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June 29, 2010

Secretary of the Air Force
Thru: HAF/IMIO (FOIA)
1000 Air Force Pentagon
Washington DC 20330-1000

Appeal under the Freedom of Information Act to USAF Response dated June 10, 2010.

Jed Margolin

FOIA Case Numbers:

Case Number: 2010-04184-F
Case Number: 2010-04185-F
Case Number: 2010-04186-F
Case Number: 2010-04187-F
Case Number: 2010-04188-F
Case Number: 2010-04189-F
Case Number: 2010-04190-F
Case Number: 2010-04191-F
Case Number: 2010-04192-F
Case Number: 2010-04193-F
Case Number: 2010-04194-F

All Filed: April 26, 2010

Sir:

This is an Appeal under the Freedom of Information Act (5 U.S.C. § 552 *et seq.*) to the USAF Response dated June 10, 2010 (Appendix at AFA3) in the above listed FOIA Requests filed April 26, 2010 (Appendix at AFA4) by Jed Margolin (“Margolin”).

Because USAF’s response was sent on June 10, 2010 this appeal is timely.

Summary

There was a fair amount of press coverage about the X-37B launched on April 24, 2010. It was even mentioned on various network radio newscasts.

Margolin knew the X-36 and X-38 both used synthetic vision so he wondered if the X-37B also used it.

He filed a Freedom of Information Act (FOIA) request with USAF on April 26, 2010 to find out.

USAF has created a cumbersome method of implementing its duties under the Freedom of Information Act (5 U.S.C. § 552 *et seq.*) by requiring a request be made separately to each location. Then it complains when identical requests are made to a number of locations. Then it plays the Shell Game so it can say it does not have responsive documents.

Details

1. There was a fair amount of press coverage about the X-37B launched on April 24, 2010. It was even mentioned on various network radio newscasts.

The X-37 was a NASA project that was started in 1998 and canceled in 2003. Only it wasn't canceled. It was taken Black by transferring it, first to DARPA, and then to the United States Air Force.

It was a big secret until shortly before the launch.

2. Margolin knew the X-36 and X-38 both used synthetic vision so he wondered if the X-37B also used it.

3. He filed a Freedom of Information Act (FOIA) request with the United States Air Force (USAF) in late April 2010 to find out.

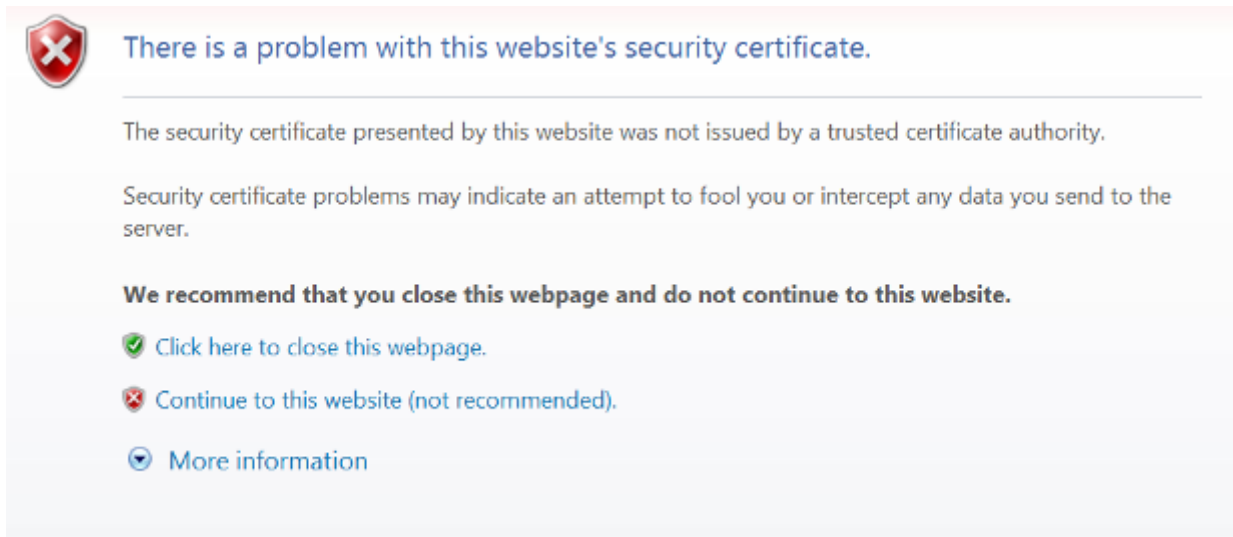
4. USAF has a web site for making FOIA requests. They don't make it easy.


