

RECEIVED

AUG 31 2018

Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GRANT F. SMITH, *PRO SE*)

)
Plaintiff,)

vs.)

)
U.S. NATIONAL ARCHIVES AND)
RECORDS ADMINISTRATION)
8601 Adelphi Road)
College Park, MD 20740-60001)

)
Defendants)

Case: 1:18-cv-02048
Assigned To : Chutkan, Tanya S.
Assign. Date : 8/31/2018
Description: FOIA (I-DECK)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff Grant F. Smith brings this action against Defendant U.S. National Archives and Records Administration (NARA) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"). As grounds therefor, Plaintiff alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

2. Venue is proper in this district pursuant to 28 U.S.C. § 1391 (e).

PARTIES

3. Plaintiff, Grant F. Smith, is a public interest researcher domiciled in the District of Columbia and founder of the Institute for Research: Middle Eastern Policy, Inc. (IRmep). Smith's FOIA, mandatory declassification review (MDR) and Interagency Security Classification Appeals Panel (ISCAP) generated releases, research and analysis have been published in *The Washington Report on Middle East Affairs*, *Antivar.com*, *the Wall Street Journal*, *the Washington Examiner*, *Corporate Crime Reporter*, *Mint Press News*, *LobeLog*, *Mondoweiss*, *Dissident Voice*, *the Bulletin of the Atomic Scientists*, *the Minneapolis Star Tribune*, *The Nation Magazine*, *The Weekly Standard*, *Military.com*, *the Jewish Daily Forward*, *Business Insider*, *the Jerusalem Post*, *Israel National News* and *Courthouse News Service*. They have been carried on broadcast outlets such as C-SPAN, NPR, other public and commercial U.S. radio stations, foreign broadcasts transmitted by VOA, as well as foreign news agencies like the BBC, Radio France and RT.

4. Defendant is an agency of the United States Government. Defendant and has its principal place of business at 8601 Adelphi Road, College Park, MD 20740-6001. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. On June 29, 2018, Plaintiff sent FOIA requests to the George W. Bush Presidential Library and the Clinton Presidential Library, both operated and maintained by Defendant, NARA, requesting release of presidential letters to Israel, pledging not to pressure the Israeli government into signing the Treaty on the Proliferation of Nuclear Weapons (NPT) or discuss Israel's nuclear weapons program. (Exhibit A, Exhibit B)
6. Plaintiff requested a waiver of both search and duplication fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 5 U.S.C. § 552(a)(4)(A)(iii), but also requested notification if reproduction costs exceeded \$50.
7. Despite extremely high public interest in the letters, Plaintiff could not realistically avail himself of expedited processing because preemptive NARA guidelines assert “Because we cannot shorten the presidential notification period required by EO 13489, we generally will not expedite requests for Presidential records.”¹
8. On July 5, 2018 the Clinton Presidential Library denied Plaintiff's FOIA request, which it numbered 2018-0887-F issuing a “Glomar” response citing Section 3.3(b)(1) of E.O. 13526.
9. On July 6, 2018 the George W. Bush Presidential Library denied Plaintiff's FOIA request, which it numbered 2018-0219-F issuing a “Glomar” response citing Section 3.3(b)(1) of E.O. 13526. (Exhibit C, Exhibit D)
10. Both denial letters offered consultation at the administrative level, stating “If you would like to discuss our response before filing an appeal to attempt to resolve your dispute without going through the appeals process, you may contact our FOIA Public Liaison John

¹ <https://www.archives.gov/foia/foia-guide#expedited>

Laster for assistance at: Presidential Materials Division, National Archives and Records Administration, 700 Pennsylvania Avenue, NW, Room G-7, Washington, DC 20408-0001; email at libraries.foia.liason@nara.gov; telephone at 202-357-5200; or facsimile at 202-357-5941.”

11. Plaintiff contacted John Laster on July 6 in an attempt to resolve his dispute, stating, “1. The FOIA denial neither confirms nor denies the existence of the letter in question, reported in *The New Yorker*, claiming " The fact of the existence or nonexistence of records containing such information, unless of course the subject has been officially acknowledged, would be classified for reasons of national security under Section 3.3(b)(1) of E.O.

13526." We do not believe that is so, because President Clinton would not have classified a letter demanded by, and then given to, the leader of a foreign government. Also, many presidential materials, whether acknowledged or not, are unclassified. Do you believe such a blanket response complies with FOIA and is proper? 2. The speed of the FOIA denial seems to indicate no search or examination of the requested letter was even attempted.

