

Frank Vera III



26 April 2011

BY FAX TRANSMISSION TO 703-696-4700

Air Force FOIA Public Liaison Office  
1800 Air Force Pentagon  
Washington, DC 20330-1800  
Phone: 703-696-6487

### FREEDOM OF INFORMATION ACT REQUEST

Re: Request for help with FOIA Response dated 5 April 2011.

Dear FOIA Public Liaison Officer:

Could you please help with processing this FOIA request?

I received this FOIA response from the USAF dated 5 April 2011 (see attachment Page 5 of 5).

- I. It was not assigned a FOIA case number.
- II. It has limited contact information for the FOIA case officer including no phone number.
- III. It has no appeal information.
- IV. The FOIA case officer provides a link to the Public Administrative Record that he knows or should know contains no classified documents. The request is for **“an index of any and all records of classified<sup>(1)</sup> or formerly classified documents pertaining to environmental contamination at the former George Air Force Base - EPA #: CA2570024453.”**

(1) Classified for national security under law or executive order

Please provide the requested records in a searchable electronic format, if possible, as the records are to be published on a website, and should be able to be read with a screen reader in order to be ADA compliant for the visually impaired.

Please provide a Data Dictionary if the requested information is in a database or spreadsheet.

## CONTEXT OF THIS REQUEST FOIA'S LEGAL REQUIREMENTS

FOIA requires an agency to disclose requested information unless the information falls within one of the nine narrowly construed exemptions from FOIA listed in 5 U.S.C. § 552(b). Additionally, the FOIA imposes a twenty working-day deadline in which to issue a final determination of an information request. 5 U.S.C. § 552(a)(6)(A)(i) (establishing deadline of twenty working days from receipt); see also 40 C.F.R. § 2.104(a).

Further, the FOIA mandates that an agency “establish a system to assign an individualized tracking number for each request received that will take longer than ten days to process and provide to each person making a request the tracking number assigned to the request.” 5 U.S.C. § 552(a)(7)(A). Similarly, the Agency must “establish a telephone line or Internet service that provides information about the status of a request to the person making the request using the assigned tracking number, including – (i) the date on which the agency originally received the request; and (ii) an estimated date on which the agency will complete action on the request.” *Id.* at § 552(a)(7)(B).

The purpose of FOIA is “to establish a general philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language.” S.Rep. No. 813, 89th Cong., 1st Sess., 3 (1965). The Supreme Court has interpreted the disclosure provisions of FOIA broadly, noting that the act was animated by a “philosophy of full agency disclosure.” *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 152 (1989). Accordingly, FOIA requires that federal agencies disclose records to any person upon request, unless the information falls within one of the nine exemptions from FOIA listed in 5 U.S.C. § 552(b). *Dep't of the Air Force v. Rose*, 425 U.S. 352, 361 (1976) (“disclosure, not secrecy, is the dominant objective of the Act”); *Dobronski*, 17 F.3d 275, 277 (9th Cir.1994). In contrast to FOIA’s disclosure provisions, in furtherance of the Act’s policy of governmental transparency, its disclosure exemptions are to be very narrowly construed by the agencies and reviewing courts.” *John Doe Agency v. John Doe Corp.*, 493 U.S. at 152; *Multnomah County Medical Soc'y v. Scott*, 825 F.2d 1410, 1413 (9th Cir. 1987); *Church of Scientology of Cal. v. U.S. Dep't. of the Army*, 611 F.2d 738, 741-42 (9th Cir.1979) (“The Freedom of Information Act . . . mandates a policy of broad disclosure of government documents when production is properly requested.”). The government bears the burden of showing that the withheld information is exempt from disclosure. 5 U.S.C. §552(a)(4)(B) (“the burden is on the agency to sustain its action”); see also *Multnomah County Medical Soc'y v. Scott*, 825 F.2d at 1413.

As the Supreme Court has declared: “FOIA is often explained as a means for citizens to know what ‘their Government is up to.’” *NARA v. Favish*, 541 U.S. 157, 171 (2004) (quoting U.S. Dep't

of Justice v. Reporters Comm. for Freedom of the Press, 489 U.S. 749, 773 (1989). The Court elaborated that “[t]his phrase should not be dismissed as a convenient formalism.” Id. at 171-72. Rather, “[i]t defines a structural necessity in a real democracy.” Id. at 172.

