

# The Washington Post

1301 K STREET N. W.  
WASHINGTON, D.C. 20071-7403  
(202) 334-6000

March 23, 2018

Naval Criminal Investigative Service  
Department of the Navy  
Attn: FOIA Coordinator  
27130 Telegraph Road  
Quantico, VA 22134-2253

Transmitted via email at [ncis\\_foia@ncis.navy.mil](mailto:ncis_foia@ncis.navy.mil)

Dear FOIA Officer,

This is a request under the Freedom of Information Act, 5 U.S.C. § 552, for records of the vetting and screening process established by the Navy to determine which officials or personnel would be permitted to have access to sensitive law-enforcement information from the Glenn Defense Marine Asia (GDMA) investigation.

The records I am seeking are from August 2013 to the present. They include – but are not limited to – the following:

- Vetting lists or records that identify which Navy officials or personnel were screened or vetted to receive information about the GDMA investigation;
- Non-disclosure agreements signed by Navy officials;
- Acknowledgment and release forms signed by Navy officials as part of the vetting or screening process;
- Action memos, draft action memos, interview notes, vetting results, vetting memos, as well as records of approval or denial regarding individuals who were subjected to the vetting or screening process.

Please also include emails – and email attachments – about the GDMA vetting and screening process sent to, from, copied or forwarded to, the following individuals:

- Paul Oostburg Sanz, Anne M. Brennan and Isaac Natter; Navy Office of General Counsel and Acquisition and Integrity Office;
- VADM Nanette DeRenzi and VADM/RADM James Crawford, Office of the Judge Advocate General;
- Andrew Traver, Norman Kiger, William Ferrell, Mark Ridley and John “Andy” Hogan, Naval Criminal Investigative Service;
- ADM Mark Ferguson, ADM William Moran, Navy Personnel Command;
- ADM John Richardson, ADM Phil Davidson, Consolidated Disposition Authority for GDMA;
- ADM Michelle Howard and ADM Jonathan Greenert;
- Thomas Oppel, SECNAV chief of staff;
- Mark Pletcher, Department of Justice.

If you regard any of these records as exempt from disclosure under the Act, I hereby request that you exercise your discretion to disclose them. As you know, in his January 2009 Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act, President Obama directed federal officials to administer the FOIA with “a clear presumption: In the face of doubt, openness prevails.” The President specifically ordered federal officials not to withhold information “merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears.”<sup>1</sup>

If you deny this request in whole or in part, I ask that you justify all deletions by reference to specific exemptions of the Act, and that you provide all non-exempt portions that are reasonably segregable. Under the FOIA Improvement Act of 2016, agencies are required to “take reasonable steps necessary to segregate and release nonexempt information” and must “consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible.”<sup>2</sup>

I further request that you disclose the listed documents, as they become available to you, without waiting until all the documents have been assembled.

There is a clear, compelling and strong public interest in disclosure of these records that greatly outweighs any potential privacy concerns. The courts have consistently and forthrightly held that the public interest favors disclosure in cases that shed light on misconduct by government officials. In *Columbia Packing Co. v. U.S. Department of Agriculture* (1977), the First Circuit upheld an order to disclose under FOIA the personnel records of two former federal meat inspectors who had been convicted of taking bribes from meat-packing firms, noting that “the public has an interest in whether public servants carry out their duties in an efficient and law-abiding manner.”<sup>3</sup> In *Cochran v. United States* (1985), the 11<sup>th</sup> Circuit held that “the balance struck under FOIA exemption six overwhelming[ly] favors the disclosure of information relating to a

<sup>1</sup> <https://www.whitehouse.gov/the-press-office/transparency-and-open-government>

<sup>2</sup> <https://www.congress.gov/114/plaws/publ185/PLAW-114publ185.pdf>

<sup>3</sup> *Columbia Packing Co. v. U.S. Department of Agriculture*, 563 F.2d 495 (1<sup>st</sup> Cir. 1977)

violation of the public trust by a government official, which certainly includes the situation of a misuse of public funds or facilities.”<sup>4</sup> Although the official misconduct in *Cochran* concerned a relatively small amount of money misappropriated by a general officer in the U.S. Army, the 11<sup>th</sup> Circuit stated that “information relating to a misappropriation of government funds, in whatever amount, by a high level government official qualifies as a textbook example of information the FOIA would require to be disclosed to the press.” In *Chang v. Department of the Navy* (2004), the court found that while information regarding a non-judicial punishment (NJP) proceeding is “generally not releasable,” such information should be disclosed pursuant to a FOIA request when “the facts leading to a nonjudicial punishment are particularly newsworthy.”<sup>5</sup>

There is simply no doubt that any information regarding the Glenn Defense Marine case is newsworthy – particularly records that would shed light on the Navy’s efforts to hold personnel accountable for wrongdoing. With more than 550 people under scrutiny, and an extensive record of misconduct that unfolded over more than two decades, the Glenn Defense Marine Asia scandal has become an ethical morass of epic proportions for the U.S. Navy.<sup>6</sup> Senior Navy and Justice Department officials have emphasized the gravity of the offenses and the unprecedented scope of the misconduct. At an Oct. 14, 2016 sentencing hearing in U.S. District Court in the Southern District of California, Assistant U.S. Attorney Brian R. Young called the scandal “easily one of the biggest fraud and corruption schemes in the history of the Navy.” At the same hearing, NCIS Director Andrew Traver called it “the most significant case that has impacted the Navy” and “arguably the largest fraud case that our agency has ever been involved in.”<sup>7</sup> In a report to the 2015 Annual Meeting of the American Bar Association, Vice Adm. James W. Crawford III, the U.S. Navy Judge Advocate General, called the Glenn Defense Marine Asia case “the largest, most comprehensive fraud and corruption investigation in the history of the U.S. Navy.”<sup>8</sup>

**I am also seeking expedited processing of this request for records.** As a journalist for The Washington Post, I am primarily engaged in disseminating information to our worldwide readership. Further, the records I am seeking are urgently needed in order to inform the public concerning government activity, specifically regarding military officials who have committed misconduct as part of their official duties.

Developments in the Glenn Defense Marine Asia investigation have led to a steady stream of breaking news articles in The Washington Post since 2013, including more than 40 articles written by this requestor alone (see Exhibit A, attached). A delay in releasing records regarding the GDMA case would undermine public confidence in the Navy’s ability and willingness to fairly and thoroughly investigate allegations of misconduct.

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<sup>4</sup> *Cochran v. United States*, 770F.2d 949 (11 Cir. 1985)

<sup>5</sup> *Chang v. Department of the Navy*, 314 F. Supp. 2d 35, 44 (D.D.C. 2004)

<sup>6</sup> Whitlock, Craig; “The Man Who Seduced the 7<sup>th</sup> Fleet,” p. A01, The Washington Post, May 29, 2016

<sup>7</sup> Transcript, Sentencing Hearing, U.S. v. John Beliveau Jr., 13-CR-3781-JLS, U.S. District Court for the Southern District of California, Oct. 14, 2016

<sup>8</sup> <http://www.jag.navy.mil/documents/ABAreport2015.pdf>



I certify that my statements concerning the need for expedited processing are true and correct to the best of my knowledge and belief.

For purposes of FOIA fee assessments, I request that you waive all fees in the public interest. The furnishing of the information sought by this request is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester. If, however, you decline to waive all fees, I am prepared to pay your normal fees for news media requesters. Please notify me if you expect the processing fees to exceed \$100.

If I can answer any questions or be of further assistance, please do not hesitate to contact me at 202-334-9587 (office) or by email at [craig.whitlock@washpost.com](mailto:craig.whitlock@washpost.com).

Thanks very much for your cooperation and assistance.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'C Whitlock', with a stylized flourish at the end.

Craig Whitlock  
Staff writer

- 1) "‘Fat Leonard’ Feted Ex-Vice Admiral, Records Show," p. A02, The Washington Post, March 13, 2018
- 2) "How ‘Fat Leonard’ Took USS Blue Ridge Off Course," p. A01, The Washington Post, Feb. 2, 2018.
- 3) "‘Fat Leonard’ Probe Expands to Ensnare More Than 60 Admirals," p. A01, The Washington Post, Nov. 6, 2017.
- 4) "Charges in Navy Scandal May Lead to Military Trial," p. A09, The Washington Post, June 20, 2017.
- 5) "‘Fat Leonard’ Bribed Navy to Secure Diplomatic Immunity," p. A03, The Washington Post, June 18, 2017.
- 6) "Ex-Admiral Sentenced in Navy Corruption Case," p. A01, The Washington Post, May 18, 2017.
- 7) "Admiral’s Ties to ‘Fat Leonard’ Go Back 20 Years, Records Allege," p. A06, The Washington Post, April 21, 2017.
- 8) "Convicted Officers Still Collect Pensions," p. A01, The Washington Post, March 20, 2017.
- 9) "Retired Admiral is Charged in Navy Bribery Probe," p. A01, The Washington Post, March 15, 2017.
- 10) "Navy Officer Who Took Bribes Gets Prison Time," p. A12, The Washington Post, Jan. 13, 2017.
- 11) "NCIS Missed Evidence of ‘Fat Leonard’s’ Cheating," p. A01, The Washington Post, Dec. 28, 2016.
- 12) "Former Navy Official Gets 6-year Sentence in ‘Fat Leonard’ Bribe Case," p. A22, The Washington Post, Dec. 4, 2016.
- 13) "Retired Navy Captain Latest to Admit Accepting Bribes From ‘Fat Leonard,’” p. A09, The Washington Post, Nov. 16, 2016.
- 14) "Former NCIS Agent Gets 12-Year Term for Role in Vast Navy Bribery Scandal," p. A03, The Washington Post, Oct. 15, 2016.
- 15) "Another Defendant Admits Guilt in Vast Navy Scandal," P. A02, The Washington Post, June 24, 2016
- 16) "Admiral Pleads Guilty in Scandal," p. A01, The Washington Post, June 10, 2016
- 17) "The Man Who Seduced the 7<sup>th</sup> Fleet," p. A01, The Washington Post, May 29, 2016
- 18) "Three More Navy Officials Charged in Mushrooming ‘Fat Leonard’ scandal," p. A03, The Washington Post, May 28, 2016
- 19) "Top Navy Officer to Push for a Recommitment to ‘Values’," p. A03, The Washington Post, May 19, 2016
- 20) "After Fairy-Tale Career, Naval Officer Sentenced in Bribery Scandal," p. A03, The Washington Post, April 30, 2016
- 21) "Navy Moves for New Intelligence Chief," p.A05, The Washington Post, April 2, 2016.
- 22) "Captain is Sentenced in Navy Scandal," p. A02, The Washington Post, March 26, 2016.
- 23) "Navy Officer Gets 40 Months in Sex-for-Secrets Scandal," p. A07 The Washington Post, Jan. 30, 2016

