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on the front lines for social justice

April 1, 2011

Commandant (CG-611)
US Coast Guard
ATTN: FOIA/PA Officer
2100 2nd St SW STOP 7101
Washington DC 20593-7101

Re: **FREEDOM OF INFORMATION ACT APPEAL – Case No. 10-2771 & 2011-0530**

Dear FOIA Officer,

On June 30, 2010, the Center for Constitutional Rights (“CCR”) filed a request for information under the Freedom of Information Act (“FOIA”) *inter alia* “seeking all records, regardless of format, medium, or physical characteristics, and including electronic records and information, audiotapes, videotapes and photographs, that reflect, relate or refer to... the May 31, 2010 Israeli military operation that occurred in international waters in the Mediterranean Sea involving a six-boat flotilla headed to Gaza with humanitarian supplies, including the U.S.-registered ‘Challenger I’ and the Comoros-registered ‘Mavi Marmara,’ which was forcefully intercepted by the Israeli Defense Forces, resulting in the death of 9 passengers on board the *Mavi Marmara* including one U.S. citizen and the injury of many more.” See Exhibit A. (“Request”).

In a letter dated July 19, 2010, and post-marked July 27, 2010, the Coast Guard issued a final response, stating that Ms. Dawn Patterson, Chief, FOIA and Data Administration Division, had “searched for any references to ‘Gaza’, ‘flotilla’, ‘Israel’, the vessels ‘CHALLENGER’ or ‘MAVI MARMARA’, ‘military’, ‘mayday’, ‘injury’ or ‘casualty,’” but was unable to locate or identify any responsive records. The Coast Guard termed this a “final response” claiming that it had conducted “an adequate search” and gave the FOIA number 10-2771. See Exhibit B. (“CG Final Response”).

On September 13, 2010, CCR filed a timely appeal to the CG Final Response appealing the Coast Guard’s determination that it did not have any responsive records to CCR’s Request. See Exhibit C. (“CCR Appeal”). The CG Final Response indicated that only the FOIA and Data Administration Division (CG-5453) was searched for records responsive to our Request. In its appeal, CCR asserted that “in light of the request for information about a U.S.-registered vessel in international waters, about the fate of U.S. passengers in an area where the United States has a presence and a policy, and taking into account the Coast Guard’s mission includes the registration of vessels, defense readiness and law enforcement, that it has participated in international missions, and is integrated with Department of Defense planning and operations”

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there were a number of other offices that could possibly include records receptive to the Request. Such offices cited by CCR, at p. 2, included Intelligence and Criminal Investigations; Office of International Affairs and Foreign Policy; Office of Law Enforcement (CG-531); Office of Counterterrorism & Defense Operations (CG-532) including the National Defense Strategy Division (GC-5321); Prevention Policy Directorate (CG-54); and the National Vessel Documentation Center. Further, CCR's Appeal requested that the Coast Guard make "an adequate and diligent effort to disclose all responsive documents not properly subject to FOIA exemption, and to comply with [its] obligations to provide segregable information when necessary."

On November 15, 2010, D.G. Taylor sent a letter re-assigning our case number 2010-0530 and notifying us that CCR's request "has been forwarded to the FOIA Coordinator of the Assistant Commandant for Marine, Safety, Security, and Stewardship (CG-5) for a subsequent/additional search for responsive records and direct response" to us. *See* Exhibit D. ("CG Receipt of Appeal"). Notably, the CG Receipt of Appeal did not indicate that it was a final response to our appeal. As detailed on the Coast Guard website, at least three units that CCR identified in its appeal letter -- Intelligence and Criminal Investigations, the Office of International Affairs and Foreign Policy and the National Vessel Documentation Center -- fall outside the scope of CG-5.

On December 3, 2010, Dawn Patterson sent a letter in response to CCR's Appeal, which Ms. Patterson termed as a "response to your Freedom of Information Act (FOIA) request of September 13, 2011."¹ In this letter, Ms. Patterson states that the information that CCR requested "requires a coordinated response between several ... Coast Guard offices." *See* Exhibit E. ("CG First Response to Appeal"). This response indicated that the Coast Guard was providing a copy of CCR's Request to the Office of Investigation and Casualty Analysis (CG-5453),² the Office of Law Enforcement (CG-531), the Office of Counterterrorism & Defense Operations (CG-532), the Office of Auxiliary and Boating Safety (CG-542), and the Director of International Affairs and Foreign Policy. Ms. Patterson notified us that each office would respond directly to us concerning our request. This letter does not provide any information on whether it was sent from the "FOIA Coordinator of the Assistant Commandant for Marine, Safety, Security, and Stewardship (CG-5)," which the CG Receipt of Appeal had referenced. It was also not clear whether it constituted one of many, or the only, responses CCR should expect from its FOIA Request and Appeal.

¹ This letter was sent under FOIA number 2011-0530. It is unclear to CCR whether a new FOIA request was considered filed on September 13, 2010, or whether the Coast Guard considered actions taken pursuant to the September 13, 2010 letter to be within the scope of the initial appeal, numbered 10-2771.

² CCR notes that pursuant to the organizational chart on the Coast Guard website, the Office of Investigation and Casualty Analysis is CG-545 and not CG-5453; CG-5453 is only a subdivision of this section, namely the Data Administration and FOIA Division. *see* <http://www.uscg.mil/top/units/org.asp>.

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Four of the units indentified in the CG First Response to Appeal responded in December 2010:

- On December 6, 2011, Susan M. Tomczuk sent a final response via e-mail on behalf of the Office of Auxiliary and Boating Safety, under FOIA number 11-0530. *See* Exhibit F. (“Office of Auxiliary Response”). In this letter, Ms. Tomczuk states that though the “Office of Auxiliary and Boating Safety oversees efforts to reduce recreation boating accidents, deaths, and injuries on the waterways of the United States of America,” to her knowledge, “the Office does not have records relating to communication with Israel Defense Forces, the involvement of the Challenger I in the described events, or guidance for vessels transiting in the Mediterranean Sea.” The letter indicated that the Request addresses “subjects [that] are outside the Office's purview.” It included notice that we have the right to appeal this determination.
- In a letter dated December 7, 2010, S.M. Rogers, CDR, notified CCR that on December 6, 2010, LT Michael Trotochaud of the Office of Counterterrorism and Defense Operations “conducted a comprehensive electronic search of files” responsive to our request of September 13, 2010. *See* Exhibit G. (“Office of Counterterrorism Response”). The letter specifies the search terms as “block” “blockade” “casualty” “Challenger I” flotilla” “Gaza” “IDF” “injury” “Israel” “Israeli” “Mavi Marmara” “May 31, 2010” “mayday” “military” and “NATO.”

Notably, nowhere in this letter does it state that no responsive documents for any of these words were returned, which, considering, for example, that the term “military” was included, would be quite inconceivable. Rather, the letter indicates that “no records exist within the Office of Counterterrorism and Defense Operations that would be responsive to your request” – a statement which CCR finds to be unclear: does this statement purport to mean that no documents were found that includes words such as “military” or “casualty” or “blockade” or “Israel”? Or does this statement indicate that no documents which contained those terms were deemed by LT Michael Trotochaud to be responsive to our request? If the latter is what that statement means, it is unspecified and unclear on what basis LT Trotochaud determined that documents that included such terms were somehow “unresponsive” to the Request. The letter indicated that we have a right to appeal this determination.

Furthermore, this letter makes no mention of a search of the National Defense Strategy Division, located within the Office of Counterterrorism and Defense Operations, which CCR had specifically identified as appearing to possibly have records responsive to the Request. It is unclear from the Office of Counterterrorism Response whether this division was searched.

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- In a letter dated December 14, 2010, under FOIA number 11-0530, Zsatiue Ferrell responded on behalf of the Office of Law Enforcement to our "FOIA request dated June 30, 2010"³ and indicated that they were "unable to locate records responsive to [our] request" *See* Exhibit H. ("Office of Law Enforcement" Response). The Office of Law Enforcement notified us that they have "interviewed knowledgeable personnel assigned to various divisions within the Office," and "searched the files and databases of the various divisions within the Office of Law Enforcement" including the Drug & Migrant Interdiction; LMR & MRS Enforcement; MHS, General LE & Policy Standards; and Plans, Analysis, & Budget. Ms. Ferrel indicated that "[a]fter making this extensive search effort", "[a]ll searches resulted in negative findings." The letter indicated that we had a right to appeal within 30 days.
- In a letter dated December 21, 2010, given FOIA number 2011-0530, and deemed a final response to our "September 13, 2010" request by the Office of International Affairs, Thomas Hale notified us that "Lieutenant Commander Nell Ero, Regional Advisor for European Command, searched any and all records to and from the Israeli government regarding [our] request" and "was unable to locate or identify any responsive records." *See* Exhibit I. ("Office of International Affairs Response"). Mr. Hale failed to identify the keywords that were used in the search or provide any additional information on the adequacy of the efforts of the Office of International Affairs to fulfill the Request, which, as described elsewhere herein, was in no way limited to records "to and from the Israeli government." The letter indicated our right to appeal within 60 days.