Do you believe such an assumption-laden administrative process complies with FOIA and is proper? 3. The purpose of the letters (Clinton's was only the first of four) is to ensure that U.S. Presidents do not comply with longstanding Arms Export Control Act provisions conditioning U.S. foreign assistance to foreign nuclear weapons states that are not

signatories to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). Section 1.7 (2) of E.O. 13526 prohibits classification of information to "conceal violations of the law."

Do you concur that classifying the Clinton letter in order to foster non-compliance with the AECA by continuing to provide foreign aid to a non-signatory nuclear state would be a

violation of E.O. 13526? Do you agree that public release of such a letter to foster public debate would only improve governance?" (See Exhibit E)

12. After waiting one week for a response from NARA's Presidential Materials Division, and not receiving one during that timeframe, Plaintiff appealed both FOIA denials by email and USPS Priority Mail on July 16, 2018. (See Exhibits F and G)

13. USPS confirmation reveals the Clinton Presidential Library received the appeal on 7/18/2018 (tracking # 9405511899560338603324).

14. USPS confirmation reveals the Bush Presidential Library received the appeal on 7/18/2018 (tracking # 9405511899560338684323).

15. Under U.S.C. § 552(a)(4)(A)(ii), NARA was obliged to "make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal."

16. U.S.C. § 552(a)(4)(A)(ii) deadline for Defendant's response to Plaintiff's appeal was August 15, 2018.

17. As of August 31, 2018, NARA has failed to properly respond to Plaintiff's administrative appeal.

18. As of August 31, 2018, NARA has failed to allow Plaintiff access to any records responsive to Plaintiff's FOIA request

19. As of August 31, 2018, neither the NARA presidential library nor FOIA Public Liaison John Laster of the Presidential Materials Division have demonstrated that responsive records are exempt from disclosure or indicated when access would be allowed.

REQUEST FOR RELIEF

20. Plaintiff realleges paragraphs 1-16 as if fully stated herein.

21. Plaintiff has a statutory right under FOIA to access and/or review any and all nonexempt records responsive to Plaintiff's FOIA request.

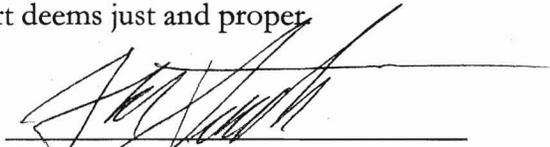
22. Defendant has violated FOIA by failing to meet statutory appeal deadlines, failing to allow Plaintiff access to any and all non-exempt records responsive to Plaintiff's requests and/or by failing to demonstrate that any such records are exempt from disclosure.

23. Plaintiff is being irreparably harmed by reason of Defendant's violation of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to conform its conduct to the requirements of the law.

WHEREFORE, Plaintiff respectfully requests that the Court: (1) declare Defendant's failure to comply with FOIA to be unlawful; (2) enjoin Defendant from continuing to deny Plaintiff access to any and all non-exempt records responsive to Plaintiff's requests; (3) order Defendant to produce a Vaughn index of any allegedly exempt records responsive to Plaintiffs request; (4) grant Plaintiff an award of court costs and other non-attorney fee related litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and (5) Promptly release the requested records, which likely consisted of 2-pages in total; (6) grant Plaintiff such other relief as the Court deems just and proper.

Dated:

8/31/2018



Grant F. Smith
IRmep
P.O. Box 32041
Washington, D.C. 20007
202-342-7325

info@IRmep.org

For process service:
Grant F. Smith c/o IRmep
1100 H St. NW Suite 840
Washington, D.C. 20005

Table of Exhibits

Exhibit A	6/29/2018 FOIA George W. Bush Presidential Library
Exhibit B	6/29/2018 FOIA Clinton Presidential Library
Exhibit C	07/05/2018 Clinton Presidential Library FOIA DENIAL
Exhibit D	07/05/2018 George W. Bush Presidential Library FOIA DENIAL
Exhibit E	7/6/2018 email to FOIA Public Liaison John Laster for assistance at: Presidential Materials Division
Exhibit F	7/16/2018 FOIA APPEAL George W. Bush Presidential Library
Exhibit G	7/16/2018 FOIA APPEAL Clinton Presidential Library

Grant F. Smith

To: gw bush.library@nara.gov
Subject: Freedom of Information Act request for President George W. Bush's letter promising not to address Israel's nuclear weapons program - Grant F. Smith

George W. Bush Presidential Library
c/o FOIA Coordinator
2943 SMU Blvd
Dallas, TX 75205

Dear FOIA Coordinator:

This is a request under the Presidential Records Act and the Freedom of Information Act. We would like an unredacted copy of a President George W. Bush letter described below. The letter is likely addressed to the Prime Minister of Israel, 1-2 pages and written at the very beginning of the first term.

