Description of document:	**National Archives and Records Administration response to FOIA request for "A copy of all FOIA requests for the Office of the Inspector General's (OIG) Report of Investigation (ROI) into the Berger matter."**
Requested date:	10-January-2007
Released date:	23-February-2007
Posted date:	03-October-2007
Date/date range of documents:	14-November-2005 – 02-February-2007
Source of document:	National Archives and Records Administration Office of the Inspector General 8601 Adelphi Road College Park, MD 20740-6001 foia@nara.gov

National Archives and Records Administration

Office of the Inspector General

8601 Adelphi Road
College Park, Maryland 20740-6001

February 23, 2007

Re: Your Freedom of Information Act (FOIA) requests dated January 10, 2007

This is in response to your FOIA requests dated January 10, 2007. Your multiple submissions request the following:

(1) A copy of all FOIA requests for the Office of Inspector General's (OIG) Report of Investigation (ROI) into the Berger matter.

(2) A copy of the "administrative tracking folder" associated with each of the above requests.

(3) Memos or notes "explaining why it took so darned long to release" the ROI.

(4) Copies of any correspondence with other agencies regarding the release of the ROI.

(5) A copy of the "closing letter and/or final report" for each investigation closed by the OIG between October 1, 2005 and January 5, 2007.

Each request is addressed below.

(1) & (2): Responsive materials are attached and include several FOIA requests for the ROI and the OIG's responses to those requests. Any responsive material contained in the OIG's FOIA files that reflects the deliberative process related to the OIG's response to FOIA requests is withheld from disclosure pursuant to exemption (b)(5) of the FOIA.

(3): The OIG maintains no material responsive to your request. For your information, prior to the release of the Berger ROI in December 2006, NARA and OIG personnel engaged in deliberations regarding the form of release of the ROI. Any material that may exist reflecting these deliberations would be subject to withholding from disclosure under the FOIA pursuant to exemption (b)(5).

(4): The OIG maintains no material responsive to this request.

(5): On January 4, 2007, the OIG provided you with a list of closed investigations during the period between October 1, 2005, and January 4, 2007. This list included 23 closed investigations. While case numbers were redacted pursuant to FOIA exemption (b)(2), a variety of information, including case type and case title were provided. This information would allow you to state with specificity any particular report you would request under the FOIA. As such, your request for "closing letter and/or final report" for each investigation closed by the OIG between October 1, 2005 and January 5, 2007 is overbroad. Any forthcoming request for a particular report will be processed accordingly.

Please Note: The National Archives' Office of General Counsel may have additional responsive material. If so, a representative from that office will respond directly to you.

While your request has been partially granted, you maintain the right to administratively appeal the denial of any material exempted pursuant to the FOIA, by writing to the Archivist, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD, 20740, within 35 calendar days of the date of this letter. If you choose to appeal, your appeal letter and its envelope should be clearly marked "Freedom of Information Act Appeal," and you should explain why you believe NARA should release the withheld information.

Thank you for contacting the National Archives and Records Administration Office of Inspector General.

Sincerely,

RW Weiland

Ross W. Weiland
Counsel to the Inspector General
National Archives & Records Administration

Enclosures

THE NEW YORK SUN

Reply Address:
814 Potrero Avenue
San Francisco, CA 94110

November 14, 2005

Mr. Ross Weiland, Counsel
Office of the Inspector General
National Archives and Records Administration
8601 Adelphi Road, Room 1300
College Park, MD 20740-6001

Via Fax No. (301) 837-3197
Re: A Freedom of Information Act Request

Dear Mr. Weiland:

This is a request for an agency record, brought pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552.

I hereby request one copy of the OIG's final report on an investigation into mishandling of classified information at a NARA facility in October 2003, during a review of documents for the September 11 commission.

I am employed full-time as a reporter for The New York Sun, a daily newspaper, and I am seeking this information in connection with news stories I am preparing on this subject. I ask that this request be considered as one from a representative of the news media, under the fee provisions of FOIA.

I ask that any fees associated with this request be waived because disclosure of the requested record will enhance public understanding of government efforts to safeguard classified information.

I would like to arrange for pick-up, e-mail or overnight delivery of the responsive records. I can be reached at (415) 695-0484 to make those arrangements, or to answer any questions about this request.

Many thanks for your assistance.

Sincerely,

Josh Gerstein

National Archives and Records Administration

Office of the Inspector General

8601 Adelphi Road
College Park, Maryland 20740-6001

January 31, 2006

Mr. Josh Gerstein
National Reporter
The New York Sun
814 Potrero Avenue
San Francisco, CA 94110

Re: Your Freedom of Information Act (FOIA) request dated November 14, 2005

Dear Mr. Gerstein:

This is in response to your FOIA request of November 14, 2005. As we discussed on the telephone, the delay in this response was the result of an ongoing investigation into the subject matter of which you requested information.