- 24) "For Navy's Intelligence Chief, a Lack of Clearance," p. A01, The Washington Post, Jan. 28, 2016
- 25) "Sailor's Bribery Case Shows Ease of Stealing Navy secrets," p. A04, The Washington Post, Jan. 22, 2016
- 26) "Three Admirals Rebuked in 'Fat Leonard' Bribery Probe," p. A07, The Washington Post, July 18, 2015
- 27) "Another Navy Officer Pleads Guilty in 'Fat Leonard' Scandal," p. A12, The Washington Post, April 16, 2015
- 28) "Three Navy Admirals Censured for Bribery," p. A16, The Washington Post, Feb. 11, 2015
- 29) "Contractor in Navy Scandal Starts Helping Investigators," p. A04, The Washington Post, Feb. 5, 2015
- 30) "Contractor Pleads Guilty in Widening Navy Scandal," p. A01, The Washington Post, Jan. 16, 2015
- 31) "Navy Contractor Likely to Plead Guilty in Bribe Case," p. A06, The Washington Post, Jan. 15, 2015
- 32) "Navy Officer Pleads Guilty in Kickback Case," p. A15, The Washington Post, July 4, 2014
- 33) "House Panel Probing Navy Bribery and Fraud Scandal," p. A10, The Washington Post, Jan. 31, 2014
- 34) "Navy Bribery Scandal Expected to Widen," p. A02, The Washington Post, Dec. 21, 2013
- 35) "NCIS Agent in Navy's 'Fat Leonard' Scandal to Plead Guilty," p. A09, The Washington Post, Dec. 13, 2013
- 36) "Navy Work Kept Going to Fumbling Contractor," p. A01, The Washington Post, Dec. 5, 2013
- 37) "7<sup>th</sup> Navy Official Suspended in Probe," p. A12, The Washington Post, Nov. 22, 2013
- 38) "Admirals Named in Bribery Probe," p. A01, The Washington Post, Nov. 9, 2013
- 39) "Moles Inside Navy Aided Huge Fraud, Officials Say," p. A01, The Washington Post, Nov. 8, 2013
- 40) "Third Navy Official is Charged in Bribery Probe," p. A18, The Washington Post, Nov. 7, 2013
- 41) "Bribery Scandal Unfolding as a Big Scandal for the Navy," P. A01, The Washington Post, Oct. 20, 2013



DEPARTMENT OF THE NAVY  
HEADQUARTERS  
NAVAL CRIMINAL INVESTIGATIVE SERVICE  
27130 TELEGRAPH ROAD  
QUANTICO VA 22134-2253

5720 2018-005865  
SER00LJF/18U0189  
March 27, 2018

craig.whitlock@washpost.com

Mr. Craig Whitlock  
The Washington Post  
1150 15<sup>th</sup> Street NW  
Washington, DC 20071

Dear Mr. Whitlock:

This responds to your March 23, 2018 Freedom of Information Act (FOIA) request seeking records of the vetting and screening process established by the Navy to determine which officials or personnel would be permitted to have access to Glenn Defense Marine Asia (GDMA) from August 3013 to present. We received your request on March 23, 2018.

Please be advised that we are coordinating with other components within the DON in an attempt to obtain the records you seek. We will further correspond with you in the near future.

If you wish, you may appeal this delay by writing to the Office of the Judge Advocate General (Code 14), 1322 Patterson Avenue, S.E., Suite 3000, Washington Navy Yard, D.C. 20374-5066. Your letter should state the reasons for your appeal and, along with a copy of this letter and a copy of your original request, must be postmarked (vice received) in the above office within the 90-day appeal limit. The letter of appeal and the envelope must both bear the notation: "Freedom of Information Act Appeal."

Your appeal rights will not be prejudiced by waiting until a substantive determination has been made regarding your request.

If you choose not to appeal, you have the right to seek dispute resolution services. You may contact the Department of the Navy's FOIA public liaison, Mr. Chris Julka, at christopher.a.julka@navy.mil or (703) 697-0031 or the Office of Government Information Services (<https://ogis.archives.gov/>).

Your request also seeks expedited processing. Based on your claim, I have determined that, in accordance with the Secretary of the Navy Instruction 5720.42F (SECNAVINST 5720.42F), your request does meet certain criteria established under the FOIA; specifically an urgent need by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity. Your request for expedited processing has been approved.

5720 2018-005865  
SER00LJF/18U0189

If you have any questions regarding this matter, please contact our office at (571) 305-9092 or via email at [ncis\\_foia@ncis.navy.mil](mailto:ncis_foia@ncis.navy.mil).

Sincerely,

A handwritten signature in black ink, appearing to read "Karen Richman". The signature is written in a cursive, flowing style.

KAREN RICHMAN  
CDR, JAGC, USN





DEPARTMENT OF THE NAVY  
HEADQUARTERS  
NAVAL CRIMINAL INVESTIGATIVE SERVICE  
27130 TELEGRAPH ROAD  
QUANTICO VA 22134-2253

5720 2018-005865  
SER00LJF/18U1242  
October 3, 2018

craig.whitlock@washpost.com

Mr. Craig Whitlock  
The Washington Post  
1150 15<sup>th</sup> Street NW  
Washington, DC 20071

Dear Mr. Whitlock:

This responds to your March 23, 2018 Freedom of Information Act (FOIA) request seeking records of the vetting and screening process established by the Navy to determine which officials or personnel would be permitted access to the Glenn Defense Marine Asia (GDMA) investigation from August 2013 to present. I subsequently informed you that the scope of this request would likely require rolling release.

As advised in our March 23, 2018 correspondence, coordination with other entities within the DON was required. Currently, we are still coordinating with various individuals in an effort to obtain the records you seek.

To accommodate you, we make this initial release before completing the entire search. The processing of 14 pages concerning the NCIS GDMA vetting process has been completed. Our review of these documents reveals that they contain personal identifiers (such as names and social security numbers) of third parties, the release of which would constitute an unwarranted invasion of personal privacy. Accordingly, we must partially deny your request and withhold this information pursuant to the FOIA provision 5 U.S.C. § 552(b)(7)(C). Exemption (b)(7)(A) has also been cited. Per 5 U.S.C. § 552(b)(7)(A), records or information are exempt from disclosure if production of the records at the time requested reasonably can be expected to interfere with enforcement proceedings. Additionally, exemption (b)(5) has also been cited. Per 5 U.S.C. § 552(b)(5) based upon the attorney work product privilege and the deliberative process privilege which protects candid advice prior to final agency decisions. We have also provided an enclosure explaining the various exemptions of the FOIA.

If you would like to appeal any adverse determination, I am advising you of your right to appeal. Your appeal must be postmarked within 60 calendar days from the date of this letter and should be addressed to the Secretary of the Navy's designee: Office of the Judge Advocate General, (Code 14), 1322 Patterson Avenue, S.E., Suite 300, Washington Navy Yard, D.C. 20374-5066. The envelope and letter should bear the annotation "FOIA Appeal." Please include a copy of your original request with your appeal letter.

5720 2018-005865  
SER00LJF/18U1242

If you choose not to appeal, you **have** the right to seek dispute resolution services. You may contact 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 or the Office of Government Information Services (<https://ogis.archives.gov/>).

There are no assessable fees associated with the processing of your request. If you have any questions regarding this matter, please contact our office at (571) 305-9092 or via email at [ncis\\_foia@navy.mil](mailto:ncis_foia@navy.mil).

Sincerely,

A handwritten signature in black ink, appearing to read "Karen Richman". The signature is fluid and cursive, with a long horizontal stroke at the end.