One additional response letter was received from a unit not specified in the CG First Response to Appeal:

- In letter dated December 9, 2010, Dawn Patterson notified CCR that the FOIA and Data Administration Division "conducted a comprehensive search of files" within the Division for records responsive to our "June 30, 2010 and September 13, 2010" request and no responsive records were located or identified. *See* Exhibit J. ("Data Admin 2010 Response"). This response indicates that a search was conducted by Mr. Rodney Levy, using the terms "Gaza", "flotilla", "Israel", the vessels CHALLENGER or MAVI MARMARA, "military", "mayday", "injury", and "casualty" of the "files." The response does not specifically indicate whether any documents were found that included any of these search terms. The Data Admin 2010 Response also states that the FOIA and Data Administration Division "looked at all activities in the Marine Information for Safety and Law Enforcement database that occurred during the month of May and by the names of the above mentioned vessels." This response was deemed a final response and Ms. Patterson further notified us that we had "the right to appeal the determination that no records exist within the Data Administration Division that would be responsive to [our] request".

³ There was no mention of the September 13, 2010 appeal letter in the Office of Law Enforcement response.

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All letters indicated the same address for appeal: Commandant (CG-611), US Coast Guard, Attn: FOIA/PA Officer, 2100 2nd St SW Stop 7101, Washington, DC 20593-7101.

As of March 23, 2011, CCR had still not received responses from the Office of Investigation and Casualty Analysis listed in the CG First Response to Appeal, and from the Intelligence and Criminal Investigations, the Office of International Affairs and Foreign Policy and the National Vessel Documentation Center, which had been identified in the CCR Appeal as possibly having responsive documents.

Although we received responses from five Coast Guard sub-agencies, CCR did not consider the receipt of these five responses as the closing of our FOIA request to the Coast Guard for three reasons. The first is that in the December 3, 2010 letter from Dawn Patterson, the Coast Guard indicated that they would copy our request to five sub-agencies, including the Office of Investigation and Casualty Analysis. To date, we have not received any communications from that office and have considered our Request before that office pending. Second, in CCR's Appeal on September 13, 2010, we asked that the National Defense Strategy Division (CG-5321), Prevention Policy Directorate (CG-54), and the National Vessel Documentation Center be searched for documents responsive to our request. The Coast Guard has yet to direct our Request to both offices so they could conduct a search for responsive documents (which may be pending under either FOIA number 10-2771 or 11-0530). Third, the status of our Appeal of September 13, 2010 remains unclear: the CG Receipt of Appeal did not indicate that it was a final response to our appeal or that our appeal was only being forwarded to the CG-5.

In an effort not to file multiple appeals and minimize the number of submissions we would file with the Coast Guard, CCR did not file individuals appeals with the subcomponents that responded in December 2010 but planned to file one global appeal with the Coast Guard challenging, as necessary, the adequacy of searches by the various agency subcomponents; as of March 2011, there were still four units from which we anticipated we would be receiving a response (the Office of Investigation and Casualty Analysis and three units identified in our Appeal).

CCR sought clarification from Dawn Patterson about the scope of 11-0530 and discussed the case with her on March 23, 2011. When inquiring about the lack of response from the Office of Investigation and Casualty Analysis, Ms. Patterson stated that the July 19, 2010 response from the FOIA & Administration Division, in which the division claimed that no responsive documents were located, constituted the response from the Office of Investigation and Casualty Analysis. According to Ms. Patterson, the Office of Investigation and Casualty Analysis is essentially the same as the FOIA & Administration Division, though they have different names. CCR found this response confusing and inadequate, as the purported response document *pre-dated* both the appeal (dated September 13, 2010) and the referral to Office of Investigation and Casualty Analysis (dated December 3, 2010). Moreover, it is not clear how CCR would have

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been able to know that two offices with different names, and indeed, different numbers on the CG organizational chart (CG-5453 and CG-545) were purportedly the same office, and subsequently no way of knowing that we would not be receiving a final response from the Office of Investigation and Casualty Analysis. To clarify the matter, Ms. Patterson said that she would send a final response to CCR stating that the office has no documents responsive to our request.

Rather than receiving a response from the Office of Investigation and Casualty Analysis, however, on March 29, 2011, CCR received a letter signed by D. Patterson dated March 23, 2011 from the FOIA and Data Administration Division – the same subcomponent whose search CCR challenged in the September 13, 2011 Appeal, and the same division which responded in December 2010 – stating that they were “unable to locate or identify any responsive records.” See FOIA and Data Admin 2011 letter, Exhibit K. This letter set forth that a search using the same terms as had been identified in the CG Final Response eight months earlier had been conducted by Ms Thelma Flood within the Marine Information for Safety and Law Enforcement database. This letter indicated that we have the right to appeal within 60 days.

In an effort to clarify the status of any outstanding subdivision referrals, the previously filed appeal, and the contours of a global appeal in light of the complex subcomponent referral history, at the suggestion of Ms. Thelma Flood, CCR called Ms. Amanda Akerson on March 30, 2011 and left her a detailed voicemail requesting that she call Ms. Gallagher. On March 31, 2011 a second call to Ms. Akerson was successful. Ms. Akerson transferred Ms. Gallagher to Gaston Brewer, and Ms Gallagher discussed filing a global appeal to all subcomponent and Coast Guard responses (or lack thereof). Mr. Brewer advised Ms Gallagher to file a global appeal, as set forth herein.

Accordingly, pursuant to the Freedom of Information Act, 5 U.S.C. § 552(a)(6), CCR hereby appeals the Coast Guard’s determination, including the responses from the subcomponents from which it has heard (Office of Counterterrorism and Defense Operations, including the National Defense Strategy Division; Office of International Affairs; Office of Law Enforcement; FOIA and Data Administration Division)⁴ as well as from those that it has not received a response (National Defense Strategy Division (CG-5321), Prevention Policy Directorate (CG-54), and the National Vessel Documentation Center; the Office of Investigation and Casualty Analysis (CG-545)) that Coast Guard does not have any responsive records to its Request.

The Coast Guard Has Failed to Demonstrate the Adequacy of its Search.

Contrary to its assertions otherwise, the Coast Guard cannot be reasonably deemed to have performed an adequate search and has not demonstrated that “all files likely to contain responsive materials . . . were searched,” *Oglesby v. Dep’t of Army*, 920 F.2d 57, 68 (D.C. Cir.

⁴ CCR does not seek to appeal the determination made in the Office of Auxiliary Response.

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1990). As an initial matter, at least four subcomponents that CCR identified as likely having responsive records have not responded to the Request: the National Defense Strategy Division (CG-5321), Prevention Policy Directorate (CG-54), the National Vessel Documentation Center, and the Office of Investigation and Casualty Analysis (CG-545). Moreover, in light of the request for information about a U.S.-registered vessel in international waters, about the fate of U.S. passengers in an area where the United States has a presence and a policy, and taking into account the Coast Guard's mission includes the registration of vessels, defense readiness and law enforcement, that it has participated in international missions, and is integrated with Department of Defense planning and operations, it seems improbable that none of the subcomponents which have responded, as well as those which have not responded, would not have *any* responsive documents.

Of those searches which were conducted, there are numerous concerns with the nature and adequacy of the search. For example, the Office of Counterterrorism Response, *supra*, states that Lt. Michael Trotochaud "conducted a comprehensive electronic search of files" responsive to our request of September 13, 2010, and that that process included using such search terms as "block" "blockade" "casualty" "Challenger I" flotilla" "Gaza" "IDF" "injury" "Israel" "Israeli" "Mavi Marmara" "May 31, 2010" "mayday" "military" and "NATO." Similarly, the Data Admin 2010 Response, *supra*, states that Mr. Rodney Levy of the FOIA and Data Administration Division "conducted a comprehensive search of files" within the Division, using the following search terms: "Gaza", "flotilla", "Israel", the vessels CHALLENGER or 'MAVI MARMARA, "military", "mayday", "injury", and "casualty" of the "files", and that "no responsive records were located or identified." The search words these subcomponents of the Coast Guard used were not clearly exhaustive. There is also no indication whether these words were used alone or together or what date(s) were used for the search. Significantly, neither of these responses states that *no* responsive documents for any of these words were returned, which is inconceivable given the general nature of many of those terms. Instead, both the Office of Counterterrorism and Defense Operations and the FOIA and Date Administration Division assert that their searches yielded no records *responsive to our request*. However, neither response specified the criteria that both Lt. Michael Trotochaud and Mr. Rodney Levy relied upon to determine that the documents yielded from their respective searches were unresponsive to the Request.