According to a report in *The New Yorker*, President George W. Bush became the second of four presidents to issue a letter promising not to pressure the Israeli government into signing the Treaty on the Proliferation of Nuclear Weapons (NPT) or discuss Israel's nuclear weapons program. (Reference, "How Trump and Three Other U.S. Presidents Protected Israel's Worst-Kept Secret: Its Nuclear Arsenal" Adam Entous, *The New Yorker*, June 18, 2018. <https://www.newyorker.com/news/news-desk/how-trump-and-three-other-us-presidents-protected-israels-worst-kept-secret-its-nuclear-arsenal> Quote:

The first iteration of the secret letter was drafted during the Clinton Administration, as part of an agreement for Israel's participation in the 1998 Wye River negotiations with the Palestinians. In the letter, according to former officials, President Bill Clinton assured the Jewish state that no future American arms-control initiative would "detract" from Israel's "deterrent" capabilities, an oblique but clear reference to its nuclear arsenal. Later, Israeli officials inserted language to make clear to Washington that Israel would "defend itself, by itself," and that it would, therefore, not consider the American nuclear arsenal to be a substitute for Israeli nuclear arms. **George W. Bush, when he became President, followed Clinton's lead, signing a similar letter, former officials told me.**

If there are any fees for searching or copying these records, please inform me if the cost will exceed \$50. However, I would also like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of how foreign and domestic groups attempt to shape foreign policy through lobbying. I am a representative of the media and my articles about Middle East policy and non-proliferation appear frequently in the *Washington Report on Middle East Affairs* and *Antiwar.com*. This information is not being sought for commercial purposes. I am willing to receive the records as .PDF files via email or paper reproductions to the mailing address below.

The Freedom of Information Act requires a response to this request be made within 20 business days. If access to the records I am requesting will take longer than this amount of time, please contact me with information about when I might expect copies or obtain the ability to inspect the requested records.

If you deny any or all of this request, please cite each specific FOIA exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

A copy of this email request has also been sent via Priority Mail #9405 5118 9956 0379 8857 27

Sincerely,

Grant F. Smith | Director | Institute for Research: Middle Eastern Policy, Inc.

Tel: 202.342.7325 | Twitter: @IRmep | gsmith@irmep.org | Website: <http://www.IRmep.org> | Podcast Feed
<http://irmep.org/irmep.xml> | Mail: PO Box 32041, Washington, DC 20007

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● Research ● Awareness ● Accountability

Grant F. Smith

To: clinton.library@nara.gov
Subject: Freedom of Information Act request for President Bill Clinton's letter promising not to address Israel's nuclear weapons program

FOIA Coordinator
Clinton Presidential Library
1200 President Clinton Ave.
Little Rock, AR 72201

Dear FOIA Coordinator:

This is a request under the Presidential Records Act and the Freedom of Information Act. We would like an unredacted copy of a President Clinton letter described below. The letter is likely addressed to the Prime Minister of Israel, 1-2 pages and written in September or October (or possibly a few months earlier) of 1998.

According to a report in *The New Yorker*, President Bill Clinton became the first of four presidents to issue a letter promising not to pressure the Israeli government into signing the Treaty on the Proliferation of Nuclear Weapons (NPT) or discuss Israel's nuclear weapons program. (Reference, "How Trump and Three Other U.S. Presidents Protected Israel's Worst-Kept Secret: Its Nuclear Arsenal" Adam Entous, *The New Yorker*, June 18, 2018. <https://www.newyorker.com/news/news-desk/how-trump-and-three-other-us-presidents-protected-israels-worst-kept-secret-its-nuclear-arsenal> Quote:

The first iteration of the secret letter was drafted during the Clinton Administration, as part of an agreement for Israel's participation in the 1998 Wye River negotiations with the Palestinians. In the letter, according to former officials, President Bill Clinton assured the Jewish state that no future American arms-control initiative would "detract" from Israel's "deterrent" capabilities, an oblique but clear reference to its nuclear arsenal. Later, Israeli officials inserted language to make clear to Washington that Israel would "defend itself, by itself," and that it would, therefore, not consider the American nuclear arsenal to be a substitute for Israeli nuclear arms."

