

Exhibit A



CHULA VISTA ELEMENTARY SCHOOL DISTRICT

84 EAST "J" STREET • CHULA VISTA, CALIFORNIA 91910 • 619 425-9600

EACH CHILD IS AN INDIVIDUAL OF GREAT WORTH

December 7, 2012

By U.S. Mail and Fax: (202) 514-6117

Chief, FOIA/PA Unit
Criminal Division
Department of Justice
Suite 1127, Keeney Building
Washington, D.C. 20530-0001

To Whom It May Concern:

Re: Freedom of Information Act Request Regarding Documents Concerning John Raymond Kinloch; Request for Expedited Processing of the Same; and Educational Institution Fee Assessment and Fee Waiver Request

Please accept this letter as the Chula Vista Elementary School District's request for records under the Freedom of Information Act. The District respectfully requests the following documents, to the extent these documents are not exempt from disclosure:

- (1) Any and all immunity agreements or similar documents involving or pertaining to John Raymond Kinloch.
- (2) Communications between any employees or agents of the United States Department of Justice and representatives of any other country, including but not limited to representatives of Great Britain, regarding John Raymond Kinloch.
- (3) Any document, including but not limited to, indictments, charges, and transcripts of any proceeding, received from representatives of any other country, including but not limited to representatives of Great Britain, regarding, relating to, or involving John Raymond Kinloch as a defendant, witness, or in any other capacity.
- (4) Any communication by and between any Department of Justice employee or agent and any other Department of Justice employee or agent regarding criminal allegations pertaining to John Raymond Kinloch.
- (5) Any communication by and between any Department of Justice employee or agent and any other United States employee or agent involving matters related in any way to John Raymond Kinloch.

Please note, the District is an educational institution and respectfully requests that designation for purposes of fee assessments related to this request. The District further requests the Department of Justice assess no fees related to this request because the information requested is in the public interest and likely to contribute significantly to public understanding of the operations or activities of the government. In particular, the

BOARD OF EDUCATION

DAVID BEJARANO ♦ LARRY CUNNINGHAM ♦ DOUGLAS E. LUFFBOROUGH, III ♦ PAMELA B. SMITH ♦ GLENDORA M. TREMPER

SUPERINTENDENT

FRANCISCO ESCOBEDO, Ed.D.

Chief, FOIA/PA Unit
Criminal Division
Department of Justice

-2-

December 7, 2012

information obtained as a result of this request, will, among other things, assist the District in understanding processes that exist and do not exist for purposes of analyzing the backgrounds of individuals who are or may be credentialed teachers in the state of California. In addition, this information will be useful for, among other purposes, assessing the need for revision to state and/or federal laws concerning background checks of individuals who are or maybe credentialed teachers in the state of California. Finally, this information will be helpful in assessing, among other things, dangers posed to the District's students, staff, and community by individuals who may be, at one time or another, the subject of Department of Justice communication with government agencies, including the agencies of other countries. This request is not related to any commercial interest.

We realize some portions of the above requested documents may be privileged or not discloseable for other reasons. Please cite each specific exemption that justifies the refusal to provide any requested information. Please note, although all or parts of this request may seek personal information, in our view, the public's interest in obtaining this information far outweighs any individual's right to privacy for the reasons noted above and others.

Finally, please expedite this request because the subject of this request is of widespread and exceptional media interest and the information sought involves possible questions about the government's integrity which affects public confidence. The widespread and exceptional media interest may be easily ascertained by viewing the many local area media sources' articles and postings concerning Mr. Kinloch. The requisite certification is included at the end of this letter.

Thank you for your attention to this request. If you have any questions regarding this request, please contact my office at (619) 425-9600, Extension 1310.

Sincerely,



Francisco Escobedo, Ed.D.
Superintendent

CERTIFICATION

By my signature below, I certify that the subject of this request is of widespread and exceptional media interest and the information sought involves possible questions about the government's integrity which affects public confidence.



Francisco Escobedo, Ed.D.
Superintendent
Chula Vista Elementary School District

Exhibit B



U.S. Department of Justice

Criminal Division

Office of Enforcement Operations

Washington, D.C. 20530

Mr. Francisco Escobedo
Chula Vista Elementary School District
84 East J Street
Chula Vista, CA 91910

Re: CRM-201201014F
KWC:CPS

DEC 31 2012

Dear Mr. Escobedo:

The Criminal Division of the U.S. Department of Justice acknowledges receipt of your Freedom of Information Act requests dated December 7 and December 11, 2012. In those requests, you asked for access to records concerning John Raymond Kinloch. Your requests have been assigned a single file number, 201201014F. You should refer to this number in any future correspondence with this Office.

You have requested records concerning a third party. This Office cannot confirm or deny the existence of any records responsive to your request. Absent consent, proof of death, official acknowledgment of an investigation, or an overriding public interest, confirming or denying the existence of such records, including law enforcement records, concerning an individual would constitute a clearly unwarranted invasion of personal privacy, and could reasonably be expected to constitute an unwarranted invasion of personal privacy. See 5 U.S.C. § 552(b)(6), (7)(C).

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. 552(c). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all requesters and should not be taken as an indication that excluded records do, or do not, exist.

