



NATIONAL SECURITY AGENCY
FORT GEORGE G. MEADE, MARYLAND 20755-6000

Serial: J9365A-96
6 December 1996

Received 16 Dec 96

Mr. William C. Beranek, Jr.
Box 87 R.D. #1
Dawson, PA 15428

Dear Mr. Beranek:

This replies to your two 11 October 1996 letters appealing the National Security Agency's (NSA) refusal to release certain information from documents relating to Vincent Foster in response to your Freedom of Information Act (FOIA) request postmarked 20 May 1996 and your clarification letter postmarked 15 June 1996. Your initial request and the clarification, the documents responsive to your request, the Director of Policy's letter denying release of portions of the documents, and your letters of appeal have been reviewed. As a result of this review, I have determined that the information deleted by NSA was properly withheld and cannot be released.

1st request 3 years ago last, second last, third and fourth in enclosed letter.

Initially you sought the 700 documents identified in a news article as NSA documents relating to Vincent Foster. It is clear from your appeals that you are more specifically seeking information which would shed light on Mr. Foster's death. The documents provided to you by the Director of Policy on 11 October 1996 are responsive to your initial request because they relate to Vincent Foster in a broad sense and were the documents identified by the press. The documents do not, however, contain information which explains or is in any way related to circumstances surrounding Mr. Foster's death. The NSA documents consist of news articles, media inquiries and responses, information pertaining to Mr. Foster's visit to this agency as a participant in Law Day activities, and documents which mention companies with which Mr. Foster was affiliated.

On 11 October 1996, the Director of Policy provided you copies of documents which were divided into three groups and tabbed A, B, and C. I affirm the Director of Policy's decision to withhold some information from the documents. No information was deleted from the documents which relates to Mr. Foster's death, nor which indicates that he was holding or working on NSA material at the time of his death. As explained below, the unclassified information withheld by NSA consists of names of NSA/CSS employees, email header information, and deliberative information regarding media responses. The classified information withheld deals with NSA activities unrelated to Mr. Foster or his death.

Some information withheld from three documents at Tab A meets the standards for classification set forth in subparagraph (a) of section 1.2 of Executive Order 12958. In addition, the information meets the specific criteria for

classification established in section 1.5(g). The information remains currently and properly classified CONFIDENTIAL in accordance with section 1.3 of Executive Order 12958. Accordingly, the information is exempt from disclosure pursuant to 5 U.S.C. § 552(b)(1).

E-mail routing information which appears before the text of messages was deleted from documents at Tab A pursuant to 5 U.S.C. § 552(b)(2), which applies to matters that are "predominantly internal," the release of which would "significantly risk circumvention of agency regulations or statutes." The release of that information would reveal how NSA's information network is constructed and could expose the network to unauthorized access.

Information which would reveal NSA/CSS functions and activities and names of NSA/CSS employees has been deleted from the documents at Tab A pursuant to 5 U.S.C. § 552(b)(3), which provides that the FOIA does not apply to matters that are specifically exempted from disclosure by statute. The applicable statutory provision with regard to that information is Section 6 of the National Security Agency Act of 1959, (Public Law 86-36, 50 U.S.C. § 402 note).

In addition, some information which reflects the deliberative process was withheld from the documents at Tab A pursuant to 5 U.S.C. § 552(b)(5). This subsection exempts from disclosure interagency or intra-agency memoranda or letters which would not be available by law to a party in litigation with the Agency. As such, it has been construed to allow agencies to protect information that is normally privileged in the civil discovery context. The information withheld pursuant to this exemption consists of discussion of possible responses to media inquiries. The withheld information does not represent finalized Agency policy. It includes the kind of analysis, frank comments, and recommendations that an agency must encourage and protect from public disclosure to avoid a chilling effect upon free and candid internal discussions in support of optimum decision making within the Agency.

Some information was also withheld from a three-page document at Tab B which meets the standards for classification set forth in subparagraph (a) of section 1.2 of Executive Order 12958. The information meets the specific criteria for classification established in section 1.5(c) and (g). The information remains currently and properly classified SECRET in accordance with section 1.3 of Executive Order 12958. Accordingly, the information is exempt from disclosure pursuant to 5 U.S.C. § 552(b)(1).

Information at Tab B is also protected against disclosure by 5 U.S.C. § 552(b)(3) as explained above. The applicable statutory provisions with regard to the information being withheld are: 18 U.S.C. § 798, which prohibits the release of classified information concerning communications intelligence activities to

unauthorized persons; the National Security Act, 50 U.S.C. § 403-3(c)(5), which protects information pertaining to intelligence sources and methods; and Public Law 86-36, 50 U.S.C. § 402 note.


Since your appeal is denied, you are hereby advised of your rights under 5 U.S.C. § 552 to seek judicial review of this determination. You may seek an order from the United States District Court in the district in which you reside, in which you have your principal place of business, in which the Agency's records are situated (U.S. District Court of Maryland), or in the District of Columbia for the production of any Agency information which you consider to have been improperly withheld by this Agency. 5 U.S.C. § 552(a)(4)(B) sets out your rights in this matter with respect to such judicial action.

In your appeal letter you question why it took so long to process your request and why an attorney processed what seem to you to be "simple documents." Please keep in mind that all documents considered for release under the FOIA are reviewed carefully to ensure that as much information as possible is released to the public without damaging the national security. Although the documents appear to be "simple," the large number of responsive documents required a time-consuming review. Occasionally, the FOIA Office asks the Office of General Counsel (OGC) to review the processing of a request. The Office of Policy informed you on 10 October that your FOIA request file was forwarded to the OGC. The file was returned to the FOIA Office and the response was signed and sent to you on 11 October.

