

DEPARTMENT OF THE AIR FORCE
WASHINGTON DC



OFFICE THE GENERAL COUNSEL

JAN 10 2012

SAF/GCA
1740 Air Force Pentagon
Washington DC 20330-1740

Mr. Jed Margolin
1981 Empire Road
Reno NV 89521-7430

Dear Mr. Margolin

This letter replies to two appeals, dated October 9, 2010, (2011-00006-A, 2011-00007-A) challenging the adequacy of the records search for "all documents relating to the use of Synthetic Vision in operating the C-130 (all variants) operated by USAF."

I have been delegated the responsibility to conduct the Office of the Secretary of the Air Force review in your case. I considered your appeals and determined they should be denied.

Upon receiving the initial request, the FOIA offices at both Dyess AFB and Little Rock AFB requested that the respective offices of primary responsibility conduct a record search. Those offices found no responsive records. Dyess AFB and Little Rock AFB provided you with "no records" responses on August 18, 2010 and August 30, 2010, respectively. You appealed the "no records" responses based on what you called "hard evidence that synthetic vision is, indeed, used in the C-130."

A record must exist and be in the possession and control of the Department of Defense at the time of the request to be considered subject to DoD 5400.7-R_AFMAN 33-302 and the FOIA. There is no obligation to create, compile, or obtain a record to satisfy a FOIA request. *See, e.g., Krohn v. Dep't of Justice*, 628 F.2d 195, 197-98 (D.C. Cir. 1980); DoD 5400.7-R, AFMAN 33-302, ¶ C1.4.4.3.

The adequacy of an agency's search under the FOIA is determined by a test of "reasonableness." *Weisberg v. United States Department of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). DoD 5400.7-R_AFMAN 33-302, ¶ C5.3.1.2.2 states: "If a requester appeals an Air Force 'no records' determination, Air Force elements must search again or verify the adequacy of their first search." A second search was conducted at each base, but again, no responsive records were found.

I found the scope and methodology of the searches to be thorough and comprehensive and reasonably calculated to uncover all relevant documents. *See e.g., Campbell v. United States*, 164 F.3d 20 (D.C. Cir. 1998) (noting that an agency must search using methods which can be

reasonably expected to produce the information requested); *Weisberg*, 705 F 2d at 1351. To conclude, both offices have satisfied their obligations to search for records under the FOIA.

This constitutes the final Air Force action on your appeal. The FOIA, 5 U.S.C. § 552, provides for judicial review of this determination.

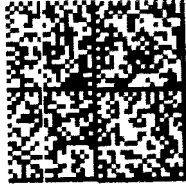
Sincerely

A handwritten signature in cursive script that reads "Cheri L. Cannon".

Cheri L. Cannon
Deputy General Counsel
(Fiscal, Ethics and Administrative Law)

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