



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

5720 2020-002653
SER00LJF/20U0155
January 10, 2019

Mr. John Greenewald
The Black Vault
27305 W. Live Oak Road
Suite #1203
Castaic, CA 91384

Dear Mr. Greenewald:

This responds to your December 11, 2019 electronic Freedom of Information Act (FOIA) request of all documents pertaining to FOIA case DON-NAVY-2019-011329 and the subsequent FOIA Appeal DON-NAVY-2020-000195. We received your request from the Chief of Naval Operations on December 11, 2019.

Our review of these documents revealed they contained 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 have *partially* denied your request and withheld this information pursuant to the FOIA provisions 5 U.S.C. § 552(b)(6). All releasable information is contained within enclosure (1). We have also provided an enclosure explaining the various exemptions of the FOIA.

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 Secretary of the Navy's designee: Department of the Navy, Office of the General Counsel, 720 Kennon Street, SE, Room 214, Washington Navy Yard, DC 20374-5012. 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 or (703) 697-0031 or the Office of Government Information Services (<https://ogis.archives.gov/>).

5720 2020-002653
SER00LJF/20U0155

There are no assessable fees associated with the processing of your request. Should you have any questions, please contact us at (571)305-9092 or via email at ncis_foia@ncis.navy.mil.

Sincerely,


A handwritten signature in black ink, appearing to read "Karen Richman". The signature is fluid and cursive, with a prominent loop at the end of the last name.

KAREN RICHMAN
Assistant Counsel
Head, Government Information Sharing Unit

Enclosure: 1. Documents

This document is made available through the declassification efforts
and research of John Greenewald, Jr., creator of:

The Black Vault



The Black Vault is the largest online Freedom of Information Act (FOIA)
document clearinghouse in the world. The research efforts here are
responsible for the declassification of hundreds of thousands of pages
released by the U.S. Government & Military.

Discover the Truth at: <http://www.theblackvault.com>



Explanation of the Nine FOIA Exemptions

The following is a list of FOIA exemptions which apply to Government information in accordance with 5 U.S.C. § 552(b):

(b)(1) EXEMPTION – Protects Classified Matters of National Defense or Foreign Policy.

This exemption protects from disclosure national security information concerning the national defense or foreign policy, provided that it has been properly classified in accordance with the substantive and procedural requirements of an executive order.

(b)(2) EXEMPTION – Internal Personnel Rules and Practices.

This exemption exempts from mandatory disclosure records “related solely to the internal personnel rules and practices of an agency.” Courts have interpreted the exemption to encompass two distinct categories of information:

- (a) Internal matters of a relatively trivial nature – sometimes referred to as “low2” information: and

(b)(3) EXEMPTION – Information Specifically Exempted by Other Statutes:

This exemption incorporates the disclosure prohibitions that are contained in various other federal statutes. As originally enacted in 1966, Exemption 3 was broadly phrased so as to simply cover information “specifically exempted from disclosure by statute.” The new Exemption 3 statute prohibits agencies from releasing under the FOIA proposals, “unless that proposal” is set forth or incorporated by reference in a contract entered into between the agency and the contractor that submitted the proposal.”

(b)(4) EXEMPTION – Trade Secrets Commercial or Financial Information.

This exemption protects “trade secrets and commercial or financial information obtained from a person (this is) privileged or confidential.” This exemption is intended to protect the interest of both the government and submitter of information.

(b)(5) EXEMPTION – Privileged Interagency or Intra-Agency Memoranda or Letters.

This exemption protects “inter-agency or intra-agency memorandums of letters which would not be available by law to a party... in litigation with the agency.” As such, it has been construed to “exempt those documents, and only those documents, normally privileged in the civil discovery context.”

(b)(6) EXEMPTION- Personal Information Affecting an Individual’s Privacy.

This exemption permits the government to withhold all information about individuals in “personnel and medical files and similar files” when the disclosure of such information “would constitute a clearly unwarranted invasion of personal privacy.” This exemption cannot be invoked to withhold from a requester information pertaining to the requester.

(b)(7) EXEMPTION – Investigatory Records Compiled for Law Enforcement Purposes.