You requested "one copy of the OIG's final report on an investigation into mishandling of classified information at a NARA facility in October 2003, during a review of documents for the September 11 commission." The material responsive to your request includes this office's Report of Investigation (ROI) with 17 attached exhibits.

While the OIG's investigation is now closed, enforcement proceedings based on that investigation continue. As a result, I am compelled to deny your request in its entirety pursuant to exemption (b)(7)(A) of the FOIA. Exemption (b)(7)(A) provides that records compiled for law enforcement purposes may be withheld when release of such records could reasonably be expected to interfere with enforcement proceedings.

Please note that this exemption is temporal in nature meaning that subsequent to the conclusion of the enforcement proceedings, the material may become available pursuant to the FOIA and considering other pertinent FOIA exemptions. I will hold your request open until that time and respond accordingly.

You have the right to administratively appeal the denial of your request by writing to the Archivist, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD, 20740, within 35 calendar days of the date of this letter. If you choose to appeal, your appeal letter and its envelope should be clearly marked "Freedom of Information Act Appeal," and you should explain why you believe NARA should release the withheld information.

Thank you for contacting the Office of the Inspector General, National Archives and Records Administration.

Sincerely,

Ross W. Weiland
Counsel to the Inspector General
National Archives & Records Administration

LANDMARK
LEGAL FOUNDATION
THE RONALD REAGAN LEGAL CENTER

30TH ANNIVERSARY *A History of Success, A Legacy of Promise*

September 29, 2006

Chief, Special Access and FOIA Staff
National Archives and Records Administration
NWCTF – Room 6350
8601 Adelphi Road
College Park, MD 20740-6001

Presidential Records & FOIA Coordinator
Clinton Presidential Library
1200 President Clinton Avenue
Little Rock, AR 72201

Request for Records Pursuant to the Presidential Records Act and Freedom of Information Act.

To Whom It May Concern:

Landmark Legal Foundation ("Landmark" or "Requester") submits this Request pursuant to the Presidential Records Act ("PRA"), 44 U.S.C. § 2001, et seq. (2006) and Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 et. seq. (2006) and corresponding National Archives and Records Administration ("NARA") regulations. This request seeks release pursuant to the PRA of the 2000 National Security Council "Millennium After Action Memorandum" in all its iterations. In addition, this request seeks the release pursuant to the FOIA of records related to the illegal removal and destruction of copies of that document by former National Security Advisor Samuel R. "Sandy" Berger.

Given the urgent nature of the records sought in this request, Landmark seeks expedited processing of this PRA and FOIA request. In addition, Landmark seeks a waiver of any and all fees incurred in the processing of this request because: (1) Release of the requested material is in the public interest; and (2) Disclosure of the requested information is not in Landmark's commercial interest as Landmark is a 501(c)(3) tax-exempt non-profit organization under the Internal Revenue Code.

Background

On September 25, 2006, former President Bill Clinton stated on Fox News Sunday that:

Headquarters: 3100 Broadway ▮ Suite ▮ 1110 Kansas City, Missouri 64111 ▮ (816) 931-5559 ▮ FAX (816) 931-1115
Virginia Office: 19415 Deerfield Avenue ▮ Suite 312 ▮ Leesburg, Virginia 20176 ▮ (703) 554-6100 ▮ FAX (703)554-6119

[The 9/11 Commission] said about you and President Bush, and I quote, "The U.S. government took the threat seriously, but not in the sense of mustering anything like the kind of effort that would be gathered to confront an enemy of the first, second or even third rank."

[President] CLINTON: First of all, that's not true with us and bin Laden.

[Chris] WALLACE: Well, I'm telling you that's what the 9/11 Commission says.

CLINTON: All right. Let's look at what Richard Clarke said. Do you think Richard Clarke has a vigorous attitude about bin Laden?

WALLACE: Yes, I do.

CLINTON: You do, don't you?

WALLACE: I think he has a variety of opinions and loyalties, but yes, he has a vigorous...

CLINTON: He has a variety of opinion and loyalties now, but let's look at the facts: He worked for Ronald Reagan; he was loyal to him. He worked for George H. W. Bush; he was loyal to him. He worked for me, and he was loyal to me. He worked for President Bush; he was loyal to him.

They downgraded him and the terrorist operation.

Now, look what he said, read his book and read his factual assertions -- not opinions -- assertions. He said we took vigorous action after the African embassies. We probably nearly got bin Laden. . . .