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Clinton Presidential Library

1200 President Clinton Avenue
Little Rock, AR 72201

July 5, 2018

Grant F. Smith
Director
Institute for Research: Middle Eastern Policy, Inc.
PO Box 32041
Washington, DC 20007

FOIA Case: 2018-0887-F

Dear Mr. Smith:

This letter is in response to your Freedom of Information Act (FOIA) request dated June 29, 2018 for access to certain William J. Clinton Presidential records. Your request was received by the Clinton Library on June 29, 2018. FOIA requests for Clinton Presidential records are processed and reviewed for access under provisions of the 1978 Presidential Records Act, as amended (PRA) (44 U.S.C. §§ 2201-2209), which incorporates the Freedom of Information Act (5 U.S.C. § 552) in substantial part.

In regard to your request for records relating to the letter from President Clinton referenced in the June 18, 2018 article in the *New Yorker* we can neither confirm nor deny the existence or nonexistence of any records that may be responsive to such a request. The fact of the existence or nonexistence of records containing such information, unless of course the subject has been officially acknowledged, would be classified for reasons of national security under Section 3.3(b)(1) of E.O. 13526.

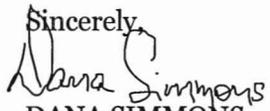
At this time, you have the right to file an administrative appeal of this determination. The appeal must be submitted in writing to the attention of the Deputy Archivist of the United States, c/o Clinton Presidential Library 1200 President Clinton Avenue Little Rock, AR 72201. You can also send the appeal electronically to Clinton.library@nara.gov. You should explain why you believe this response does not meet the requirements of the FOIA and you should also include a copy of your original request and our denial. Both the letter and the envelope (or email subject line) should be clearly marked "FOIA Appeal." To be considered timely, your appeal must be postmarked or electronically submitted within 90 calendar days from the date of this letter.

If you would like to discuss our response before filing an appeal to attempt to resolve your dispute without going through the appeals process, you may contact our FOIA Public Liaison John Laster for assistance at: Presidential Materials Division, National Archives and Records Administration, 700 Pennsylvania Avenue, NW, Room G-7, Washington, DC 20408-0001; email at libraries.foia.liaison@nara.gov; telephone at 202-357-5200; or facsimile at 202-357-5941.

If you are unable to resolve your FOIA dispute through our FOIA Public Liaison, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies. The contact information for OGIS is: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road – OGIS, College Park, MD 20740-6001; email at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you have any questions regarding your FOIA request, please contact our staff at 501-244-2877 or Clinton.library@nara.gov. Your case log number is 2018-0887-F. Please have this number accessible for reference during any future contact concerning this FOIA request.

Sincerely,

A handwritten signature in cursive script that reads "Dana Simmons".

DANA SIMMONS

Supervisory Archivist

William J. Clinton Presidential Library and Museum



07/05/2018 George W. Bush Presidential Library FOIA DENIAL Exhibit D
George W. Bush Presidential Library and Museum

2943 SMU Boulevard
Dallas, Texas 75205

July 6, 2018

Grant Smith
PO Box 32041
Washington, DC 20007

Dear Mr. Smith:

This letter is in response to your Freedom of Information Act (FOIA) request dated June 29, 2018 for access to certain George W. Bush Presidential records. Your request was received by the George W. Bush Library on June 29, 2018. FOIA requests for Bush Presidential records are processed and reviewed for access under provisions of the 1978 Presidential Records Act, as amended (PRA) (44 U.S.C. §§ 2201-2209), which incorporates the Freedom of Information Act (5 U.S.C. § 552) in substantial part.

In regard to your request for records relating to a letter as reported in *The New Yorker* on June 18, 2018, we can neither confirm nor deny the existence or nonexistence of any records that may be responsive to such a request. The fact of the existence or nonexistence of records containing such information, unless of course the subject has been officially acknowledged, would be classified for reasons of national security under Section 3.3(b)(1) of E.O. 13526.

