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"It's Not Just A Good Idea—It's The Law!"

February 8, 2011

Honorable Adrienne C. Thomas
Deputy Archivist of the United States
National Archives and Records Administration
College Park, Maryland 20740

Freedom of Information Act Appeal NGC10-224

Dear Ms. Thomas:

I am writing to appeal the decision of **February 1 by Mr. Joseph Scanlon**, NARA FOIA Officer. This is in response to my August 23, 2010 request to his office requesting "the 3,000 page agreement with Lockheed Martin." As you know, I previously requested this document in December 2009 as part of my preparation for testimony before the U.S. Congress on the subject of the ERA system. I have since repeatedly requested copies of this contract.

In response to my August 23, 2010 request, NARA released to me a series of 218 cover sheets, saying that the remainder of the contract was in the process of being examined and would be released shortly. When I had not heard back from NARA, I wrote back in on January 11 and was told by Ms. Stephani L. Abramson:

"As you know, on September 1, 2010, NARA released to you 218 pages consisting of the Base award and all modifications in existence at the time. Since then, NARA has created an electronic reading room to respond to the various FOIA requests related to the ERA contract. All documents that have been released to date can be found in this electronic reading room."

The February 1 letter from Mr. Scanlon indicates "the contract and other records for NAMA-04-C-0007 have been made and are now publicly available in our Electronic Reading Room." The letter goes on to say "we will continue to work with the contractor to release more records pertaining to this contract. As more records become available, they will be posted to the reading room."

Just to be absolutely certain, I took the time today to download (again) all 63 documents you have posted on your so-called "**Electronic Reading Room**." Fifty-two of those documents are those that Ms. Abramson sent to me: the 7-page Standard Form

28 for the award of the contract dated 8/3/2004 and the 51 different "Amendment of Solicitation/Modification of Contract." In addition, the site contains the **Appendix 1G Award Fee Plan** which is so heavily redacted as to be totally useless and the 2-page form DD 254 Security Specification.

Your Electronic Reading Room also contains 11 supplementary system design documents from 2005 and 2006. I have also examined the 18 documents on the undated page entitled "**Operations and Maintenance (O&M) Acquisition.**" Perhaps this collection of documents in toto is "the contract," but it is very hard to believe this is it.

Mr. Scanlon takes pains to reassure me that he does not "consider this response a denial because the records you are seeking are available in our Electronic Reading room." However, I do consider the actions of NARA to be a denial on several grounds:

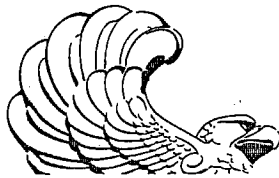
- The FOIA law does not say that if you happen to place documents on a web site you can ignore FOIA requests. Ms. Abramson had indicated she would let me know if additional documents are made available because the first response (a series of cover sheets) was clearly not responsive. She reassured me that people were hard at work so that additional documents would be released. NARA had a duty to inform me if/when those documents are released. She did not do so.
- Your responses have not been timely under the law. My formal request was submitted August 23, 2010 after close to a year of informal requests. By no measure has NARA met your requirements for responses under FOIA.
- Your responses do not meet the requirements set under FOIA for release of documents. In particular, the absurdly heavy redaction of the award plan can in no way be considered to meet the intent or the spirit or the letter of the FOIA.
- There are clearly a series of missing documents, but it is impossible to tell what you have released and what you have not released. At the very least, you should make available a list of responsive documents that are still being processed and indicate when you anticipate your review will be completed.

Ms. Thomas, it is particularly distressing to see such a high-profile contract hidden, a contract that has been subject to repeated criticisms from the Congress, GAO, your own Inspector General, and outside analysts. This is matter of considerable public interest and your agency, charged with overall administration of the FOIA and acting as the FOIA ombudsman, has a particular duty to be responsive.

Sincerely yours,

Carl Malamud
Public.Resource.Org

cc: Ms. Miriam Nisbet, Federal FOIA Ombudsman
Hon. Trey Gowdy, Chairman, Subcommittee on Health Care, District of Columbia, Census, and the National Archives



NATIONAL
ARCHIVES

February 1, 2011

Carl Malamud
Public.Resource.Org
1005 Gravenstein Highway North
Sebastopol, CA 95472

Re: Freedom of Information Act Request NGC10-224

Dear Mr. Malamud:

This is in response to your Freedom of Information Act (FOIA) request of August 23, 2010 for a copy of NARA's "3,000 page agreement with Lockheed Martin," in particular, "what has already been released." Your request was received in this office on August 23, 2010, and assigned tracking number NGC10-224.

We have interpreted your request to mean the contract with Lockheed Martin Corporation (LMC) and any other documents related to the ERA contract with LMC that have been previously released.

On September 1, 2010, NARA released to you 218 pages consisting of the Base Award and Modifications 1 -51. All pages were released in full. Since that initial release to you in September, the contract and other records for NAMA-04-C-0007 have been made and are now publicly available in our Electronic Reading Room at this link:
<http://www.archives.gov/foia/contracts.html>. We will continue to work with the contractor to release more records pertaining to this contract. As more records become available, they will be posted to the reading room.

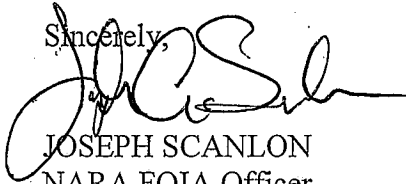
I do not consider this response a denial because the records you are seeking are available in our Electronic Reading Room. If you consider this to be a denial of your request, you may appeal by writing to the Deputy Archivist (ND), National Archives and Records Administration, College Park, MD 20740 within 35 calendar days and explain why you think this response does not meet the requirements of the FOIA. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please include the tracking number NGC10-224 in your appeal letter.

NATIONAL ARCHIVES and
RECORDS ADMINISTRATION

8601 ADELPHI ROAD
COLLEGE PARK, MD 20740-6001

www.archives.gov

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Scanlon', written over the word 'Sincerely,'.

JOSEPH SCANLON
NARA FOIA Officer
Office of General Counsel