The Coast Guard has the duty to demonstrate that it exercised all reasonable efforts to ensure that the agency included what was requested in the search conducted. *See Amnesty Int'l USA v. CIA*, No. 07 Civ. 5435, 2008 U.S. Dist. LEXIS 47882 at *37 (S.D.N.Y. June 19, 2008) (citing authorities). CCR "reasonably described" the information we sought in the Request, and the Coast Guard did not seek clarification about the nature or scope of the Request. Agencies may not "read the request so strictly that the requester is denied information the agency well knows exists in its files, albeit in a different form from that anticipated by the requester." *Id.* (quoting *Hemenway v. Hughes*, 601 F. Supp. 1002, 1005 (D.D.C. 1985)). .

The Office of Law Enforcement Response, *supra*, and the Office of International Affairs Response, *supra*, failed to include any search terms used to locate documents responsive to our

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request, raising questions about the adequacy and efficiency of both searches. The Office of Law Enforcement Response notified CCR that the Office had “interviewed knowledgeable personnel assigned to various divisions within the Office,” and “searched the files and databases of the various divisions within the Office of Law Enforcement” including the Drug & Migrant Interdiction; LMR & MRS Enforcement; MHS, General LE & Policy Standards; and Plans, Analysis, & Budget., but that “[a]fter making this extensive search effort”, “[a]ll searches resulted in negative findings.” Absent in this response is any additional information regarding the types of questions used in interviews with personnel or the exact keywords used to search the various databases. The Office of International Affairs stated in its response that “Lieutenant Commander Nell Ero, Regional Advisor for European Command, searched any and all records to and from the Israeli government regarding [our] request” and “was unable to locate or identify any responsive records.” The Response failed to identify the keywords that were used in the search or provide any additional information on the adequacy of the efforts of the Office of International Affairs to fulfill the Request, which, as described elsewhere herein, was in no way limited to records “to and from the Israeli government.”

The Office of International Affairs Response is also problematic because of the narrow way in which it defined the search: “any and all records to and from the Israeli government” regarding our Request. The Office of International Affairs Response provides no explanation of why it conducted such a narrow and limited search; the Request provided no basis for drawing such narrow parameters for the search and was not limited simply to communications to and from the government of Israel. For example, the Request sought information about U.S. policy and actions towards the blockade of Gaza and towards flotillas headed to Gaza; sought communications with NATO and other foreign government; and sought information about the U.S.-registered vessel, the *Challenger I*. See Ex. A.

The Freedom of Information Act requires that each agency search for all relevant records described in our Request, which may be found within the agency as a whole. Accordingly, the search did not fulfill the most basic requirements for an adequate search as the searches were not of a nature and scope that could be “reasonably calculated to uncover all relevant documents.” *Weisberg v. Dep’t of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983).

Furthermore, the information that the Coast Guard subcomponents have provided about the search processes contains insufficient detail that would allow CCR to discern whether an adequate search has been conducted and not enough information to enable CCR to challenge the procedures that were used. *Nation Magazine v. U.S. Customs Serv.*, 71 F.3d 885, 890, 892 (D.C. Cir. 1995) (holding that the agency had not provided sufficient information “to allow [] review of the adequacy of [its] search); *Weisberg v. Dep’t of Justice*, 627 F.2d 365, 371 (D.C. Cir. 1980) (requiring a reflection of a systematic approach to document location, and providing specific enough information to enable the requester to challenge the procedures used.) Each of the subcomponents provided limited information about the search process itself. For example, the

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Responses do not provide information about whether the search was conducted electronically or by hand and no indication regarding how the agency would find responsive records not in the most likely case files. The language used in relation to the use of search terms is also problematic, in that the letters fail to state whether no documents were found containing any of those terms, or whether some unknown review process was employed to determine the relevance of documents containing the search terms. The Coast Guard subcomponents must provide information about what, if any, systematic approach to locating the documents requested was used. *Weisberg v. Dep't of Justice*, 627 F.2d 365, 371 (D.C. Cir. 1980)

While an agency's search for records must be reasonable, we recognize that it does not have to be perfect. *Amnesty Int'l USA v. C.I.A.*, No. 07 Civ. 5435, 2008 U.S. Dist. LEXIS 47882, at *27 (quoting *Garcia v. Dep't of Justice*, 181 F. Supp. 2d 356, 368 (S.D.N.Y. 2002)). What is important is whether "the search was reasonably calculated to discover the requested documents, not whether it actually uncovered every document extant . . ." *Grand Cent. P'ship, Inc. v. Cuomo*, 166 F.3d 473, 489 (2d Cir. 1999). Reasonableness is looked at within the context of each particular request. See *Davis v. U.S. Dep't of Justice*, 460 F.3d 92, 103 (D.C. Cir. 2006); *Weisberg v. U.S. Dep't of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984). The agency must set forth in an affidavit why a search of other some record systems, but not others, would lead to the discovery of responsive documents. See *Oglesby v. U.S. Dep't of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). *Amnesty International et al. v. CIA et al.*, 2010 U.S. Dist. LEXIS 78659 at 11, August 2, 2010. There are numerous factors which call into serious doubt the reasonableness of the searches conducted; the fact that not a single document has been recovered that is responsive to a FOIA request that involved a U.S. flagged vessel, an international incident that involved U.S. citizens – including the killing of one U.S. citizen (Furkan Doğan), and that implicated the actions and policies a key U.S. ally, as well as other international partners is not a "reasonable" result of an exhaustive and adequate FOIA search.

* * *

In closing, CCR requests that you make an adequate and reasonable search for the records we requested. The searches conducted were incomplete and even appear designed to be incomplete, and the process and results are inadequately described. The Coast Guard must conduct a reasonable search for all responsive documents. Requesters note that many government officials involved in classification determinations have been increasingly concerned over the past few years about the over-classification of information that results in less public accountability for government conduct.⁵ Accordingly, we demand that your office engage in an

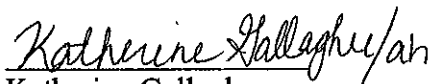
⁵ The over-classification of documents was an issue cited by the 9/11 Commission in its final report as one factor impairing the efficient and effective sharing of information with the American public. See The 9/11 Commission Report, Final Report of the National Commission on Terrorist Attacks Upon the United States, 417 ("Current security requirements nurture overclassification and excessive compartmentation of information among agencies"); see also Memorandum from Lawrence J. Halloran to Members of the

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adequate and diligent effort to properly designate information, to disclose all responsive documents not properly subject to a FOIA exemption, and to comply with your obligations to provide segregable information when necessary.

We request a response to this appeal with twenty (20) working days.

Sincerely,



Katherine Gallagher
Senior Staff Attorney
Center for Constitutional Rights
666 Broadway, 6th Floor
New York, NY 10012
Phone: (212) 614-6455

Subcommittee on National Security, Emerging Threats, and International Relations, *Briefing Memorandum for the hearing, Emerging Threats: Overclassification and Pseudo-classification, scheduled for Wednesday, March 2, 1:00 p.m., 2154 Rayburn House Office Building, Feb. 24, 2005* (noting that the Information and Security Oversight Office's 2003 Report to the President found that "many senior officials will candidly acknowledge that the government classifies too much information, although oftentimes the observation is made with respect to the activities of agencies other than their own").

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EXHIBIT A

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June 30, 2010

By Email: EFOIA@uscg.mil

Donald G. Taylor
United States Coast Guard
HQ USCG Commandant, CG-611
2100 2nd Street, S.W.
Washington, D.C. 20593-7101

Re: Freedom of Information Act Request

Dear Mr. Taylor:

The Center for Constitution Rights (CCR) ("Requester") makes this request for information regarding the May 31, 2010 Israeli military operation that occurred in international waters in the Mediterranean Sea involving a six-boat flotilla headed to Gaza with humanitarian supplies, including the U.S.-registered "*Challenger I*" and the Comoros-registered "*Mavi Marmara*," which was forcefully intercepted by the Israel Defense Forces, resulting in the death of 9 passengers on board the *Mavi Marmara*, including one U.S. citizen, and the injury of many more,¹ pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. Sec. 552 *et seq.*, and U.S. Department of Homeland Security FOIA Regulations, 6 C.F.R. Part 5.

Specifically, CCR seeks all records, regardless of format, medium, or physical characteristics, and including electronic records and information, audiotapes, videotapes and photographs, that reflect, relate or refer to:

- (1) Any and all records since January 1, 2010 that relate to and reflect any and all plans, reports, documents, discussions, meetings, or other communications, whether in person, by phone, mail, instant message, email, or any other method, that mention, refer or relate to any vessels or a flotilla of boats destined for Gaza in May 2010,

¹ For more information on the attack on the May 31, 2010 attack on the flotilla, see, e.g., "Deaths as Israeli forces storm Gaza aid ship," BBC News, May 31, 2010, available at: http://news.bbc.co.uk/2/hi/middle_east/10195838.stm; J. Zacharia, "Israeli troops raid aid flotilla headed for Gaza, killing nine" Washington Post, June 1, 2010, available at: "Security Council Condemns Acts Resulting in Civilian Deaths During Israeli Operation," Security Council, SC/9940, May 31, 2010, available at: <http://www.un.org/News/Press/docs/2010/sc9940.doc.htm>.