As amended, this exemption protects from disclosure “records or information compiled for law enforcement purposes.

EXEMPTION 7(A) Records of information that could reasonably be expected to interfere with enforcement proceedings. This exemption authorizes the withholding of “records or information compiled for law enforcement purposes, but only to the extent that production of such law enforcement records or information... could reasonably be expected to interfere with enforcement proceedings.”

EXEMPTION 7(B) Disclosure which would deprive a person of a fair trial or an impartial adjudication. Records that would prevent prejudicial pretrial publicity that could impair a proceeding, protect “records of information compiled for law enforcement purposes (the disclosure of which) would deprive a person of the right to a fair trial or an impartial adjudication.”

EXEMPTION 7(C) Personal Information in Law Enforcement Records. This exemption provides protection for personal information in law enforcement records. This exemption is the law enforcement counterpart to Exemption 6, providing protection for law enforcement information the disclosure of which “could reasonably be expected to constitute an unwarranted invasion of personal privacy.”

EXEMPTION 7(D) Identity of a Confidential Source. This exemption provides protection for “records or information compiled for law enforcement purposes (which) could reasonably be expected to disclose the identity of a confidential source – including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis – and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source.”

EXEMPTION 7(E) Circumvention of the Law. This exemption affords protection to all law enforcement information which “would disclose techniques and procedures for law enforcement investigation 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.”

EXEMPTION 7(F) Physical Safety to Protect a wide Range of individuals. This exemption permits the withholding of information necessary to protect the physical safety of a wide range of individuals. Whereas Exemption 7(F) previously protected records that “would... endanger the life or physical safety of law enforcement personnel.” The amended exemption provides protection to “any individual when disclosure of information about him or her “could reasonably be expected to endanger (his/her) life or physical safety.”

(b)(8) EXEMPTION – Records of Financial Institutions.

This exemption covers matters that are “contained in or related to examinations, operating, or condition reported prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.”

(b)(9) EXEMPTION – Geographical and Geophysical Information Concerning Wells.

This exemption covers “geological and geophysical information and data, including maps concerning wells.”

With respect to the 2004 sighting by aircraft from the aircraft carrier USS Nimitz (CVN 68); that video was widely shared throughout the ship at that time. In 2007, one of those crewmembers posted the video onto the public web. In 2009, the online post of the video came to the attention of Navy officials who, in consultation with Navy law enforcement personnel, decided not to pursue the matter. Given the time since recording (approximately 5 years), the widespread distribution of the recording within the ship at the time of recording, and the size of the crew at the time (approximately 5,000), it was determined that there was no way to accurately determine who might have released the video.

(b)(6)

From: (b)(6)
Sent: Thursday, October 24, 2019 3:02 PM
To: (b)(6) Code 14
Subject: Appeal Re: (b)(6) and Greenwald
Attachments: Appeal Response - Greenwald.pdf; Appeal Response (b)(6).pdf

Good afternoon (b)(6)

Please see the attached responses regarding (b)(6) and Mr. Greenwald.

NCIS FOIA Team
ncis_foia@ncis.navy.mil
(571) 305-9092

~~FOR OFFICIAL USE ONLY -~~

This e-mail is from the Naval Criminal Investigative Service and may contain information that is Law Enforcement Sensitive or Privacy Act Sensitive to be used for official purposes only. Any misuse or unauthorized disclosure may result in both civil and criminal penalties.

(b)(6)

From: (b)(6)
Sent: Wednesday, October 9, 2019 10:39 AM
To: (b)(6) USA)
Cc: (b)(6) ode 14
Subject: Appeals in FOIA Online

Hello (b)(6)

NCIS received 3 recent appeals in FOIA Online. I have reassigned them to you guys for your review. Let us know when our response is due to you guys.

These are the numbers:

(b)(6)

2020-0000195 Greenwald

(b)(6)

Thanks,

NCIS FOIA Team
ncis_foia@ncis.navy.mil
(571) 305-9092

~~FOR OFFICIAL USE ONLY -~~

This e-mail is from the Naval Criminal Investigative Service and may contain information that is Law Enforcement Sensitive or Privacy Act Sensitive to be used for official purposes only. Any misuse or unauthorized disclosure may result in both civil and criminal penalties.