The main FOIA Web site is <http://www.foia.af.mil/>

Although it is not apparent at this point, you have to use Microsoft Internet Explorer. You also have to disable all Pop-Up Blockers. Firefox totally doesn't work. If you use Firefox it lets you go through the entire process and then says **Internal Error Occured, Close the browser and open new browser.**

The FOIA Request page is <https://www.foia.af.mil/palMain.aspx>

When Margolin goes there he gets the ominous warning (but proceeds, nonetheless):






 **There is a problem with this website's security certificate.**

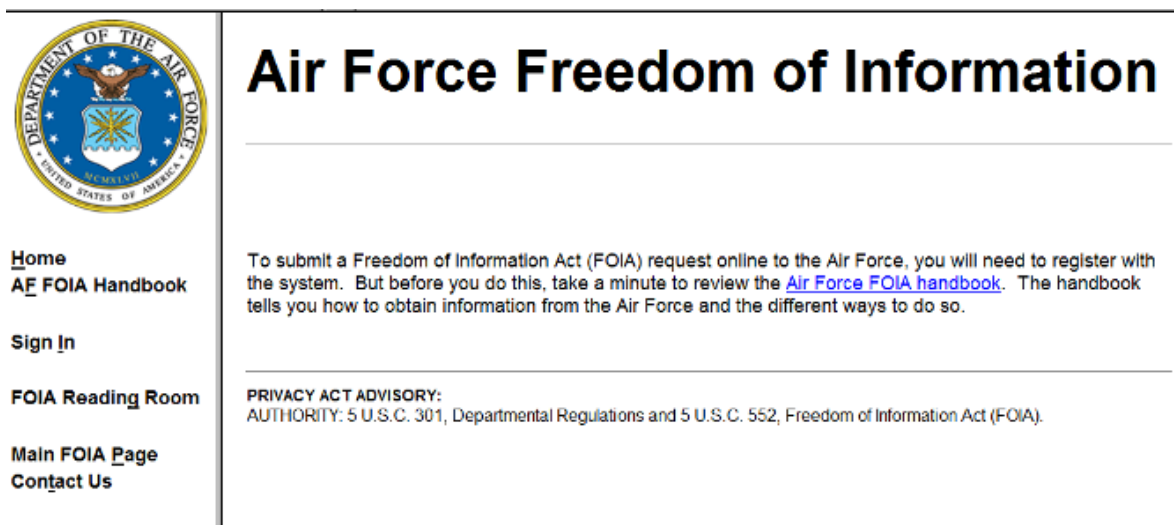
The security certificate presented by this website was not issued by a trusted certificate authority.


Security certificate problems may indicate an attempt to fool you or intercept any data you send to the server.

We recommend that you close this webpage and do not continue to this website.

-  [Click here to close this webpage.](#)
-  [Continue to this website \(not recommended\).](#)
-  [More information](#)

It turns out that you have to register.



	<h1>Air Force Freedom of Information</h1>
<p>Home AF FOIA Handbook</p> <p>Sign In</p> <p>FOIA Reading Room</p> <p>Main FOIA Page Contact Us</p>	<p>To submit a Freedom of Information Act (FOIA) request online to the Air Force, you will need to register with the system. But before you do this, take a minute to review the Air Force FOIA handbook. The handbook tells you how to obtain information from the Air Force and the different ways to do so.</p> <hr/> <p>PRIVACY ACT ADVISORY: AUTHORITY: 5 U.S.C. 301, Departmental Regulations and 5 U.S.C. 552, Freedom of Information Act (FOIA).</p>

Margolin registered.

Now when he goes there he can sign-in.



Air Force Freedom of Information

[Home](#)
[AF FOIA Handbook](#)

[Sign In](#)

[FOIA Reading Room](#)

[Main FOIA Page](#)
[Contact Us](#)

New User? [Click here to Register](#)

Please read prior to registering or submitting requests online

Before submitting your request please be sure to check the "FOIA Reading Room" to see if the documents you are requesting have already been published.

Please Note: The preferred browser is Internet Explorer and all popup blockers should be disabled.

