



March, 9, 2011

Carl Malamud
Public.Resource.Org
105 Gravenstein Highway North
Sebastopol, CA 95472

Re: Freedom of Information Act Appeal NGC11-025A

Dear Mr. Malamud:

This is in response to your February 8, 2011, Freedom of Information Act (FOIA) appeal concerning our handling of your request for NAMA-04-C-0007, the contract for the Electronic Records Archive (ERA). Your appeal was received in this office on February 8, 2010, and assigned tracking number NGC11-025A.

We logged in your initial request on August 23, 2010, but in an email of August 25, 2010, to Stephani Abramson, you clarified the request as follows:

I believe there is a 3,000 page agreement with Lockheed Martin? I understand that some sections are perhaps not releasable due to proprietary information, but I would like to see what has already been released.

In your appeal, you raise the following concerns: 1) whether the documents posted in the electronic reading room constitute the entire contract, that certain documents may be missing, and NARA should provide a list of responsive documents still being reviewed and inform you when such review will be complete; 2) whether placing documents on a website is responsive to your FOIA request, and failing to inform you when the documents were released; 3) that the response was not timely under FOIA; and 4) that information may have been improperly redacted.

For your background information and as you may have already been informed, at the time you made your request, NARA had already received another FOIA request for the ERA contract (which also requested additional information related to the contract). When an agency receives a FOIA request for records containing confidential commercial information submitted by an outside party, the agency must follow the requirements of Executive Order 12600, Predisclosure Notification Procedures for Confidential Commercial Information, and provide the submitter a

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reasonable period of time to review and raise objections to the release of the submitted information. Accordingly, in response to the previously submitted FOIA request, NARA has been allowing Lockheed Martin an opportunity to review the responsive information it had submitted and to raise any objections to disclosure; upon review and concurrence by NARA, we have withheld information from some documents in accordance with FOIA exemptions (b)(4) and (b)(6).

Based on the language of your August 25 email to Ms. Abramson, the NARA FOIA staff interpreted your request as asking for any part of the NARA contract with Lockheed Martin for the Electronic Records Archives (ERA) that was already released and that was not subject to the FOIA exemption applicable to proprietary information, per 5 U.S.C. § 552(b)(4). Accordingly, on September 1, 2010, NARA provided you with all of the portions of the ERA contract that had already been released up to that time. Subsequently, on January 11, 2011, Ms. Abramson informed you that additional responsive portions of the ERA contract were available in the electronic FOIA reading room on NARA's website.

1) The ERA contract consists of the Base Contract, all modifications to the contract, and any attachments or appendices to the base or any of the modifications. What was posted on e-FOIA reading room as of February 1, 2011, under the heading "Contract and Modifications," was the contract information that has been released as of that date, as per your request. Upon re-reviewing the documents posted on the website, we realized that the document listed as the "Base Contract" was incomplete, and did not include all of the contract provisions. I also agree with you that NARA should have indicated whether there were any additional contract documents that were still being reviewed, which was the case. We have now posted the complete base contract, and 12 contract attachments in the e-FOIA reading room, as well as the most recent modifications (up to number 58, dated February 28, 2011). Eight of these documents contain redactions under exemption (b)(4), because there is a substantial likelihood that disclosure of the information would cause Lockheed Martin competitive harm.

Two additional documents are still being reviewed in accordance with E.O. 12600. When that review is complete, we will post those documents on our website, and we will inform you that we have done so.

In addition to the actual contract, there are numerous other documents that have been submitted to NARA under the contract. These documents were included in the prior FOIA request, but we did not understand them to be included in your request. The submitted documents that have

completed the FOIA review process are posted, or will be posted in the near future, in the e-FOIA reading room under the heading "System Design."

2) You may not be aware that under section 5 U.S.C. § 552 (a)(2)(D) of the FOIA, agencies are supposed to post in their FOIA reading rooms, including on the web, records that "have become or are likely to become the subject of subsequent requests for substantially the same records." In such situations, posting responsive documents on the agency's FOIA reading room website does constitute a response to a FOIA request. Your appeal letter states that "NARA had a duty to inform me if/when those documents are released. She did not do so." I am confused by this comment, because you were so informed on January 11 and February 1, 2011. By this appeal letter, we are further informing you of the additional contract documents that are now on the website. We will inform you subsequently when the two additional documents noted above are posted.

3) You are correct that the response to your FOIA request was not timely under the FOIA. The FOIA requires agencies to respond within 20 working days. NARA has a performance goal of responding to FOIA requests within this timeframe 88% of the time. This means, necessarily, that we will be untimely in some cases. Because some of the contract documents had to be reviewed for potentially sensitive information in accordance with E.O. 12600, we have not been able to review and release all of the responsive documents within the 20 working day timeframe. We apologize for the delays.

4) You have specifically appealed the redactions to the document titled "Appendix 1G: Award Fee Plan." This is the only document among the "Contract and Modification" documents previously posted on our website that was not released in full. The redacted information was withheld under 5 U.S.C. § 552(b)(4) (confidential commercial information). Upon my review of the information withheld as confidential commercial information, I have determined that most of the withheld information should be released, and am therefore granting your appeal with respect to this document, in part. We are continuing to withhold specific information on one page relating to award fees under exemption (b)(4), because there is a substantial likelihood that disclosure of the information would cause Lockheed Martin competitive harm. A newly redacted version of this document is now posted on the NARA FOIA website.

I apologize for any miscommunication that may have occurred in the processing of your request.

Your administrative remedies are now exhausted. You may seek judicial review in the United States District Court for the judicial district in which you reside, the District of Columbia, or the District of Maryland which is where the records are located.

Sincerely,

A handwritten signature in cursive script that reads "Adrienne C. Thomas". The signature is written in black ink and is positioned above the printed name and title.

ADRIENNE C. THOMAS
Deputy Archivist