced or examined by the Office of Legal Counsel to determine whether a targeted strike on Qasem Soleimani was authorized by the 2002 Authorization for Use of Military Force.
- Any documents produced or examined by the Office of Legal Counsel to determine whether a targeted strike on Qasem Soleimani was permitted solely by the President’s authority pursuant to Article II of the Constitution.
- Any documents produced or examined by the Office of Legal Counsel to determine whether a targeted strike on Qasem Soleimani was authorized by the War Powers Act.

In addition to the records requested above, POGO also requests records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched and any tracking sheets used to track the processing of this request. If your agency uses FOIA questionnaires or certifications completed by individual custodians or

components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

I request a waiver of all costs associated with fulfilling this submission pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). Disclosure of the requested records will further the "public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest" of the requester, the Project On Government Oversight (POGO). Specifically, POGO intends to use the requested records to highlight for the public federal government interest in the extent to which the executive branch asserts unilateral authority to engage initiate military action that may constitute an act of war or initiate prolonged military conflict. If the request for a fee waiver is denied, please contact me about any incurred expenses prior to supplying the requested records.

Please see the following fee waiver statements:

The subject of the request:

POGO is requesting records which will inform readers the executive branch's legal reasoning for conducting a targeted military strike on a top military and government official of a foreign nation, and specifically how the Department of Justice believes such action comports with constitutional constraints that only permit acts of war that are authorized by Congress.

The informative value of the information to be disclosed:

The information to be disclosed is likely to contribute to an increased public understanding of the executive branch's views on the extent of executive power to conduct military operations and engage in use of force, including against top military and government officials of foreign nations.

The contribution to an understanding of the subject by the public likely to result from disclosure:

POGO investigates, exposes, and seeks to remedy systemic abuses of power and mismanagement in the federal government. Founded in 1981, POGO is a politically independent, nonprofit watchdog that promotes a government that is accountable to the citizenry. POGO disseminates information about its activities to the public, policymakers, and the media via email, direct mail, and its websites which receives over 100,000 unique views per month. The records provided by your agency will be used for the following activities, which are publicly available: publication by email and on POGO websites; publication in reports and newsletters issued by POGO; publication in the newsletters of affiliated nonprofit organizations; efforts to educate Congress, the executive branch, and other policymakers; or in conjunction with other members of the news media. The information will advance understanding of executive branch claims regarding its inherent power to use military force and the degree to which the executive branch believes this power is constrained by Congress.

The significance of the contribution to public understanding:

The targeted killing of Qasem Soleimani has increased hostilities between the United States and Iran, increasingly the possibility of direct military confrontation or war with Iran. As debate over proper foreign policy decisions on this topic continues, the public has a significant interest in knowing to what degree the executive branch believes it has unilateral authority to conduct this type of military action, and to what degree Congress has the power to authorize or limit relevant military action.

The existence and magnitude of a commercial interest:

POGO does not charge for access to its web site, reports, newsletters, or other publications. In addition, we do not directly profit from increased viewership of our website, as it is advertisement-free.

The primary interest in disclosure:

POGO has no financial interest in the requested information as stated above. The primary interest in disclosure is that of the public interest.

If this request is denied in full or in part, please cite each exemptions pursuant to 5 U.S.C. § 552(b) that justifies each denial. Please bear in mind that the foreseeable harm standard must be met before an exemption applies. If an exemption applies, however, please consider exercising the agency's discretionary release powers to disclose the records. Any such action supports the presumption of "openness" on which FOIA is based upon. Additionally, please release all reasonably segregable portions of the records that do not meet an exemption. 5 U.S.C. § 552(b).

I look forward to your response, including an individualized tracking number, within 20 days of the receipt of this request, unless, in the case of "unusual circumstances," the time limitation is "extended by written notice." 5 U.S.C. § 552(a)(6)(B). I am aware that all fees will be waived if specified time limits are not met. 5 U.S.C. § 552(a)(4)(A)(viii). I have a right to appeal if this request is wholly or partially denied or if the agency fails to respond within 20 days, and that, if successful, a federal district court may assess "reasonable attorney fees and other litigation costs." 5 U.S.C. § 552(a)(4)(E).

Please do not hesitate to call me at (202) 347-1122 to see if I can clarify the request or otherwise expedite and simplify your efforts. Thank you for your prompt attention to this matter.

Sincerely,

Jake Laperruque
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