FOIA Requests - To submit a Freedom of Information Act (FOIA) request online to the Air Force, you will need to register with the system. But before you do this, take a minute to review the [Air Force FOIA handbook](#). The handbook tells you how to obtain information from the Air Force and the different ways to do so.

Registered User

User Name:

Password:

[Forgot User Name or Password?](#)

See the warning: **Please Note: The preferred browser is Internet Explorer and all popup blockers should be disabled.**

That appears to be new. Margolin does not remember it being there when he first went to the web page.

After signing in, Margolin receives the following screen.



Air Force Freedom of Information

[Home](#)
[AF FOIA Handbook](#)

[Submit FOIA Request](#)
[Submit FOIA Appeal](#)
[FOIA Request Status](#)
[FOIA Appeal Status](#)
[Change Password](#)
[My Account](#)
[Send Mail](#)
[Sign Out](#)

[FOIA Reading Room](#)

[Main FOIA Page](#)

Welcome JED MARGOLIN

Sign in Successful.

To continue, please make a selection from the navigation menu on the left side.

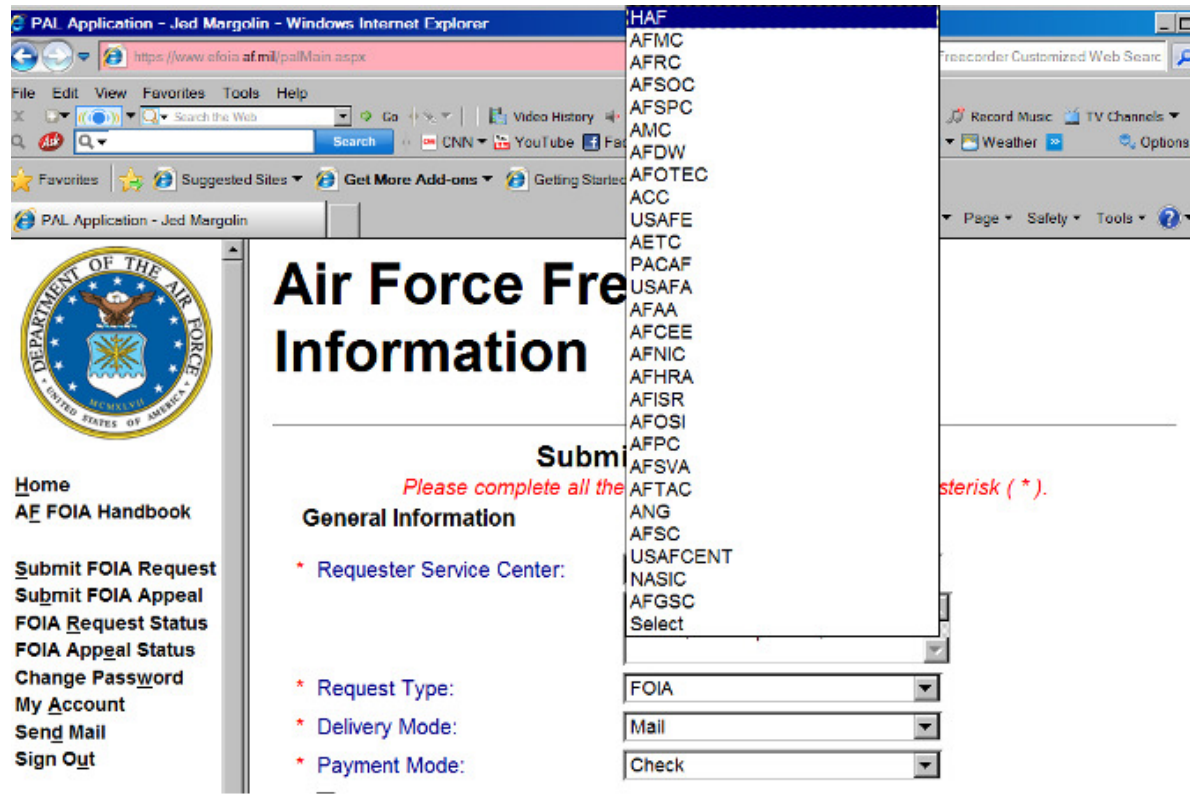
PRIVACY ACT ADVISORY:
 AUTHORITY: 5 U.S.C. 301, Departmental Regulations and 5 U.S.C. 552, Freedom of Information Act (FOIA).

