



Department of Energy
National Nuclear Security Administration
Office of the General Counsel
P. O. Box 5400
Albuquerque, NM 87185



November 13, 2020

SENT VIA EMAIL:

94797-68973793@requests.muckrock.com

Mr. Jacob Applebaum
411A Highland Avenue
MR94797
Somerville, MA 02144

Dear Mr. Appelbaum:

This letter is our final response to your Freedom of Information Act (FOIA) request, dated July 6, 2020 for a copy of the following:

“All records, documents, emails, and other correspondence regarding or related to the 1991 Bell 412 Helicopter as well as any additional equipment attached to the aircraft. This aircraft has holds registration N411DE. This aircraft uses the mode-s code of A4D827 in hexadecimal. I request records, documents, emails, privacy assessments, purchase orders, maintenance records, and other correspondence relating to the equipment. Additionally, I would like any manuals, procedures, communications protocols, and any communications related to inter-agency coordination. This should include pilot logs, flight plans, and surveillance plans. Specifically, I am looking for any and all data relating to flights over and near the city of Washington, DC.

The data should cover the last week, and for the months of May and June 2020 where the aircraft was documented flying over demonstrations. Any imaging or other surveillance data from onboard collection is additionally requested, as well as any policies which govern the collection, processing, use, and dissemination of this data. Any communication about this data or related data should be included, especially inter-agency communications, and metadata.”

Your request was received in this office on July 15, 2020.

As discussed with Kristen Duran and Angelia Bowman of this office and confirmed via email on September 17, 2020, you agreed to reduce your original request to “the May and June 2020 Flight Plans related to the 1991 Bell 412 Helicopter that holds registration N411DE.”

Upon receipt of this request, we contacted the NNSA Office of Counterterrorism and Counterproliferation (NA-80) regarding your request. After researching your request, NA-80 forwarded your request to the NNSA Nevada Field Office (NA-NV) for further processing. NA-NV, along with their M&O contractor, Mission Support and Test Services (MSTS),

conducted searches for responsive records. The searches yielded one document (10 pages) responsive to this request. The document (N411DE Flight Plans May-June 2020) is provided with deletions pursuant to 5 USC § 552(b)(7)(C) and (b)(7)(E) (Exemption 7 of the FOIA).

Exemption 7(C) of the FOIA provides protection for, among other things, records or information compiled for law enforcement purposes and may be withheld from disclosure, but only to the extent that the production of such law enforcement records or information could reasonably be expected to constitute an unwarranted invasion of personal privacy. The information withheld under Exemption 7(C) includes names of agency employees who are federal law enforcement officers. Public identification of these individuals could conceivably subject them to harassment and annoyance in the conduct of their official duties and in their private lives.

Exemption 7(E) of the FOIA provides protection for all information compiled or for law enforcement purposes when release would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. The term “law enforcement” can include activities associated with preventing breaches to national security.

The portions redacted pursuant to Exemption 7(E) contain information relating to the N411DE pilots, to include names, call signs, contact information, and signatures. This information directly relates to enforcement of federal laws regarding entrance to both the Washington D.C. Special Flight Rules Area and the Washington D.C. Flight Restricted Zone. The flights conducted by these pilots are directly related to national security law enforcement efforts in detecting and interdicting illicit nuclear fissile or radiological materials and deterring nuclear or radiological proliferation threats against the U.S. government and its citizens. If this information were to be made public, it would reasonably enable a person to impersonate the pilots and thus circumvent the law and potentially cause harm to the U.S. government and its citizens.

The Department of Energy (DOE) regulations 10 CFR § 1004.1 provide that documents exempt from mandatory disclosure under the FOIA shall be released regardless of their exempt status, unless DOE determines that disclosure is contrary to public interest. For the reasons described above, NNSA has determined that release of the information described above is not in the public interest.

Pursuant to 10 CFR § 1004.7(b)(2), I am the individual responsible for the withholding of information pursuant to Exemption 7 of the FOIA.

You may appeal our withholding of Exemption 7 information pursuant to 10 CFR § 1004.8. Such an appeal must be made in writing within 90 calendar days from your receipt of this letter. Appeals should be addressed to the Director, Office of Hearings and Appeals, HG-1, US Department of Energy, 1000 Independence Avenue, SW, L’Enfant Plaza, Washington, DC 20585-1615. The written appeal, including the envelope, must clearly indicate that a FOIA appeal is being made. You may also submit your appeal to OHA.filings@hq.doe.gov, including the phrase “Freedom of Information Appeal” in the subject line (this is the method preferred by the Office of Hearings and Appeals). The appeal must contain all of the elements required by 10 CFR § 1004.8, including a copy of the determination letter.

Thereafter, judicial review will be available to you in the Federal District Court either: 1) in the district where you reside; 2) where you have your principal place of business; 3) where DOE's records are situated; or 4) in the District of Columbia.

You may contact Pamela Arias-Ortega, the NNSA's FOIA Public Liaison, at 1-866-747-5994, or by mail at Department of Energy, National Nuclear Security Administration, Office of the General Counsel, PO Box 5400, Albuquerque, NM 87185, for further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at (202) 741-5770; toll free at 1-877-684-6448; or facsimile at (202) 741-5769.

There are no charges to you for the processing of your FOIA request.

If you have questions about the processing of this request, please contact Ms. Kristen Duran by e-mail at Kristen.Duran@nnsa.doe.gov or write to the address at the top of the first page. Please reference Control Number FOIA 20-00187-KD in your correspondence.

Sincerely,

Christina H. Hamblen
FOIA Officer

Enclosure