The Director of Policy explained to you in his 11 October letter that non-responsive names and identities of non-NSA/CSS employees were deleted from the documents to facilitate their release without considerable coordination with other agencies. That is the only non-responsive information deleted from the documents. Responsive information which originated with other agencies was referred to those agencies for review, and where appropriate, direct response to you. The Office of Policy will provide you with a final response once coordination is complete.

I am returning the Office of Policy's 11 October 1996 letter as you requested.

Sincerely,


WILLIAM P. CROWELL
Freedom of Information Act/Privacy Act
Appeals Authority

Encl:
a/s



NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE
FORT GEORGE G. MEADE, MARYLAND 20755-6000

Serial: J9365-96
11 October 1996

Mr. William Beranek, Jr.
Box 87, R.D. #1
Dawson, PA 15428

Dear Mr. Beranek:

This responds to your Freedom of Information Act (FOIA) request postmarked 20 May 1996 and clarification letter postmarked 15 June 1996 for 700 documents outlined by NSA spokeswoman Renee Frank in the news article of Washington Times, 15 May 96. We have processed your request under the provisions of the FOIA and documents responsive to your request are enclosed.

Information has been deleted (blacked out) from the documents at Tab A pursuant to the first exemption of the FOIA (5 U.S.C. section 552(b)(1)). This information has been found to be currently and properly classified in accordance with Executive Order 12958. The information meets the criteria for classification as set forth in subparagraph (g) of section 1.5 and remains classified CONFIDENTIAL as provided in section 1.3 of Executive Order 12958. The information is classified because disclosure could reasonably be expected to cause damage to the national security.

In addition, subsection (b)(2) of the FOIA exempts from disclosure matters related solely to the internal personnel rules and practices of an agency. This exemption has been held to apply to matters that are "predominantly internal" the release of which would "significantly risk circumvention of agency regulations or statutes." Crooker v. Bureau of Alcohol, Tobacco, and Firearms, 670 F.2d 1051, 1074 (D.C. Cir. 1981). Information contained within the enclosures meets the criteria for exemption (b)(2) protection as that statutory provision has been interpreted and applied by the Federal Judiciary. The information being protected under subsection (b)(2) is limited to e-mail routing information that appears before the text of a message and would reveal how NSA's information network is constructed. The release of such information could expose the network to unauthorized access.

Information which would reveal NSA/CSS functions and activities and names of NSA/CSS employees has also been deleted from these documents. These deletions are exempt from disclosure pursuant to the third exemption of the FOIA which provides for the withholding of information specifically protected from disclosure by statute. The specific statute applicable in this case is Section 6, Public Law 86-36 (50 U.S. Code 402 note).

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In addition, some of the information has been deleted from the enclosures at Tab A pursuant to the fifth exemption of the FOIA. This exemption provides that the FOIA does not apply to inter-agency or intra-agency memoranda or letters which would not be available by law to a party in litigation with the agency.

Information has been deleted (blacked out) from the documents at Tab B pursuant to the first exemption of the FOIA. The information meets the criteria for classification as set forth in subparagraphs (c) and (g) of section 1.5 and remains classified ~~SECRET~~ as provided in section 1.3 of Executive Order 12958. The information is classified because disclosure could reasonably be expected to cause grave damage to the national security.

Information is also protected in accordance with the third exemption as discussed above. The specific statutes applicable to these deletions are Title 18 U.S. Code 798, Title 50 U.S. Code 403-3(c) (5) and Section 6, Public Law 86-36 (50 U.S.C. 402 note).

The documents at Tab B also contain non-responsive names and identities of non-NSA/CSS employees, release of which would require considerable coordination with other agencies. To facilitate the release of the documents, the non-responsive information has been deleted (whited out and bracketed). Please inform the NSA FOIA office within 30 days of the date of this letter if you wish us to coordinate the release on the non-responsive information with the other agencies.

To provide you with as much information as possible at this time, the draft letter and press items at Tab C are being released without an accompanying cover note originated by NSA. The cover note is one of the documents requiring coordination with another Agency as described below and we will respond further on this document when coordination is complete.

Since the deletions to documents at Tabs A and B may be construed as a partial denial of your request, you are hereby advised of this Agency's appeal procedures. Any person denied access to information may, within 60 days after notification of the denial, file an appeal to the NSA/CSS Freedom of Information Act Appeal Authority. The appeal shall be in writing addressed to the NSA/CSS FOIA Appeal Authority (N5P5) STE 6248, National Security Agency, 9800 Savage Road, Fort George G. Meade, MD 20755-6248. The appeal shall reference the initial denial of access and shall contain, in sufficient detail and particularity, the grounds upon which the requester believes release of the information is required. The NSA/CSS Appeal Authority shall respond to the appeal within 20 working days after receipt.

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In processing your request, we located documents that originated with other agencies as well as NSA-originated records containing information pertaining to other agencies. Those documents have been referred to the other agencies for review and, where appropriate, direct response to you. A number of the records will be returned to NSA for release and we will respond further on this material when coordination with the other agencies has been completed.

For the purpose of fee assessment, you have been placed in the "media" category. As a media requester you are entitled to duplication of 100 pages at no cost, but liable for the cost of duplication of additional pages. Because of the public interest in the subject matter of your request, all fees have been waived.

Sincerely,



JAMES P. CAVANAUGH
Deputy Director of Policy

Encls:
a/s