(b)(6)

From: (b)(6) navy.mil>
Sent: Friday, November 15, 2019 3:51 PM
To: NCIS FOIA
Cc: (b)(6) Code 14
Subject: Final adjudication response ICO John Greenwald DON-NAVY-2020-000195
Attachments: Greenwald Fin Ltr.pdf
Signed By: (b)(6) navy.mil

Good Afternoon,

Attached is the final response ICO Mr. John Greenwald; original request number DON-NAVY-2019-011329.

(b)(6)

From: NCIS FOIA
Sent: Monday, November 18, 2019 6:41 AM
To: (b)(6)
Subject: FW: Final adjudication response ICO John Greenwald DON-NAVY-2020-000195
Attachments: Greenwald Fin Ltr.pdf
Signed By: (b)(6) ncis.navy.mil

(b)(6)

Yay! We won the Greenwald appeal.

(b)(6)

-----Original Message-----

From: (b)(6) navy.mil>
Sent: Friday, November 15, 2019 3:51 PM
To: NCIS FOIA <ncis_foia@NCIS.NAVY.MIL>
Cc: (b)(6) navy.mil>
Subject: Final adjudication response ICO John Greenwald DON-NAVY-2020-000195

Good Afternoon,

Attached is the final response ICO Mr. John Greenwald; original request number DON-NAVY-2019-011329.

DON-NAVY-2019-011329 Request Details

Case Phase: Evaluation **Case Status:** Initial Evaluation **Due Date:** N/A **Clock Days:** 0 (Never Started)

Requester Information

Requester	Mr. John Greenewald
Organization	The Black Vault
Requester Has Account	Yes
Email Address	john@greenewald.com
Phone Number	8006426555
Fax Number	8186597688
Address	27305 W. Live Oak Rd. Suite #1203
City	Castaic
State/Province	CA
Zip Code/Postal Code	91384
Tracking Number	DON-NAVY-2019-011329
Submitted Date	09/16/2019
Received Date	09/16/2019
Perfected Date	
Last Assigned Date	09/17/2019
Assigned To	Naval Criminal Investigative Service
Last Assigned By	
Request Track	Simple
Fee Limit	\$25.00

Request Handling

Description

1536/2000

I respectfully request a copy of records, electronic or otherwise, of the following: ALL documents, reports, memos, letters, e-mails, etc. that pertain to a circa 2009 investigation by NCIS into a 2007 'leak' of a Navy video depicting "unidentified aerial phenomena" or UAP. The footage was shot in 2004, while the Nimitz Carrier Strike Group was on a training mission off the coast of San Diego. Based on recent statements from the U.S. Navy to myself, I am aware that there was an inquiry/investigation of some kind into the leak.

I attached a screen shot of the official statement for reference (as I do not have enough space on FOIAOnline to

Has Description Been Modified

Description Available to the Public

No

Short Description

Additional Information

Attached Supporting Files

Upload Supporting Files



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

5720 2019-0011329
SER00LJF/19U1890
October 24, 2019

MEMORANDUM

From: Information and Privacy Coordinator, Naval Criminal Investigative Service
To: Office of the Judge Advocate General, Code 14

Subj: FREEDOM OF INFORMATION ACT APPEAL ICO MR. JOHN GREENEWALD

Encl: (1) FOIAOnline request submitted 16SEP19
(2) Official response letter to Mr. Greenewald dated 01OCT19.