. . . . . .

The CIA, which was run by George Tenet, that President Bush gave the Medal of Freedom to, he said, "He did a good job setting up all these counterterrorism things."

The country never had a comprehensive anti-terror operation until I came there.

Now, if you want to criticize me for one thing, you can criticize me for this: After the Cole, I had battle plans drawn to go into Afghanistan, overthrow the Taliban, and launch a full-scale attack search for bin Laden.

But we needed basing rights in Uzbekistan, which we got after 9/11.

> The CIA and the FBI refused to certify that bin Laden was responsible while I was there. They refused to certify. So that meant I would've had to send a few hundred Special Forces in in (sic) helicopters and refuel at night.
>
> Even the 9/11 Commission didn't do that. Now, the 9/11 Commission was a political document, too. All I'm asking is, anybody who wants to say I didn't do enough, you read Richard Clarke's book.
>
> . . . . . .
>
> And you've got that little smirk on your face and you think you're so clever. But I had responsibility for trying to protect this country. I tried and I failed to get bin Laden. I regret it. But I did try. And I did everything I thought I responsibly could.
>
> The entire military was against sending Special Forces in to Afghanistan and refueling by helicopter. And no one thought we could do it otherwise, because we could not get the CIA and the FBI to certify that Al Qaida was responsible while I was president.

(Exhibit 1, Fox News Sunday Transcript, September 24, 2006.)

On September 27, 2006, the Washington Post reported that the truthfulness of some of President Clinton's statements was questioned:

> [s]ome of Clinton's statements on Fox have drawn scrutiny. He said that after the bombing of the USS Cole in 2000, "I had battle plans drawn to go into Afghanistan, overthrow the Taliban and launch a full-scale attack search for bin Laden. But we needed basing rights in Uzbekistan." The Sept. 11 commission, though, found no plans for an invasion of Afghanistan or for an operation to topple the Taliban, just more limited options such as plans for attacks with cruise missiles or Special Forces. And nothing in the panel's report indicated that a lack of basing rights in Uzbekistan prevented a military response.

(Exhibit 2, "Bush and Clinton teams debate pre-9/11 efforts," Washington Post, September 27, 2006.)

Moreover, in testimony before the 9/11 Commission, former Attorney General John Ashcroft provided further evidence questioning the validity of President Clinton's statements. Ashcroft testified that:

> ... [T]he Commission should study carefully the National Security Council plan to disrupt the al Qaeda network in the U.S. that our government failed to implement fully seventeen months before September 11.

The NSC's Millennium After Action Review declares that the United States barely missed major terrorist attacks in 1999 — with luck playing a major role. Among the many vulnerabilities in homeland defenses identified, the Justice Department's surveillance and FISA operations were specifically criticized for their glaring weaknesses. It is clear from the review that actions taken in the Millennium Period should not be the operating model for the U.S. government.

In March 2000, the review warns the prior Administration of a substantial al Qaeda network and affiliated foreign terrorist presence within the U.S., capable of supporting additional terrorist attacks here.

Furthermore, fully seventeen months before the September 11 attacks, the review recommends disrupting the al Qaeda network and terrorist presence here using immigration violations, minor criminal infractions, and tougher visa and border controls.

These are the same aggressive, often criticized law enforcement tactics we have unleashed for 31 months to stop another al Qaeda attack. These are the same tough tactics we deployed to catch Ali al-Marri, who was sent here by al Qaeda on September 10, 2001, to facilitate a second wave of terrorist attacks on Americans.

Despite the warnings and the clear vulnerabilities identified by the NSC in 2000, no new disruption strategy to attack the al Qaeda network within the United States was deployed. It was ignored in the Department's five-year counterterrorism strategy.

I did not see the highly-classified review before September 11. It was not among the 30 items upon which my predecessor briefed me during the transition. It was not advocated as a disruption strategy to me during the summer threat period by the NSC staff which wrote the review more than a year earlier.

I certainly cannot say why the blueprint for security was not followed in 2000. I do know from my personal experience that those who take the kind of tough measures called for in the plan will feel the heat. I've been there; I've done that. So the sense of urgency simply may not have overcome concern about the outcry and criticism which follows such tough tactics.

(Exhibit 3, 9/11 Hearing Transcript Excerpt, http://www.washingtonpost.com/wp-dyn/articles/A9088-2004Apr13.html, See also 9/11 Commission Report, pp. 182; 352.)