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including the U.S.-flagged *Challenger I*. This request includes, but is not limited to records reflecting communications with inter-governmental organizations, such as the North Atlantic Treaty Organization (NATO), foreign governments, including the Government of Israel, and any communications with other agencies, departments or divisions of the United States, including but not limited to any communications which relate to possible, planned, or executed actions by the U.S. government in the Mediterranean Sea in response to Israel's military operations at sea;

This request also includes but is not limited to:

- (2) Any and all records reflecting communications, in any format, with the Israel Defense Forces, or any other division, department or representative of the Government of Israel, prior to, on, or after May 31, 2010 in relation to the U.S.-registered *Challenger I*, including any requests, notices or indications from the Israeli government, including by and through the IDF, of its intentions to block, board or otherwise redirect the U.S.-registered vessel to a destination other than its intended destination of Gaza, and any responses to such requests, notices or indications of actions by the Israeli government;
- (3) Any and all records reflecting communications, in any format, with the Israel Defense Forces, or any other division, department or representative of the Government of Israel, prior to, on, or after May 31, 2010 in relation to vessels included in the flotilla of boats destined to Gaza in May 2010, other than the U.S.-registered *Challenger I*, including any requests, notices or indications from the Israeli government, including by and through the IDF, of its intentions to block, board or otherwise redirect any vessel to a destination other than its intended destination of Gaza, and any responses to such requests, notices or indications of actions by the Israeli government;
- (4) Any and all records reflecting communications in any format, with the Israel Defense Forces, or another other division, department or representative of the Government of Israel, on or after May 31, 2010, in relation to the actions that occurred on board each of the six boats of the flotilla, including the U.S.-registered "*Challenger I*" and the "*Mavi Marmara*," including but not limited to information regarding the status of U.S. and non-U.S. passengers, including the injured and the dead, while on board the vessels or in Israel, including in detention or medical facilities or other facilities, following the interception of the flotilla by Israel;
- (5) Any and all records reflecting communications in any format, with the Israel Defense Forces, or another other division, department or representative of the Government of Israel, on or after May 31, 2010 in relation to whereabouts, condition and status of the *Challenger I*, including the property on board that vessel and/or belonging to the passengers on board that vessel, and its return;

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- (6) Any and all records reflecting communications in any format, with the Israel Defense Forces, or another other division, department or representative of the Government of Israel, on or after May 31, 2010 in relation to whereabouts, condition and status of vessels included in the flotilla of boats destined to Gaza in May 2010, other than the U.S.-registered *Challenger I*, including the property on board each vessel and/or belonging to the passengers on board that vessel, and its return;
- (7) Any and all records reflecting communications, including but not limited to the transmission or exchange of instructions, guidelines, policy statements or standard operation procedures, in any format, with the Israel Defense Forces, or another other division, department or representative of the Government of Israel, on or after May 31, 2010 in relation to the preservation and safeguarding of any and all possible evidence or materials seized by or in the possession of Israel from, related to or relevant to the incident, including but not limited to computers, cameras, cell phones, SIM cards, personal devices, computer disks or memory chips, hard drives or other such devices, so as to ensure that evidence has not been destroyed, tampered with, altered or otherwise rendered suspect or unusable in any and all subsequent investigatory proceedings, including but not limited to criminal, civil or administrative proceedings; and
- (8) Any and all records, including but not limited to plans, reports, communications, instructions and documents since at least June 1, 2007 that relate to U.S. actions, policies, procedures or guidelines in relation to interception, inspection, safe-passage or any other action or response to vessels in the Mediterranean Sea that have as their destination Gaza, including but not limited to vessels undertaking humanitarian missions in response to the Israeli blockade of Gaza.

Please search for responsive records regardless of format, medium, or physical characteristics. Where possible, please produce records electronically, in PDF or TIF format on a CD-ROM. We seeks records of any kind, including electronic records, audiotapes, videotapes, photographs, including satellite imagery where available, and back-up tapes. Our request includes any telephone messages, voice mail messages, daily agenda and calendars, information about scheduled meetings and/or discussions, whether in-person or over the telephone or via video-conference, agendas for those meetings and/or discussions, participants included in those meetings and/or discussions, minutes of any such meetings and/or discussions, the topics discussed at those meetings and/or discussions, email regarding meetings and/or discussions, email, facsimiles, cables or other communications sent as a result of those meetings and/or discussions, and transcripts and notes of any such meetings and/or discussions to the extent they relate to the aforementioned requested information.

centerforconstitutionalrights

on the front lines for social justice

The Requester

The Center for Constitutional Rights ("CCR") is a not-for-profit, public interest, legal, and public education organization that engages in litigation, public advocacy, and the production of publications in the fields of civil and international human rights. CCR's diverse dockets include litigation and advocacy related to human rights in times of armed conflict or occupation, as well as the protection of human rights defenders. CCR is a member of human rights networks nationally and internationally, and provides legal support to human rights defenders and movements. One of CCR's primary activities is the publication of newsletters, know-your-rights handbooks, legal analysis of current international law issues, and other similar materials for public dissemination. These and other materials are available through CCR's Development, Communications, and Education & Outreach Departments. CCR operates a website, www.ccrjustice.org, which addresses the issues on which the Center works. The website includes material on topical civil and human rights issues and material concerning CCR's work. All of this material is freely available to the public. In addition, CCR regularly issues press releases and operates a listserv of over 50,000 members and issues "action alerts" that notify supporters and the general public about developments and operations pertaining to CCR's work. CCR staff members often serve as sources for journalist and media outlets, including on international human rights.

Fee Waiver

CCR qualifies as a "representative[] of the news media" and the requested records are not sought for commercial use. Accordingly, we request a waiver of fees on the grounds that disclosure of the requested records is in the public interest and because disclosure "is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester[s]." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 6 C.F.R. § 5.11(k) (records furnished without charge if the information is in the public interest, and disclosure is not in the commercial interest of institution). *See, e.g., McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

The Requesters have a proven track-record of compiling and disseminating information to the public about government functions and activities, including the government's record and position on international human rights and policy matters, and plans to disseminate any information disclosed as a result of this FOIA request through the channels described above. The Requesters have undertaken this work in the public interest and not for any private commercial interest. Similarly, the primary purpose of this FOIA request is to obtain information to further the public's understanding of the U.S. government's role in, and response, to an international incident which involved U.S. citizens, U.S. property, including a vessel registered in accordance with international regulations and entitled to certain protections under domestic and international

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law, and has involved the United States in formulating an international response to both the May 31, 2010 attack on the flotilla and the blockade of Gaza. As such, the subject of this request concerns the operations of the federal government and expenditures, and the disclosures will likely contribute to a better understanding of relevant government procedures by CCR and the general public in a significant way.

The public has an interest in knowing about the manner in which the federal government prepared for, and responded to, information regarding a possible attack on the flotilla destined for Gaza in May 2010. The public further has an interest in knowing what steps the United States took, and continues to take, in securing the rights and protections of U.S. citizens, and their property vis-à-vis a foreign military, and what steps the United States took to ensure that civilians of all nationalities engaged in stated humanitarian missions are protected from attack, in accordance with domestic policies and laws, and international humanitarian law.

The public further has an interest in knowing what the United States policy was, and is, in relation to the blockade of Gaza, including in relation to the list of prohibited goods including but not limited to spices, toys and candy that do not have a military purpose, and the delivery of humanitarian assistance to the civilian population of Gaza.

As stated above, the Requesters have no commercial interest in this matter. The Requesters will make any information that they receive as a result of this FOIA request available to the public, including the press, at no cost. Disclosure in this case therefore meets the statutory criteria, and a fee waiver would fulfill Congress' legislative intent in amending FOIA. *See Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers of noncommercial requesters.'").

Alternatively, we request a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) ("[F]ees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by . . . a representative of the news media."). CCR is an "entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." *National Security Archive v. Department of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). Publishing and disseminating information are some of our primary activities. As a "representative of the news media," we fit within this statutory and regulatory mandate. Therefore, fees associated with the processing of this Request should be limited accordingly.

Expedited Processing

Expedited processing of this request is required because there is a "compelling need" for the information. 5 U.S.C. § 552(a)(6)(E)(i)(D). A "compelling need" is established when there exists an "urgency to inform the public concerning actual or alleged Federal Government

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on the front lines for social justice

activity," when the requester is a "person primarily engaged in disseminating information," 6 C.F.R. § 5.5(d)(ii).