At this time, you have the right to file an administrative appeal of this determination. The appeal must be submitted in writing to the attention of the Deputy Archivist of the United States, c/o the George W. Bush Library and Museum, 2943 SMU Boulevard, Dallas, TX 75205. You should also include a copy of your original request and our denial. Both your appeal letter and the envelope should be clearly marked "FOIA Appeal." You have 90 calendar days from the date of this letter to file your appeal. The Library will coordinate your appeal with the appropriate authority.

If you would like to discuss our response before filing an appeal to attempt to resolve your dispute without going through the appeals process, you may contact our FOIA Public Liaison John Laster for assistance at: Presidential Materials Division, National Archives and Records Administration, 700 Pennsylvania Avenue, NW, Room G-7, Washington, DC 20408-0001; email at libraries.foia.liaison@nara.gov; telephone at 202-357-5200; or facsimile at 202-357-5941.

If you are unable to resolve your FOIA dispute through our FOIA Public Liaison, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies. The contact information for OGIS is: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road – OGIS, College Park, MD 20740-6001; email at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you have any questions regarding your FOIA request, please contact our staff at 214-346-1557 or gwbush.library@nara.gov. Your case log number is 2018-0219-F. Please have this number accessible for reference during any future contact concerning this FOIA request.

Sincerely,


SHANNON JARRETT
Supervisory Archivist
George W. Bush Library and Museum

SJ: MAC

Grant F. Smith

To: libraries.foia.liaison@nara.gov
Cc: clinton.library@nara.gov
Subject: FW: Clinton Library FOIA request 2018-0887-F
Attachments: Smith 2018-0887-F.pdf

FOIA Public Liaison
Presidential Materials Division
National Archives and Records Administration
700 Pennsylvania Avenue, NW, Room G-7
Washington, DC 20408-0001

RE: 2018-0887-F, this is not a FOIA or FOIA appeal;

Dear John Laster,

The attached FOIA denial suggests that you may be of assistance to me before we file a FOIA appeal for Clinton records.

Today our June 29, 2018 FOIA request (below) for a Clinton administration letter was denied (attached).

1. The FOIA denial neither confirms nor denies the existence of the letter in question, reported in *The New Yorker*, claiming "The fact of the existence or nonexistence of records containing such information, unless of course the subject has been officially acknowledged, would be classified for reasons of national security under Section 3.3(b)(1) of E.O. 13526." We do not believe that is so, because President Clinton would not have classified a letter demanded by, and then given to, the leader of a foreign government. Also, many presidential materials, whether acknowledged or not, are unclassified. Do you believe such a blanket response complies with FOIA and is proper?
2. The speed of the FOIA denial seems to indicate no search or examination of the requested letter was even attempted. Do you believe such an assumption-laden administrative process complies with FOIA and is proper?
3. The purpose of the letters (Clinton's was only the first of four) is to ensure that U.S. Presidents do not comply with longstanding Arms Export Control Act provisions conditioning U.S. foreign assistance to foreign nuclear weapons states that are not signatories to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). Section 1.7 (2) of E.O. 13526 prohibits classification of information to "conceal violations of the law." Do you concur that classifying the Clinton letter in order to foster non-compliance with the AECA by continuing to provide foreign aid to a non-signatory nuclear state would be a violation of E.O. 13526? Do you agree that public release of such a letter to foster public debate would only improve governance?

Please advise,

Grant F. Smith | Director | Institute for Research: Middle Eastern Policy, Inc.

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From: Dana Simmons <clinton.library@nara.gov>

Sent: Thursday, July 5, 2018 3:11 PM

To: gsmith@irmep.org

Subject: re: Clinton Library FOIA request 2018-0887-F

Dear Mr. Smith:

Please see attached regarding your FOIA request.

Sincerely:

Dana Simmons
Supervisory Archivist
Clinton Presidential Library

[Clinton Library Official Website](#)
[@WJCLibrary on Twitter](#)
[Clinton Library on Facebook](#)

FOIA Coordinator
Clinton Presidential Library
1200 President Clinton Ave.
Little Rock, AR 72201

Dear FOIA Coordinator:

This is a request under the Presidential Records Act and the Freedom of Information Act. We would like an unredacted copy of a President Clinton letter described below. The letter is likely addressed to the Prime Minister of Israel, 1-2 pages and written in September or October (or possibly a few months earlier) of 1998.