KAREN RICHMAN

Assistant Counsel

Head, Government Information and Sharing Unit

Encl:  
(1) Documents



DEPARTMENT OF THE NAVY  
HEADQUARTERS  
NAVAL CRIMINAL INVESTIGATIVE SERVICE  
27130 TELEGRAPH ROAD  
QUANTICO VA 22134-2253

5720 2018-005865  
SER00LJF/19U0750  
August 6, 2019

craig.whitlock@washpost.com

Mr. Craig Whitlock  
The Washington Post  
1150 15<sup>th</sup> Street NW  
Washington, DC 20071

Dear Mr. Whitlock:

This further responds to your March 23, 2018 Freedom of Information Act (FOIA) request seeking records of the vetting and screening process established by the Navy to determine which officials or personnel would be permitted access to the Glenn Defense Marine Asia (GDMA) investigation from August 2013 to present.

As advised in our March 23, 2018 correspondence, coordination with other entities within the Department of the Navy (DON) was required. Upon completion with the DON, additional coordination with the Department of Justice was necessary. In light of this, the remainder of your request is denied pursuant to FOIA provisions 5 U.S.C. § 552(b)(5) and (b)(7)(A).

The requested documents contain privileged, deliberative process, and attorney work product material. The disclosure of such information would result in foreseeable harm to ongoing enforcement proceedings. In particular, the issue of vetting, clearance, and recusal necessarily implicates the scope, subject matter, and targets of the investigation (by positive and negative implication) and thus the deliberative process and conclusions of the investigators and attorneys overseeing enforcement proceedings.

Upon conclusion of the GDMA investigation and the adjudication of all subjects, you may resubmit your request at a later date.

If you would like to appeal any adverse determination, I am advising you of your right to appeal. Your appeal must be postmarked within 60 calendar days from the date of this letter and should be addressed to the Secretary of the Navy's designee: Office of the Judge Advocate General, (Code 14), 1322 Patterson Avenue, S.E., Suite 300, Washington Navy Yard, D.C. 20374-5066. The envelope and letter should bear the annotation "FOIA Appeal." Please include a copy of your original request with your appeal letter.

If you choose not to appeal, you have the right to seek dispute resolution services. You may contact the Department of the Navy's FOIA public liaison, Mr. Chris Julka, at

5720 2018-005865  
SER00LJF/19U0750

christopher.a.julka@navy.mil or (703) 697-0031 or the Office of Government Information Services (<https://ogis.archives.gov/>).

There are no assessable fees associated with the processing of your request. If you have any questions regarding this matter, please contact our office at (571) 305-9092 or via email at [ncis\\_foia@navy.mil](mailto:ncis_foia@navy.mil).

Sincerely,

A handwritten signature in black ink, appearing to read "Karen Richman". The signature is fluid and cursive, with a long horizontal stroke at the end.

KAREN RICHMAN  
Assistant Counsel  
Head, Government Information and Sharing Unit



# The Washington Post

1301 K STREET N. W.  
WASHINGTON, D.C. 20071-7403  
(202) 334-6000

9 September 2019

Office of the Judge Advocate General  
Code 14  
Department of the Navy  
1322 Patterson Avenue SE  
Suite 3000  
Washington Navy Yard, DC 20374-5066

Re: Freedom Of Information Act Appeal, **DON-FOIA-2018-005865**

Dear Sir or Madam,

Pursuant to 5 U.S.C. § 552(a)(6)(a), The Washington Post (“The Post”) submits this administrative appeal of the denial by the Naval Criminal Investigative Service (NCIS) of a Freedom of Information Act request (the “Request”) by reporter Craig Whitlock. Copies of the Request and the NCIS denial letter (the “Denial”) are attached as Exhibits A and B, respectively.

The Request, which was submitted on March 23, 2018, seeks:

- Vetting lists and other records that identify which Navy officials or personnel were screened or vetted to receive information about the Glenn Defense Marine Asia investigation;
- Non-disclosure agreements signed by Navy officials;
- Acknowledgment and release forms signed by Navy officials as part of the vetting or screening process;
- Action memos, draft action memos, interview notes, vetting results, vetting memos, as well as records of approval or denial regarding individuals who were subjected to the vetting or screening process;
- Emails about the GDMA vetting and screening process sent to, from, copied or forwarded to several specified Navy officers and senior civilian officials.

In a letter dated March 27, 2018, CDR Karen Richman, the director of the FOIA office for NCIS, confirmed receipt of the Request and assigned it case number **DON-FOIA-2018-005865**. CDR Richman also approved The Post's request for expedited processing.

In a preliminary response ("Preliminary Response") to the Request, NCIS released a small batch of records, consisting of 14 pages, on Oct. 3, 2018. Portions of the records were redacted or withheld pursuant to FOIA provisions 5 U.S.C. § 552 (b)(5), (b)(7)(A) and (b)(7)(C). As part of the Preliminary Response, CDR Richman informed The Post that NCIS was still "coordinating with various individuals in an effort to obtain the records you seek" and that "the scope of this request would likely require rolling release." A copy of the Preliminary Response is attached as Exhibit C.

In subsequent telephone calls over the next several months, Richman informed Whitlock that NCIS was still in the process of gathering and reviewing a large volume of records responsive to the Request and consulting with other agencies, specifically the Department of Justice. In a phone call on April 10, 2019, for example, Richman told Whitlock that the Justice Department was reviewing a batch of 1,400 pages of documents responsive to the Request. Two months later, on June 7, 2019, Richman told Whitlock in another phone conversation that the Justice Department was still reviewing the 1,400 pages of documents, and that in the meantime, NCIS had identified another large batch of documents – consisting of an additional 1,500 pages – responsive to the Request and was reviewing those as well. Richman apologized for the long delays in responding to the Request and said she hoped to make a production of documents as soon as the Justice Department completed its review.

In the Denial on Aug. 6, 2019, however, contrary to its earlier representations that additional productions of records would be forthcoming on a rolling basis, NCIS rejected the remainder of the Request in full. The Denial withheld those records in their entirety pursuant to FOIA provisions 5 U.S.C. § 552 (b)(5) and (b)(7)(A), claiming that "the disclosure of such information would result in foreseeable harm to ongoing enforcement proceedings." The Denial also advised that, upon conclusion of the GDMA investigation and adjudication of all subjects, Whitlock could resubmit the Request "at a later date."

The Post appeals NCIS's decision to withhold records in their entirety pursuant to 5 U.S.C. § 552 (b)(5) and (b)(7)(A), and also appeals NCIS's decision in the Preliminary Response to withhold portions of the 14 pages of records pursuant to U.S.C. § 552 (b)(5), (b)(7)(A) and (b)(7)(C).

### **Argument**

NCIS has not justified its withholding of these public records. In the Preliminary Response and the Denial, NCIS offers only vague, generalized reasons that the withheld information should be kept secret rather than the specific, detailed evidence the law requires. Moreover, NCIS's overbroad claim that release of the records would cause "foreseeable harm to ongoing enforcement proceedings" is undercut by the fact that it has

already released much of the same information to the public without suffering any ill effects.

Under FOIA, there is a standing presumption in favor of disclosure of public records, especially with respect to records that shed light on important government policies and actions. This presumption in favor of disclosure grows even stronger when it comes to records concerning official misconduct and public corruption. As the Supreme Court has stated, “the basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.” *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242

In fact, the Glenn Defense Marine Asia case is the worst corruption scandal in Navy history. The number of Navy officials involved is staggering. Since 2013, the Justice Department has filed criminal charges against 33 individuals for corruption-related offenses, including bribery and conspiracy, and the Navy has held court-martial proceedings for five officers. In addition, more than 600 active-duty and retired Navy personnel – including 60 flag officers -- have come under investigation by the the Navy for possible misconduct or ethics violations.

NCIS’s denial violates the Navy’s public pledge to come clean about the GDMA scandal. In a Dec. 20, 2013 news conference at the Pentagon, then-Navy Secretary Ray Mabus announced the establishment of the Consolidated Disposition Authority to handle GDMA cases and promised that the Navy would not sweep matters under the rug simply to avoid public embarrassment. “The Navy has a long tradition of transparency when we uncovered allegations of misconduct, particularly against high-ranking officers, because not only can the spotlight act as a deterrent, but mostly because it’s the right thing to do. I would rather get bad headlines than let bad people get away,” Mabus said.<sup>1</sup>

Much of the information NCIS has withheld is already in the public domain – through its Preliminary Response to the Post and through its release of 100 pages of similar records to another FOIA requester. NCIS cannot justify its attempts to keep secret information that it already made public itself.

### **The Wannamaker FOIA Request**

Established FOIA law holds that, under the public domain doctrine, “when information has been ‘officially acknowledged,’ its disclosure may be compelled even over an agency’s otherwise valid exemption claim.” *Wolf v. CIA*, 473 F.3d 370, 378 (D.C. Cir. 2007) (quoting *Fitzgibbon v. CIA*, 911 F.2d 755, 765 (D.C. Cir. 1990)). In other words, records that otherwise may be exempt from disclosure under FOIA “lose their protective cloak once disclosed and preserved in a permanent public record.” *Cottone v. Reno*, 193 F.3d 550, 554 (D.C. Cir. 1999).

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<sup>1</sup> <http://archive.defense.gov/transcripts/transcript.aspx?transcriptid=5346>



On April 15, 2017, the Department of the Navy received a FOIA request from Eric Wannamaker, a former JAG officer with the Navy who, not coincidentally, previously served as FOIA officer for NCIS. In his request, which was assigned case number **DON-NAVY-2017-005424**, Wannamaker sought “Navy records created between January 1, 2011 and April 15, 2017 related to the Glenn Defense Marine Asia (GDMA) corruption investigations and resulting corrective measures.” Specifically, Wannamaker requested “the first 100 pages of memoranda, emails, or other written communications by the Secretary of the Navy (SECNAV), the Navy Office of General Counsel)...the Vice Chief of Naval Operations, and/or headquarters personnel at the Naval Criminal Investigative Service regarding requests, status, description, and results of VETTING of senior Navy judge advocates for access to information and participation in provision of counsel to decision processes related to the GDMA investigations.”