I am required by statute and regulation to inform you of your right to an administrative appeal of this determination. Your appeal must be in writing and addressed to the Director, Office of Information Policy, United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001. Your appeal must be received within sixty days from the date of this letter. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

A handwritten signature in black ink that reads "Kenneth Carter / Kim".

Rena Y. Kim
Chief
FOIA/PA Unit

Exhibit C



CHULA VISTA ELEMENTARY SCHOOL DISTRICT

84 EAST "J" STREET • CHULA VISTA, CALIFORNIA 91910 • 619 425-9600

EACH CHILD IS AN INDIVIDUAL OF GREAT WORTH

January 8, 2013

Melanie Ann Pustay
Office of Information Policy
United States Department of Justice
Suite 11050, 1425 New York Ave, NW
Washington D.C. 20530-001

Re: Appeal to December 31, 2012 Determination
CRM-201201014F

Dear Ms. Pustay:

The Chula Vista Elementary School District is in receipt of the U.S. Department of Justice's ("DOJ") December 31, 2012 response to the District's December 7, 2012 request for records pursuant to the Freedom of Information Act ("FOIA"). The DOJ did not respond to the District's individual requests, but generally stated it could not confirm or deny the existence of any of the records requested by the District because they concerned a third party. The District hereby appeals the DOJ's determination pursuant to 5 U.S.C. section 552(a)(6).

Background Information

The District's FOIA Request for Public Records

On December 7, 2012, the District requested several records from the DOJ pursuant to FOIA. Specifically, the District requested the following:

- (1) Any and all immunity agreements or similar documents involving or pertaining to John Raymond Kinloch.
- (2) Communications between any employees or agents of the United States Department of Justice and representatives of any other country, including but not limited to representatives of Great Britain, regarding John Raymond Kinloch.
- (3) Any document, including but not limited to, indictments, charges, and transcripts of any proceeding, received from representatives of any other country, including but not limited to representatives of Great Britain, regarding, relating to, or involving John Raymond Kinloch as a defendant, witness, or in any other capacity.
- (4) Any communication by and between any Department of Justice employee or agent and any other Department of Justice employee or agent regarding criminal allegations pertaining to John Raymond Kinloch.

BOARD OF EDUCATION

MARISSA A. BEJARANO ♦ LARRY CUNNINGHAM ♦ DOUGLAS E. LUFFBOROUGH, III ♦ PAMELA B. SMITH ♦ GLENDORA M. TREMPER

SUPERINTENDENT

FRANCISCO ESCOBEDO, Ed.D.

Letter to Ms. Pustay

January 8, 2013

Page 2

- (5) Any communication by and between any Department of Justice employee or agent and any other United States employee or agent involving matters related in any way to John Raymond Kinloch.

The District specified that the requested information was in the public interest and likely to contribute significantly to public understanding of the operations or activities of the government. In particular, the requested information would, among other things:

- (1) Assist the District in understanding processes that exist and do not exist for purposes of analyzing the backgrounds of individuals who are or may be credentialed teachers in the state of California;
- (2) Be useful for, among other purposes, assessing the need for revision to state and/or federal laws concerning background checks of individuals who are or maybe credentialed teachers in the state of California; and
- (3) Be helpful in assessing, among other things, dangers posed to the District's students, staff, and community by individuals who may be, at one time or another, the subject of Department of Justice communication with government agencies, including the agencies of other countries.

The District's request also specified that, although all or parts of its request may seek personal information, in its view and for the reasons stated (among others), the public's interest in obtaining the requested information far outweighed any individual's right to privacy.

Lastly, the District noted that the subject of its request was of widespread and exceptional media interest and the information sought involved possible questions about the government's integrity affecting public confidence. The widespread and exceptional media interest is evident simply by viewing the many local area media sources' articles and postings concerning Mr. Kinloch.

DOJ's Glomar Response to the District's Request

On or about December 31, 2012, the DOJ provided the District with a "Glomar response," stating that it could not confirm or deny the existence of any of the records requested by the District. (*See Phillip v. CIA* (D.C. Cir. 1976) 546 F.2d 1009.) Specifically, the DOJ generally cited to 5 U.S.C. sections 552(b)(6) and (7)(C) in support of its contention that confirming or denying the existence of such records, including law enforcement records, concerning a third party individual would "constitute a clearly unwarranted invasion of personal privacy, and could reasonably be expected to constitute an unwarranted invasion of personal privacy."

The DOJ also cited to 5 U.S.C. section 552(c), stating "Congress excluded three discrete categories of law enforcement and national security records from the requirements of FOIA," and that the DOJ's determination applied only to requested records that are subject to FOIA.

Letter to Ms. Pustay

January 8, 2013

Page 3

The DOJ did not, however, cite to which of the three exclusions, if any, it determined applied to the District's individual requests, or which records it determined were excludable pursuant to Section 552(c).¹

Argument

FOIA requires federal agencies to release records to the public upon request, unless one of nine statutory exemptions applies. (*NLRB v. Sears, Roebuck & Co.* (1975) 421 U.S. 132, 136; 5 U.S.C. § 552(b).) The President and Attorney General have emphasized that FOIA reflects a "profound national commitment to ensuring an open Government," directing all agencies to "adopt a presumption in favor of disclosure." (*See* Presidential Memorandum for heads of Executive Departments and Agencies Concerning the Freedom of Information Act, 74 Fed. Reg. 4683 (Jan. 21, 2009); Attorney General Holder's Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act (March 19, 2009).) Consequently, federal agencies are to administer FOIA with "a clear presumption: [i]n the face of doubt, openness prevails." (*Id.*) Consistent with these purposes, exemptions from disclosure "must be construed narrowly, in such a way as to provide the maximum access consonant with the overall purpose of [FOIA]." (*Vaughn v. Rosen* (D.C. Cir. 1973) 484 F.2d 823.)