1. As requested, enclosures (1) - (2) are provided to assist in the processing of the subject appeal. There are no exemptions claimed.
2. On September 16, 2019, the Naval Criminal Investigative Service (NCIS) received a Freedom of Information Act (FOIA) request from Mr. Greenewald seeking records pertaining to a 2009 NCIS investigation into a leak of a Navy video depicting “unidentified aerial phenomena” or UAP where the footage was shot in 2004 while the Nimitz Carrier Strike Group was on a training mission off the coast of San Diego.
3. On October 1, 2019, this office provided Mr. Greenewald with a “no record” response letter after searching all applicable databases using the information provided in Mr. Greenewald’s request.
5. Mr. Greenewald is appealing the “no record” response based on an official statement provided to him from Deputy Chief of Naval Operations (b)(6) “the online post of the video came to the attention of Navy officials who, in consultation with Navy law enforcement personnel, decided not to pursue the matter.” This statement confirms that NCIS did not investigate the matter, therefore, responsive records do not exist.
4. The point of contact for this appeal is (b)(6) who may be reached at (b)(6) or via electronic mail at (b)(6)@ncis.navy.mil.

Sincerely,

KAREN RICHMAN
Assistant Counsel
Head, Government Information Sharing Unit



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

5720 2019-011329
SER00LJF/19U11851
October 1, 2019

Mr. John Greenewald
The Black Vault
27305 W. Live Oak Road, Suite 1203
Castaic, CA 91384

Dear Mr. Greenewald,

This responds to your September 16, 2019, Freedom of Information Act (FOIA) request seeking information pertaining to an investigation into the leak of a Navy video depicting "unidentified aerial phenomena" or UAP from 2004, which was shot by personnel from the USS Nimitz Carrier Strike Group. We received your request on September 16, 2019.

We conducted a search of the NCIS Knowledge Network (K-Net) database. K-Net identifies investigative reports created and transmitted by NCIS. A search of K-Net using the information provided in your request did not identify any records responsive to your request.

You may appeal the adequacy of our search 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 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 us at ncis_foia@ncis.navy.mil or (571) 305-9092.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen Richman", is positioned above the typed name.

KAREN RICHMAN
Assistant Counsel
Head, Government Information Sharing Unit

To whom it may concern,

This is an official appeal on the final decision for FOIA case DON-NAVY-2019-011329. In this request, I was given a "no records" determination.

I hereby appeal this decision, based on an official statement given to me by Joseph Gradisher, deputy chief of naval operations for information warfare. This statement reads:

"With respect to the 2004 sighting by aircraft from the aircraft carrier USS Nimitz (CVN 68); that video was widely shared throughout the ship at that time. In 2007, one of those crewmembers posted the video onto the public web. In 2009, the online post of the video came to the attention of Navy officials who, in consultation with Navy law enforcement personnel, decided not to pursue the matter. Given the time since recording (approximately 5 years), the widespread distribution of the recording within the ship at the time of recording, and the size of the crew at the time (approximately 5,000), it was determined that there was no way to accurately determine who might have released the video."

It appears there was some sort of investigation, or inquiry, to see what may be done about the leak. It is my opinion, that would have been done by NCIS, therefore, responsive records should exist.

I ask that you please reconsider your final determination, and search for responsive records.

Thank you for your time...

Sincerely,

John Greenewald, Jr.

Owner/Founder

The Black Vault

<http://www.theblackvault.com>

Toll Free: (800) 456-2228

International: 1 (818) 655-0474

Fax: (818) 659-7688

Mailing Address:

The Black Vault

27305 W. Live Oak Rd., Suite 1203

Castaic, CA 91384-4520



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 14/037
November 15, 2019

Mr. John Greenewald
27305 W. Live Oak Road, Suite 1203
Castaic, CA 91384-4520
Email to: john@greenewald.com

SUBJECT: FREEDOM OF INFORMATION ACT (FOIA) REQUEST DON-NAVY-
2019-011329; FOIA APPEAL DON-NAVY-2020-000195

This letter responds to your FOIA appeal received in our office on October 9, 2019. I interpret your appeal as a challenge to the adequacy of the search conducted by the Naval Criminal Investigative Service (NCIS). In your underlying request, you asked NCIS for information pertaining to an investigation into the leak of a Navy video depicting “unidentified aerial phenomena” or UAP from 2004, which was shot by personnel from the USS Nimitz Carrier Strike Group. Your appeal asserts that NCIS would have conducted an investigation into this matter, but cites a statement from the Deputy Chief of Naval Operations for Information Warfare, which states, in part, “Navy officials who, in consultation with Navy law enforcement personnel, decided not to pursue the matter”

Your appeal is a request for a final agency determination under the FOIA. For the reasons set forth below, I must deny your appeal.