There is an urgent need to inform the public of the policies, procedures, guidelines, action, responses or instructions given by the federal government to agencies, departments or divisions, about preparation, participation or reaction to attacks on U.S.- registered boats in international waters, to vessels with U.S. citizens onboard, or to vessels with civilians, including but not limited to civilians transporting humanitarian supplies. This request is urgent in that U.S. citizens or U.S.-registered vessels must know the support, protection, reactions and any actions or inactions they can expect from the United States government in the event that they are subject to attack, detention or deportation.

Further, in light of pending international investigations, whether criminal, civil or disciplinary in nature, and in light of the U.S. position, involvement or assistance in relation to such an investigation,² there is an urgent need to inform the public of the policies, procedures, requests, demands or any other responses, actions or inactions, the United States has made to the government of Israel to safeguard evidence gathered in relation to the May 31, 2010 attack on the flotilla, including but not limited to the preservation of property in its original form seized by the government of Israel including but not limited to computers, cameras, cell phones, personal devices that have memory chips, hard drives or other such devices, and to ensure that evidence has not been destroyed, tampered with, altered or otherwise rendered suspect or unusable in subsequent investigatory proceedings. In light of the announced Israeli investigation and the commencement of work by that investigation commission,³ this matter is urgent.

The Requester certifies that the above information is true and correct to the best of the Requesters' knowledge. See 6 C.F.R. § 5.5(d)(3).

Conclusion

If this Request is denied in whole or in part, CCR ask that the United States Coast Guard justify all deletions by reference to specific exemptions of FOIA. The Requester expects the Coast Guard to release all segregable portions of otherwise exempt material, and reserves the right to appeal a decision to withhold any records or to deny the within application for expedited processing and waiver of fees.

² Statement by the President of the Security Council, S/PRST/2010/9, June 1, 2009, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/382/79/PDF/N1038279.pdf?OpenElement> (calling for "a prompt, impartial, credible and transparent investigation conforming to international standards").

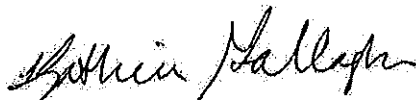
³ See, "Statement by the Press Secretary on Israel's investigation into the flotilla incident," The White House, Office of the Press Secretary, June 13, 2010 available at: <http://www.whitehouse.gov/the-press-office/2010/06/13/statement-press-secretary-israels-investigation-flotilla-incident>; I. Lemberg, "Israel opens official probe into deadly flotilla raid," CNN, June 28, 2010 available at: <http://www.cnn.com/2010/WORLD/meast/06/28/israel.raid.commission/index.html>

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If you have any questions regarding the processing of this request, please contact me at (212) 614-6455. Also, if CCR's request for a fee waiver is not granted in full, please contact me immediately upon making such determination. Please furnish all applicable Records to: Katherine Gallagher, Staff Attorney, Center for Constitutional Rights, 666 Broadway, 7th Floor, New York, N.Y. 10012.

Thank you for your prompt attention to this matter.

Sincerely,



Katherine Gallagher
Staff Attorney
Center for Constitutional Rights
666 Broadway, 6th Floor
New York, NY 10012
Phone: (212)614-6455

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on the front lines for social justice

EXHIBIT B

U.S. Department of
Homeland Security

United States
Coast Guard



Commandant
United States Coast Guard

2100 Second Street, S.W. Stop 7581
Washington, DC 20593-7581
Staff Symbol: CG-5453
Phone: (202) 372-1282
Fax: (202) 372-1922
Email: Dawn.Patterson@uscg.mil

5720
FOIA 10-2771
July 19, 2010

Ms. Katherine Gallagher
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012-2399

Dear Ms. Gallagher:

This letter is the final response to your June 30, 2010 Freedom of Information Act (FOIA) request addressed to the U.S. Coast Guard (USCG). You requested information regarding the May 31, 2010 Israeli military operation that occurred in the Mediterranean Sea involving a six-boat flotilla. You requested any and all records since January 1, 2010 that related to and reflect any and all plans, reports, documents, etc. that mention or relate to any vessels or a flotilla of boats destined for Gaza in May 2010. Your request includes but is not limited to any and all records reflecting communications in any format with the Israel Defense Forces, or any other division, department or representative of the Government of Israel prior to, on or after May 31, 2010 in relation to the U.S. registered vessel CHALLENGER I or any vessel in the flotilla. Your request was received in this office on July 13, 2010.

We conducted a comprehensive search of files within the FOIA and Data Administration Division (CG-5453) for records that would be responsive to your request. Unfortunately, we were unable to locate or identify any responsive records. We searched for any references to "Gaza", "flotilla", "Israel", the vessels CHALLENGER or MAVI MARMARA, "military", "mayday", "injury" or "casualty". This search was conducted on July 15, 2010 by Ms. Dawn Patterson, Chief, FOIA and Data Administration Division.

While an adequate search was conducted, you have the right to appeal this determination that no records exist within the Data Administration Division that would be responsive to your request. Should you wish to do so, you must send your appeal and a copy of this letter, within 60 days of the date of this letter, to:

COMMANDANT (CG-611)
US COAST GUARD
ATTN: FOIA/PA OFFICER
2100 2ND ST SW STOP 7101
WASHINGTON DC 20593-7101

5720
FOIA 10-2771

Following the procedures outlined in the DHS FOIA regulations at 6 CFR § 5.9. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. In this instance, because the cost is below the \$14 minimum, there is no charge.

If you need to contact our office concerning this request, please contact Ms. Dawn Patterson at the email address of phone number above.

Sincerely,



D. PATTERSON
Chief, Data Administration Division
U.S. Coast Guard
By direction

(CG-5453)

D

STOP 7581

C 20593-7581



US OFFICIAL MAIL

\$300 Penalty /
For Private Use

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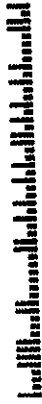
\$00.440

07/27/2010

Mailed From: 20743

US POSTAGE

MS. KATHERINE GALLAGHER
CENTER FOR CONSTITUTIONAL RIGHTS
666 BROADWAY, 7TH FLOOR
NEW YORK, NY 10012-2399



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on the front lines for social justice

EXHIBIT C

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on the front lines for social justice

September 13, 2010

Commandant (CG-611)
US Coast Guard
ATTN: FOIA/PA Officer
2100 2nd St SW STOP 7101
Washington DC 20593-7101

Re: **FREEDOM OF INFORMATION ACT APPEAL – Case No. 10-2771**

Dear FOIA Officer,

On June 30, 2010, the Center for Constitutional Rights (“CCR”) filed a request for information under the Freedom of Information Act (“FOIA”) *inter alia* “seeking all records, regardless of format, medium, or physical characteristics, and including electronic records and information, audiotapes, videotapes and photographs, that reflect, relate or refer to... the May 31, 2010 Israeli military operation that occurred in international waters in the Mediterranean Sea involving a six-boat flotilla headed to Gaza with humanitarian supplies, including the U.S.-registered ‘Challenger I’ and the Comoros-registered ‘Mavi Marmara,’ which was forcefully intercepted by the Israeli Defense Forces, resulting in the death of 9 passengers on board the *Mavi Marmara* including one U.S. citizen and the injury of many more.” See Exhibit A. (“Request”).

In a letter dated July 19, 2010, and post-marked July 27, 2010, the Coast Guard issued a response, stating that Ms. Dawn Patterson, Chief, FOIA and Data Administration Division, had “searched for any references to ‘Gaza’, ‘flotilla’, ‘Israel’, the vessels ‘CHALLENGER’ or ‘MAVI MARMARA’, ‘military’, ‘mayday’, ‘injury’ or ‘casualty,’” but was unable to locate or identify any responsive records. The Coast Guard termed this a “final response” claiming that it had conducted “an adequate search.” See Exhibit B. (“CG-Response”).

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552(a)(6), CCR hereby appeals the Coast Guard’s determination that Coast Guard does not have any responsive records to its Request.

The Coast Guard Has Failed to Demonstrate the Adequacy of its Search.

Contrary to its assertions otherwise, the Coast Guard cannot be reasonably deemed to have performed an adequate search and has not demonstrated that “all files likely to contain responsive materials . . . were searched,” *Oglesby v. Dep’t of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). As an initial matter, the CG Response indicates that only the “FOIA and Data

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Administration Division (CG-5453)" was searched for records responsive to our Request. As the organization overview of the Coast Guard demonstrates, this division is but one of numerous divisions of the Coast Guard, and apparently all other divisions were not searched for responsive records. In light of the request for information about a U.S.-registered vessel in international waters, about the fate of U.S. passengers in an area where the United States has a presence and a policy, and taking into account the Coast Guard's mission includes the registration of vessels, defense readiness and law enforcement, that it has participated in international missions, and is integrated with Department of Defense planning and operations, the following offices, for example, would appear to possibly include records receptive to the Request: Intelligence and Criminal Investigations; Office of International Affairs and Foreign Policy; Office of Law Enforcement (CG-531); Office of Counterterrorism & Defense Operations (CG-532) including the National Defense Strategy Division (CG-5321); Prevention Policy Directorate (CG-54); and the National Vessel Documentation Center. The CG Response provides no explanation of why it conducted such a narrow and limited search; the Request provided no basis for drawing such narrow parameters for the search. The Freedom of Information Act requires that each agency search for all relevant records described in our Request, which may be found within the agency as a whole. Accordingly, the search did not fulfill the most basic requirements for an adequate search as this search was not one that could be "reasonably calculated to uncover all relevant documents." *Weisberg v. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983).

