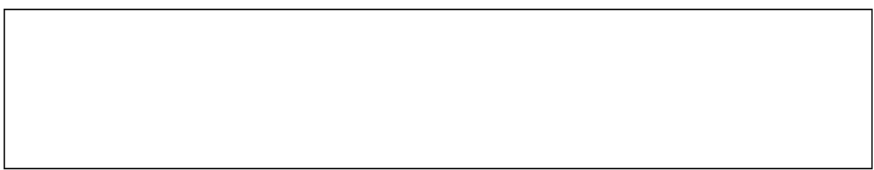


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United States Senate

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MEMORANDUM



STAT

Enclosed is a copy of
Mr. Wright's testimony at the
August 2 hearing. Unfortunately,
we cannot provide Mr. Peek's
testimony (in unedited form) -
even the printer would not do that.
Mr. Peek did not provide a written
statement, but I hope the material
here will be enough.
The printer will be sending you another

- Katie Miller

Senate Judiciary Committee Subcommittee on
Technology and the Law.

1 Department of Health and Human Services.

2 Mr. Wright, Mr. Faulk, Mr. Roberts, it is good to have
3 you all here. Mr. Faulk, it is good to see you again, and I
4 should add that somebody had asked me whether we had had an
5 earlier hearing and in the interests of appropriate reflec-
6 tions of freedom of information, when I had mentioned
7 chatting with Mr. Faulk before this was over the weekend in
8 simply a chance encounter.

9 Mr. Faulk is a dedicated and hard-working public servant
10 and we have known each other for years and I have had the
11 benefit of his expertise as a member of the State Department
12 going back to an early trip to China to normalization. So I
13 just wanted to hasten to add we did not rehearse testimony
14 before we started. It was more a discussion of the weather
15 than anything else.

16 Mr. Wright, I wonder if I might ask you--and all of the
17 statements will be put in the record and we will go back to
18 that, but just in case we have another vote, you heard Mr.
19 Peek, who is the Editor for the Addison Independent, tell us
20 he was treated as commercial requestor by the CIA. That sort
21 of puts him in the same category as Exxon or Citibank.

22 Was that a right decision?

*Unedited
transcript:
not for
dissemination*

1 STATEMENT OF A PANEL CONSISTING OF JOHN H. WRIGHT,
2 INFORMATION AND PRIVACY COORDINATOR, CENTRAL
3 INTELLIGENCE AGENCY; RUSSELL M. ROBERTS, DIRECTOR,
4 FREEDOM OF INFORMATION/PRIVACY ACTS DIVISION,
5 UNITED STATES DEPARTMENT OF HEALTH AND HUMAN
6 SERVICES; AND RICHARD C. FAULK, DEPUTY ASSISTANT
7 SECRETARY FOR OPERATIONS, DEPARTMENT OF STATE.

8 Mr. Wright. It is not really clear at this point. I
9 think that, well, first of all, in many of the FOIA requests
10 we get, many requestors allege that they have journalist
11 connections and we do require a fairly high degree of
12 specificity before we can make that determination.

13 And in the case of Mr. Peek, we do offer administrative
14 appeal rights in the event that the initial determination
15 either denies the fee waiver or the requestor is not satisfied
16 with the initial category determination.

17 At the time that request was serviced, we had relatively
18 little experience with the new provisions of the Reform Act,
19 and my advice to Mr. Peek at this point would be, if he did
20 not exercise his administrative appeal rights, to do so
21 because in the process of doing that, we do expand the
22 record. There is an exchange of information, and so forth.

23 The request for other fee considerations is looked at
24 more broadly in our organization, and that really is the
25 proper course of action at this point.

1 Senator Leahy. Well, let me tell you the statute is
2 fairly clear. It says, "Fees shall be limited to reasonable
3 standard charges for document duplication when records are
4 not sought for commercial use and the request is made by a
5 representative of the news media."

6 Now, a description of a newspaper which has county-wide
7 circulation in a county where there is a well-known college,
8 and one with which your agency has had a long and open
9 relationship, I might add, as has the Foreign Service and
10 others because of the language programs and all--members of
11 the agency give lectures and open-to-the-public forums at
12 Middlebury. Mr. Peek is an editor for that newspaper.

13 I mean, just based on what he has said here today, is
14 there any reason why he has to go through an appeal process?
15 I mean, isn't it pretty much on the face of it that he
16 qualifies as a representative of the news media, or are
17 editors precluded?

18 Mr. Wright. Well, I believe he identified himself in
19 the letterhead as Editor of the Addison Press, and it may not
20 have been entirely clear to our professional officers who
21 processed the case that he was indeed the editor of a
22 newspaper.

23 He did say in his request letter, and I have just had
24 the opportunity to look at it today, that newspaper articles
would be written based on the information disclosed. And the

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1 only thing I can say at this point is that the initial
2 reaction to that request may have been to not see a connection
3 between him as editor as Addison Press and editor of the
4 newspaper.

5 [Laughter.]

6 Mr. Wright. Based on what has been said today, my guess
7 is that were he to supply us additional information, he might
8 well qualify for a fee waiver, or at least placement in the
9 news media category.

10 The issue of whether he would be entitled to a fee
11 waiver is--that would be considered on other merits.

12 Senator Leahy. Well, I don't think he is going to have
13 any difficulty proving the fact that he is a member of the
14 news media, and if you would like an affidavit from me, I
15 will be happy to do that. I have been both praised and
16 damned by his newspaper, usually with even-handed heavy-
17 handedness. So it is not for any other reason that I say
18 that.

19 But, you know, the thing that bothers me more than
20 anything else is in your letter, or your agency's letter that
21 was written by Mr. Strickland, it says this: "Although you
22 are an editor of the Addison Press, Inc., the information you
23 seek does not meet the regulatory requirement of current
24 events or information that would be of current interest to
25 the general public."

