



DEFENSE COUNTERINTELLIGENCE AND SECURITY AGENCY
27130 TELEGRAPH ROAD
QUANTICO, VA 22134-2253

June 6, 2023

Mr. Jed Margolin
1981 Empire Road
Reno, Nevada 89521-7430

Re: FOIA Appeal of FOI/PA #019-211 (APP21-00010)

Dear Mr. Margolin:

We appreciate your patience and apologize for the delayed response. Your appeal of the Defense Security Service's (DSS) decision to withhold certain information, in response to your Freedom of Information Act request to the Defense Intelligence Agency (DIA) for information maintained on Reza Zandian, pursuant to 5 U.S.C. § 552(b)(1) and (b)(3) was received on June 25, 2019. On October 1, 2019, the DSS merged with the Office of Personnel Management – National Background Investigations Bureau to form the Defense Counterintelligence and Security Agency (DCSA). In accordance with 32 CFR § 286.11(c), I am affirming the decision of the DSS.

On March 14, 2019, the DIA referred one document, totaling five pages, responsive to your request to the DSS for review. In their referral, the DIA identified certain equities under their purview that should continue to be withheld pursuant to FOIA exemption (b)(3) as authorized by 10 U.S.C. §424. The DSS responded to you on May 23, 2019, withholding this document in full pursuant to FOIA exemption (b)(1), as this document is classified, and (b)(3) citing to 10 U.S.C. §424 as requested by the DIA.

FOIA exemption (b)(1) exempts from release information classified “under criteria established by an Executive order to be kept secret in the interest of national defense . . . [and is] properly classified pursuant to such Executive order.” 5 U.S.C. §552(b)(1). Typically, when reviewing the applicability of exemption (b)(1), courts will look to the executive order in effect at the time of the “the agency’s ultimate classification decision is actually made.” *King v. DOJ*, 830 F.2d 210, 217 (D.C. Cir. 1987). In this instance, the documents were properly classified pursuant to Executive Order 12,958, issued by President George W. Bush on March 25, 2003, authorizing the classification of records if “the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to national security” *Exec. Order No. 12, 292, 68 Fed. Reg. 15, 315 (Mar. 28, 2003)[hereinafter Exec. Order No. 12, 958, as amended]*.

The responsive document was properly classified pursuant to the guidelines established by Executive Order 12,958 and as of the date of this letter, remains classified. As such, it is exempt from release pursuant to FOIA exemption (b)(1). As previously stated, certain DIA

equities are also exempt from release pursuant to FOIA exemption (b)(3) as authorized by 10 U.S.C. §424. I am, therefore, affirming the decision to withhold in full.

This is the DCSA's final determination with respect to your Privacy Act request. In accordance with 5 U.S.C § 552a(g)(1) and 32 CFR § 310.8, you may seek judicial review of this determination in the district court of the United States in the district (1) in which reside; (2) in which you maintain your principal place of business; (3) where the disputed agency records are maintained; or (4) in the U.S. District Court for Washington, D.C.

Sincerely,

A handwritten signature in black ink that reads "Charles D. Watters". The signature is written in a cursive style with a prominent "C" and "W".

Charles D. Watters
Chief
Privacy, Civil Liberties, and
Freedom of Information