Here is the first problem when filing a FOIA request with USAF.



The image shows the 'Air Force Freedom of Information' website. On the left is a navigation menu with links like 'Home', 'AF FOIA Handbook', 'Submit FOIA Request', etc. The main content area is titled 'Submit New FOIA Request' and includes a red warning: 'Please complete all the required fields marked with an asterisk (*).' Below this is a 'General Information' section with four dropdown menus: 'Requester Service Center' (set to AFPC), 'Request Type' (set to FOIA), 'Delivery Mode' (set to Mail), and 'Payment Mode' (set to Check).

You have to specify which of 27 Service Centers to submit your FOIA request to.



This screenshot shows the same 'Air Force Freedom of Information' page, but with a dropdown menu open for the 'Requester Service Center' field. The dropdown lists 27 service center codes: HAF, AFMC, AFRC, AFSOC, AFSPC, AMC, AFDW, AFOTEC, ACC, USAFE, AETC, PACAF, USAFA, AFAA, AFCEE, AFNIC, AFHRA, AFISR, AFOSI, AFPC, AFSVA, AFTAC, ANG, AFSC, USAFCENT, NASIC, AFGSC, and a 'Select' option. The rest of the page content, including the navigation menu and the 'Submit New FOIA Request' header, is visible in the background.

And all they give you are the acronyms.

So, Margolin had to look them up. All 27.

Now, the next part.



DEPARTMENT OF THE AIR FORCE
UNITED STATES OF AMERICA

Home
AF FOIA Handbook

Submit FOIA Request
Submit FOIA Appeal
FOIA Request Status
FOIA Appeal Status
Change Password
My Account
Send Mail
Sign Out

Request Information

* Description of Request: [\(Add Attachment\)](#)

Fee Information

Enter Amount Willing to Pay: \$

Fee Waiver Requested: [\(Add Attachment\)](#)

* Fee Waiver Request Reason:

When you get to actually making the request, the forms are wonky and difficult to edit. It's difficult to even do a cut-and-paste from a MS Word document. As a result Margolin composed everything in a document, converted it to PDF, and attached the PDF documents.

For Margolin's FOIA Request see Appendix at AFA4. Margolin's request for a fee waiver was included in his FOIA Request and was also separately filed as an attachment under Fee Waiver requested.

Margolin thought he was almost done filing his FOIA request.

He wasn't. He wasn't even close.



Home
AF FOIA Handbook

Submit FOIA Request
Submit FOIA Appeal
FOIA Request Status
FOIA Appeal Status
Change Password
My Account
Send Mail
Sign Out

Search Details

Records Search Location
 * Location to be searched:

Accept All Fees Assessed
 Accept All Assessed Fees:

Clearly Releasable Record
 Without Citing Exemption:

Save Reset

PRIVACY ACT ADVISORY:
AUTHORITY: 5 U.S.C. 301, Departmental Regulations and 5 U.S.C. 552, Freedom of Information Act (FOIA).

Do you see the *Location to be searched: ?

Guess how many there are.

The following is just the beginning of the list:

The screenshot shows a web browser window with the URL <https://www.etois.af.mil/palMain.aspx>. The browser's address bar and search bar are visible. The main content area displays the 'Search Details' form from the previous image, with a list of Air Force bases overlaid on the right side. The list includes:

- AETC - Randolph AFB-HQ
- AETC - Altus AFB
- AETC - Columbus AFB
- AETC - Goodfellow AFB
- AETC - Keesler AFB
- AETC - Lackland AFB
- AETC - Laughlin AFB
- AMC - Little Rock AFB
- AETC - Luke AFB
- AETC - Maxwell AFB
- AETC - Sheppard AFB
- AETC - Tyndall AFB
- AETC - Vance AFB
- AFGSC - Whiteman AFB
- ACC - Shaw AFB
- ACC - Seymour Johnson AFB
- ACC - Offutt AFB
- ACC - Nellis AFB
- ACC - Mountain Home AFB
- ACC - Moody AFB
- AFGSC - Minot AFB
- ACC - Langley AFB-HQ
- ACC - Holloman AFB
- ACC - Ellsworth AFB
- ACC - Dyess AFB
- ACC - Davis-Monthan AFB
- ACC - Beale AFB
- AFGSC - Barksdale AFB
- AFMC - Tinker AFB
- AFMC - Robins AFB

At the bottom of the list, 'Save' and 'Reset' buttons are visible. The 'Search Details' form is partially obscured by the list. The browser's taskbar shows 'PAL Application - Jed Margolin'.