Additionally, the Coast Guard has the duty to demonstrate that it exercised all reasonable efforts to ensure that the agency included what was requested in the search conducted. See *Amnesty Int'l USA v. CIA*, No. 07 Civ. 5435; 2008 U.S. Dist. LEXIS 47882 at *37 (S.D.N.Y. June 19, 2008) (citing authorities). CCR "reasonably described" the information we sought in the Request, and the Coast Guard did not seek clarification about the nature or scope of the Request. Agencies may not "read the request so strictly that the requester is denied information the agency well knows exists in its files, albeit in a different form from that anticipated by the requester." *Id.* (quoting *Hemerway v. Hughes*, 601 F. Supp. 1002, 1005 (D.D.C. 1985)). The search words the Coast Guard used were not clearly exhaustive. It only used nine specific search terms, and failed to use other words relevant to the Request, such as "block" "blockade" "NATO" or "Israeli" "IDF" or the date in question, all important items mentioned in the Request. There is also no indication whether these words were used alone or together or what date(s) were used for the search. According to the letter the Coast Guard also failed to use the correct name of the U.S. registered boat, using "Challenger" instead of "Challenger I." Indeed, that a vessel registered by the Coast Guard – the *Challenger I* – was not responsive to the search conducted demonstrates the narrowness and insufficiency of the search.

Furthermore, the information that the Coast Guard has provided about the search processes contains neither meaningful detail that would allow CCR to discern whether an adequate search has been conducted nor enough information to enable CCR to challenge the procedures that were used. *Nation Magazine v. U.S. Customs Serv.*, 71 F.3d 885, 890, 892 (D.C. Cir. 1995) (holding that the agency had not provided sufficient information "to allow [] review of the adequacy of [its] search"); *Weisberg v. Dep't of Justice*, 627 F.2d 365, 371 (D.C. Cir. 1980)

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(requiring a reflection of a systematic approach to document location, and providing specific enough information to enable the requester to challenge the procedures used.) The Coast Guard provided limited information about the search process itself. For example, it provided no information about whether the search was conducted electronically or by hand and no indication regarding how the agency would find responsive records not in the most likely case files. Ms. Patterson's letter also does not indicate if there was any systematic approach to locating the documents requested. *Weisberg v. Dep't of Justice*, 627 F.2d 365, 371 (D.C. Cir. 1980)

While an agency's search for records must be reasonable, we recognize that it does not have to be perfect. *Amnesty Int'l USA v. C.I.A.*, No. 07 Civ. 5435, 2008 U.S. Dist. LEXIS 47882, at *27 (quoting *Garcia v. Dep't of Justice*, 181 F.Supp. 2d 356, 368 (S.D.N.Y. 2002)). What is important is whether "the search was reasonably calculated to discover the requested documents, not whether it actually uncovered every document extant . . ." *Grand Cent. P'ship, Inc. v. Cuomo*, 166 F.3d 473, 489 (2d Cir. 1999). Reasonableness is looked at within the context of each particular request. See *Davis v. U.S. Dep't of Justice*, 460 F.3d 92, 103 (D.C. Cir. 2006); *Weisberg v. U.S. Dep't of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984). The agency must set forth in an affidavit why a search of other some record systems, but not others, would lead to the discovery of responsive documents. See *Oglesby v. U.S. Dep't of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). *Amnesty International et al. v. CIA et al.*, 2010 U.S. Dist. LEXIS 78659 at 11, August 2, 2010. Ms. Patterson's letter, the CG Response, only notes that the FOIA and Data Administration Division files were checked. From this response, it is unclear whether the Coast Guard made any determination about whether there are more appropriate records systems or other record systems aside from this Division that could have been searched. Our review of the agency's structure clearly suggests that there are.

* * *

In closing, CCR requests that you make an adequate and reasonable search for the records we requested. The searches conducted were incomplete and even appear designed to be incomplete, and the process and results are inadequately described. The Coast Guard must conduct a reasonable search for all responsive documents. Requesters note that many government officials involved in classification determinations have been increasingly concerned over the past few years about the over-classification of information that results in less public accountability for government conduct.¹ Accordingly, we demand that your office engage in an

¹ The over-classification of documents was an issue cited by the 9/11 Commission in its final report as one factor impairing the efficient and effective sharing of information with the American public. See The 9/11 Commission Report, Final Report of the National Commission on Terrorist Attacks Upon the United States, 417 ("Current security requirements nurture overclassification and excessive compartmentation of information among agencies"); see also Memorandum from Lawrence J. Halloran to Members of the Subcommittee on National Security, Emerging Threats, and International Relations, *Briefing Memorandum for the hearing, Emerging Threats: Overclassification and Pseudo-classification, scheduled for Wednesday, March 2, 1:00 p.m., 2154 Rayburn House Office Building, Feb. 24, 2005*

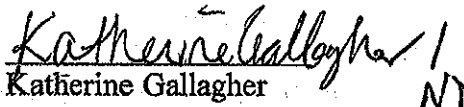
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adequate and diligent effort to properly designate information, to disclose all responsive documents not properly subject to a FOIA exemption, and to comply with your obligations to provide segregable information when necessary.

We request a response to this appeal with twenty (20) working days.

Sincerely,


Katherine Gallagher ND
Senior Staff Attorney
Center for Constitutional Rights
666 Broadway, 6th Floor
New York, NY 10012
Phone: (212) 614-6455

(noting that the Information and Security Oversight Office's 2003 Report to the President found that "many senior officials will candidly acknowledge that the government classifies too much information, although oftentimes the observation is made with respect to the activities of agencies other than their own").

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EXHIBIT D

U.S. Department of
Homeland Security

United States
Coast Guard



Commandant
United States Coast Guard

2100 2ND ST SW STOP 7101
WASHINGTON DC 20593-7101
Staff Symbol: CG-611
Phone: (202) 475-3519
Fax: (202) 475-3929

5720
FOIA 2010-2771

Ms. Katherine Gallagher
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012

NOV 15 2010

Dear Ms. Gallagher:

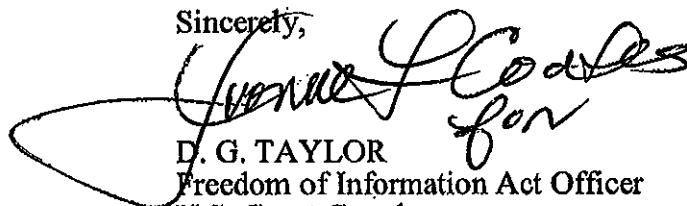
This is in response to your Freedom of Information Act (FOIA) letter of September 13, 2010, in which you appealed the "no records" determination of your June 30, 2010 request for information regarding the May 31, 2010 Israeli military operation that occurred in international waters in the Mediterranean Sea.

Your request has been forwarded to the FOIA Coordinator of the Assistant Commandant for Marine, Safety, Security, and Stewardship (CG-5) for a subsequent/additional search for responsive records and direct response to you. CG-5 will respond to you under new FOIA number 2010-0530.

If you wish to communicate with us concerning your FOIA request, please refer to Control Number 2010-0530 and address your correspondence to:

COMMANDANT (CG-5453)
US COAST GUARD
ATTN FOIA COORDINATOR
2100 2ND ST SW STOP 7581
WASHINGTON DC 20593-7581

Sincerely,


D. G. TAYLOR
Freedom of Information Act Officer
U.S. Coast Guard
By direction

Copy: CG-5453

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EXHIBIT E

U.S. Department of
Homeland Security

United States
Coast Guard



Commandant
United States Coast Guard

2100 Second Street, S.W.
Washington, DC 20593-0001
Staff Symbol: CG-5453
Phone: (202) 372-1284
Fax: (202) 372-1922
Email: Thelma.R.Flood@uscg.mil

5720
FOIA 2011-0530
December 3, 2010

Mr. Katherine Gallagher
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012-2399

Dear Ms. Gallagher:

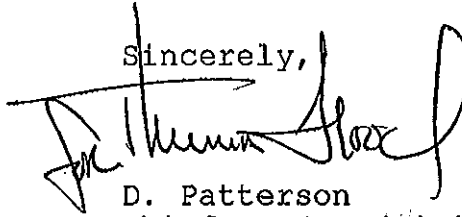
This letter is in response to your Freedom of Information Act (FOIA) request of September 13, 2010, for copies regarding the May 31, 2010 Israeli military operation that occurred in the Mediterranean Sea involving a six boat flotilla. You requested any and all records since January 1, 2010 that related to and reflect any and all plans, reports, documents, etc.. that mention or relate to any vessels or a flotilla of boats destined for Gaza in May 2010. Your request includes but is not limited to any and all records reflecting communications in any format with the Israel Defense Forces, or any other division, department or representative of the Government of Israel prior to, on or after May 31, 2010 in relation to the U.S. registered vessel CHALLENGER I or any vessel in the flotilla.