A federal agency withholding requested records must show the search for responsive documents was adequate, any exemptions claimed actually apply, and reasonably segregable non-exempt information has been disclosed after deletion of exemption information. (*Blackwell v. FBI* (D.C. Cir. 2010) 680 F.Supp.2d 79, 89-90.) As discussed below, the DOJ's categorical Glomar response unlawfully restricts the District's access to records and was inappropriate in light of the significant public interest implicated by the District's requests.

I. Exemptions 6 and 7(C) to FOIA Do Not Support the DOJ's Glomar Response to the Districts Request for Public Records.

The DOJ's letter cited to only two FOIA exemptions in its response: U.S.C. sections 552(b)(6) and (7)(C). Exemptions 6 and 7(C) are similarly intended to protect personal privacy interests under FOIA. Exemption 6 permits an agency to withhold from disclosure "personnel and medical files and similar files" if their disclosure would "constitute a clearly unwarranted invasion of personal privacy." (5 U.S.C. § 552(b)(6).) In order to determine whether Exemption 6 protects against disclosure, an agency must balance the privacy interest that would be compromised by disclosure against any public interest in the requested information. (*See News-Press v. DHS* (11th Cir. 2007) 489 F.3d 1173, 1196-97.) When engaging in this analysis, it is important for the agency to remember that, "under Exemption 6, the presumption in favor of disclosure is as strong as can be found anywhere in [FOIA]." (*Nat'l Assoc. of Home Builders v. Norton* (D.C. Cir. 2002.) 309 F.3d 32.)

¹ Because the DOJ's response did not specify which of the requested records, if any, are in fact excluded from FOIA pursuant to any of the three exclusions provided for in Section 552(c), it is difficult, if not impossible, for the District to respond to that paragraph of the response. Consequently, the District's appeal addresses only the two specific exemptions specified in the DOJ's response.

Letter to Ms. Pustay

January 8, 2013

Page 4

Exemption 7(C) more broadly exempts disclosure of information based on privacy concerns by permitting an agency to withhold from disclosure information that is “compiled for law enforcement purposes, 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.” (5 U.S.C. § 552(b)(7)(C).) Courts have clarified that this exemption protects the identities of suspects, witnesses, and other persons of investigatory interest who are identified in agency records in connection with alleged criminal activity. (*Computer Prof'ls for Soc. Responsibility v. Secret Service* (D.C. Cir. 1996) 72 F.3d 897, 904.) It also protects the identities of law enforcement personnel because such disclosure could subject them to annoyance, embarrassment, and harassment in the conduct of their official and private lives. (*Halpern v. FBI* (2d. Cir. 1999) 181 F.3d 279, 296-97.)

As discussed below, the significant public interests served by the District’s request involved clearly outweigh any such privacy interest. Further, FOIA entitles the District to the requested records related to the agency’s performance. Certainly, the DOJ’s refusal to even confirm or deny the existence of such records is inappropriate given FOIA’s presumption in favor of disclosure. Consequently, for reasons discussed below, the Director should remand the request with direction to fully disclose all responsive records.

a. The Privacy Interest(s) Implicated by the Request are Minimal in Light of the Notoriety of the Underlying Investigation.

Under the balancing test that traditionally has been applied to both Exemptions 6 and 7(C), the agency must first identify and evaluate the privacy interests, if any, implicated in the requested records. (*Associated Press v. DOD* (2d Cir. 2009) 554 F.3d 274, 284.) When the requested records related to criminal investigations, courts have recognized that “the mention of an individual’s name in a law enforcement file will engender comment and speculation and carries a stigmatizing connotation.”² (*Fitzgibbon v. CIA* (D.C. Cir. 1990) 911 F.2d 755, 767.)

In light of this privacy interest, an agency may in certain circumstances issue Glomar response in place of a statement acknowledging the existence of responsive records but withholding them, if confirming or denying the existence of the records would associate the individual named in the request with criminal activity. (*Nation Magazine v. U.S. Customs Serv.* (D.C. Cir. 1995) 71 F.3d 885, 893.) An agency may not, however, rely on an otherwise valid exemption to justify withholding information that is already in the public domain. (*Students Against Genocide v. Dep't of State* (D.C. Cir. 2001) 257 F.3d 828, 836; *see also Hidalgo v. FBI* (D.D.C., Sept. 29, 2005) 2005 WL 6133690, [where requesting party produced documentation demonstrating that a certain individual’s status as an FBI informant was publicly known, the FBI responded to the request insofar as it touched matters in which the individual’s role as a cooperator].)

² It should be noted, it is unclear whether any criminal investigation occurred in this instance. However, as discussed in detail below, the FOIA entitles the District to the records it requested even if such an investigation occurred.