There are 232 locations, of which 102 are Air National Guard units.

Since Margolin did not think the X-37B was developed by the Air National Guard, that still left 130 possible locations for him to send his FOIA request to.

USAF does not allow Requestors to make their request and click which locations they want it sent to. You can send it to only one location at a time. Then you start over and send it to another location.

Some USAF organizations do not have a listed location. One is AFOTEC. Another is AFRL.

5. Margolin filed his FOIA requests on Monday morning, April 26, 2010.

He sent them to the following centers and locations, and case numbers were assigned:

<p>Case Number: 2010-04184-F Center: HAF: Headquarters Air Force Location: HAF AF Office of Scientific Research</p>
<p>Case Number: 2010-04185-F Center: AFMC: Bases: Arnold, TN, Brooks City-Base, TX, Edwards, CA, Eglin, FL, Gunter, AL, Hanscom, MA, Hill, UT, Kirtland, NM, Robins, GA, Tinker, OK, Wright-Patterson, OH Location: AFRC - WPAFB OH 445 AW</p>
<p>Case Number: 2010-04186-F Center: HAF: Headquarters Air Force Location: HAF AF Headquarters DC</p>
<p>Case Number: 2010-04187-F Center: HAF: Headquarters Air Force Location: AF Program Office Executive Office, DC</p>
<p>Case Number: 2010-04188-F Center: HAF: Headquarters Air Force Location: AF Program Office Executive Office, DC</p>
<p>Case Number: 2010-04189-F Center: HAF: Headquarters Air Force Location: HAF - AF Review Boards Agency, Andrews</p>
<p>Case Number: 2010-04190-F Center: HAF: Headquarters Air Force Location: AFMC - Rome Labs, NY</p>
<p>Case Number: 2010-04191-F Center: AFSPC: Bases: HQ AFSPC, CO, Los Angeles, CA, Patrick, FL, Peterson, CO, Vandenberg, CA Location: AFSPC - AFSPC HQ</p>
<p>Case Number: 2010-04192-F Center: AFSPC: Bases: HQ AFSPC, CO, Los Angeles, CA, Patrick, FL, Peterson, CO, Vandenberg, CA Location: AFSPC - Vandenberg AFB</p>

Case Number: 2010-04193-F

Center: AFSPC Bases: HQ AFSPC, CO, Los Angeles, CA, Patrick, FL, Peterson, CO, Vandenberg, CA

Location: AFSPC Patrick AFB

Case Number: 2010-04194-F

Center: HAF: Headquarters Air Force

Location: DRU AF Operational Test & Eval Center

Note that in Case 2010-04185-F it was supposed to go to AFMC (Air Force Materiel Command):

Center: AFMC: Bases: Arnold, TN, Brooks City-Base, TX, Edwards, CA, Eglin, FL, Gunter, AL, Hanscom, MA, Hill, UT, Kirtland, NM, Robins, GA, Tinker, OK, Wright-Patterson, OH

Instead, it was handled by AFRC:

Location: AFRC - WPAFB OH 445 AW

AFRC is the Air Force Reserve Command.

See Appendix at AFA6 - AFA38 for the status reports for the FOIA Requests listing the Case Number, Center, and Location for each one.

6. The organization most likely to be involved in the X-37B project is the Air Force Research Laboratory (AFRL). <http://www.af.mil/information/factsheets/factsheet.asp?id=148>

This is what they say about their Air Vehicles Directorate.

Air Vehicles Directorate -- With headquarters at Wright-Patterson AFB, Ohio, the Air Vehicles Directorate leads the effort to develop and transition superior technology solutions that enable dominant military aerospace vehicles. The emphasis and vision are on technology investments that support cost-effective, survivable aerospace vehicles capable of accurate and quick delivery of a variety of future weapons or cargo anywhere in the world. To achieve this, core technology areas focus on aeronautical sciences, control sciences, structures and integration. The directorate targets advanced concepts to direct the development of vehicle technologies that provide future capabilities in the areas of sustainment, unmanned air vehicles, space access and future strike.

Unfortunately, AFRL is not on the Locations list so you cannot make a request to AFRL.