The information you requested requires a coordinated response between several of our Coast Guard offices. They will respond directly to you concerning your request.

We are providing a copy of your request to Commandant (CG-5453) the Office of Investigation and Casualty Analysis, for questions please contact Ms. Dawn Patterson at (202) 372-1282, Commandant (CG-531) the Office of Law Enforcement, for questions please contact Ms. Zsatique Ferrell at (202) 372-2167, Commandant (CG-532), the Office of Counterterrorism & Defense Operations, for questions please contact LT Michael Trotochaud at (202) 372-2026, Commandant (CG-542) the Office of Auxiliary and Boating Safety, for questions please contact Ms. Susan Tomczuk at (202) 372-1103

and Director of International Affairs and Foreign Policy, for questions please contact Ms. Yvette Novak at (202) 372-4450.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Patterson". The signature is stylized with a large, sweeping initial "D" and a long, horizontal stroke extending to the right.

D. Patterson
Chief, Data Administration Division
U.S. Coast Guard
By direction

Copy: CG-DCO Directorate FOIA Coordinator
COMDT (CG-611)

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on the front lines for social justice

EXHIBIT F

From: Susan.M.Tomczuk@uscg.mil [mailto:Susan.M.Tomczuk@uscg.mil]
Sent: Monday, December 06, 2010 11:35 AM
To: Katherine Gallagher
Cc: Flood, Thelma; Kerlin, Donald
Subject: FOIA 11-0530 response

Dear Ms. Gallagher:

This email is a final response to your 30 June 2010 Freedom of Information Act (FOIA) request addressed to the U.S. Coast Guard (USCG) and given by Coast Guard ID 11-0530. Your FOIA was distributed to a number of offices within the Coast Guard. The Office of Auxiliary and Boating Safety received your request for documentation relating to a 31 May 2010 Israeli military operation on 6 December 2010.

The Office of Auxiliary and Boating Safety oversees efforts to reduce recreational boating accidents, deaths and injuries on the waterways of the United States of America. To my knowledge, the Office does not have records relating to communication with Israel Defense Forces, the involvement of the Challenger I in the described events, or guidance for vessels transiting in the Mediterranean Sea. These subjects are outside the Office's purview.

You have the right to appeal this determination that no records exist within the Office of Auxiliary and Boating Safety that would be responsive to your request. Should you wish to do so, you must send your appeal and a copy of this letter, within 60 days of the date of this letter, to:

COMMANDANT (CG-611)
US COAST GUARD
ATTN: FOIA/PA OFFICER
2100 2ND ST SW STOP 7101
WASHINGTON DC 20593-7101

Following the procedures outlined in the DHS FOIA regulations at 6 C.F.R. § 5.9. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. In this instance, because the cost is below the \$14 minimum, there is no charge.

If you would like to contact our office concerning this request, please call 202-372-1103 and refer to FOIA 11-0530.

Sincerely,
Susan Tomczuk
Statistician
Office of Auxiliary and Boating Safety

Phone: 202-372-1103
Fax: 202-372-1908
Email: Susan.M.Tomczuk@uscg.mil

Mailing address:

centerforconstitutionalrights
on the front lines for social justice

EXHIBIT G

U.S. Department of
Homeland Security

United States
Coast Guard



Commandant
United States Coast Guard

2100 Second Street, S.W. STOP 7363
Washington, DC 20593-7363
Staff Symbol: CG-532
Phone: (202) 372-2026
Fax: (202) 372-2911
Michael.r.trotochaud@uscg.mil

5720
FOIA 11-0530
December 7, 2010

Katherine Gallagher
Staff Attorney
Center for Constitutional Rights
666 Broadway, 6th Floor
New York, NY 10012

Dear Ms. Gallagher:

This letter is in response to your September 13, 2010 Freedom of Information Act (FOIA) request addressed to the U.S. Coast Guard (USCG). You requested copies of any and all records, regardless of format, regarding the May 31, 2010 Israeli military operation that occurred in the Mediterranean Sea involving a six-boat flotilla. You requested any and all records since January 1, 2010 that related to and reflect any and all plans, reports, documents, etc. that mention or relate to any vessels or a flotilla of boats destined for Gaza in May 2010. Your request includes, but is not limited to, any and all records reflecting communications in any format with the Israel Defense Forces, or any other division, department or representative of the Government of Israel prior to, on or after May 31, 2010 in relation to the U.S. registered vessel CHALLENGER I or any vessel in the flotilla. Your request was received in this office on December 3, 2010.

We conducted a comprehensive electronic search of files within the Office of Counterterrorism and Defense Operations (CG-532) for records that would be responsive to your request. The search looked for any references to "block", "blockade", "casualty", "Challenger I", "flotilla", "Gaza", "IDF", "injury", "Israel", "Israeli", "Mavi Marmara", "May 31, 2010", "mayday", "military", and "NATO". This search was conducted on December 6, 2010 by LT Michael Trotochaud, Office of Counterterrorism and Defense Operations.

While an adequate search was conducted, you have the right to appeal this determination that no records exist within the Office of Counterterrorism and Defense Operations that would be responsive to your request. Should you wish to do so, you must send your appeal and a copy of this letter, within 60 days of the date of this letter, to:

COMMANDANT (CG-611)
US COAST GUARD
ATTN: FOIA/PA OFFICER
2100 2ND ST SW STOP 7101
WASHINGTON DC 20593-7101

Following the procedures outlined in the DHS FOIA regulations at 6 CFR § 5.9. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. In this instance, because the cost is below the \$14 minimum, there is no charge.

If you need to contact our office concerning this request, please contact LT Michael Trotochaud at the email address or telephone number above.

Sincerely,



S. M. Rogers, CDR
Chief, Office of Counterterrorism and Defense Operations
U.S. Coast Guard
Acting

centerforconstitutionalrights
on the front lines for social justice

EXHIBIT H

U.S. Department of
Homeland Security

United States
Coast Guard



Commandant
United States Coast Guard

2100 Second Street, S.W.
Washington, DC 20593-0001
Staff Symbol: CG-5311
Phone: (202) 372-2187
Fax: (202) 372-2913

5720
CG FOIA 11-0530
14 DEC 2010

Ms. Katherine Gallagher
Senior Staff Attorney
Center for Constitutional Rights
666 Broadway, 6th Floor
New York, NY 10012

Dear Ms. Gallagher:

This is in response to your Freedom of Information Act (FOIA) request dated June 30, 2010, submitted to the U.S. Coast Guard. We received your request in the Office of Law Enforcement (CG-531) on December 7, 2010. You are seeking records relating to the May 31, 2010 Israeli military operation that occurred in the Mediterranean Sea involving a six boat flotilla. You requested any and all plans, reports, documents, etc., that mention or relate to any vessels or a flotilla of boats destined for Gaza in May 2010. Your request includes but is not limited to any and all records reflecting communications in any format with the Israel Defense Forces, or any other division, department or representative of the Government of Israel prior to, on or after May 31, 2010 in relation to the U.S. registered vessel CHALLENGER I or any vessel in the flotilla. Your request has been assigned FOIA number 11-0530. Please refer to this number in any future correspondence regarding this request.

Please be aware that we are not required to create new releasable records or documents in response to a request. With the information provided, we are unable to locate records responsive to your request. We have interviewed knowledgeable personnel assigned to various divisions within the Office of Law Enforcement (CG-531). We also searched the files and databases of the various divisions within the Office of Law Enforcement. The divisions that were searched are as follows:

Drug & Migrant Interdiction
LMR & MRS Enforcement
MHS, General LE & Policy Standards
Plans, Analysis & Budget

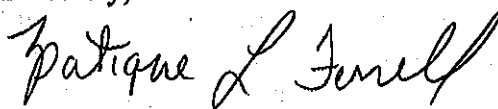
We have conducted a thorough search of the Office of Law Enforcement's files, databases, and records including the Marine Information and Law Enforcement (MISLE) database. In addition, the legal advisor for the Office of Law Enforcement, Lt Hernaez was interviewed. All searches resulted in negative findings.

We have searched all locations in which we would reasonably expect to find the records such as the ones you seek. We are unaware of any other places in which responsive records relating to your request are likely to be found within the Office of Law Enforcement (CG-531). After making this extensive search effort, I regret that we are unable to satisfy your request.

