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April 22, 2016
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Office of Information Programs and Services
A/GIS/IPS/RL
U.S. Department of State
Washington, D.C. 20522-8100

Re: FREEDOM OF INFORMATION ACT (FOIA) REQUEST
of United States Justice Foundation

Dear FOIA Processing Officials:

We represent United States Justice Foundation (“USJF”), and submit this Freedom of Information Act (“FOIA”) request on its behalf.

USJF is a nonprofit educational organization, and is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986. USJF’s tax-exempt mission and purposes include education and litigation to protect civil liberties, including, but not limited to, information and issues regarding freedoms and rights guaranteed by the First Amendment, Second Amendment, and Fourth Amendment to the U.S. Constitution, and proper interpretation of our federal and state constitutions, statutes, and regulations. USJF’s principal office is located at 932 D Street Suite 2, Ramona, CA 92065 (<http://www.usjf.net/>).

In making this request to the Department of State (“State”), we want to call your special attention to the message of President Obama, in his January 21, 2009 Memorandum for the Heads of Executive Departments and Agencies, and the President’s following directive:

The Freedom of Information Act should be administered with a clear **presumption**: In the face of doubt, **openness** prevails.... [i]n responding to requests under the FOIA, executive branch agencies ... should act **promptly** and in a spirit of cooperation, recognizing that such agencies are servants of the public.

All agencies should adopt a **presumption in favor of disclosure**, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should

be applied to all decisions involving FOIA. [74 *Fed. Reg.* 4683-84 (Jan. 26, 2009) (emphasis added).¹]

In accordance with this Presidential directive, we look forward to the Department of State's processing this FOIA request "promptly," and with a "presumption in favor of disclosure." *See also* Attorney General Holder's Memorandum for Heads of Executive Departments and Agencies (March 19, 2009)² (issued pursuant to the President's January 21, 2009 FOIA Memorandum, underscoring our nation's fundamental commitment to open government).

Instructions

In an effort to simplify this request and avoid any possible confusion, the following instructions clarify and govern this FOIA request:

1. "Records," as used herein, means and includes, without limitation, any information that is an agency record subject to the requirements of the Freedom of Information Act, in any format, including in electronic format.
2. If an exemption is claimed with respect to a particular record, please state particularly the exemption claimed and the reason for claiming it. Please provide any part or parts of such record for which an exemption is not claimed, along with a general description of the part withheld.
3. If State is aware of the existence of records sought by this request but is not in the possession of those records, please state specifically what person(s) or agency(ies) have possession of those records.

Background

After conducting an investigation of the events of September 11, 2001, in December 2002, the Senate Select Committee on Intelligence and House Permanent Select Committee on Intelligence issued a joint report entitled "Joint Inquiry Into Intelligence Community Activities Before and After the Terrorist Attacks of September 11, 2001," issued both as S. Rept. No. 107-351 and H. Rept. No. 107-792 (107th Cong., 2d Sess.) (December 2002).³ That report was released with certain important redactions.

¹ http://www.whitehouse.gov/the_press_office/FreedomofInformationAct/.

² <https://www.justice.gov/sites/default/files/ag/legacy/2009/06/24/foia-memo-march2009.pdf>.

³ http://fas.org/irp/congress/2002_rpt/911rept.pdf.

The George W. Bush Administration classified 28 pages of the joint report (Part Four, beginning on page 395) which reportedly discussed the involvement of the Kingdom of Saudi Arabia with the events of 9-11. Efforts to force the declassification of those pages of this report have been led by Congressmen Walter Jones (R-NC) and Stephen Lynch (D-MA) who introduced H.Res. 14 on January 6, 2015.⁴ It is reported that this document is being reviewed for possible declassification at this time — efforts supported by the United States Justice Foundation, which requests disclosure of these pages at this time.

However, there are many other portions of the report, in addition to those 28 pages, that were redacted or revised before the report was released. The report’s Foreword identifies two types of changes to the “original report language.” First, certain information was redacted in the version that was released, as the Foreword states:

Where necessary, information that the Intelligence Community has identified as **classified** for national security purposes has been **deleted**. Such deletions are indicated with brackets and a strikethrough [-----]. [Report Foreword (emphasis added).]

⁴ H.Res. 14 is limited to this 28 page redaction: “Urging the president to release information regarding the September 11, 2001, terrorist attacks upon the United States.