In contrast to the lengthy delays that NCIS has inflicted on the Post, Wannamaker promptly received 100 pages of partially redacted records from his former colleagues at NCIS, according to a Supplemental Declaration that Wannamaker signed and submitted as part of a separate lawsuit he filed in U.S. District Court for the District of Idaho (the “Wannamaker Supplemental Declaration”). A copy of the Wannamaker Supplemental Declaration is attached as Exhibit D.

According to the Wannamaker Supplemental Declaration, NCIS released partially redacted emails and other documents, primarily concerning the vetting process for Vice Admiral Nanette DeRenzi and then-Rear Admiral James Crawford, the former Judge Advocate General and Deputy Judge Advocate General for the U.S. Navy. Correspondents in the emails included DeRenzi, Crawford, the director and deputy director of NCIS, the principal deputy general counsel for the Navy, and several other senior Navy officials. Although the documents were partially redacted, they suggest that DeRenzi was disapproved by the GDMA vetting process – a noteworthy finding that is clearly in the public interest given her position as the top uniformed lawyer in the Navy.

A review of the records that NCIS released to Wannamaker shows they are clearly and equally responsive to the Request filed by The Post. There is simply no legal justification for NCIS to disclose these records to a requester who is a Navy officer, yet to withhold them in their entirety from The Post. Again, once NCIS released the documents into the public domain, the records lost whatever “protective cloak” may have existed.

NCIS should apply – at a minimum – the same standard of disclosure it used in the Wannamaker case to the Post’s request for GDMA vetting documents. While Wannamaker only requested the first 100 pages of records, the Post put no limit on the number of records that might be responsive to its request; as noted above, NCIS has already represented to the Post that approximately 3,000 pages of records exist. According to the Wannamaker Supplemental Declaration, NCIS made some redactions by citing FOIA exemptions 5 U.S.C. § 552 (b)(5), (b)(6) and (b)(7)(A), but it did disclose the names of senior officials identified in the records, as well as their email communications and deliberations concerning the GDMA vetting process.



It is also noteworthy that NCIS did not withhold any records in their entirety when responding to Wannamaker, yet withheld 3,000 similar documents in their entirety from the Post. NCIS cannot legally rely on a different standard for the same category of records when it comes to different requesters. Showing favoritism to a former colleague doesn't pass muster under the law.

Extending its pattern of inconsistency, NCIS also seems to have forgotten that it released 14 pages of records to the Post in the Preliminary Response, including a spreadsheet that names dozens of senior officials who went through the GDMA vetting process and whether they were approved. Once again, there is no legal justification for NCIS now to change its mind midstream and arbitrarily decide it cannot release any vetting documents at all – or identify any individuals involved in the vetting process -- given that it has already introduced similar records into the public domain. Just because NCIS has taken so long – nearly 18 months -- to respond to the Request doesn't mean it is entitled to erase or forget about the past.

### **NCIS Has Not Justified Its Redactions Under Exemption Five**

Exemption 5 permits an agency to withhold “inter-agency or intra-agency memorandums or letters” that it would not have to produce to a litigation adversary in discovery. 5 U.S.C. § 552(b). The agency still must produce any “reasonably segregable portion of a record” that does not contain exempt material. *Id.* Here, NCIS has invoked the deliberative process privilege, which is intended to protect the integrity of the federal government's decision-making process. *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150-51 (1975); *Wolfe v. Dep't of Health & Human Servs.*, 839 F.2d 768, 773 (D.C. Cir. 1988).

To qualify for the deliberative process privilege, and consequently for withholding information pursuant to Exemption 5, the material at issue must be both “predecisional and deliberative,” meaning that it must have been “generated before the adoption of an agency policy” and “reflect[] the give-and-take of the consultative process.” *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). Like all FOIA exemptions, the agency has the burden of proving the exemption applies, and courts must give Exemption 5 a narrow scope, keeping in mind “the basic policy that disclosure, not secrecy, is the dominant objective of” FOIA. *Dep't of Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 7-8 (2001) (internal marks omitted); *Coastal States*, 617 F.2d at 868 (Exemption 5 “is to be applied ‘as narrowly as consistent with efficient Government operation.’”) (citation omitted).

NCIS has failed to carry this burden. First, NCIS relies on vague, conclusory allegations, rather than providing the specific, detailed proof required. To succeed under Exemption 5, an agency must provide “specific and detailed proof that disclosure would defeat, rather than further, the purposes of FOIA.” *Morley*, 508 F.3d at 1127 (internal marks omitted) (remanding for agency to provide specific information supporting its claim). Specifically, the agency bears “the burden of establishing what deliberative process is involved, and the role played by the documents in issue in the course of that process.”

*Coastal States*, 617 F.2d at 868. Specific information about the documents at issue is essential, because “the deliberative process privilege is so dependent upon the individual document and the role it plays in the administrative process.” *Coastal States*, 617 F.2d at 867.

NCIS’s denial of the Request falls far short of this standard. NCIS withheld about 3,000 documents in their entirety under claims of Exemption 5 and yet provided no specific or detailed justification for doing so. NCIS’s vague description and inconsistent application are insufficient to withhold information from responsive documents, particularly in light of the record in this case.

Additionally, in the Exemption 5 context, “deliberative” means, “in essence, that the communication is intended to facilitate or assist development of the agency’s final position on the relevant issue.” *CREW v. NARA*, 583 F. Supp. 2d at 146. Material is “deliberative” when it “reflect[s] the personal opinions of the writer rather than the policy of the agency.” *Coastal States*, 671 F.2d at 866. If the withheld material “could not reasonably be said to reveal an agency’s or official’s mode of formulating or exercising policy-implicating judgment, the deliberative process privilege is inapplicable.” *Petroleum Info.*, 976 F.2d at 1435.

Further, the D.C. Circuit has held that “agency communications containing purely factual material are generally not protected by Exemption (b)(5).” *Russell v. Dep’t of Air Force*, 682 F.2d 1045, 1048 (D.C. Cir. 1982). This means that “Exemption 5 disputes can often be resolved by the simple test that factual material must be disclosed but advice and recommendations may be withheld.” *Wolfe*, 839 F.2d at 774. Moreover, “a report does not become a part of the deliberative process merely because it contains only those facts which the person making the report thinks material,” so the general rule is that “compilations of facts, devoid of any conclusions, recommendations, opinions or advice” cannot be withheld. *Playboy Enters., Inc. v. Dep’t of Justice*, 677 F.2d 931, 935-36 (D.C. Cir. 1982).

On the public interest side of the balance, the need for complete transparency concerning the worst corruption scandal in Navy history is compelling – so compelling, the *Post* submits, as to override all but the gravest privacy concerns. See Section \_\_, *supra*. NCIS gave these interests “surprisingly little weight.” *Campbell v. Dep’t of Justice*, 164 F.3d 20, 33 (D.C. Cir. 1998), *as amended* (Mar. 3, 1999).

The identities of those officials who were vetted – as well as those officials doing the vetting -- will serve the fundamental purposes of FOIA by informing the public about “what their government is up to” and “shed[ding] light on an agency’s performance of its statutory duties.” *Dep’t of Justice v. Reporters Comm. For Freedom of the Press*, 489 U.S. 749, 773 (1989).

### **NCIS Has Not Justified Its Redactions Under Exemption 7**

Exemption (7)(A) provides for the withholding of a law-enforcement record the disclosure of which would reasonably be expected to interfere with enforcement proceedings. This exemption protects an active law-enforcement investigation from interference through premature disclosure. Determining the applicability of Exemption (7)(A), however, requires a two-step analysis focusing on (1) whether a law-enforcement proceeding is pending or prospective; and (2) whether release of information about it could reasonably be expected to cause some articulable harm. See, e.g., *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 224 (1978) (holding that government must show how records “would interfere with a pending enforcement proceeding.”).

The FOIA Improvement Act of 2016 amended the FOIA to codify the “foreseeable harm” standard and require agencies to go beyond mere formulaic justifications for redacting records. Congress made clear that it is no longer enough that an agency make a case for the technical application of an exemption; it must instead articulate *precise* reasons why *specific* records, or portions of records, could be reasonably foreseen to harm a cognizable interest. The unambiguous language of the “foreseeable harm” standard manifests Congress’s intent to require something more of an agency when it defends its withholding.

In this case, NCIS made no attempt whatsoever to articulate specific reasons for how disclosure could impair an ongoing law-enforcement investigation.

First, it is important to note that it is highly improbable that the vetting records pertain to any individuals who are currently under investigation; to the contrary, it is unfathomable that NCIS would vet an individual so they could be “read in” to the biggest corruption case in Navy history if they were simultaneously under investigation.