Letter to Ms. Pustay

January 8, 2013

Page 5

Here, any privacy interest in the requested records, assuming one exists, is eliminated in light of the fact that Mr. Kinloch's involvement is already in the public domain. Specifically, that Mr. Kinloch was, in fact, investigated by the DOJ and entered into an immunity agreement has been widely reported by local media.³ In fact, the San Diego Reader first published a story in June 1998 that Mr. Kinloch went to England to testify in the criminal trial of a college student accused in trafficking in child pornography, adding the following information provided by the U.S. Attorney's Office:

Working through the Justice Department's Office of International Affairs in Washington, D.C., Staffordshire police last year informed the U.S. Attorney's San Diego office of their intention to prosecute [the college student] and of their need for Kinloch to testify at trial. While no legal mechanism permits foreign courts directly to compel U.S. citizens to testify abroad, treaties with certain nations, such as England, allow the U.S. Attorney to cooperate with foreign courts in securing the testimony of American witnesses.

"Of the two young men -- [the college student] and Kinloch -- the Staffordshire police convinced us that Wrigley was clearly the more dangerous," says Mitch Dembin, Chief of General Crimes Section in the local U.S. Attorney's office. "We approached Kinloch and offered him immunity in exchange for his testimony at Wrigley's trial. He agreed."

...

Mitch Dembin of the U.S. Attorney's office says that Kinloch is still bound by the terms of his immunity agreement.

It's a two-way street. Kinloch agreed to testify wherever, whenever. As long as he complies, we don't prosecute. None of his words will be used against him.⁴

The U.S. Attorney's Office has publicly acknowledged the existence of the agreement since 1998, but now refuses to provide documents relating to its public comments. Consequently, because this information has been in the public domain (both through the U.S. Attorney and other services), the DOJ's Glomar response was inappropriate under FOIA, and any privacy interests implicated by Exemption 7(C) are minimal in light of the substantial public interests discussed below.

³ See, e.g., <http://www.utsandiego.com/news/2012/dec/09/tp-teachers-past-involvement-in-child-porn/>; <http://www.760kfnb.com/story/20326475/warrants-reveal-alleged-online-lures-of-local-teacher>.

⁴ See <http://www.sandiegoreader.com/news/1998/jun/04/unique-warmth-youngsters/>.

Letter to Ms. Pustay
January 8, 2013
Page 6

b. The Public Interest in Agency Action as Stated in the Underlying Requests Clearly Outweighs the Minimal Privacy Interests in Individual Information.

Though a privacy interest may be implicated in keeping secret the fact that third parties were subject to a law enforcement investigation, the mere fact that records pertain to an individual's activities does not necessarily qualify them under Exemptions 6 and/or 7(C). (*Nation Magazine v. U.S. Customs Serv.* (D.C. Cir. 1995) 71 F.3d 885, 894-95.) Rather, whether a Glomar response is appropriate still requires "an ad hoc balancing of private and public interests." (*Id.* at 893) Thus, once a privacy interest has been established, it must be balanced against the public interest, if any, that would be served by disclosure of the information. (*Albuquerque Publishing Co. v. Dept. of Justice* (D.D.C. 1989) 726 F.Supp. 851, 855.)

The U.S. Supreme Court has held that "[o]fficial information that sheds light on an agency's performance of its statutory duties falls squarely within" the central purpose of FOIA "to open agency action to the light of public scrutiny." (*United States Dept. of Justice v. Reporters Comm. For Freedom of the Press* (1989) 489 U.S. 749, 773; *Dept. of Air Force v. Rose* (1976) 425 U.S. 352, 371.) Thus, even where a record pertains to individual activities, it may nevertheless be cloaked with public interest if the information would shed light on agency action. (*Nation Magazine, supra*, 71 F.3d at 895.)

For instance, in *Reporters Committee*, the U.S. Supreme Court found that FBI rap sheets—i.e., compilations of an individual's criminal history from various law enforcement sources—implicated substantial privacy interests and revealed "little or nothing about an agency's own conduct" because they were mere compilations of information. (*Reporters Committee*, 489 U.S. at 773.) Consequently, the DOJ properly withheld the records pursuant to Exemption 7(C).

In contrast, in *Judicial Watch v. U.S. Dept. of Homeland Security* (D.D.C. 2009) 598 F.Supp.2d 93, the requestor sought information regarding a Mexican national, Davila, who testified for the U.S. government in the prosecution of two border agents. It specifically sought: (1) communications between the DOJ and Government of Mexico, the State Department, or Homeland Security concerning Davila; (2) DOJ records pertaining to the Davila's entries in the U.S.; (3) information concerning grants of immunity to Davila; and (4) records regarding how Davila lawfully entered the country. (*Id.* at 96.) The requesting party explained it needed the information to "help answer questions surrounding DOJ's official activities," namely whether and/or how DOJ cooperated with other government agencies, including Mexico, in the prosecution of border agents, and whether and/or how DOJ regularly offers immunity agreements to illegal drug smugglers to aid in the prosecution of U.S. law enforcement officers. The DOJ cited Exemptions 6 and 7(C) in stating the records were "clearly exempt." Rejecting the DOJ's categorical exemption, the court explained that, as opposed to the information sought in *Reporters Committee*, "[s]uch information, to say the least, goes to the very heart of FOIA's purpose." (*Id.* at 97.)

