

Marti Ayers

From: Gillum, Jack [JGillum@ap.org]
Sent: Tuesday, October 08, 2013 11:52 AM
To: FOIA
Subject: Follow up to AP FOIA request

Department of Energy
Southwestern Power Administration
S1200
One West Third
Tulsa, OK 74103

RE: Follow up to Freedom of Information Act request

Oct. 8, 2013

Dear Sir or Madam:

This is a follow up to a FOIA request filed today, which asked for records relating to SWAT and special response teams. The request, however, omitted my postal mailing address. It is:

Jack Gillum
Associated Press
1100 13th Street NW, Suite 700
Washington, DC 20005

Thank you for your assistance.

With regards,

Jack Gillum
The Associated Press

The information contained in this communication is intended for the use of the designated recipients named above. If the reader of this communication is not the intended recipient, you are hereby notified that you have received this communication in error, and that any review, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify The Associated Press immediately by telephone at +1-212-621-1898 and delete this email. Thank you.

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Marti Ayers

From: Gillum, Jack [JGillum@ap.org]
Sent: Tuesday, October 08, 2013 10:16 AM
To: FOIA
Subject: AP FOIA request

Department of Energy
Southwestern Power Administration
S1200
One West Third
Tulsa, OK 74103

RE: Freedom of Information Act request
Expedited processing requested

Oct. 8, 2013

Dear Sir or Madam:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, I request access to and copies of:

- All emails send to and from agency staff during the last five years in which “SWAT”, “special response team”, “armed response team” or “SRT” are in the subject and/or body of the email.
- All contracts with private security companies used to carry out agency functions, including those that authorize the use of lethal force and/or collect past-due debts.
- Digital copies of any database, spreadsheet or documents detailing instances in which lethal force was used during the past five years.
- Copies of policies governing the use of SWAT, special response, rapid response or armed response teams as part of your enforcement efforts, including guidelines detailing when such teams may be deployed.

These records pertain to how the government may have used its authority to use deadly force on American citizens^[1]. In turn, the records are a matter of extreme public importance such that disclosure of would not apply to any exemption sufficient to warrant withholding or unnecessary delay under the FOIA. In fact, the only relevant public interest at stake here is the extent to which disclosure of the information sought would “let citizens know ‘what their government is up to.’” See *U.S. Dep’t of Def. v. Fed. Labor Relations Auth.*, 510 U.S. 487, 497 (1994) (quoting *DOJ v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989)).

Because I am a member of the news media who is primarily engaged in disseminating information, I have an “urgency to inform” the public about federal government activity in accordance with § 552 (a)(6)(E)(v). Such a request for expedited processing meets established criteria for demonstrating a “compelling need”: the records concern a matter of current exigency to the American public; that their delay would compromise a significant recognized interest; and that they concern federal government activity. See generally *Al-Fayed v. C.I.A.*, 254 F.3d.300, 310 (D.C. Cir. 2001).

Public interest in the prompt disclosure of the records is high, as it would shed light on the operations of government, particularly whether or not the Executive Branch engaged in misconduct when conducting possible raids on citizens. Any reasonable person, in light of press reports^[2], may thus conclude that “government impropriety might have occurred.” *Nat’l Archives & Records Admin. v. Favish*, 541 U.S. 157, 172 (2004). Prompt release of records would therefore contribute significantly to a recognized, national interest: how the government protects the safety and civility liberties of American citizens.

Because this is a request by the news media for records in the public interest, I ask that you waive any search fees in accordance with § 552(a)(4)(A)(ii)(II)^[3]. If the fee for retrieving or reproducing these records will exceed \$25, please notify me before filling this request. I can be reached at (202) 641-9448 or by electronic mail at jgillum@ap.org.

As you know, agencies must redact only what is necessary to protect exempt information and must explain the basis for any redactions. See *Georgacarakos v. F.B.I.*, 908 F. Supp. 2d 176, 182 (D.D.C. 2012). As well, please provide documents to me on a rolling basis, rather than waiting for my entire request to be processed before releasing documents.

As a reminder, the President has directed that the FOIA “be administered with a clear presumption: In the face of doubt, openness prevails.” Memorandum for the Heads of Executive Dep’ts and Agencies, 74 Fed. Reg. 15, 4683 (Jan. 26, 2009), emphasis added. That view is unambiguous and consistent with Supreme Court precedent espousing “a general philosophy of full agency disclosure” under the FOIA. *Dep’t of the Air Force v. Rose*, 425 U.S. 352, 360-61 (1976).

The Act, in § 552(a)(6), grants your office no more than twenty working days in which to respond to this request. See also *Oglesby v. U.S. Dep’t of Army*, 920 F.2d 57, 65 (D.C. Cir. 1990) (“Congress adopted the time limit provision in the FOIA in order to ‘contribute to the fuller and faster release of information, which is the basic objective of the Act.’” (quoting H.R. Rep. No. 93-876, March 5, 1974, reprinted (1974) U.S. Code Cong. & Ad. News 6267 at 6271)). Agencies therefore “should make it a priority to respond in a timely manner. Timely disclosure of information is an essential component of transparency.” Attorney General’s Memorandum for Heads of Executive Dep’ts and Agencies Concerning the Freedom of Info. Act, at 3 (Mar. 19, 2009), available from <http://www.justice.gov/ag/foia-memo-march2009.pdf>.

I affirm the information provided above, including information applicable to my request for expedited processing, is true and correct to the best of my knowledge and belief.

Thank you for your assistance. I look forward to your prompt reply.

With regards,

Jack Gillum
The Associated Press

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^[1] Radley Balko, RISE OF THE WARRIOR COP, *The Wall Street Journal*, Aug. 7, 2013.

^[2] *Id.*

^[3] As amended by the OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524.



Department of Energy
Southwestern Power Administration
One West Third Street
Tulsa, Oklahoma 74103-3502

November 6, 2013

Mr. Jack Gillum
Associated Press
Email: jgillum@ap.org

RE: FOIA SWPA-2014-0048-F

Dear Mr. Gillum:

This letter is in response to your Freedom of Information Act email request received October 8, 2013. You requested all emails sent to and from agency staff during the last five years in which "SWAT", or "special response team", "armed response team, or "SRT" are in the subject and/or body of the email. All contracts with private security companies used to carry out agency functions, including those that authorize the use of lethal force and/or collect past due debts. Digital copies of any database, spreadsheet or documents detailing instances in which lethal force was used during the past five years. Copies of policies governing the use of SWAT, special response, rapid response or armed response teams as part of your enforcement efforts, including guidelines detailing when such teams may be deployed.

A reasonable search was performed and no documents were found.

If you are dissatisfied with this determination, you may appeal within 30 days from the date you receive this letter to The Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585. The appeal must be in writing and both the envelope and letter must be clearly marked "Freedom of Information Act Appeal".

If you have any questions about this letter, please contact me.

A handwritten signature in dark ink that reads "Martha F. Ayers".

Martha F. Ayers
Freedom of Information Act Officer