

THE NATIONAL SECURITY ARCHIVE

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IN ALL CORRESPONDENCE PLEASE REFER
TO ARCHIVE FILE NO. 900003AIR002

Ms. Barbara Carmichael
FOIA Officer
Department of the Air Force
SAF/AADADF, Pentagon, Room 4A1088C
Washington, DC 20330-1000

January 3, 1990

RE: Freedom of Information Act Request

Dear Ms. Carmichael:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. Section 552, et seq. (as amended), I hereby request disclosure of the documents described on the last page of this letter for inspection and possible copying.

If you regard any of these documents as exempt from the FOIA's disclosure requirements, I request that you nonetheless exercise your discretion to disclose them. In this connection I note that you are required under the FOIA to release any reasonably segregable nonexempt portions of documents containing information you regard as exempt. Section 552(b). To permit an intelligent, informed decision whether or not to file an administrative appeal of any denial decision, you are also requested to describe withheld records (or portions thereof) and explain the logical and factual basis for exemption claims. See Mead Data Central, Inc. v. Department of the Air Force, 566 F.2d 242, 251 (D.C. Cir., 1977).

This request is made on behalf of the National Security Archive, a nonprofit public interest research institute and library located in Washington, D.C. The Archive is organized and operated as a division of The Fund for Peace, Inc., a nonprofit corporation that is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, and has been acknowledged by the Internal Revenue Service since November 19, 1962 to be "organized and operated exclusively for educational purposes."

The fee waiver provisions under section 552(a)(4)(A) of the FOIA were recently amended by the Freedom of Information Reform Act. The Reform Act's fee provisions became effective on April 25, 1987 and rewrote section 552(a)(4)(A) to create categories of requesters entitled to fee waivers. Pub.L. 99-570, Sec. 1803, 1804. One category consists of "educational or noncommercial scientific institution[s] whose purpose is scholarly or scientific research" and another consists of representatives of the "news media." 5 U.S.C. 552 (a)(4)(A)(ii)(II). Requesters in these groups receive an automatic waiver of all search and review fees, irrespective of the nature or contents of the documents requested. They can be charged standard duplication costs (in excess of the first one hundred copied pages), but these charges may also be waived in certain circumstances.

On May 11, 1987 the Archive submitted a comprehensive memorandum to your agency providing documentation under penalty of perjury which establishes that the Archive is entitled to fee waivers under the categories of educational or noncommercial scientific institutions and representatives of the news media within

the meaning of the Reform Act. To summarize, the Archive's purpose is to enrich public policy debate by making available records pertaining to important, mostly contemporary issues of major public concern in the areas of foreign, defense, intelligence, and international economic policy.

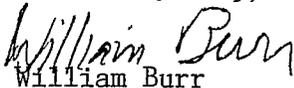
Documents obtained by the Archive, including the records requested in this letter, are carefully analyzed, indexed and organized into document sets in the Archive's collection. Document sets are available for inspection and copying by scholars, journalists, Members of Congress and Congressional staffs, present and former public officials, other public interest organizations, and the general public at the Archive's Washington office. In addition, information in the documents will be disseminated across the country through distribution of comprehensive document indices to university and other research libraries and through the Archive's publications.

As a staff member of the Archive, I have been assigned to conduct research on the subject of this request. I am working as part of a research team which includes experts on this subject with a wide variety of educational and professional backgrounds relating to foreign affairs, defense, intelligence and international economic policy. The qualifications of various Archive staff members are detailed in the aforementioned memorandum forwarded to your agency. Members of the team have conducted an extensive literature search at the Library of Congress and specialized research libraries and have determined that the requested materials are necessary to our research.

I therefore request that you waive all search and reproduction fees pursuant to section 552(a)(4)(A), as amended. If you determine that the Archive does not fall within one of the two categories of requesters described above, this request would also qualify for favored treatment under the "all other requesters" category because disclosure of the information in the requested documents 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 Archive within the meaning of the Reform Act. See 5 U.S.C. 552(a)(4)(A)(iii). Should you decline to waive all fees, however, we are prepared to pay you normal search fees (and reproduction fees, if I decide to copy the records produced). Our willingness to pay fees is subject to our rights to appeal and litigate the fee waiver question, and payment would be deferred until exhaustion of such rights. I further ask that if you decline to waive fees that you set forth your reasons for doing so in writing and that you obtain our authorization before incurring search costs in excess of \$100.

In order to expedite the release of the listed documents, I request that you disclose them as they become available to you, without waiting until all the documents have been assembled. If you have any questions that I might be able to answer regarding the identity of the records, their location, or the scope of the request, please call me. I look forward to receiving your response within the statutory time period.

Yours very truly,


William Burr

attachment

FOIA Sequence Number: 900003AIR002
Date of Request: 01/03/1990
NSA Record Number: 5772

Subject of Request:

Memoranda, cables, briefing papers, or other records concerning Air Force participation in Berlin crisis contingency planning, November-December, 1958. Please include in your search any material held in the records of the DCS/Plans and Operations, Directorate of Plans.