

FOIA Request ID: 2563

FOIA Request submitted by:

Mr. Jason Leopold

Submitted on: January 31, 2014 : 18:26 - America/New_York

Investigative Journalist



(b)(6)

United States

Request:

This is a request for records under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 and the Privacy Act, 5 U.S.C. § 552a. This request should be considered under both statutes to maximize the release of records.

RECORDS SOUGHT

I request disclosure of any and all records that were prepared, received, transmitted, collected and/or maintained by the Central Intelligence Agency (CIA) mentioning the deceased individual Pete Seeger

Date of Birth: 03 May 1919

Place of Birth: Manhattan, New York

Date of Death: 27 January 2014

Place of Death: New York

ADDITIONAL DESCRIPTIVE INFORMATION

The following information about Pete Seeger is provided in order to enable the CIA to locate the requested records. It is not intended to limit the scope of this request.

Pete Seeger was a folk singer and activist. According to the New York Times, "During the McCarthy era Mr. Seeger's political affiliations, including membership in the Communist Party in the 1940s, led to his being blacklisted and later indicted for contempt of Congress. The pressure broke up the Weavers, and Mr. Seeger disappeared from commercial television until the late 1960s. But he never stopped recording, performing and listening to songs from ordinary people. Through the decades, his songs have become part of America's folklore."

"In 1955 he was subpoenaed by the House Un-American Activities Committee, where he testified, "I feel that in my whole life I have never done anything of any conspiratorial nature." He also stated: "I am not going to answer any questions as to my association, my philosophical or religious beliefs or my political beliefs, or how I voted in any election, or any of these private affairs. I think these are very improper questions for any American to be asked, especially under such compulsion as this." Mr. Seeger offered to sing the songs mentioned by the congressmen who questioned him. The committee declined."

1. Instructions Regarding "Leads":

As required by the relevant case law, the CIA should follow any leads it discovers during the conduct of its searches and perform additional searches when said leads indicate that records may be located in another system. Failure to follow clear leads is a violation of FOIA.

2. Request for Public Records:

Please search for any records even if they are already publicly available.

3. Request for Electronic and Paper/Manual Searches:

I request that searches of all electronic and paper/manual indices, filing systems, and locations for any and all records relating or referring to the subject of my request be conducted. I further request that the CIA conduct a search of its "soft files."

4. Request for Search of Filing Systems, Indices, and Locations:

I request that the CIA conduct a search of all of its directorates. Specifically, I request that the search conducted by the CIA include, but not be limited to, the following filing systems, indices, and locations: Training Records; Center for the Study of Intelligence (CSI) Records; CIA Declassifications Center (CDC) External Liaison Records; Manuscript Review Records; Security Operations Records; Information Release Records; Official Personnel Files; Personnel Security Records; Polygraph Records; Office of the Director Action Center Records; Office of General Counsel Records; Congressional Liaison Records; Public Affairs Records; Inspector General Research Records; Inspector General Investigation and Interview Records; Office of the Deputy Director of Central Intelligence (DDCI) for Community Management Records; Directorate of Science & Technology (DS&T) Private Sector Contact Information; Alumni Communications Records; Directorate of Operations Records; Academic and Business Contact Records; Customer Relations Records; Research System Records; Intelligence Analysis Records; Guest Speaker Records; National Intelligence Council (NIC) Records; Arms Control Records; CREST; employees' official files; CIA's daily diary of its activity; and monthly progress reports.

Additionally, please search all of your indices, filing systems, and locations, including those I have not specified by name and those of which I

may not be aware.

5. Request for Search of Operational Files:

I request that in conducting its search, the CIA include "operational files," as that term is defined in 50 U.S.C. § 431(b).

6. Request to Search Emails:

Please search for emails relating to the subject matter of my request.

7. Request for Search of Records Transferred to Other Agencies:

I request that in conducting its search, the CIA disclose releasable records even if they are available publicly through other sources outside the CIA, such as NARA.

8. Regarding Destroyed Records

If any records responsive or potentially responsive to my request have been destroyed, my request include, but is not limited to, any and all records relating or referring to the destruction of those records. This includes, but is not limited to, any and all records relating or referring to the events leading to the destruction of those records.

INSTRUCTIONS REGARDING SCOPE AND BREADTH OF REQUESTS

Please interpret the scope of this request broadly. The CIA is instructed to interpret the scope of this request in the most liberal manner possible short of an interpretation that would lead to a conclusion that the request does not reasonably describe the records sought.

I am willing to pay any reasonable expenses associated with this request, however, as the purpose of the requested disclosure is in full conformity with the statutory requirements for a waiver of fees, I formally request such a waiver. I request a waiver of all costs pursuant to 5 U.S.C. §552(a)(4)(A)(iii) ("Documents shall be furnished without any charge ... if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."). Disclosure in this case meets the statutory criteria, and a fee waiver would fulfill Congress's legislative intent in amending FOIA. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers for noncommercial requesters.'"). I incorporate by reference the explanation and attached materials in the above sections which demonstrates why the requested information is in the public interest.