Whereas President George W. Bush classified **28 pages** of the Joint Inquiry into Intelligence Activities Before and After the Terrorist Attacks of September 2001;

Whereas the contents of the redacted pages are necessary for a full public understanding of the events and circumstances surrounding the September 11, 2001, attacks upon the United States;

Whereas the executive branch’s decision to maintain the classified status of these pages prevents the people of the United States from having access to information about the involvement of certain foreign governments in the terrorist attacks of September 2001; and

Whereas the people of the United States and the families of the victims of the September 11, 2001, terrorist attacks deserve full and public disclosure of the results of the Joint Inquiry: Now, therefore, be it

Resolved, That it is the sense of the House of Representatives that—

(1) the President should declassify the **28-page** section of the Joint Inquiry into Intelligence Community Activities Before and After the Terrorist Attacks of September 2001; and
 (2) the families of the victims and the people of the United States deserve answers about the events and circumstances surrounding the September 11, 2001, attacks upon the United States.” [Emphasis added.]

Second, certain information was revised in the version that was released, as the Foreword states:

In other portions of the report, **alternative language** that the Intelligence Community has agreed is unclassified has been substituted for the **original report language** which remains classified. Paragraphs that contain alternative language, whether one word or several sentences, have been identified by brackets at the beginning and end of the paragraph. [*Id.* (emphasis added).]

It appears that release of these redacted or revised “original report language” of the report were not sought by H.Res. 14, or by the many other efforts to obtain declassification, which have focused on the 28 pages, but release of those records containing the “original report language” is now sought by this FOIA request.

To summarize USJF requests release of a completely unredacted copy of the report containing the “original report language.” This request seeks disclosure of all of the redacted portions of the report, not limited to the entirely redacted 28 pages. And this request seeks disclosure of the “original report language” wherever that language many have been revised.

Should any of the “original report language” continue to be withheld, the basis for withholding those portions needs to be identified for the American people.

Record Request

Pursuant to the FOIA, 5 U.S.C. § 552, and State’s implementing regulations, 22 C.F.R. §§ 171.10, *et seq.*, we hereby request copies of the following records:

- (1) A complete and unredacted copy of the Report of the Senate Select Committee on Intelligence and House Permanent Select Committee on Intelligence entitled “Joint Inquiry Into Intelligence Community Activities Before and After the Terrorist Attacks of September 11, 2001,” S. Rept. No. 107-351, H. Rept. No. 107-792 (December 2002) (107th Cong., 2d Sess.) (hereinafter “the Report”), specifically including:
 - (a) The “original report language” of the 28-page section (Part Four, beginning on page 395) of the Report, which was redacted when the Report was released, having been classified by the George W. Bush Administration, together with any footnotes and appendices that may be related thereto.
 - (b) The “original report language” for portions of the Report other than Part Four, which were redacted for any reason from the report as released.

- (c) The “original report language” of all portions of the Report where “alternative language” was substituted for “original report language.”

Fee Waiver Request

We request that the search, review, and copying fees be waived as provided under section 5 U.S.C. § 552(a)(4)(A) and 22 C.F.R. § 171.17. USJF is a nonprofit educational organization seeking the requested documents to educate the public on a matter of great public importance, by releasing information that — in addition to contributing to public understanding regarding the workings of government — may have great effect on substantive policy discussions relating to the national defense. The fees should be waived because release of the requested documents is in the public interest, and the requested information is likely to contribute significantly to public understanding of the operations or activities of the government. The requested documents pertain to the workings of the U.S. intelligence community, and the protection of the United States against terrorist attacks.

The release of the requested documents is not primarily for any commercial interest or purpose, including any commercial interest of USJF. USJF intends to disseminate to the general public, free of charge, any important information it obtains as a result of this request.

If USJF’s waiver request is denied, we would appreciate an estimate of the costs involved in procuring any of the requested documents if such costs exceed \$50. If the costs do not exceed \$50, however, we do not need an estimate, and we will guarantee payment.

Prompt Handling Requested

The findings of the U.S. Congress about the events of September 11, 2001, is a public policy issue of great importance to all Americans. Although the report being sought is now more than a decade old, they are of continuing concern to the United States. The issue of the portions of the report being withheld has received significant attention in the media, as United States leaders, and the American people, debate national security policy. All of these factors lead us to request that the 20-day response time imposed by 22 C.F.R. § 171.12(d) be adhered to strictly. Thank you for your prompt attention to this request.

Sincerely yours,

William J. Olson

WJO:mm

cc: United States Justice Foundation