According to a report in *The New Yorker*, President Bill Clinton became the first of four presidents to issue a letter promising not to pressure the Israeli government into signing the Treaty on the Proliferation of Nuclear Weapons (NPT) or discuss Israel's nuclear weapons program. (Reference, "How Trump and Three Other U.S. Presidents Protected Israel's Worst-Kept Secret: Its Nuclear Arsenal" Adam Entous, *The New Yorker*, June 18, 2018. <https://www.newyorker.com/news/news-desk/how-trump-and-three-other-us-presidents-protected-israels-worst-kept-secret-its-nuclear-arsenal> Quote:

The first iteration of the secret letter was drafted during the Clinton Administration, as part of an agreement for Israel's participation in the 1998 Wye River negotiations with the Palestinians. In the letter, according to former officials, President Bill Clinton assured the Jewish state that no future American arms-control initiative would "detract" from Israel's "deterrent" capabilities, an oblique but clear reference to its nuclear arsenal. Later, Israeli officials inserted language to make clear to Washington that Israel would "defend itself, by itself," and that it would, therefore, not consider the American nuclear arsenal to be a substitute for Israeli nuclear arms."

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Grant F. Smith | Director | Institute for Research: Middle Eastern Policy, Inc.

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To research and improve US-Middle East policy formulation.

- Research
- Awareness
- Accountability

Grant F. Smith

From: Grant F. Smith <gsmith@IRmep.org>
Sent: Monday, July 16, 2018 12:46 PM
To: 'gwbush.library@nara.gov'
Subject: FOIA Appeal - Case: 2018-0219-F
Attachments: 2018-0219-F (002).pdf; 06292018_bush_letter.pdf

Deputy Archivist of the United States - FOIA Appeal
George W. Bush Presidential Library
2943 SMU Blvd
Dallas, TX 75205

RE: Appeal of July 6, 2018 FOIA Denial 2018- 0219-F

Dear Deputy Archivist:

This is an appeal of the above-referenced FOIA denial (attached) of our June 29, 2018 FOIA request (attached) and is filed within the statutory time limits of the Freedom of Information Act (5 U.S.C. § 552) which is incorporated in substantial part into the 1978 Presidential Records Act, as amended (PRA) (44 U.S.C. §§ 2201-2209).

1. The FOIA denial neither confirms nor denies the existence of the letter reported in the New Yorker claiming instead that, " The fact of the existence or nonexistence of records containing such information, unless of course the subject has been officially acknowledged, would be classified for reasons of national security under Section 3.3(b)(1) of E.O.13526."

We do not believe the letter is classified, because President Bush would not have classified a letter originally demanded by, and then given to, and circulated by, the leader of a foreign government. Also, many presidential materials, whether publicly acknowledged or not, are unclassified and may be freely released to the public upon request.

2. The speed of the FOIA denial seems to indicate no required search was even attempted much less an examination of the requested letter for FOIA release. Under the Freedom of Information Act (5 U.S.C. § 552) which is incorporated in substantial part into the 1978 Presidential Records Act, as amended (PRA) (44 U.S.C. §§ 2201-2209) the George W. Bush Presidential Library was required to conduct a bona fide search upon receipt of our request.

3. The core purpose of the George W. Bush letter was to assure the Israeli government that as acting U.S. President he would not comply with longstanding Arms Export Control Act subsections conditioning U.S. foreign assistance to foreign nuclear weapons states that are not signatories to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). See 22 U.S. Code § 2799aa-1 - Nuclear reprocessing transfers, illegal exports for nuclear explosive devices, transfers of nuclear explosive devices, and nuclear detonations. That is why, as described in the New Yorker, the Israelis were so adamant about getting an early written promise that Clinton would violate the AECA.

Section 1.7 (2) of E.O. 13526 prohibits classification of information to "conceal violations of the law." Even if the letter were classified, which it probably is not, the requested letter could not have been properly classified, and may not be withheld under classification guidelines, because classification guidelines do not permit concealing violations of the law via classification.

4. The balance of equities favor immediate unredacted public disclosure of the requested letter so that the American public may better understand the function of government—as actually practiced, rather than merely espoused. We request that you avoid burdening the American public more than it already has been, by forcing us to file what would surely be a costly lawsuit that the Department of Justice would have to defend at taxpayer expense. We are confident that in camera review of the letter by a judge would reveal it to be releasable. The length of the letter and presumed bad faith involved in both writing and concealing it mean in camera review would be required "Where the record

contains a showing of bad faith, the district court would likely require In camera inspection.” Ray v Turner, 587 F.2d 1187, 1195 (D.C. Cir 1978); see also Allen v CIA, 636 F.2d 1287, 1298 (D.C. Cir. 1980). Also, “In cases that involve a strong public interest in disclosure there is...a greater call for in camera inspection.” Allen v CIA, 636 F.2d 1287, 1294 (DC. Cir 1980).