The Millennium After Action Review, in its various forms, is the same document the Clinton administration's National Security Advisor, Sandy Berger, illegally removed and in part destroyed in 2004 while Berger was preparing for his and Clinton's testimony before the Commission. (Exhibit 3, "Berger will plead guilty to taking classified paper," washingtonpost.com, April 1, 2005.) The Washington Post noted at the time that:

> [T]he document, written by former National Security Advisor Richard A. Clarke, was an 'after-action review' prepared in early 2000 detailing the [Clinton] administration's actions to thwart terrorist attacks during the millennium celebration. It contained considerable discussion about the administration's awareness of the rising threat of attacks on U.S. soil. ...
>
> Berger's archives visit occurred as he was reviewing materials as a designated representative of the Clinton administration to the national commission investigating the September 11, 2001, terrorist attacks. The question of what Clinton knew and did about the emerging al Qaeda threat before leaving office in January 2001 was acutely sensitive, as suggested by Berger's determination to spend hours poring over the Clarke report before his testimony.

(Id.)

The release of the Millennium After Action Review documents to Landmark swill make a critical – and perhaps dispositive -- contribution to the question of "what Clinton knew and did about the emerging al Qaeda threat before leaving office." (Id.) Moreover, it will assist greatly in President Clinton's expressed desire that "I just want people to tell the truth [regarding the events leading up to the 9/11 attacks]." (Exhibit 4, "Clinton blasts 9/11 film, amid report of changes," www.cnn.com (September 8, 2006).) Most importantly, it will fill a big gap in the public's knowledge about events leading up to September 11, 2001.

Particularly given Mr. Clinton's repeated reference to former National Coordinator for Counterterrorism Richard A. Clarke (including Clinton's endorsement of Clarke's credibility) and his recently published book as providing an accurate picture of the Clinton administration's conduct, it is imperative that Mr. Clarke's contemporaneously prepared and noncommercial assessment be made public, as well as all iterations of the document including those that contain hand-written notations of any kind.

Moreover, release of NARA records related to Mr. Berger's illegal removal and partial destruction of the original and/copies of the Millennium After Action Review will also contribute to the public's understanding of why this public document and its contents are so important as to warrant attempted destruction. The public is entitled to fully vet the conduct of its government and the truthfulness of its officials, past and present, as it relates to the 9/11 terrorist attacks.

Records Sought

Landmark requests production of public records in any and all forms that may be in the possession or under the control of the National Archives and/or the Clinton Library, including but not limited to documents, notes, diaries, letters, memoranda, draft memoranda, files, messages, orders, agreements and/or instructions created from January

1, 1999, to the present, that were prepared, received, transmitted, collected and/or maintained by the NARA or the Clinton Library or any of their components; and which is maintained in any form including -- hard copy, electronic, computer disk, data storage tapes, microfiche, and/or microfiche, and which refer to the following:

1. **NSC Millennium After Action Review.**

Landmark requests production of documents, reportedly prepared in 1999 or 2000, by Richard A. Clarke for former President Clinton's National Security Council ("NSC") entitled "Millennium After Action Review." The records sought are referenced and described by the National Commission On Terrorist Attacks Upon The United States ("9/11 Commission") in its Report (See 9-11 Commission Report, pp. 182, 352). Moreover, the contents of the Review was discussed at length by former Attorney General John Ashcroft in his public testimony before the 9/11 Commission.

Requester understands that this document is subject to the Presidential Records Act and is therefore subject to disclosure provisions specified in 44 U.S.C. § 2204(a), which provides for withholding certain national defense related documents for no more than 12 years after a president leaves office. Requester seeks any and all portions of the Millennium After Action Review that can be "reasonably segregable" without jeopardizing the interests of national defense or foreign policy. 44 U.S.C. § 2204(b)(3). Moreover, if NARA and/or the Clinton Presidential Library conclude that it will withhold these documents in whole or in part, Landmark requests that the Archivist conduct a systematic declassification review pursuant to Executive Order 12,958, as amended.

Information may be declassified in exceptional cases where the need to protect such information may be outweighed by the public's interest in the disclosure of such information. Exec. Order No. 12,958 as amended, § 3.1(b). Given the enormous public interest in knowing whether its government took appropriate steps to protect the American people from terrorist attacks and the highly charged and contradictory statements of the nation's most senior elected and appointed officials – both current and former -- it is imperative that the Millennium After Action Review documents be released in an appropriately redacted form, i.e., with as much information being made public as possible. Particularly in light of the recent declassification of significant portions of the most recent top secret National Intelligence Assessment, release of a six-year-old Millennium After Action Review cannot legitimately be refused on general national security grounds. (Please note, information may not be classified (or retain classified status) in order to prevent embarrassment to a person, organization, or agency. Exec. Order No. 12,958 as amended, § 1.7(a)(2).)