Similarly, in *Nation Magazine*, the Customs Service invoked Exemption 7(C) in making a Glomar response to a request for records regarding offers from then-Presidential candidate Ross Perot to aid Customs in its drug interdiction efforts. The agency reasoned that the request related only to

Letter to Ms. Pustay

January 8, 2013

Page 7

activities of a privacy citizen, and production would be an unwarranted invasion of Mr. Perot's personal privacy. (*Nation Magazine*, supra, 71 F.3d at 888.) In rejecting this argument, the court noted that what made Mr. Perot's activities significant was their connection to agency conduct. Specifically, the public had an interest in finding out whether Mr. Perot offered to help Customs fulfill its statutory duties to interdict drugs, how the agency responded to his overtures, and how government operations were covertly funded. (*Id.* at 895.) Consequently, because disclosure may serve the public's interests in knowing "what their government is up to," the court held that a "more particularized approach [was] required" than Customs' categorical Glomar response.

Here, as described in detail below, *Nation Magazine* and *Judicial Watch* dictate that the DOJ must disclose all records responsive to the District's requests. Furthermore, they dictate that the DOJ's Glomar response was wholly inappropriate and contrary to the "commitment to ensuring an open Government" pursuant to FOIA. (*See* Presidential Memorandum for heads of Executive Departments and Agencies Concerning the Freedom of Information Act, 74 Fed. Reg. 4683.)

First, similar to *Nation Magazine* and *Judicial Watch*, and in contrast to *Reporters Committee*, the District specified that its requests were not related only to the activities of Mr. Kinloch as a private citizen. Rather, what made Mr. Kinloch's activities significant was their connection to DOJ conduct. In particular, the public has a significant and compelling interest in protecting young children from potential predators in the classroom. Whether the DOJ entered into an immunity agreement with Mr. Kinloch—knowing he was sexually attracted "only to teenage boys and younger" and "exchanged pictures of boys as young as five"—at the same time it knew Mr. Kinloch was seeking a teaching credential in California, is unquestionably in the public interest of knowing "what the government is up to."⁵ As explicitly stated by the President and Attorney General, FOIA does not permit the DOJ to hide behind a categorical Glomar response "merely because public officials might be embarrassed by disclosure." (*See* Presidential Memorandum for heads of Executive Departments and Agencies Concerning the Freedom of Information Act, 74 Fed. Reg. 4683.) Consequently, the public interest heavily outweighs any privacy interests in this matter.

Second, similar to *Judicial Watch*, the public has a significant and compelling interest in knowing how the DOJ analyzes the backgrounds of individuals who are or may be credentialed teachers in the state of California. Before hiring Mr. Kinloch, the District did, in fact, conduct a statutorily required background check on Mr. Kinloch. It appears that the DOJ did nothing to disclose information regarding Mr. Kinloch so that it would have been discovered during the District's background check. The District certainly would have benefited from knowing that Mr. Kinloch was "active in international child pornography rings."⁶ Again, the public unquestionably has a significant and compelling interest in knowing "what their government is up to" when the subject of a school district's background check is apparently concealed behind the protection of a DOJ immunity agreement. At the very least, this would assist the public in knowing whether and how to

⁵ The San Diego Reader article is available at:
<http://www.sandiegoreader.com/news/1998/jun/04/unique-warmth-youngsters/>.

⁶ See <http://dailycaller.com/2012/12/04/first-grade-teacher-in-san-diego-busted-for-child-porn/>.

Letter to Ms. Pustay

January 8, 2013

Page 8

work with its elected lawmakers in revising the nation's and/or state's laws and regulations, as necessary.

Third, the public has a significant and compelling interest in ensuring public school districts have sufficient information to fully analyze and appropriately address current employees who are or may be known sex offenders. Withholding such information from the public domain not only fails to satisfy FOIA's "profound national commitment to ensuring an open Government," but continues to place the public in unnecessary danger of individuals who public school employers have a legal duty to protect its students from.

Fourth, to the extent the DOJ asserts that the types of requested records here are categorically exempted from FOIA because they concern a third party, or are excluded from FOIA as law enforcement or national security records, the District seeks to emphasize that the requested information concerned materials that were nearly identical to those requested in *Judicial Watch*, including government agency communications (including those with a foreign country) and immunity agreements. As noted by that court, these types of records, unlike the rap sheets in *Reporters Committee*, "could well be suffused, from top to bottom, with information about DOJ's performance of duties," thus "go[ing] to the very heart of FOIA's purpose." (*Judicial Watch, supra*, 598 F.Supp.2d at 96-97.) Consequently, FOIA requires the DOJ to produce the requested documents and the DOJ's categorical response that the existence of such records cannot be confirmed or denied is clearly contrary to FOIA's requirements.

Lastly, there is no indication the DOJ balanced the public and private interests implicated by the District's requests, as required by the foregoing authorities. Rather, it broadly and categorically denied that any such records did or did not exist on grounds that they concerned a third party. As stated in by the D.C. Circuit in *Nation Magazine*, because the District set forth a public interest cognizable under FOIA, "a more particularized approach is required" than that apparently taken by DOJ in this case. (*Nation Magazine, supra*, 71 F.3d at 895.) Consequently, for this reason and those stated above, the Director should remand the District's requests with instructions that the DOJ fully disclose all responsive records.

II. The DOJ Violated Its Duty to Disclose any Reasonably Segregable Information Even if the Requested Information was Otherwise Exempt from Disclosure.