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1 Now, that is kind of an outrageous statement, not to put
2 too fine a point on it, isn't it?

3 Mr. Wright. Well, I think you have to look at the
4 information requested, and essentially, as I recall, there
5 were three items in that request. One of those items clearly
6 involved a request for information on the possible conduct of
7 intelligence activities involving representatives from the
8 college.

9 Another of the items asked for information dealing with
10 relationships with individuals associated with Middlebury
11 College, and what we indicated there was that any records
12 which might reflect the existence of a covert relationship,
13 we would neither confirm nor deny the existence of any such
14 records.

15 Senator Leahy. But that is not the point. It says,
16 "would not be of current interest to the general public."
17 Now, any ongoing intelligence activity may be of current
18 interest, and none of us disagree that you have an exemption
19 for that and you neither confirm nor deny, and so on.

20 Mr. Wright. Yes.

21 Senator Leahy. I have no problem with that; I strongly
22 support that. But on his specific request, to say that it
23 could be of current interest to the general public--I mean,
24 isn't this exercising an editorial function that goes way
25 beyond anything that is set out in the law?

1 Mr. Wright. Well, yes, I agree with that, but I would
2 like to, if I could, come back to the nature of the request.
3 In essence, the way that request was treated--and, again,
4 forgive me; I do not have the correspondence in front of me
5 and I am trying to recall this from memory.

6 Senator Leahy. Sure.

7 Mr. Wright. Essentially, a significant portion of that
8 request was denied, and we cited exemptions, named a denying
9 official, and gave Mr. Peek appeal rights. We focus,
10 however, down to what was left, and the remaining portion of
11 the request focused primarily, as I recall--again, I do not
12 have the letter in front of me--on CIA recruiting activities
13 at Middlebury College.

14 The CIA does recruit at colleges and universities
15 throughout the nation; it is a matter of public record. That
16 fact has been made known many times with regard to many
17 colleges and universities.

18 And, again, I come back to the point as to whether the
19 information on the fact that we are, again, recruiting on a
20 college campus in the U.S. would be of public interest or,
21 and I believe we may have stated in the response letter,
22 contribute significantly to an understanding of the operations
23 of the U.S. government.

24 And I think depending on which of those two criteria you
25 apply, you might very well come up with a different viewpoint

1 as to whether a fee waiver should be granted.

2 Senator Leahy. Mr. Wright, I might say in that regard,
3 along with one of the administrators of the CIA I went to
4 Middlebury in a public forum. We discussed why it was very
5 appropriate for the CIA to be there. I did this at the
6 request of the Director of the CIA, who was at that time
7 hearing from a number of different schools not only in my
8 State, but in a lot of other States, about why the CIA
9 shouldn't be there recruiting.

10 I felt they had the absolute right to be there recruit-
11 ing, as well as any company would or anything else. But if
12 one agrees or disagrees with it, that is a choice for the
13 student to make.

14 Middlebury had invited in somebody who was strongly
15 opposed to the CIA who spoke one night, or a couple of people
16 did, and then one of the assistant directors of the CIA and
17 myself spoke of why they should be allowed to be there.
18 Again, they are public things.

19 The only reason I mention this is that it was an
20 overflow crowd each time. Trust me, there was a great deal
21 of public interest, and I suspect there would be today.

22 [The statement of Mr. Wright follows:]

1 background. It takes a long time to get that, and so we do
2 miss some of the hiring opportunities that other agencies
3 have.

4 Given the background and the information that people
5 deal with, they have to have a good clearance, and high-level
6 clearances take time. But we are working on trying to
7 improve the working area of our people, and also their grade
8 levels, and bring in more people.

9 Senator Leahy. Mr. Wright, what about over at the CIA?
10 Is this considered almost--well, in an open session I am not
11 going to mention a couple of the assignments that are
12 considered one step short of Alcatraz.

13 But going into the FOIA part of the CIA probably would
14 not be the most sought after area for a career CIA officer,
15 would it?

16 Mr. Wright. Senator Leahy, actually, some of the FOIA
17 positions are highly coveted. We do have a career track in
18 records management activities and an assignment in the FOIA
19 office would be considered an important tour of duty for an
20 individual on that career track.

21 As far as the review of records for releasability is
22 concerned, the CIA operates on the basis of using its most
23 senior intelligence officers to conduct those reviews. So
24 outside of the main workforce cadre, you do find a very
25 substantial number of intelligence officers, both operations

1 officers and intelligence analysts, and what have you,
2 involved in the review of records to determine their ultimate
3 releasability.

4 Senator Leahy. So then if somebody gets well trained
5 into handling FOIA, they actually do have a career available
6 to them there. They would not be in a position where they
7 would almost immediately be looking for somewhere else to go?

8 Mr. Wright. Yes, sir, that is correct. It would be in,
9 overall, our records management field.

10 Senator Leahy. Now, Mr. Faulk, in regard to the fee
11 issues, I looked at the form letter that the department sends
12 to requestors to inquire as to their credentials and intent.
13 It seems like there is an awful lot of paperwork here.

14 Most of the initial request letters I have seen have a
15 lot of information, such as a university letterhead or a
16 listing of publications which would help people make waiver
17 determinations.

18 Are you able to categorize how much time is spent on fee
19 determination as compared to actual search and retrieval and
20 review of documents?

21 Mr. Faulk. If you don't mind, Senator, I will turn to
22 my expert on that and ask the question.

23 Senator Leahy. We will get the fee determination expert
24 here. Sir, you understand what I am--.

25 Mr. Faulk. I would like to introduce--.