This is what we have learned so far. If you are a Federal Agency (such as USAF) and you are subject to the Freedom of Information Act, and you want to keep some of your activities out of the reach of the Freedom of Information Act you:

1. Set up a system that requires Requestors send a separate request to each location.

2. Leave the department to be protected off the list.

That is what USAF has done with AFRL.

7. Later that day on Monday (April 26) Margolin received a phone call from someone who identified himself as Technical Sergeant Kennerly.

He said he had noticed that Margolin had filed several FOIA requests that appeared to be identical, and were they in fact identical?

Margolin said, "yes", because the USAF FOIA Web site requires that a separate request be made to each location.

Then Margolin explained to him the basics of Synthetic Vision, and then Technical Sergeant Kennerly said he had some other things he had to do.

8. On Tuesday Morning, April 27, 2010 Margolin received an email from Darrin Booher ("Booher"), a FOIA Analyst at Wright-Patterson. In it he denied Margolin's request for a fee waiver because:

"There is no contribution to an understanding of the subject by the general public, but rather a small segment of interested persons. Requestor doesn't appear to have the capability to, or intention to, disseminate this information to the general public. Furthermore, there is no significant contribution to the public if it were widely released. Therefore, the request for a waiver of fees is denied."

Booher gave Margolin until April 30 to indicate how much money he was willing to pay.

See Appendix at AFA52.

Booher's statements are insulting and arrogant, especially where he says,

Requestor doesn't appear to have the capability to, or intention to, disseminate this information to the general public.

The Secretary of the Air Force is invited to read Margolin's article/blog **How the United States Air Force Plays the Shell Game with the Freedom of Information Act and How They Treat Independent Inventors** at Margolin's Web site http://www.jmargolin.com/usaf/usaf_web.htm .

The most current version is reproduced in Appendix at AFA39.

As FOIA Analyst at Wright-Patterson, Booher represents USAF so Margolin must assume Booher's statements represent USAF's official position.

9. Margolin called Technical Sergeant Kennerly and told him of the Booher email.

Technical Sergeant Kennerly said to ignore it, that Margolin's FOIA request was going to be handled by the Pentagon. He also asked him to forward him a copy of the Booher email, which he did. See Appendix at AFA54.

Nonetheless, Margolin responded to Booher. See Appendix at AFA57.

Booher responded by closing Margolin's FOIA request without responding to his email. See Appendix at AFA62.

As the time Margolin did not think it was a big deal, just the actions of a nasty civilian government bureaucrat. After all, Technical Sergeant Kennerly had told Margolin that his FOIA request was going to be handled by the Pentagon.

In the Air Force, the rank of Technical Sergeant is a big deal.

From Wikipedia (http://en.wikipedia.org/wiki/Technical_Sergeant)

Technical Sergeant, or Tech Sergeant, is the sixth enlisted rank (E-6) in the U.S. Air Force, just above Staff Sergeant and below Master Sergeant. A technical sergeant is a non-commissioned officer and abbreviated as TSgt. Official terms of address are "Technical Sergeant" or "Sergeant", although many use "Tech Sergeant".

Within the enlisted Air Force, promotion to TSgt has historically been the second most difficult rank to achieve (only the rank of Senior Master Sergeant, capped by Federal law, has lower promotion rates) and is the most difficult promotion most career Air Force members achieve. To be considered for a promotion to Technical Sergeant, a Staff Sergeant must have 6 years' time in service and 24 months time in grade, however, 10–12 years time in service is normally when this grade is reached. Technical Sergeants provide technical mentorship to junior enlisted members in preparation for entry into the senior noncommissioned tier and promotion to the rank of Master Sergeant.

With Technical Sergeant Kennerly handling the matter, what could possibly go wrong?

Margolin had correspondence from FOIA officers in other locations.

10. There was Sherrie Crochunis from Peterson AFB:

Mr. Margolin,

I received three identical FOIA requests for Patrick AFB and I just want to confirm that there should only be one request. I will forward one request (2010-04191-F) onto Patrick

AFB for processing and assume the other two (2010-04192-F & 2010-04193-F) are duplicates and close them out on 28 April, if I don't hear otherwise from you.

Thank you,

Sherrie Crochunis
AFSPC FOIA & Privacy Act Manager

See Appendix at AFA63.

11. Margolin received an email from Shelly Valliere, Wing FOIA/PA Manager at Patrick. She did not have a problem granting Margolin a fee waiver. Then she kicked it upstairs.