Second, while there is a law-enforcement investigation into GDMA, it is in its final stage. The first arrests occurred six full years ago. The Justice Department and the Navy have not filed criminal charges against any defendants in more than a year; the U.S. attorney for the Southern District of California, Robert Brewer, recently stated that he expected all pending criminal cases to go to trial next year. Discovery in those cases has been ongoing since 2017. Given those facts, it is impossible to envision a scenario under which disclosure of vetting records by NCIS could interfere with any pending cases. If any of the responsive records are relevant to the pending investigation, the Justice Department and NCIS already would have been legally obligated to share them with the defendants. It is much more likely that the vetting documents are not germane at all to the pending law-enforcement proceedings. In any event, NCIS has failed to meet its legal obligation to articulate what harm disclosure of the records would cause.

## CONCLUSION

For all the reasons detailed above, the Post’s appeal should be granted. NCIS should immediately disclose the vetting records in their entirety, including the redacted portions that were released as part of the Preliminary Response. NCIS cannot legally withhold



records that are already in the public domain, and it has failed to articulate in any detailed, specific or meaningful way how disclosure could foreseeably harm any pending law-enforcement proceedings.

Thank you for your attention and consideration. If I can answer any questions or be of further assistance, please do not hesitate to contact me at 202-334-9587 (office) or by email at [craig.whitlock@washpost.com](mailto:craig.whitlock@washpost.com).

Sincerely yours,

A handwritten signature in black ink, appearing to read "Craig Whitlock". The signature is written in a cursive style with a large initial "C" and "W".

Craig Whitlock  
Staff writer





**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 14/004  
October 18, 2019

Mr. Craig Whitlock  
The Washington Post  
1150 15<sup>th</sup> Street NW  
Washington, DC 20071  
Email: craig.whitlock@washpost.com

**SUBJECT: FREEDOM OF INFORMATION ACT (FOIA) REQUESTS DON-NAVY-2018-005865; FOIA APPEAL DON-NAVY-2019-011356**

This responds to your FOIA appeal received in my office on September 17, 2019. You appeal the Naval Criminal Investigative Service (NCIS) response to your FOIA request relating to the Glenn Defense Marine Asia (GDMA) investigation. The Secretary of the Navy designated NCIS as the proper authority to process FOIA requests relating to the GDMA investigation and prosecution. Your FOIA request sought the following information:

1. Vetting lists or records that identify which Navy officials or personnel were screened or vetted to receive information about the GDMA investigation;
2. Non-disclosure agreements signed by Navy officials;
3. Acknowledgment and release forms signed by Navy officials as part of the vetting or screening process;
4. Action memos, draft action memos, interview notes, vetting results, vetting memos, as well as records of approval or denial regarding individuals who were subjected to the vetting or screening process.
5. Emails and attachments about the GDMA vetting and screening process sent to, from, copied or forwarded to various Department of the Navy and Department of Justice individuals.

NCIS received your original request on March 23, 2018. On March 27, 2018, you were informed that NCIS would need to coordinate within the Department of the Navy to obtain the requested documents. NCIS released a preliminary response consisting of 14 pages to you on August 20, 2018. That release included the blank questionnaire used to question individuals being vetted to take part in the GDMA investigation with certain individuals' names redacted pursuant to FOIA exemption (b)(7)(A). It also included the status of individuals being vetted, with those ranking O-6/GS-15 and below being withheld pursuant to FOIA exemption (b)(7)(C). Additionally, some (b)(5) exemptions

were claimed in this preliminary response. NCIS has since removed FOIA exemption (b)(5) as a justification for withholding with respect to the preliminary response.

An additional 1,409 pages of responsive records were sent to the Department of Justice (DOJ) for consultation. The lead prosecutor in the GDMA cases is the DOJ attorney who reviewed the responsive records. Ultimately, DOJ found that the responsive documents in question constituted privileged, deliberative process, and attorney work product materials that would impact the prosecution of the GDMA cases. In particular, the DOJ found that the issue of vetting, clearance, and recusal implicated the scope, subject matter, and targets of the investigation (by positive and negative implication) and thus the deliberative process and conclusions of the investigators and attorneys overseeing the matter. Based off of the reasoning of the DOJ, NCIS withheld the entirety of those responsive documents under FOIA exemptions (b)(5) and (b)(7)(A).

Outside of your FOIA appeal, you also reference documents released to former Navy Lieutenant Eric Wannamaker in conjunction with a separate FOIA request related to his litigation with the Department of the Navy. My staff reached out to NCIS FOIA representatives, who indicated the documents released to LT Wannamaker were available to you in part on the NCIS FOIA Reading Room webpage; in part because they were sent to you in conjunction with your FOIA request DON-FOIA-2017-01396/001432; and in part because you indicated (and LT Wannamaker confirmed) that he had provided copies of those documents to you. You allude to these documents in your FOIA appeal, but do not object to any withholdings within those documents.

You appeal NCIS's withholding of the entire 1,409 responsive records pursuant to FOIA exemptions (b)(5) and (b)(7)(A). You also appeal NCIS's partial withholdings within its preliminary 14 page response under FOIA exemptions (b)(5), (b)(7)(A), and (b)(7)(C).

Your appeal is a request for a final agency determination under the FOIA. For the reasons stated below, your appeal is hereby denied.

#### I. FOIA Exemption (b)(5)

FOIA Exemption (b)(5) protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5). Parties in litigation cannot obtain privileged information from an opposing party during discovery. Three of the civil discovery privileges are relevant to the issue of release related to 1,409 responsive records that were withheld in their entirety: the deliberative process privilege, the attorney-client privilege and the attorney work-product privilege.

The deliberative process privilege seeks to encourage open, frank discussion; protect against premature disclosure of proposed policies, and guard against public confusion from release of reasons and rationales that were not ultimately the basis for agency decisions. *Wolfe v. Dep't of Health & Human Servs.*, 839 F.2d 768, 773 (D.C. Cir. 1988) (opining that the “quality of administrative decision-making would be seriously undermined if agencies were forced to operate in a fishbowl”). In short, it protects the integrity of agency’s decision-making processes where release of responsive documents would harm the decision-making process. To claim this privilege, courts have established two fundamental requirements: (1) the communication must be pre-decisional, i.e., antecedent to the adoption of an agency policy/decision; and (2) the communication must be deliberative, i.e., a direct part of the deliberative process in that it makes recommendations or expresses opinions on policy matters or decisions.

The attorney-client privilege concerns confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice. *Rein v. U.S. Patent and Trademark Office*, 553 F. 3d 353 (4th Cir. 2009). Although it fundamentally applies to facts divulged by a client to his attorney, courts have found that this privilege also encompasses any opinions given by an attorney to his client based upon, and thus reflecting, those facts, as well as communications between attorneys that reflect client-supplied information. *Id.* at 377; *Vento v. IRS*, 714 F. Supp. 2d 137, 151 (D.D.C. 2010); *Jernigan v. Dep't of the Air Force*, No. 97-35930, 1998 WL 658662, at \*2 (9th Cir. Sept. 17, 1998); *Judicial Watch, Inc. v. U.S. Dep't of Commerce*, 337 F. Supp. 2d 146, 174 (D.D.C. 2004). While the privilege typically involves a single client (even where the “client” is an agency) and his, her, or its attorneys, it also applies in situations where there are multiple clients who share a common interest. *Hanson v. AID*, 372 F.3d 286, 292 (4th Cir. 2004). Furthermore, in *Upjohn Co. v. United States*, the Supreme Court held that the attorney-client privilege covers attorney-client communications when the specifics of the communication are confidential, even though the underlying subject matter is known to third parties. 449 U.S. 383,395-96 (1981). The *Upjohn* Court additionally concluded that the privilege encompasses confidential communications made to the attorney not only by decision-making “control group” personnel, but also by lower-level employees. *Id.* at 392-397.

The attorney work-product privilege protects documents prepared by an attorney in contemplation of litigation. *Hickman v. Taylor*, 329 U.S. 495, 509-10 (1947). The privilege is not limited to civil proceedings, but rather extends to administrative proceedings as well. *Schoenman v. FBI*, 573 F. Supp. 2d 119, 143 (D.D.C. 2008). To fall within the protection of the work-product privilege, litigation need not have actually commenced, so long as specific claims have been identified which make litigation probable. *Citizens for Responsibility and Ethics in Wash. v. NARA*, 583, F. Supp. 2d 146, 160 (D.D.C. 2008); see also *Schiller v. NLRB*, 964 F.2d 1205, 1208 (D.C. Cir. 1992) (finding the attorney work-product privilege extends to documents prepared in

anticipation of foreseeable litigation, even if no specific claim is contemplated). Courts have also found the attorney work-product privilege can apply to documents prepared by an attorney not employed as a litigator. *Ill. State Bd. Of Educ. v. Bell*, No. 84-337, slip op. at 9-10 (D.D.C. May 31, 1985). Finally, Courts have found the attorney work-product privilege, as opposed to the deliberative process privilege, does not distinguish between factual and deliberative material; thus, agencies are not required to segregate and release factual information that is properly protected under the attorney work-product privilege. Courts realize that when an attorney is preparing for litigation, both the facts collected by the attorney and that attorney's opinions/recommendations may disclose the attorney's litigation strategy. *Martin v. Office of Special Counsel*, 819 F.2d 1181, 1187 (D.C. Cir. 1987); *Pac. Fisheries Inc. v. United States*, 539 F.3d 1143, 1148 (9th Cir. 2008).