### **EXEMPT RECORDS**

If you assert that any of the requested records are exempt from mandatory disclosure under FOIA, I request that you disclose them nevertheless, as such disclosure would serve the public interest of educating citizens regarding the operations and activities of the Agency regarding this matter.

Should you decide to invoke a FOIA exemption, please include in your full or partial denial letter sufficient information for us to evaluate an appeal of the denial. To comport with legal requirements this information must include:

1. Basic factual material about each withheld item, including the originator, date, length, general subject matter, and location of each item; and
2. Explanations and justifications for denial, including the identification of the category within the governing statutory provision under which the document (or portion thereof) was withheld and a full explanation of how each exemption fits the withheld material.

In addition, I ask that you certify that any records that are withheld were not shared with any person beyond the Agency, which would waive or destroy any claim of privilege that could be claimed to exempt such disclosed documents from production under FOIA. See, e.g., *Department of the Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 12 (2001).

Finally, if you determine that any portion of the records requested are exempt from disclosure, please segregate the exempt portions and mail the remaining records to me within the statutory time limits after the exempted material has been redacted from the other records I am seeking.

### **FEE WAIVER REQUEST**

Based on the nature and scope of this request, it is unlikely that the production of responsive data will exceed the Agency’s de minimis threshold for the assessment of fees (2 hours of search time/100 pages of records, see 40 C.F.R. § 2.107(d)(3)).

However, to the extent that any fees are properly incurred, I request that you waive all copy, clerical and other fees associated with providing information responsive to this request. The FOIA requires agencies to furnish documents to information requesters free of charge, or at a

reduced rate, "if disclosure of the information is in the public interest." 5 U.S.C. § 552(a)(4)(A)(iii). Such disclosure is in the public interest if "it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." *Id.* While a FOIA requester bears the initial burden of making a prima facie showing of entitlement to a fee waiver, *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284-85 (9th Cir.1987), once that threshold has been satisfied, the burden shifts back to the agency to substantiate denial of a waiver request. The prima facie test is not intended to be a difficult one to satisfy, as the Ninth Circuit has held a requester meets this burden in situations in which "They identified why they wanted the [requested information], what they intended to do with it, to whom they planned on distributing it. . ." *Friends of the Coast Fork v. BLM*, 110 F.3d 53, 55 (9th Cir.1997).

As you consider my fee waiver request, please recall that in enacting FOIA, Congress was "principally interested in opening administrative processes to the scrutiny of the press and public." *Renegotiation Bd. v. Bannerkraft Clothing Co.*, 415 U.S. 1, 17 (1974). To further this policy, FOIA requires that documents must be provided without charge or at a reduced charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii).

#### CONCLUSION

For these reasons, I respectfully request that the Agency promptly provide me with access to the requested information and waiver of any fees associated with your response. Please let me know if I can help you in your efforts to publicly disclose the important information contained in the requested document. Should you have any questions whatsoever, please do not hesitate to contact me.

You may contact me at the address listed above, my phone number is [REDACTED], my email address is [REDACTED].

Sincerely,

Frank Vera III

<http://www.georgeafb.info/>



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS UNITED STATES AIR FORCE ACADEMY

USAFA FOIA Requester Service Center  
5136 Community Center Drive  
USAF Academy CO 80840

APR 5 2011

Mr. Frank Vera



Dear Mr. Vera

This letter is in response to your request for an index of any and all records of classified or formally classified documents pertaining to environmental contamination at the former George Air Force Base – EPA #CA2570024453. The Air Force Real Property Agency located documents in the Administrative Record which is accessible to the public at the following link below. Select the appropriate base and type in TCE in the Document Text Search.

<https://afrpaar.lockland.af.mil/ar/>

Sincerely

A handwritten signature in black ink, appearing to read "Laurence L. Mcdanel", is written above the printed name.

LAURENCE L. MCDANEL

*Developing Leaders of Character*

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