Even if a document is otherwise exempt from disclosure under a FOIA exemption, the agency nonetheless has a duty to disclose any "reasonably segregable" information unless the exempt and non-exempt portions are "inextricably intertwined." (*Blackwell v. FBI* (D.C. Cir. 2010) 680 F.Supp.2d 79, 96; 5 U.S.C. § 552(b).) Though an agency need not commit significant time and resources to separating disjointed words, phrases, or sentences which taken separately or together have minimal or no information content, it must provide a "detailed justification" and not just "conclusory statements" to demonstrate that it has released all reasonably segregable information. The agency must also show with reasonable specificity why a document cannot be further segregated.

Here, assuming *arguendo* that some of the requested documents were properly determined to be exempt from disclosure pursuant to Exemptions 6 and 7(C), the DOJ nevertheless had a duty to disclose any reasonably segregable information. There is no indication from its determination that

Letter to Ms. Pustay

January 8, 2013

Page 9

the DOJ took any effort to do so. Rather, it merely offered conclusory statements that the information pertained to a third party, and was therefore categorically exempt from FOIA. As discussed in detail above, the DOJ must disclose all requested documents. In the event the DOJ determines that a portion or portions of any document is/are exempt from disclosure, those portions may be redacted.

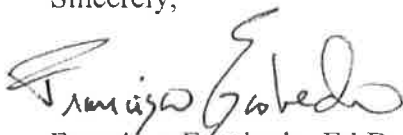
Conclusion

For the reasons stated above, the DOJ's categorical Glomar response to the District's requests failed to comply with FOIA's central purpose of ensuring an open government. Neither privacy exemption cited in the DOJ's response applies to the District's requests in light of the significant and compelling public interests implicated. Consequently, the District respectfully requests DOJ to disclose all responsive documents. Furthermore, to the extent the DOJ properly determines any portions of the requested documents are exempt from disclosure, the District respectfully requests that it reasonably segregate any and all information from those documents that are subject to disclosure, as required by FOIA.

In the event this appeal is denied, the DOJ is required to provide a written response describing the reasons for the denial, names and titles of each person responsible for the denial, and the procedures required to invoke judicial assistance in this matter. (5 U.S.C. § 552(a)(6)(ii), 7 C.F.R. § 1.8(d).) As noted in the District's underlying requests, time is of the essence in this matter. Consequently, the District respectfully requests this information so that it may seek judicial review, including the award of attorneys' fees, as soon as possible.

Thank you for your prompt attention to this matter. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



Francisco Escobedo, Ed.D
Superintendent

00371.00004/410267.1

By certified mail

Exhibit D



U.S. Department of Justice

Office of Information Policy

Telephone: (202) 514-3642

Washington, D.C. 20530

JAN 28 2013

CHULA VISTA ELEMENTARY
SCHOOL DISTRICT

FEB 05 2013

SUPERINTENDENT'S OFFICE

Mr. Francisco Escobedo
Chula Vista Elementary School District
84 East J Street
Chula Vista, CA 91910

Re: Request No. CRM-201201014F

Dear Mr. Escobedo:

This is to advise you that your administrative appeal from the action of the Criminal Division was received by this Office on January 16, 2013.

The Office of Information Policy has the responsibility of adjudicating such appeals. In an attempt to afford each appellant equal and impartial treatment, we have adopted a general practice of assigning appeals in the approximate order of receipt. Your appeal has been assigned number **AP-2013-01614**. Please mention this number in any future correspondence to this Office regarding this matter.

We will notify you of the decision on your appeal as soon as we can. If you have any questions about the status of your appeal you may contact me at the number above.

Sincerely,

A handwritten signature in cursive script, appearing to read "Priscilla Jones".

Priscilla Jones
Supervisory Administrative Specialist

Exhibit E

San Diego Reader

- [City Lights](#)

A Unique Warmth for Youngsters

1 0

By [Abe Opincar](#), June 4, 1998

- [Facebook](#)
- [Twitter](#)
- [Google+](#)
- [Share](#)
- [Email](#)
- [Story alerts](#)
- [Letter to Editor](#)
- [Pin it](#)

"How did you get this number?" snarled an unidentified male voice at the other end of the line. "John isn't involved involved in *anything!* Don't ever call here again!"

John's phone number isn't hard to find if you know anything about the enormous amount of information available online. And anyone answering John's phone should already know a little something about the Internet's hair-raising variety of resources.

Last month, John Raymond Kinloch, a history major at San Diego State University, went to Staffordshire, England, to testify in the three-week criminal trial of Christopher Wrigley, a 28-year-old college student accused of trafficking in kiddie porn on the Internet. Wrigley, a psychology major, had been nabbed in Operation Sunburst, a 1995 investigation conducted by English law enforcement to crack down on Internet transmission of child pornography to and from Great Britain. Wrigley's computer files, bristling with almost 700 nude and sexually graphic images of boys aged 5 to 15, also contained information that led investigators to Kinloch in San Diego.

Working through the Justice Department's Office of International Affairs in Washington, D.C., Staffordshire police last year informed the U.S. Attorney's San Diego office of their intention to prosecute Wrigley and of their need for Kinloch to testify at trial. While no legal mechanism permits foreign courts directly to compel U.S. citizens to testify abroad, treaties with certain nations, such as England, allow the U.S. Attorney to cooperate with foreign courts in securing the testimony of American witnesses.