As the legislative history of FOIA reveals, "It is critical that the phrase 'representative of the news media' be broadly interpreted if the act is to work as expected. . . . In fact, any person or organization which regularly publishes or disseminates information to the public . . . should qualify for waivers as a 'representative of the news media.'" 132

Cong. Rec. S14298 (daily ed. Sept. 30, 1986) (emphasis in original quotation); and 2) "A request by a reporter or other person affiliated with a newspaper, magazine, television or radio station, or other entity that is in the business of publishing or otherwise disseminating information to the public qualifies under this provision." 132 Cong. Rec. H9463 (Oct. 8, 1986) (emphasis in original quotation)). Therefore, in accordance with the Freedom of Information Act and relevant case law, I, Jason Leopold, should be considered a representative of the news media.

Fee Waiver:

Fee Category and Request for a Waiver of Fees:

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The Department of Justice provides a two-part test for determining whether a requestor is entitled to a waiver of fees. Records responsive to a request

are to be furnished without charge if the requestor has demonstrated that “(i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and (ii) Disclosure of the information is not primarily in the commercial interest of the requestor.” 28 CFR 16.11(k). The DOJ regulations further require the consideration of the following factors in determining whether the requestor has met the first part of the test: the subject of the request; the informative value of the information to be disclosed; the contribution to an understanding of the subject by the public likely to result from disclosure; and the significance of the contribution to public understanding. 28 CFR 16.11(k)(2). To determine whether the second part of the test is met, the DOJ regulations require consideration of the following factors: the existence and magnitude of a commercial interest; and the primary interest in disclosure. As explained below, my request clearly meets this two-part test, and is also the type of request, and I am the type of requestor, for which courts have held that waiver of fees is required under FOIA.

I. DISCLOSURE OF THE REQUESTED RECORDS IS IN THE PUBLIC INTEREST BECAUSE IT IS LIKELY TO CONTRIBUTE SIGNIFICANTLY TO THE PUBLIC UNDERSTANDING OF THE OPERATIONS AND ACTIVITIES OF THE GOVERNMENT.

A. The subject of the requested records concerns the operations and activities of the CIA and broader government. The subject of the requested records concerns identifiable operations and activities of the CIA and broader government, such as: US and possibly CIA involvement in surveillance of Seeger; US and possibly CIA provision of intelligence regarding Seeger; US and possibly CIA assistance in the prosecution of Seeger; US and possibly CIA monitoring of Seeger’s activism and dissent; US and possibly CIA possible continued provision of intelligence gathering regarding Seeger.

B. The disclosure is likely to contribute to an understanding of government operations and activities because the disclosable portions of the requested records will be meaningfully informative about those operations and activities. The vast majority of disclosable information is not already in the public domain, in either a duplicative or a substantially identical form, and therefore the disclosure would add substantial new information to the public’s understanding of issues including but not limited to: US and possibly CIA involvement in surveillance and marginalization of Seeger.

The overwhelming preponderance of records I need to conduct my reporting are in the possession of the CIA and not in the public domain.

C. The disclosure of the requested records will contribute to the increased understanding of a broad audience of persons interested in the subject, rather than merely my own individual understanding. I have the ability and intention to effectively convey information to the public.

As explained herein in more detail, the audience likely to be interested in the subject is broad, and includes, musicians, historians of modern American government, politics, culture, and national security; journalists reporting on American politics, government, national security, and society; civil liberties attorneys; and the general public.

The OPEN Government Act of 2007's definition of "a representative of the news media" is taken nearly verbatim from language used by the United States Court of Appeals, District of Columbia Circuit in the court's 1989 FOIA fee waiver-oriented ruling in *National Security Archive v. Department of Defense*. As the court also relatedly found in *National Security Archive v. Department of Defense*, a requester need not already have published numerous works in order to qualify as a representative of the news media. The court found that the express "intention" to publish or disseminate analysis of requested documents amply satisfies the above noted requirement for journalists to "publish or disseminat[e] information to the public."

National Security Archive v. Department of Defense, 880 F.2d 1386, (D.C. Cir, 1989). As noted above, I am currently working on popular articles involving significant analysis of records obtained through FOIPA requests to be written by me and fellow journalist Jason Leopold. Additionally, as detailed above, I have already publicly disseminated significant analysis of documents obtained through FOIPA requests. I have expressed a firm intention to continue disseminating significant analysis of documents obtained through FOIPA requests. And I have demonstrated my ability to continue disseminating significant analysis of documents obtained through FOIPA requests.

Therefore, in that I am "person or entity that gathers information of potential interest to the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience," I solidly meet the applicable definition of "a representative of the news media." As such, I have again more than satisfied the requirement for a fee waiver.

D. The disclosure of the requested records is likely to contribute "significantly" to public understanding of government operations and activities because disclosure would enhance to a significant extent the public's understanding of the subject in question as compared to the level of public understanding existing prior to the disclosure

III. CONCLUSION.

As demonstrated above, the disclosure of the requested records will significantly contribute to expanded public understanding of government operations. I have the intent and ability to disseminate this significant expansion of public understanding of government operations. The public interest in this significant expansion of public understanding of government operations far outweighs any commercial interest of my own in the requested

release. Accordingly, my fee waiver request amply satisfies the rules of 28 C.F.R. 16.11(k). Legislative history and judicial authority emphatically support this determination. For these reasons, and based upon their extensive elaboration above, I request a full waiver of fees be granted. I will appeal any denial of my request for a waiver of fees to the Department of Justice Office of Information Policy, and to the courts if necessary.