

Ms. Katherine Myrick
Freedom of Information Operations Unit (SARO)
Drug Enforcement Administration
700 Army Navy Drive
Arlington, VA 22202
(202) 307-7596

December 30, 2006

RE: REQUEST **06-0327-F** AND COMMUNICATION OF DECEMBER 6, 2006.

Dear Ms. Myrick:

In a communication dated December 6, 2006, you stated:

*“Subject of Request: DOCUMENTS PERTAINING TO THE JOINT ASSESSMENT TEAM
MANAGEMENT REVIEW REPORT*

Dear Mr. Weaver:

This letter is in further response to your initial Freedom of Information Act (FOIA) request letter of October 31, 2005, and your follow-up correspondence of November 6, 2005, an undated correspondence (received in our office on February 8, 2006) and your latest correspondence of July 5, 2006. Please be advised that I have learned that the information responsive to your request was forwarded on or about August 18, 2006, for classification review pursuant to Executive Order 12958. Thus, in accordance with 28 C.F.R. § 16.7 the material will require review in the course of the processing of the documents. It is impracticable to provide an estimated date for completion of the classification review at this time. To process your request and for the classification review, require documents that are currently located in the Southern United States and South America, and the individuals directly involved in this matter have been transferred from their previous duty assignments.

We will update you on the progress of the processing of your request in 90 days.”

First, let me ask if you have simply confused my request with another? There is nothing in the Joint Assessment Team report or supporting materials that remotely involve “South America” or the “Southern United States.” All of the events investigated by the team occurred in the El Paso/Juarez region. Some interviews were made in Mexico City.

Second, presuming you have not confused requests, let me point out what I have said to you over and over again: The Joint Assessment Team report and associated materials are all located at headquarters. I know they are there; you know they are there. There is no need to pursue documents in the “Southern United States” or “South America.” Even if personnel involved in producing the report have since been reassigned, that is irrelevant to my request, for the report is at headquarters.

Third, you say that the report is being evaluated to determine whether or not it contains national security information. You do not explain why it took you from August 18, 2006 to December 6, 2006, to notify me of this event. A thorough search of case law has produced no reported case where the DEA has asserted Exemption One in a FOIA context. You cite 28 C.F.R. 16.7 in support of your positions. That CFR reads:

“In processing a request for information that is classified under Executive Order 12958 (3 CFR, 1996 Comp., p. 333) or any other executive order, the originating component shall review the information to determine whether it should remain classified. Information determined to no longer require classification shall not be withheld on the basis of Exemption 1 of the FOIA.”

The CFR you cited is inapposite. It concerns questions of matters as to whether or not already classified material should remain classified or be released. In the present case, the material apparently has yet to be classified. Classification of material is accomplished via original and derivative classification authorities in the various agencies. As a former classifier myself, I am aware of the processes involved. Your apparent failure to classify the requested material in accordance with EO 12958 after four months (or more) of consideration creates great suspicion that you are using claims of national security to circumvent disclosure of the JAT report. When I made classification decisions as a federal employee they were performed at or near the time of document creation. No one that I worked with who handled classified material waited months to classify national security information. Let me remind you that EO 12958 1.8(a) prohibits classification of material in order to:

(1) conceal violations of law, inefficiency, or administrative error;

(2) prevent embarrassment to a person, organization, or agency;

. . . or

(4) prevent or delay the release of information that does not require protection in the interest of national security.

And again, you say, “To process your request and for the classification review, require documents that are currently located in the Southern United States and South America, and the individuals directly involved in this matter have been transferred from their previous duty assignments.” If for some strange reason you believe that pertinent documents are in South America, the Southern United States, or that transferred personnel must be consulted in order to complete my request, please continue your work. However, as I stated in my communication of September 18, 2006, please give me what you have as you get it. For example, and at the risk of sounding like a looped recording, you have the JAT and its attachments at headquarters. Please send them to me immediately. Also, as I have repeatedly pleaded, please immediately send me any responsive documents for other material requested under this case file that you presently have.

In sum, your office has been unresponsive, obstructionist, dilatory, and a scofflaw concerning this request. It may be that the information requested will provide embarrassing revelations about the DEA or other government agencies and their personnel, but as Louis Brandeis said, “sunshine is the best disinfectant.” The FOIA exists to serve the people by mandating disclosure of information of what our government is doing. Embarrassment is not an exemption under FOIA or a reason for classification under EO 12958.

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