The adequacy of an agency's search for information requested under the FOIA is determined by a “reasonableness” test. *Meeropol v. Meese*, 790 F.2d 942, 956 (D.C. Cir. 1986); *Weisberg v. United States Dep't of Justice*, 705 F.2d 1344, 1350-51 (D.C. Cir. 1983). As a general rule, an agency must undertake a search that is reasonably calculated to locate the requested information. *Kowalczyk v. Department of Justice*, 73 F.3d 386, 388 (D.C. Cir. 1996). Courts have found agencies satisfy the “reasonableness” test when they properly determine where responsive records are likely to be found and search those locations. *Lechliter v. Rumsfeld*, 182 F. App'x 113, 115 (3rd Cir. 2006) (concluding that agency fulfilled duty to conduct a reasonable search when it searched two offices that it determined to be the only ones likely to possess responsive documents (citing *Oglesby v. U.S. Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990))); *McKinley v. Bd. of Governors of the Fed. Reserve Sys.*, 849 F. Supp. 2d 47, 55-56 (D.D.C. 2012) (concluding that agency's search was reasonable because agency determined that all responsive records were located in a particular location created for express purpose of collecting records related to subject of request and searched that location).

Moreover, courts have found that an agency's inability to locate a responsive record does not undermine an otherwise reasonable search. *Moore v. FBI*, 366 F. App'x 659, 661 (7th Cir. 2010) (noting that although agency had years earlier destroyed some potentially responsive records, that fact does not invalidate the search). Additionally, the mere speculation that requested documents exist does not undermine the finding that the agency conducted a reasonable search. *Wilbur v. C.I.A.*, 355 F.3d 675, 678 (D.C. Cir. 2004) ("Likewise, the agency's failure to turn up a particular document, or mere speculation that as yet uncovered documents might exist, does not undermine the determination that the agency conducted an adequate search for the requested records."). Finally, Courts have found searches that require review of voluminous amounts of as yet unindexed files unreasonably burdensome. See generally *Nation Magazine v. U.S. Customs Serv.*, 71 F.3d 885, 892 (D.C. Cir. 1995) (agreeing that search which requires review of twenty-three years of unindexed files would be unreasonably burdensome); *Wilson v. DOT*, 730 F. Supp. 2d 140, 150 (D.D.C. 2010) (finding "'unduly burdensome,' if not impossible, for [agency] to identify the records responsive to [plaintiff's] request" because records "simply do not exist in format he requests" (citing *Nation Magazine*, 71 F.3d at 891-92)).

For your underlying request, NCIS conducted a search of the NCIS Knowledge Network (K-Net) database. The K-Net identifies investigative reports created and transmitted by NCIS. A search of K-Net using the information provided in your request did not identify any records responsive to your request. I note that the statement you cite in your appeal notes that Navy law enforcement officials decided not pursue the matter concerning the leaked videos, which means there would not have been an investigation concerning such leaked videos. It appears to me that your own speculation is the reason you believe NCIS conducted an investigation. The courts have routinely held that mere speculation by the requester does not prove that a search was inadequate.

Based on this information, I find NCIS's search was reasonable because it was specifically tailored to search a database that would have identified an investigation based on your request. Furthermore, as the Court said in *Moore*, NCIS's "inability to locate a responsive record does not undermine an otherwise reasonable search."

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.

You have the right to seek dispute resolution services by contacting the Department of the Navy's FOIA public liaison, Mr. Christopher Julka, at christopher.a.julka@navy.mil

5720
Ser 14/037
November 15, 2019

or at (703) 697-0031. You may also seek dispute resolution services from the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, at (202) 741-5770 or ogis@nara.gov.

If you have further questions or concerns for my office, my point of contact is Maj James McKeon, USMC, who may be reached at james.mckeon@navy.mil or (202) 685-4596.

Sincerely,

A handwritten signature in cursive script that reads "G. E. Lattin".

G. E. LATTIN
Director
General Litigation Division

Copy to:
NCIS
DNS-36
DON CIO