"Of the two young men -- Wrigley and Kinloch -- the Staffordshire police convinced us that Wrigley was clearly the more dangerous," says Mitch Dembin, Chief of General Crimes Section in the local U.S. Attorney's office. "We approached Kinloch and offered him immunity in exchange for his testimony at Wrigley's trial. He agreed."

Because British law is very cautious about who may be interviewed and what may be printed about a criminal proceeding in progress, Wrigley's trial has received little publicity in England's national press.

"Probably because it was revealed that just before he was arrested, Wrigley got a job as a high school teacher," says Gill Abbott, a reporter for the *Staffordshire Sentinel* who covered the trial. "And because Wrigley is very attractive. He's handsome. He's got that Hugh Grant floppy hair.

"He's also very well-spoken and very self-confident. John Kinloch was also very self-confident and well-spoken, but he's not as good-looking as Wrigley. Kinloch's sort of short and slight with a full head of dark, almost black hair, and a very thin mustache. I think the jury sort of took to [Kinloch] because he had that all-American college boy sort of thing."

In the course of his testimony, Kinloch stated that he was "homosexual" but was attracted only to "teenage boys and younger." He admitted that in 1995 he had exchanged pictures of boys as young as five with Wrigley after the two had struck up a friendship in an Internet discussion group about music.

Kinloch told the Stoke-on-Trent Crown Court, "In the beginning it was discussion and e-mail, then it moved into transmission of pictures. At first it was pictures of ourselves, later it was boys. At first it was nothing indecent, later on you could class it as indecent." When asked if he believed Wrigley shared his sexual tastes, Kinloch answered, "I would not just tell anyone about my sexual preferences. There would have to be trust-building. I think you could say we both knew about each other. If I had not thought he had similar tastes, I would have not divulged information to him."

Wrigley, too, admitted to a unique warmth for youngsters. When the jury was told he had been on a Cub Scout weekend two days before he was arrested, Wrigley said he liked to help children and had consoled one Cub Scout in particular. Wrigley said, "[The Cub Scout] was a child who was experiencing many problems both in and out of school, and I took him under my wing to help him out."

But Wrigley maintained his innocence of the child-pornography charges. In his testimony he stated that rather than being a pedophile he was simply a psychology student engaging in an elaborate experiment involving child pornography and pedophile sexuality. The only reason he exchanged images with Kinloch and another American named Sonny Delite, he said, was to determine what sort of pornography interested pedophiles. Testifying in Wrigley's defense, Cambridge professor Donald West, a pedophilia expert, told the court he believed Wrigley's alleged experiment would be useful in research into pedophilia.

Six of the 12-member Stoke-on-Trent jury believed Wrigley's defense. On May 16, after deliberating for six hours, the jury foreman informed the judge that it was unlikely that the jury would be able to arrive at a verdict. The Crown Court intends to try Wrigley again sometime in the next six months in Birmingham, where the case has received less attention.

Staffordshire police are unable to comment on the matter and declined to state whether or not John Kinloch would be brought again to England to testify. Mitch Dembin of the U.S. Attorney's office says that Kinloch is still bound by the terms of his immunity agreement.

"It's a two-way street. Kinloch agreed to testify wherever, whenever. As long as he complies, we don't prosecute. None of his words will be used against him."

Wrigley is free on bail until his retrial.

- [Facebook](#)
- [Twitter](#)
- [Google+](#)
- [+ Share](#)

Exhibit F



Fagen Friedman & Fulfroft LLP

1 Civic Center Drive, Suite 300
San Marcos, California 92069
Main: 760-304-6000
Fax: 760-304-6011
www.fagenfriedman.com

Dean T. Adams
Direct Dial: 760-304-6012
dadams@fagenfriedman.com

April 1, 2013

Via First Class Mail and Facsimile
202-514-6117

Mr. Kiepura
U.S. Department of Justice
1425 New York Avenue, Suite 11050
Washington, D.C. 20005-2108

Re: Chula Vista Elementary School District, Request No. CRM-201201014F,
AP-2013-01614

Dear Mr. Kiepura:

Our office represents the Chula Vista Elementary School District ("District") in the above referenced matter. This letter follows my March 27 and March 29, 2013 voicemails with your office.

As you know, on December 7, 2012, the District filed a Freedom of Information Act request with the Department of Justice seeking certain documents related to John Raymond Kinloch. In that request, the District described why the requested documents pertaining to Mr. Kinloch are discloseable under the Freedom of Information Act and explained that the subject matter associated with the request had become a topic of exceptional media interest resulting in, among other things, possible questions about the government's integrity which affect public confidence. The District requested that the Department of Justice expedite its request.

On or about December 31, 2012, the Department of Justice provided the District with a "Glomar response," stating that it could not confirm or deny the existence of any of the records requested by the District. On or about January 16, 2013, the District appealed the Department of Justice's response. By letter dated January 28, 2013, received by the District on February 5, 2013, the Department of Justice acknowledged receipt of the appeal and invited the District to contact your office with questions related to the status of the appeal. To date, the District has received no information from the Department of Justice regarding the status of its appeal.