## II. FOIA Exemption (b)(7)(C)

FOIA Exemption (b)(7)(C) provides protection for law enforcement information, the disclosure of which "could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(7)(C). Exemption (b)(7)(C) is the law enforcement counterpart to exemption (b)(6). Despite the similarities in language between Exemptions (b)(6) and (b)(7)(C), the relative sweep of the two exemptions can be significantly different. Under the balancing test that traditionally has been applied to both Exemptions (b)(6) and (b)(7)(C), the agency must first identify and evaluate the privacy interest(s), if any, implicated in the requested records. Exemption (b)(7)(C) "establishes a lower bar [than Exemption 6] for withholding material," *ACLU v. U.S. Dep't of Justice*, 655 F.3d 1, 6 (D.C. Cir. 2011). Thus, in situations where the records requested under the FOIA are law enforcement related, Courts will focus their analysis on whether the records were properly withheld under Exemption (b)(7)(C). *See Adionser v. Dep't of Justice*, 811 F. Supp. 2d 284, 298 n. 15 (D.D.C. 2011).

Courts have long recognized, either expressly or implicitly, that "the mention of an individual's name in a law enforcement file will engender comment and speculation and carries a stigmatizing connotation." *Fitzgibbon v. CIA*, 911 F.2d 755, 767 (D.C. Cir. 1990) (quoting *Branch v. FBI*, 658 F. Supp. 204, 209 (D.D.C. 1987)); accord *Massey v. FBI*, 3 F.3d 620, 624 (2nd Cir. 1993) (same); *Miller v. Bell*, 661 F.2d 623, 631-32 (7th Cir. 1981). This is true whether the person is the subject of the investigation or only a witness. Thus, Exemption (b)(7)(C) has been regularly applied to withhold references to persons who are not targets of investigations and who were merely mentioned in law enforcement files, as well as to persons of "investigatory interest" to a criminal law enforcement agency. *Peltier v. FBI*, 563 F. 3d 754, 766 (8th Cir. 2009) (per curiam) (affirming district court's determination that third parties mentioned within released records were properly withheld). That said, Courts have also held that in situations where requested documents shed light on misconduct by senior public officials, public interest



can weigh in favor of disclosure. *Cochran v. United States*, 770 F.2d 949 (11th Cir. 1985); *Chang v. Department of Navy*, 314 F.Supp.2d 35 (D.D.C. 2004).

Where a court finds that a legitimate privacy interest exists, the requester must “(1) show that the public interest sought to be advanced is a significant one, an interest more specific than having the information for its own sake, and (2) show the information is likely to advance that interest.” *Boyd v. Criminal Div. of the U.S. Dep’t of Justice*, 475 F.3d 381, 387 (D.C. Cir. 2007)(quotations omitted). “[T]he only public interest relevant for purposes of Exemption 7(C) is one that focuses on the citizens’ right to be informed about what their government is up to.” *Davis v. U.S. Dep’t of Justice*, 968 F.2d 1276, 1282 (D.C. Cir. 1992) (quotations omitted). Accordingly, a court must determine whether the disclosure “contribut[es] significantly to public understanding of the operations or activities of the government.” *Reporters Comm. for Freedom of Press*, 489 U.S. 749, 775 (1989).

### III. FOIA Exemption (b)(7)(A)

Pursuant to 5 U.S.C. § 552(b)(7)(A), information compiled for law enforcement purposes is exempted from disclosure to the extent that production of the information “could reasonably be expected to interfere with enforcement proceedings.” 5 U.S.C. § 552(b)(7)(A). The exemption applies where (1) law enforcement proceedings are pending or prospective; and (2) release of the information could reasonably be expected to cause some articulable harm. See *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 224 (1978); *FBI v. Abramson*, 456 U.S. 615, 621 (1982).

Although temporal in nature, Exemption (b)(7)(A) remains viable throughout the duration of long-term investigations. *Antonelli v. U.S. Parole Comm’n*, No. 93-0109, slip op. at 3-4 (D.D.C. Feb. 23, 1996) (reiterating that Courts repeatedly find lengthy, delayed or even dormant investigations covered by (7)(A)). Additionally, Courts have broadly interpreted the types of “law enforcement proceedings” to which (b)(7)(A) applies - such proceedings have been held to include not only criminal actions, but also civil actions, and regulatory proceedings as well. See generally *Bender v. Inspector Gen. NASA*, No. 90-2059, slip op. at 1-2, 8 (N.D. Ohio May 24, 1990); *Johnson v. DEA*, No. 97-2231, 1998 U.S. Dist. LEXIS 9802, at \*9 (D.D.C. June 25, 1998).

Even after enforcement proceedings have closed in a particular case against an individual (either in a criminal or administrative proceeding), Courts have ruled that continued use of Exemption (b)(7)(A) may still be proper in “related” proceedings, i.e., when charges or administrative action are pending against additional individuals arising out of a similar broad scheme or conspiracy. See generally *DeMartino v. FBI*, 577 F. Supp. 2d 178, 182 (D.D.C. 2008) (explaining that case remains open and pending because co-defendant is scheduled to be retried and other unindicted co-conspirators

remain at large); *Hidalgo v. FBI*, 541 F. Supp. 2d 250, 256 (D.D.C. 2008) (finding that although plaintiff was convicted long ago...ongoing search for – and possible future trials of – indicted and unindicted fugitives satisfies the standard [under (b)(7)(A)]).

Finally, Courts have accepted that Congress intended Exemption (b)(7)(A) to apply whenever the government’s case would be harmed by the premature release of evidence or information, or when disclosure would impede any necessary investigation prior to an enforcement proceeding. As such, Courts have held (b)(7)(A) is properly invoked when release would hinder an agency’s ability to control or shape an investigation, would enable targets of investigations to elude detection or suppress or fabricate evidence, or would prematurely reveal evidence or strategy in the Government’s case. *Solar Sources, Inc. v. United States*, 142 F.3d 1033, 1039 (7th Cir. 1998) (determining that disclosure could result in “revelation of the scope and nature of the Government's investigation”); *Mapother v. DOJ*, 3 F.3d 1533, 1540 (D.C. Cir. 1993) (holding that release of prosecutor's index of all documents he deems relevant would afford a “virtual roadmap through the [government's] evidence . . . which would provide critical insights into its legal thinking and strategy”); *Suzhou Yuanda Enter. Co. v. Customs and Border Prot.*, 404 F. Supp. 2d 9, 14 (D.D.C. 2005) (agreeing that disclosure could “inform the public of the evidence sought and scrutinized in this type of investigation”).

#### IV. Analysis

As an initial matter, after carefully reviewing your FOIA request, I find all of the requested records are law enforcement related. I also find that the individuals mentioned in the requested documents have a privacy interest which implicates (b)(7)(C); and that your stated public interest of keeping the country informed of potential corruption is relevant and would potentially be advanced by some of the information contained in the requested records. That said, under the (b)(7)(C) balancing test, disclosure turns on the relative seniority/position of the individual being vetted. See *Hunt v. FBI*, 972 F.2d 286, 289-290 (9th Cir. 1992); *Stern v. FBI*, 737 F.2d 84, 92 (D.C. Cir. 1984); *Chang v. Department of Navy*, 314 F.Supp.2d 35 (D.D.C. 2004); *ACLU v. U.S. Dep’t of Justice*, 655 F.3d, 1 (D.C. Circuit 2011). In this case, all of the (b)(7)(C) redactions made by NCIS involve officers in the rank of O-6 (CAPTAIN)/ GS-15 or below. Under that analysis, the release of the names of more junior personnel being vetted for the GDMA investigation does not outweigh their privacy interests under (b)(7)(C). The redacted information provided to you is enough to know the workings of the government with respect to the initial stages of the vetting process. Therefore, as it relates to these redactions, I find NCIS’s withholding under the (b)(7)(C) balancing test appropriate and in accordance with the Supreme Court’s decision in *NARA v. Favish*, 541 U.S. 157, 166 (2004) (protecting the privacy rights of individuals “whose link to the official inquiry may be the result of mere happenstance”).

Additionally, after careful review, I find NCIS's complete withholding of the 1,409 pages of documents related to the vetting of individuals involved in the GDMA investigation under (b)(7)(A) was appropriate. The investigation of GDMA and the associated accountability actions of the CDA is still active and ongoing. The size and scope of the investigation and prosecution is immense and involves a review of the actions of hundreds of officers over a multi-year period extending back at least fifteen years. Further release of any additional information at this time to you, including information NCIS withheld relating to the vetting of individuals participating in the investigation, could, as the Courts in *Solar Sources* and *Suzhou Yuanda Enter. Co.* found, hinder the Navy's ability to control the investigation going forward, enable potential targets to elude detection or suppress or fabricate evidence, or prematurely reveal evidence or strategy of the Government's case to those who might not yet know their actions are under scrutiny. If the information were released, it would reveal key insights of the investigators and prosecutors to those under prosecution, which would assuredly hinder the government's ability to hold those individuals responsible. Of note, this particular determination to withhold all of the documents in total was made by the lead prosecutor on the case, who feared disclosure would do nothing but aid the defense. Furthermore, as it pertains to the preliminary 14-page release, I find NCIS properly withheld the names of individuals who have not been disciplined under FOIA exemption (b)(7)(A), for the reasons stated *supra*.