A copy of this email request has also sent via Priority Mail 9405 5118 9956 0338 6843 23.

Grant F. Smith | Director | Institute for Research: Middle Eastern Policy, Inc.

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To research and improve US-Middle East policy formulation.

● Research ● Awareness ● Accountability

Grant F. Smith

To: clinton.library@nara.gov
Subject: FOIA Appeal - Case: 2018-0887-F
Attachments: 07052018_deputy_archivist_request_for_information.pdf; 06292018_clinton_letter.pdf; Smith 2018-0887-F.pdf

Deputy Archivist of the United States - FOIA Appeal
c/o Clinton Presidential Library
1200 President Clinton Avenue
Little Rock, AR 72201

RE: Appeal of July 5, 2018 FOIA Denial 2018-0887-F

Dear Deputy Archivist:

This is an appeal of the above-referenced FOIA denial (attached) of our June 29, 2018 FOIA request (attached) and is filed within the statutory time limits of the Freedom of Information Act (5 U.S.C. § 552) which is incorporated in substantial part into the 1978 Presidential Records Act, as amended (PRA) (44 U.S.C. §§ 2201-2209).

1. The FOIA denial neither confirms nor denies the existence of the letter reported in the New Yorker claiming instead that, " The fact of the existence or nonexistence of records containing such information, unless of course the subject has been officially acknowledged, would be classified for reasons of national security under Section 3.3(b)(1) of E.O. 13526."

We do not believe the letter is classified, because President Clinton would not have classified a letter originally demanded by, and then given to, and circulated by, the leader of a foreign government. Also, many presidential materials, whether publicly acknowledged or not, are unclassified and may be freely released to the public upon request.

2. The speed of the FOIA denial seems to indicate no required search was even attempted much less an examination of the requested letter for FOIA release. Under the Freedom of Information Act (5 U.S.C. § 552) which is incorporated in substantial part into the 1978 Presidential Records Act, as amended (PRA) (44 U.S.C. §§ 2201-2209). the Clinton Presidential Library was required to conduct a bona fide search upon receipt of our request.

3. The core purpose of the Clinton letter was to assure the Israeli government that as acting U.S. President he would not comply with longstanding Arms Export Control Act subsections conditioning U.S. foreign assistance to foreign nuclear weapons states that are not signatories to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). See 22 U.S. Code § 2799aa-1 - Nuclear reprocessing transfers, illegal exports for nuclear explosive devices, transfers of nuclear explosive devices, and nuclear detonations. That is why, as described in the New Yorker, the Israelis were so adamant about getting an early written promise that Clinton would violate the AECA.

Section 1.7 (2) of E.O. 13526 prohibits classification of information to "conceal violations of the law." Even if the letter were classified, which it probably is not, the requested letter could not have been properly classified, and may not be withheld under classification guidelines, because classification guidelines do not permit concealing violations of the law via classification.

4. The balance of equities favor immediate unredacted public disclosure of the requested letter so that the American public may better understand the function of government—as actually practiced, rather than merely espoused. We request that you avoid burdening the American public more than it already has been, by forcing us to file what would surely be a costly lawsuit that the Department of Justice would have to defend at taxpayer expense. We are confident that in camera review of the letter by a judge would reveal it to be releasable. The length of the letter and presumed

bad faith involved in both writing and concealing it mean in camera review would be required “Where the record contains a showing of bad faith, the district court would likely require In camera inspection.” Ray v Turner, 587 F.2d 1187, 1195 (D.C. Cir 1978); see also Allen v CIA, 636 F.2d 1287, 1298 (D.C. Cir. 1980). Also, “In cases that involve a strong public interest in disclosure there is...a greater call for in camera inspection.” Allen v CIA, 636 F.2d 1287, 1294 (DC. Cir 1980).

As suggested in the FOIA denial letter, we did contact the Office of the Deputy Archivist about this denial (see attachment), but no response was forthcoming in a timely manner.

A copy of this email request has also sent via Priority Mail 9405 5118 9956 0338 6033 24.

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