Mr. Kiepura
April 1, 2013
Page 2

At your earliest convenience, please provide us with the status of the District's appeal. Please also inform us when the District may expect to receive some or all of the documents requested in its December 7, 2012 Freedom of Information Act Request.

Thank you in advance for your assistance. Your attention to this matter is appreciated.

Sincerely,

FAGEN FRIEDMAN & FULFROST, LLP

A handwritten signature in black ink, appearing to read "Dean Adams", written in a cursive style.

Dean T. Adams

DTA:km

cc: Francisco Escobedo, Ed.D.

00371.00004/434947.1



Fagen Friedman & Fulfrosts LLP

1 Civic Center Drive, Suite 300
San Marcos, California 92069
Main: 760-304-6000
Fax: 760-304-6011
www.fagenfriedman.com

Dean T. Adams
Direct Dial: 760-304-6012
dadams@fagenfriedman.com

April 8, 2013

Ms. Priscilla Jones
Supervisory Administrative Specialist
U.S. Department of Justice
1425 New York Avenue, Suite 11050
Washington, D.C. 20005-2108

Re: Chula Vista Elementary School District, Request No. CRM-201201014F,
AP-2013-01614

Dear Ms. Jones:

Our office represents the Chula Vista Elementary School District (“District”) in the above referenced matter. On March 27, 2013, our office was informed that this case had been assigned to Robert Kiepura. In effort to obtain the status of this matter, we left voicemail messages with Mr. Kiepura’s office on March 27 and March 29, 2013. In addition, we sent a letter to Mr. Kiepura requesting the status of this case on April 1, 2013. To date, our office has received no response.

As you know, on December 7, 2012, the District filed a Freedom of Information Act request with the Department of Justice seeking certain documents related to John Raymond Kinloch. In that request, the District described why the requested documents pertaining to Mr. Kinloch are discloseable under the Freedom of Information Act and explained that the subject matter associated with the request had become a topic of exceptional media interest resulting in, among other things, possible questions about the government’s integrity which affect public confidence. The District requested that the Department of Justice expedite its request.

On or about December 31, 2012, the Department of Justice provided the District with a “Glomar response,” stating that it could not confirm or deny the existence of any of the records requested by the District. On or about January 16, 2013, the District appealed the Department of Justice’s response. By letter dated January 28, 2013, received by the District on February 5, 2013, you

Ms. Jones
April 8, 2013
Page 2

acknowledged receipt of the appeal and invited the District to contact your office with questions related to the status of the appeal.

At your earliest convenience, please provide us with the status of the District's appeal. Please also inform us when the District may expect to receive some or all of the documents requested in its December 7, 2012 Freedom of Information Act Request.

Thank you in advance for your assistance. Your attention to this matter is appreciated.
Sincerely,

FAGEN FRIEDMAN & FULFROST, LLP



Dean T. Adams

DTA:km

cc: Francisco Escobedo, Ed.D.

00371.00004/436868.1

Exhibit G



U.S. Department of Justice
Office of Information Policy
Suite 11050
1425 New York Avenue, NW
Washington, DC 20530-0001

CHULA VISTA ELEMENTARY
SCHOOL DISTRICT

JUL 18 2013

SUPERINTENDENT'S OFFICE

Telephone: (202) 514-3642

July 11, 2013

Mr. Francisco Escobedo
Chula Vista Elementary School District
84 East J Street
Chula Vista, CA 91910

Re: Appeal No. AP-2013-01614
Request No. CRM-201201014F
MWH:RRK

VIA: U.S. Mail

Dear Mr. Escobedo:

You appealed from the action of the Criminal Division of the United States Department of Justice on your request for access to records concerning John Raymond Kinloch.

After carefully considering your appeal, I am affirming, on partly modified grounds, the Criminal Division's action on your request. The Freedom of Information Act provides for disclosure of many agency records. At the same time, Congress included in the FOIA nine exemptions from disclosure that provide protection for important interests such as personal privacy, privileged communications, and certain law enforcement activities. The Criminal Division properly refused to confirm or deny the existence of records responsive to your request. Without consent, proof of death, official acknowledgment of an investigation, or an overriding public interest, confirming or denying the existence of law enforcement records concerning an individual could reasonably be expected to constitute an unwarranted invasion of personal privacy. See 5 U.S.C. § 552(b)(7)(C).

With regard to your allegation that the Criminal Division may have improperly invoked a FOIA exclusion to withhold records from you, although the Department of Justice can neither confirm nor deny that an exclusion was employed in any particular case, see Attorney General's Memorandum on the 1986 Amendments to the Freedom of Information Act 27 (Dec. 1987), I have carefully considered your allegation and have found this claim to be without merit. You should not take this response as an indication that an exclusion was or was not used in response to your request. Rather, this is the standard response made by this Office when any requester alleges that an exclusion was used by a component of the Department of Justice.

Please be advised that this Office's decision was made only after a full review of this matter. Your appeal was assigned to an attorney with this Office who thoroughly reviewed and analyzed your appeal, your underlying request, and the action of the Criminal Division in response to your request.

If you are dissatisfied with my action on your appeal, the FOIA permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).

- 2 -

For your information, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 301-837-1996; toll free at 1-877-684-6448; or facsimile at 301-837-0348.

Sincerely,

A handwritten signature in cursive script that reads "Sean O'Neill".

Sean R. O'Neill
Chief
Administrative Appeals Staff