Furthermore, it is of no matter that the Department may have discretionarily waived (b)(7)(A) and released information involving other targets in the GDMA inquiry in the past – that information was carefully reviewed and found to be releasable under FOIA when balancing the interests of disclosure, transparency, and government accountability with the interest in protecting the integrity of an ongoing and active investigation. Thus, your appeal of the release determination covered by (b)(7)(A) is hereby denied at this time. However, I recognize the temporal nature of Exemption (b)(7)(A) under the FOIA; for these reasons, and in the interest of transparency, I recommend you periodically contact the NCIS FOIA attorney, Ms. Karen Richman, JAGC, USN, who may be reached at (571) 305-9092, karen.richman@ncis.navy.mil, to determine when additional information may be releasable to you.

Finally, as these 1,409 pages were properly withheld under exemption (b)(7)(A), I will resolve whether each page was properly withheld under FOIA exemption (b)(5) and its various privileges. Though a (b)(5) withholding may require a segregability analysis, a withholding under (b)(7)(A) does not require segregability, and since all 1409 pages are covered by (b)(7)(A) I find that all of the information covered by (b)(5) is also covered by (b)(7)(A). I do find, however, that given the nature of these records, (b)(5) is necessarily implicated and much of the information within the 1,409 pages is also

privileged under (b)(5), but resolution of those specific redactions can wait until the time when (b)(7)(A) is no longer applicable.

#### V. Conclusion

As the Department of the Navy's designated adjudication official for this FOIA appeal, I am responsible for the denial of this 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 Department of the Navy's FOIA public liaison, Mr. Chris Julka, at christopher.a.julka@navy.mil or (703) 697-0031. If you have further questions or concerns for my office, my point of contact is Major Jim McKeon, USMC, who may be reached at james.mckeon@navy.mil or (202) 685-4596.

Sincerely,

G. E. LATTIN  
Director  
General Litigation Division

Copy to:  
NCIS  
DNS-36  
DON CIO



# The Washington Post

1301 K STREET N. W.  
WASHINGTON, D.C. 20071-7403  
(202) 334-6000

Oct. 2, 2018

Naval Criminal Investigative Service  
Department of the Navy  
Attn: FOIA Coordinator  
27130 Telegraph Road  
Quantico, VA 22134-2253

Transmitted via email at [ncis\\_foia@ncis.navy.mil](mailto:ncis_foia@ncis.navy.mil)

Dear FOIA Officer,

This is a request under the Freedom of Information Act, 5 U.S.C. § 552, for copies of records related to Boards of Inquiry (BOI), administrative separations and retirement-grade determinations for U.S. Navy officers involved in the Glenn Defense Marine Asia (GDMA) case.

The records I am seeking include, but are not limited to, the following:

- Records of Boards of Inquiry (BOI) for U.S. Navy officers who have received adverse findings as a result of investigations, inquiries or reviews related to Glenn Defense Marine Asia. Please include the entire record of these Boards of Inquiry, including the BOI reports, findings, transcripts, video and audio recordings, exhibits, submissions, written and verbal testimony (sworn and unsworn), depositions, show-cause orders and recommendations, notifications, correspondence and fund expenditures related to the convening of the boards.
- Retirement-grade determinations for U.S. Navy officers who were the subject of investigations, inquiries or reviews related to Glenn Defense Marine Asia. Please include retirement-grade determinations, characterizations of service, recommendations, notifications, findings and related correspondence made by the Secretary of the Navy, his designate, the Chief of Naval Personnel or other officials in the officers' chain of command. Please also include any rebuttals, responses, submissions or correspondence from the officers in question, or advocates acting on their behalf.

- Retirement requests submitted by U.S. Navy officers who were the subject of investigations, inquiries or reviews related to Glenn Defense Marine Asia. Please include any related correspondence.
- Records of any U.S. Navy officers who have been dropped from the rolls as a result of adverse findings regarding their conduct as a result of investigations, inquiries or reviews related to Glenn Defense Marine Asia. Please include any rebuttals, responses, submissions or correspondence from the officers in question, or advocates acting on their behalf.

If you regard any of these records as exempt from disclosure under the Act, I hereby request that you exercise your discretion to disclose them. As you know, in his January 2009 Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act, President Obama directed federal officials to administer the FOIA with “a clear presumption: In the face of doubt, openness prevails.” The President specifically ordered federal officials not to withhold information “merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears.”<sup>1</sup>

If you deny this request in whole or in part, I ask that you justify all deletions by reference to specific exemptions of the Act, and that you provide all non-exempt portions that are reasonably segregable. As you know, in his March 2009 Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act, Attorney General Eric Holder directed federal officials to make discretionary releases when appropriate and partial disclosures of records when full disclosures are not possible.<sup>2</sup> In addition, under the FOIA Improvement Act of 2016, agencies are required to “take reasonable steps necessary to segregate and release nonexempt information” and must “consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible.”<sup>3</sup>

I further request that you disclose the listed documents, as they become available to you, without waiting until all the documents have been assembled.

There is a clear, compelling and strong public interest in disclosure of these records that greatly outweighs any potential privacy concerns. The courts have consistently and forthrightly held that the public interest favors disclosure in cases that shed light on misconduct by government officials. In *Columbia Packing Co. v. U.S. Department of Agriculture* (1977), the First Circuit upheld an order to disclose under FOIA the personnel records of two former federal meat inspectors who had been convicted of taking bribes from meat-packing firms, noting that “the public has an interest in whether public servants carry out their duties in an efficient and law-abiding manner.”<sup>4</sup> In

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<sup>1</sup> <https://www.whitehouse.gov/the-press-office/transparency-and-open-government>

<sup>2</sup> <https://www.justice.gov/sites/default/files/ag/legacy/2009/06/24/foia-memo-march2009.pdf>

<sup>3</sup> <https://www.congress.gov/114/plaws/publ185/PLAW-114publ185.pdf>

<sup>4</sup> *Columbia Packing Co. v. U.S. Department of Agriculture*, 563 F.2d 495 (1<sup>st</sup> Cir. 1977)



*Cochran v. United States* (1985), the 11<sup>th</sup> Circuit held that “the balance struck under FOIA exemption six overwhelming[ly] favors the disclosure of information relating to a violation of the public trust by a government official, which certainly includes the situation of a misuse of public funds or facilities.”<sup>5</sup> Although the official misconduct in *Cochran* concerned a relatively small amount of money misappropriated by a general officer in the U.S. Army, the 11<sup>th</sup> Circuit stated that “information relating to a misappropriation of government funds, in whatever amount, by a high level government official qualifies as a textbook example of information the FOIA would require to be disclosed to the press.” In *Chang v. Department of the Navy* (2004), the court found that while information regarding a non-judicial punishment (NJP) proceeding is “generally not releasable,” such information should be disclosed pursuant to a FOIA request when “the facts leading to a nonjudicial punishment are particularly newsworthy.”<sup>6</sup>

There is simply no doubt that any information regarding the Glenn Defense Marine case is newsworthy – particularly records that would identify Navy personnel whose conduct has been officially called into question. With more than 500 people under scrutiny, and an extensive record of misconduct that unfolded over more than two decades, the Glenn Defense Marine Asia scandal has become an ethical morass of epic proportions for the U.S. Navy.<sup>7</sup> Senior Navy and Justice Department officials have emphasized the gravity of the offenses and the unprecedented scope of the misconduct. At an Oct. 14, 2016 sentencing hearing in U.S. District Court in the Southern District of California, Assistant U.S. Attorney Brian R. Young called the scandal “easily one of the biggest fraud and corruption schemes in the history of the Navy.” At the same hearing, NCIS Director Andrew Traver called it “the most significant case that has impacted the Navy” and “arguably the largest fraud case that our agency has ever been involved in.”<sup>8</sup> In a report to the 2015 Annual Meeting of the American Bar Association, Vice Adm. J.W. Crawford III, the U.S. Navy Judge Advocate General, called the Glenn Defense Marine Asia case “the largest, most comprehensive fraud and corruption investigation in the history of the U.S. Navy.”<sup>9</sup>

**I am also seeking expedited processing of this request for records.** As a journalist for The Washington Post, I am primarily engaged in disseminating information to our worldwide readership. Further, the records I am seeking are urgently needed in order to inform the public concerning government activity, specifically regarding military officials who have committed misconduct as part of their official duties.

Developments in the Glenn Defense Marine Asia investigation have led to a steady stream of breaking news articles in The Washington Post since 2013. Over the past four years, this reporter personally has written more than 50 articles about the case, including numerous front-page stories. A delay in releasing records from the Consolidated

<sup>5</sup> *Cochran v. United States*, 770F.2d 949 (11 Cir. 1985)

<sup>6</sup> *Chang v. Department of the Navy*, 314 F. Supp. 2d 35, 44 (D.D.C. 2004)

<sup>7</sup> Whitlock, Craig; “The Man Who Seduced the 7<sup>th</sup> Fleet,” p. A01, The Washington Post, May 29, 2016

<sup>8</sup> Transcript, Sentencing Hearing, U.S. v. John Beliveau Jr., 13-CR-3781-JLS, U.S. District Court for the Southern District of California, Oct. 14, 2016

<sup>9</sup> <http://www.jag.navy.mil/documents/ABAreport2015.pdf>

Disposition Authority would undermine public confidence in the Navy's ability and willingness to fairly and thoroughly investigate allegations of misconduct.

I certify that my statements concerning the need for expedited processing are true and correct to the best of my knowledge and belief.

For purposes of FOIA fee assessments, I request that you waive all fees in the public interest. The furnishing of the information sought by this request is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester. If, however, you decline to waive all fees, I am prepared to pay your normal fees for news media requesters. Please notify me if you expect the processing fees to exceed \$100.

