



2517 Hobman Avenue  
Silver Spring, MD 20910  
301-585-1027

June 23, 2003

NRO Appeal Authority  
14675 Lee Road  
Chantilly, VA 2051-1715

**FREEDOM OF INFORMATION APPEAL**

Dear Sir:

I hereby appeal the decision to withhold in full and to declare exempt from search the records I requested relating to NRO Comity Agreements and Memoranda of Understanding, case number F03-0033.

Under the Intelligence Authorization Act of 2003, Section 502, operational files of the NRO are exempt from the provisions of the Freedom of Information Act.

However, these records do not appear to be "operational files" under the criteria set forth in the statute.

*"(2)(A) Subject to subparagraph (B), for the purposes of this section, the term 'operational files' means files of the National Reconnaissance Office (hereafter in this section referred to as 'NRO') that document the means by which foreign intelligence or counterintelligence is collected through scientific and technical systems." Id.*

See, e.g., 50 U.S.C. § 431, cited in U.S. See also *Sullivan v. CIA*, 992 F.2d 1249, 1251 (1<sup>st</sup> Cir. 1992) ("Operational files, i.e., files that memorialize the conduct and means of the government's foreign intelligence and counterintelligence efforts". See also *Students Against Genocide v. Department of State*, 1998 U.S. Dist. LEXIS 23088, \*20, n. 8 (D.C. Cir. 1998) "Briefly, the term "operational files" means files which document (1) the conduct of foreign intelligence operations; (2) the means by which foreign intelligence is collected through scientific and technical systems, and (3) investigations conducted to determine the suitability of foreign intelligence sources."

This is not that type of material.

The reason for the existence of this "operational files" exemption is that there are certain records that implicate intelligence concerns. By applying the exemption to records that so clearly fall outside the purview of these concerns, the agency is jeopardizing this extraordinary protection required by actual intelligence records. The requested administrative and management records fall outside any rational description of "operational files". Moreover, there are procedures and exemptions that would address any foreseeable harm identifiable with regard to these records.

While internal NRO procedures may inadvertently include the Comity Agreements and MOU's in the list of "operational files" such procedures carry little or no weight with respect to contravening federal statutes and agency regulations.

I ask as an administrative remedy that this request be remanded for initial processing.

Sincerely,

Michael Ravnitzky