

Central Intelligence Agency



Washington, D.C. 20505

MAY 24 1999

Elaine P. English, Esquire
Graybill & English, L.L.C.
1920 N Street, N.W.
Suite 620
Washington, D.C. 20036

Reference:

F-1994-00036
F-1998-00734
F-1998-00735
F-1998-00736
F-1998-00742

Dear Ms. English:

This is in response to your letter dated 23 April 1998 in which you requested a waiver of fees on behalf of your client, Roger Hall, for processing his Freedom of Information Act (FOIA) requests. Specifically, your client requested a fee waiver on a search for the following information:

F-1994-00036 - POW/MIAs sent out of S.E. Asia (to China, Russia, N. Korea, Cuba, etc.); whether they be civilian or military even if they are not now in a prisoner status as long as they at any time were a POW/MIA and have not returned, been returned, or their remains returned; even if they voluntarily allowed themselves to go after being captured.

F-1998-00734 - access to and copies of all radio and television broadcast intercepts and newspaper articles from 1968 through and including 1973 that are within the possession and control of the CIA or any agency components, including those that may then have been in existence such as the National Imagery and Mapping Agency (NIMA) and Studies and Observation Group (SOG), and which relate in any way to or mention prisoners of war (POWs) or those missing in action (MIAs) from the Vietnam war or any other conflict then ongoing in South East Asia.

Attachment 1

Civil Action No. 04-0814
(HHK)

F-1998-00735 - all records, reports, memoranda or other documents, in the possession and control of your agency which were prepared by or assembled by the Central Intelligence Agency, including any of its controlled American sources or any other CIA assets or agents, based upon information derived from CIA or other sources, including such foreign governmental entities as the Royal Laotian government, between January 1, 1971 and December 31, 1975 relating to the status of any United States prisoners of war (POWs) or those missing in action (MIAs) in Laos, including but not limited to any reports prepared by Mr. Horgan or any other agent or employee of the CIA for the Joint Chiefs of Staff, the President or any other agency.

F-1998-00736 - those records of the Select Committee on POW/MIA Affairs that were withdrawn from the collection of the National Archives and returned to your agency for processing.... In addition, I request access to the listing of those documents referred to in the attached letter to my client from the Archives.

F-1998-00742 - all records in the possession and control of your agency relating to any of the following U.S. military personnel and civilians who were involved in the Vietnam war and were known to be either taken as prisoners of war or listed as missing or killed in action in that conflict:....

These five requests were submitted on behalf of or by Mr. Hall and contain requests concerning the same general topic (i.e., POW/MIAs). As such, pursuant to 32 C.F.R. § 1900.13(j), because your multiple requests appear to be merely discrete subdivisions of the information you actually seek segregated for the purpose of reducing applicable fees, the Agency has, for purposes of assessing your fee waiver requests and any fees that may apply, aggregated your four requests.

The fee waiver provisions of the FOIA, as amended in 1986, mandate that two criteria be met before consideration can be given to waiving or reducing properly assessable fees. These criteria are: (1) the disclosure of the information must be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the United States Government; and (2) the disclosure of the information is not primarily in the commercial interest of the requester [5 U.S.C. § 552(a)(4)(A)(iii)].

CIA has promulgated regulations to implement the amended fee waiver provisions, pursuant to 5 U.S.C. § 552(a)(4) (A)(i), and has incorporated into Agency regulations Department of Justice recommendations regarding the utilization of six analytical factors in making determinations on fee waiver requests. These factors are published in CIA regulations at 32 C.F.R. § 1900.13.

Your client's request for a fee waiver has been considered in light of the aforementioned regulations and statutory provisions. I have reviewed the request and determined that your petition does not meet the requirements of those regulations. In 1993, the Agency in accordance with Executive Order 12812 released the majority of its documents relating to POW/MIAs to the Library of Congress for public access. Release of any information the Agency may have on your client's request would not be likely to contribute significantly to public understanding of the operations and activities of the United States Government considering the majority of Agency records on POW/MIAs were previously released. Given the vast amount of materials already disseminated and publicized and the Congressional hearings and reports on the very same issue, your request fails to explain how disclosure of the limited amounts of documents responsive to your client's request would add anything to the public understanding of the issues raised.

Moreover, identifying a public interest in the subject matter is not enough. The requester must show, with specificity, an ability to disseminate the information to the public. The public dissemination must be reasonably broad. Your request makes no such showing.

Accordingly, based upon the information you have provided, I must deny your client's request for a fee waiver. Similarly, I hereby determine that your client's request belongs in the "all other" fee category which means that your client will be responsible for charges which recover the full direct cost of searching for and reproducing responsive records beyond the first 100 pages of reproduction and the first two hours of search time, which will be furnished without charges.

To date, the searches conducted by the Agency for documents responsive to the five requests cited above have taken over 115 hours. Approximately 400 pages of documents have been provided to your client in response to his FOIA request. The fee for the work completed on your client's request minus the free first two hours of search time and the first 100 pages is \$4,550.00. Until this point, the Agency

has chosen to utilize administrative discretion and not charge your client the fees that he has incurred in the processing of these FOIA request. Due to the extensive amount of time and effort spent on his FOIA requests, the Agency will begin charging your client the applicable processing fees for future searches and copying. Copying costs will be assessed at the rate of ten cents per page. Personal search and review of documents by a professional employee will be assessed at the rate of ten dollars per quarter hour.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lee Strickland".

Lee Strickland
Information and Privacy Coordinator