If I can answer any questions or be of further assistance, please do not hesitate to contact me at 202-334-9587 (office) or by email at [craig.whitlock@washpost.com](mailto:craig.whitlock@washpost.com).

Sincerely yours,

A handwritten signature in black ink, appearing to read "Craig Whitlock". The signature is fluid and cursive, with the first name "Craig" and last name "Whitlock" clearly distinguishable.

Craig Whitlock  
Staff writer





DEPARTMENT OF THE NAVY  
HEADQUARTERS  
NAVAL CRIMINAL INVESTIGATIVE SERVICE  
27130 TELEGRAPH ROAD  
QUANTICO VA 22134-2253

5720 2019-000104  
SER00LJF/19U0149  
June 24, 2019

craig.whitlock@washpost.com

Mr. Craig Whitlock  
The Washington Post  
1150 15<sup>th</sup> Street NW  
Washington, DC 20071

Dear Mr. Whitlock:

This further responds to your October 2, 2018 Freedom of Information Act (FOIA) request seeking copies of records related to Boards of Inquiry, administrative separations and retirement-grade determinations for U.S. Navy officers involved in the Glenn Defense Marine Asia (GDMA) case.

In coordination with the Navy Personnel Command and other offices within the Department of the Navy a search for responsive records was conducted. After additional coordination with other entities within the federal government, a release of information has been processed and is provided to you at enclosure (1).

Our review of these documents reveals that they contain personal identifiers (such as names and social security numbers) of third parties, the release of which would constitute an unwarranted invasion of personal privacy. Accordingly, we must partially deny your request and withhold this information pursuant to the FOIA provisions 5 U.S.C. § 552 (b)(6), (b)(7)(A), and (b)(7)(C). We have also provided an enclosure explaining the various exemptions of the FOIA.

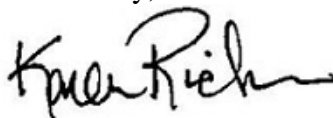
If you would like to appeal any adverse determination, I am advising you of your right to appeal. Your appeal must be postmarked within 90 calendar days from the date of this letter and should be addressed to the Secretary of the Navy's designee: Office of the Judge Advocate General, (Code 14), 1322 Patterson Avenue, S.E., Suite 300, Washington Navy Yard, D.C. 20374-5066. The envelope and letter should bear the annotation "FOIA Appeal." Please include a copy of your original request with your appeal letter.

If you choose not to appeal, you have the right to seek dispute resolution services. You may contact the Department of the Navy's FOIA public liaison, Mr. Chris Julka, at christopher.a.julka@navy.mil or (703) 697-0031 or the Office of Government Information Services (<https://ogis.archives.gov/>).

5720 2019-000104  
SER00LJF/19U0149

If you have any questions regarding this matter, please contact our office at (571) 305-9092 or via email at [ncis\\_foia@ncis.navy.mil](mailto:ncis_foia@ncis.navy.mil).

Sincerely,

A handwritten signature in black ink, appearing to read "Karen Richman". The signature is written in a cursive, flowing style.

KAREN RICHMAN  
Assistant Counsel  
Head, Government Information Sharing Unit

Encl:

- (1) Documents
- (2) Exemption sheet

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

From: "Richman, Karen - GOV" <karen.richman@ncis.navy.mil>  
To: "Whitlock, Craig" <Craig.Whitlock@washpost.com>  
Cc:  
Bcc:  
Date: Wed, 2 Oct 2019 17:04:42 +0000  
Subject: 2018-006127 2019-003445/005803

Hi Craig,

I hope you're having a great day. I'm uploading documents responsive to 2019-003445/005803 and 2018-006127. You will receive three emails containing links to download the documents.

Just a reminder that we are still comparing the BOIs we received from PERS with the BOIs we received from the Regions and will make a supplemental release of any records that were not included in previous releases. We are also in the process of redacting the Morales record of trial which is quite large.

I know I still owe you 2019-008473/008473. My goal is to release them this month. Thanks again for your continued patience.

Best regards,

Karen

Karen Richman

Assistant Counsel

Head, Government Information Sharing Unit

Naval Criminal Investigative Service - Code 00L

27130 Telegraph Rd

Quantico, VA 22134

COMM: 571-305-9099

DSN: 312-240-9099

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

From: "Roberge, Erin S - GOV" <erin.roberge@ncis.navy.mil>

To: "Whitlock, Craig" <Craig.Whitlock@washpost.com>

Cc: "Richman, Karen - GOV" <karen.richman@ncis.navy.mil>

Bcc:

Date: Tue, 28 Apr 2020 14:40:58 +0000

Subject: RE: NEW NCIS FOIA GDMA REQUESTS

Good Morning Mr. Whitlock,

Unfortunately, every single one of your requests is pending at DOJ until further notice. We can't move forward with the release of information until the consultation has concluded. We have located 2 NCIS investigations from 2004 and have also asked for a review of previously denied investigations.

In regards to the BOIs, we have received additional records for 1 individual from your 1<sup>st</sup> request, 4 individuals from your second request, however, one file is identical and won't be provided, and 5 individuals from your 3<sup>rd</sup> request, including JANSEN.

Hope you are doing well!

Erin



DEPARTMENT OF THE NAVY  
HEADQUARTERS  
NAVAL CRIMINAL INVESTIGATIVE SERVICE  
27130 TELEGRAPH ROAD  
QUANTICO VA 22134-2253

5720 2020-000525  
SER00LJF/20U1010  
June 16, 2020

craig.whitlock@washpost.com

Mr. Craig Whitlock  
The Washington Post  
1150 15<sup>th</sup> Street NW  
Washington, DC 20071

Dear Mr. Whitlock:

This further responds to your multiple Freedom of Information Act (FOIA) requests seeking various records pertaining to the disposition and accountability actions by the Consolidated Disposition Authority (CDA) for matters related to Glenn Defense Marine Asia (GDMA). Reference is made to the Office of the Judge Advocate General's (OJAG) appeal memorandum dated June 3, 2020 and Ms. Richman's email response dated June 11, 2020.

PENDING FOIA REQUESTS:

- DON-NAVY-2019-000104 – Board of Inquiry 1<sup>st</sup> request (updated records)
- DON-NAVY-2019-005803 – Board of Inquiry 2<sup>nd</sup> request (updated records)
- DON-NAVY-2020-000481 – Board of Inquiry 3<sup>rd</sup> request
- DON-NAVY-2020-000525 – David Morales record of trial
- DON-NAVY-2020-003840 – NCIS GDMA closed case files prior to Jan. 1, 2006
- DON-NAVY-2020-003844 – Disposition and accountability actions for LSC Ulysis T. Guno
- DON-NAVY-2020-007209 – Board of Inquiry 4<sup>th</sup> request

Upon receipt of the OJAG appeal memorandum it was determined that the requested information is currently exempt from disclosure because the investigation into GDMA is still pending. Per the provisions of 5 U.S.C. § 552 (FOIA) at subsection (b)(7)(A), law enforcement records are exempt if the production of the records at the time requested reasonably can be expected to interfere with enforcement proceedings. We also find that FOIA exemption (b)(7)(B) applies. Exemption (b)(7)(B) allows for the withholding of records to prevent prejudicial pretrial publicity that could impair a proceeding, specifically protecting "records or information compiled for law enforcement purposes the disclosure of which would deprive a person of a right to a fair trial or an impartial adjudication." Records can be withheld from release pursuant to exemption (b)(7)(B) when "(1) a trial or adjudication is pending or imminent; and (2) that it is more probable than not that disclosure of the material sought would seriously interfere with the fairness of those proceedings." The GDMA criminal investigation is active and ongoing and will remain so until the completion of all enforcement proceedings. You may resubmit your requests upon completion of the adjudication process.

5720 2020-000525  
SER00LJF/20U1010

As advised by Ms. Richman, we will continue to obtain and process GDMA related documents so that upon conclusion of enforcement proceedings, documents are ready to release without an additional wait. Redacted documents will also be available on the NCIS reading room located at <https://www.ncis.navy.mil/Media/Reading-Room/>.

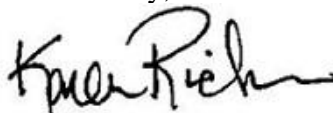
You may appeal our exemptions within 90 days from the date of this letter. If you have created an account in FOIAonline (<https://foiaonline.gov>), you may submit an appeal directly within the web-based system. To do this, you would log into your account, retrieve your original request, and then click on the "Create New" tab in the left-hand column and select "Appeal." Fill in the basis for your appeal and select "Submit."

Alternatively, you may appeal by writing to the Judge Advocate General of the Navy (Code 14), 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, DC 20374-5066. Your letter should state the reasons for your appeal, and include a copy of this letter along with a copy of your original request and must be postmarked (vice received) in the above office within the 90-day appeal limit. The letter of appeal and the envelope must both bear the notation: "FOIA Appeal."

If you choose not to appeal, you have the right to seek dispute resolution services. You may contact 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 or the Office of Government Information Services (<https://ogis.archives.gov/>).

If you have any questions regarding this matter, please contact our office at [ncis\\_foia@ncis.navy.mil](mailto:ncis_foia@ncis.navy.mil) or (571) 305-9092.

Sincerely,



KAREN RICHMAN  
Assistant Counsel  
Head, Government Information Sharing Unit