The SAF FOIA office at the Pentagon will respond to your FOIA request (reference: Case No. 2010-04186-F). Therefore, we have closed Case No. 2010-04191-F here at Patrick AFB. All future inquiries/correspondence concerning Case No. 2010-04186-F should come from that office.

See Appendix at AFA74.

(Margolin has been told that "SAF" is "Secretary of the Air Force.")

12. Margolin received an email from Pennie Carlo, Pubs & Forms Manager, AFRL/RIOI. This appears to be the elusive AFRL but how this relates to Mr. Booher, FOIA Analyst at Wright-Patterson is unknown.

See Appendix at AFA82 - AFA111.

It looked like it was going to be productive, but ends with Ms. Carlo kicking it upstairs to Headquarters. (Appendix at AFA111)

Upon transfer of your case #2010-04190-F, we were informed that this is a duplicate of case #2010-04842-F which is already being handled by HAF/IMIO. For this reason we will close case #2010-04190-F at the Rome FOIA office.

13. This is the response Margolin received from the Pentagon on June 10, 2010 (Appendix at AFA3):

Dear Mr. Margolin

This is in response to your April 26, 2010, Freedom of Information Act request for information relating to the use of Synthetic Vision and various U.S. Patents.

The Office of The General Counsel, Intellectual Property Office conducted a proper search for records relating to Items 2 and 5 of your request; however, no information was found. Therefore, a no records determination was made.

Should you decide that an appeal to this decision is necessary, you must write to the Secretary of the Air Force, Thru: HAF/IMIO (FOIA), 1000 Air Force Pentagon, Washington DC 20330-1000 within 60 calendar days from the date of this letter. Include in the appeal, your reasons for reconsideration, and attach a copy of this letter.

Additionally, we requested assistance from the Air Force Historical Research Agency (AFHRA) and the Air Force Flight Test Center for Item 1 with negative results. AFHRA suggest you try NASA, if you have not done so already.

Please contact the undersigned at (703) 693-2736 should you have any questions and refer to case #2010-04186-F. There are no fees associated with the processing of this request in this instance.

Sincerely

Signed by ESPINAL.JOHN.
M.1184810375
JOHN M. ESPINAL
FOIA Disclosure Officer

Note that this only applies to Case 2010-04186-F

Case Number: 2010-04186-F
Center: HAF: Headquarters Air Force
Location: HAF AF Headquarters DC

It does not apply to any of the other ones, so it does not address departments such as AFRL which is the most likely suspect for having documents related to the X-37B project.

The USAF blew Margolin off. Technical Sergeant Kennerly's role in this is not exactly known but is substantial.

14. This FOIA request was only about the use of synthetic vision in the X-37B. Margolin did not ask about the secret stuff, like what is the X-37B for? Is the cargo bay for bringing stuff up? Is it for bringing stuff down? Is it for delivering weapons? All it has to do is drop titanium rods with a tapered front and small controllable vanes at the back for maneuvering. Maybe with an ablative coating. The kinetic energy delivered from orbit would be devastating. Is it for anti-satellite activities? Being about to pull up right next to LEO and MEO satellites makes disabling a satellite easier and less detectable than firing something from the ground. Perhaps USAF could put out the cover story that the purpose of the X-37B is to investigate the feasibility of in-orbit

refueling of satellites. They could maneuver it wherever they wanted without being accused of having a nefarious purpose. It wouldn't violate any Space Treaties. It would be a benign and peaceful use.

Margolin has not asked about the use of Synthetic Vision in the F-22 and F-35, or the Common Ground Stations for the Predator and Global Hawk UAVs.

Conclusion

USAF has created a cumbersome method of implementing its duties under the Freedom of Information Act by requiring a request be made separately to each location.

Then it complains when identical requests are made to a number of locations.

Then it plays the Shell Game so it can say it does not have responsive documents.

USAF's rights under 5 U.S.C. § 552(a)(1) do not relieve it of its duties under 5 U.S.C. § 552(a)(2).

USAF has applied 5 U.S.C. § 552(a)(4)(A)(iii) inconsistently and in an arbitrary, capricious, and insulting manner.

The purpose of the Freedom of Information Act is to allow citizens to understand how their government works.

By gaming the Freedom of Information Act, USAF has shown how Government works, but not in the way the Freedom of Information Act intends.

Respectfully,

Dated: June 29, 2010

/Jed Margolin/

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