This response is not a denial of access to information. However, I must inform you that you have the right to appeal this "No Records" determination, in writing, within thirty days of receipt of this letter. You may appeal by writing to: Commandant (CG-611) U.S. Coast Guard, 2100 Second Street, S.W., Washington, DC 20592-0001 within 30 days from the date of this letter. Clearly mark the envelope "Freedom of Information Act Appeal."

If you require additional assistance, please contact FOIA/PA Specialist Zsatique Ferrell at (202)372-2167.

Sincerely,



ZSATIQUE L. FERRELL

U.S. Coast Guard

Freedom of Information Specialist, Office of Law Enforcement
by Direction of the Commandant

centerforconstitutionalrights
on the front lines for social justice

EXHIBIT I

U.S. Department of
Homeland Security

United States
Coast Guard



Commandant
United States Coast Guard

2100 Second Street, SW STOP 7471
Washington, DC 20593-7471
Staff Symbol CG-DCC-1
Phone: (202) 372-4450
Fax: (202) 372-4986

5720
FOIA 2011-0530
DEC 21 2010

Ms. Katherine Gallagher
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012-2399

Dear Ms. Gallagher:

This letter is the final response to your September 13, 2010 Freedom of Information Act (FOIA) request addressed to the U.S. Coast Guard (USCG). You requested copies regarding the May 31, 2010 Israeli Military operation that occurred in the Mediterranean Sea involving a six-boat flotilla. Your request was received in this office on December 3, 2010.

We conducted a comprehensive search of files, database, and email archives within the United States Coast Guard Office of International Affairs for records that would be responsive to your request. On December 8, 2010, Lieutenant Commander Nell Ero, Regional Advisor for European Command, searched any and all records to and from the Israeli government regarding your request. Unfortunately, we were unable to locate or identify any responsive records.

While an adequate search was conducted, you have the right to appeal this determination that no records exist within the Office of International Affairs that would be responsive to your request. Should you wish to do so, you must send your appeal and a copy of this letter, within 60 days of the date of this letter, to:

COMMANDANT (CG-611)
US COAST GUARD
ATTN: FOIA/PA OFFICER
2100 2ND ST SW STOP 7101
WASHINGTON DC 20593-7101

Following the procedures outlined in the DHS FOIA regulations at 6 C.F.R. § 5.9. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

If you need to contact our office concerning this request, please call 202-372-4450 and refer to FOIA #2011-0530.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas R. Hale".

THOMAS R. HALE
Captain, U. S. Coast Guard
Deputy Director of International Affairs

*** RX REPORT ***

RECEPTION OK

TX/RX NO	7787	
CONNECTION TEL		92023724965
SUBADDRESS		
CONNECTION ID		
ST. TIME	12/21 13:42	
USAGE T	00'35	
PGS.	2	
RESULT	OK	



U.S. COAST GUARD
Office of International Affairs
(CG-DCO-I)
U.S. Department of Homeland Security
2100 2nd Street, SW
ROOM 4420
WASHINGTON, DC 20593-0001

Phone: (202) 372-4453

Fax Cover Sheet

TO: CCR

FROM: US COAST GUARD

ATTN: KATHERINE GALLAGHER

TITLE: OFFICE OF INT'L AFFAIRS

PHONE: 212-614-6455

PHONE: 202-372-4450

FAX: 212-614-6499

FAX: (202) 372-4965

DATE SENT: 21 DEC 2010 TIME SENT:

1 PAGES + HEADER

SUBJECT:

URGENT FYI AS REQUESTED PLEASE REPLY

COMMENTS:

SUBMITTED IN RESPONSE TO YOUR REQUEST FOR INFORMATION (FOIA 2011-0530).

centerforconstitutionalrights
on the front lines for social justice

EXHIBIT J

U.S. Department of
Homeland Security

United States
Coast Guard



Commandant
United States Coast Guard

2100 Second Street, S.W. Stop 7581
Washington, DC 20593-7581
Staff Symbol: CG-5453
Phone: (202) 372-1282
Fax: (202) 372-1922
Email: Dawn.Patterson@uscg.mil

5720
FOIA 10-2771
11-0530
December 9, 2010

Ms. Katherine Gallagher
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012-2399

Dear Ms. Gallagher:

This letter is the final response to your June 30, 2010 and September 13, 2010 Freedom of Information Act (FOIA) request addressed to the U.S. Coast Guard (USCG). You requested information regarding the May 31, 2010 Israeli military operation that occurred in the Mediterranean Sea involving a six-boat flotilla. You requested any and all records since January 1, 2010 that related to and reflect any and all plans, reports, documents, etc. that mention or relate to any vessels or a flotilla of boats destined for Gaza in May 2010. Your request includes but is not limited to any and all records reflecting communications in any format with the Israel Defense Forces, or any other division, department or representative of the Government of Israel prior to, on or after May 31, 2010 in relation to the U.S. registered vessel CHALLENGER I or any vessel in the flotilla. Your request was received in this office on July 13, 2010.

We conducted a comprehensive search of files within the FOIA and Data Administration Division (CG-5453) for records that would be responsive to your request. Unfortunately, we were unable to locate or identify any responsive records. We searched for any references to "Gaza", "flotilla", "Israel", the vessels CHALLENGER or MAVI MARMARA, "military", "mayday", "injury" or "casualty". The search also looked at all activities in the Marine Information for Safety and Law Enforcement (MISLE) database that occurred during the month of May and by the names of the above mentioned vessels. This search was conducted on December 7, 2010 by Mr. Rodney Levy, IT Specialist.

While an adequate search was conducted, you have the right to appeal this determination that no records exist within the Data Administration Division that would be responsive to your request. Should you wish to do so, you must send your appeal and a copy of this letter, within 60 days of the date of this letter, to:

COMMANDANT (CG-611)
US COAST GUARD
ATTN: FOIA/PA OFFICER
2100 2ND ST SW STOP 7101
WASHINGTON DC 20593-7101

5720
FOIA 10-2771
11-0530

Following the procedures outlined in the DHS FOIA regulations at 6 CFR § 5.9. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. In this instance, because the cost is below the \$14 minimum, there is no charge.

If you need to contact our office concerning this request, please contact Ms. Dawn Patterson at the email address of phone number above.

Sincerely,



D. PATTERSON
Chief, Data Administration Division
U.S. Coast Guard
By direction

centerforconstitutionalrights
on the front lines for social justice

EXHIBIT K

U.S. Department of
Homeland Security

United States
Coast Guard



Commandant
United States Coast Guard

2100 Second Street, S.W. Stop 7581
Washington, DC 20593-7581
Staff Symbol: CG-5453
Phone: (202) 372-1284
Fax: (202) 372-1922
Email: Thelma.R.Flood@uscg.mil

5720
FOIA 11-0530
March 23, 2011

Ms. Katherine Gallagher
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012-2399

Dear Ms. Gallagher:

This letter is further response to your June 30, 2010 Freedom of Information Act (FOIA) request addressed to the U.S. Coast Guard (USCG). You requested information regarding the May 31, 2010 Israeli military operation that occurred in international waters in the Mediterranean Sea involving a six-boat flotilla. You also requested any and all records since January 1, 2010 that related to and reflect any and all plans, reports, documents, etc., that mention or relate to any vessels or a flotilla of boats destined for Gaza in May 2010. Your request includes but is not limited to any and all records reflecting communications in any format with the Israel Defense Forces, or any other division, department or representative of the Government of Israel prior to, on or after May 31, 2010 in relation to the U.S. registered vessel CHALLENGER I or any vessel in the flotilla. Your request was received in this office on July 13, 2010.

We conducted a comprehensive search of files within the Marine Information for Safety and Law Enforcement (MISLE) database within the FOIA and Data Administration Division (CG-5453) for records that would be responsive to your request. Unfortunately, we were unable to locate or identify any responsive records. We search for any references to "Gaza", "flotilla", "Israel", the vessels CHALLENGER or MAVI MARMARA, "military", "mayday", injury" or "casualty". This search was conducted by Ms. Thelma Flood of Commandant (CG-5453) on March 23, 2011.

While an adequate search was conducted, you have the right to appeal this determination that no records exist within the Data Administration division, MISLE database that would be responsive to your request. Should you wish to do so, you must send your appeal and a copy of this letter, within 60 days of the date of this letter, to:

COMMANDANT (CG-611)
US COAST GUARD
ATTN: FOIA/PA OFFICER
2100 2ND ST SW STOP 7101
WASHINGTON DC 20593-7101


5720
FOIA 11-0530
March 23, 2011

Following the procedures outlined in the DHS FOIA regulations at 6 CFR § 5.9. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. In this instance, because the cost is below the \$14.00 minimum, there is no charge.

If you need to contact our office concerning this request, please contact Ms. Thelma Flood at the email address or phone number above and refer to FOIA number 2011-0530.

Sincerely,

A handwritten signature in cursive script that reads "D. Patterson". The signature is written in black ink and is positioned above the typed name.

D. PATTERSON
Chief, Data Administration Division
U. S. Coast Guard
By direction