2. **NARA Records Related To Former National Security Adviser Sandy Berger's Actions Between September 2 and October 2, 2003.**

Former National Security Advisor Sandy Berger pled guilty to illegally removing several copies (and to destroying some of the pilfered copies) of the Millennium After Action Review from the National Archives between September 2, 2003 and October 2,

2003. (See Exhibit 3.) Landmark seeks production of any all records in possession of the National Archives and/or the Clinton Library that relate to Mr. Berger's conduct and/or to the records Mr. Berger reviewed, removed tampered with and/or otherwise destroyed, as well as all records relating to Mr. Berger's plea agreement, including those related to any negotiations leading to the plea agreement.

Requester Is Entitled To Expedited Processing.

Expedited processing is warranted where there is "an urgent need to inform the public about an actual or alleged Federal government activity" that is "made by a person primarily engaged in disseminating information to the public." 36 C.F.R. § 1250.28 (2006). As demonstrated below, the instant request meets each of these standards.

Requester is a tax exempt, 501(c)(3) national public interest law firm engaging in litigation, legal research, public policy research, and public education. Landmark publishes newsletters and other materials that are disseminated widely to the public and to other media. Landmark also distributes information through a wide variety of resources including its website, www.landmarklegal.org, through commentaries published widely in a variety or print and electronic media, and through regular national and local media appearances.

The Millennium After Action Review relates to "Federal Government activity" in that it is a report prepared in 2000 by the National Security Council that identifies terrorists and posits recommendations for responding to terrorist threats. The conduct of officials in the Clinton Administration during the late 1990s in responding to terrorist threats is a timely and pressing news story. Former President Clinton's recent published and televised declarations related to his official conduct and the steps his Administration took to prevent attacks have been contradicted by current government officials. Landmark seeks release of this record in order to provide a more complete picture of this hotly contested issue that is of ongoing public debate. The public has a right to know what its government has been and is doing to protect America from terrorist attack. As public policy decisions are being made based on this ongoing debate, it is imperative that the requested records be released immediately.

Requester Is Entitled To A Fee Waiver.

Requester is entitled to a fee waiver because disclosure of the requested record is in the public interest and is "likely to contribute significantly to public understanding of the operations and activities of the government." 36 C.F.R. § 1250.58(a)(1) (2006). Moreover, Requester is a nonprofit, 501(c)(3) public interest law firm and education organization working to increase public awareness of the government's efforts to thwart terrorist attacks in the United States. The records are not sought for commercial use, and as a representative of the news media, Landmark qualifies for a fee waiver under NARA regulations.

NARA considers the following criteria when determining whether to waive or reduce fees pursuant to a request:

(1) How do the records pertain to the operations and activities of the Federal Government?

(2) Will release reveal any meaningful information about Federal Government activities that is not already publicly known?

(3) Will disclosure to [Requester] advance the understanding of the general public on the issue?

(4) Do you [Requester] have expertise in or a thorough understanding of these records?

(5) Will [Requester] be able to disseminate this information to a broad spectrum of the public?

(6) Will disclosure lead to a significantly greater understanding of the Government by the public?

36 C.F.R. 1250.60(a)(1-6) (2006).

Regarding the first factor, disclosure of the Millennium After Action Review will allow Landmark and the public to determine the recommendations that former President Clinton's NSC made to secure the United States from terrorist attack. The NSC is an executive body that, in part, advises the President on issues pertaining to national security and the Federal Government's response to such issues. Thus, the Millennium After Action Review pertains directly to the operations of the Federal Government.

The release of the requested material will allow Landmark and the public at large, to obtain a more accurate picture of the threat level that terrorist organizations posed to the United States and the Federal Government's assessment of such threats as of the year 2000. Former Attorney General Ashcroft referenced the document in his testimony before the 9/11 Commission and stated "the review warns the prior Administration of a substantial al Qaeda network and affiliated foreign terrorist presence within the U.S." Additionally, former Attorney General Ashcroft stated "the review recommends disrupting the al Qaeda network and terrorist presence [in the U.S.] using immigration violations, minor criminal infractions, and tougher visa and border controls." Presumably, the release of the Review will provide additional insight along the lines described by former Attorney General Ashcroft.

Disclosure of the Millennium After Action Review will advance the public's understanding of the efforts that the Clinton Administration undertook to prevent terrorist attacks. As stated above, as recently as September 24, 2006, former President Clinton

discussed his efforts to disrupt the al Qaeda terrorist organization during his presidency. Release of the Review will provide a complete picture to this timely issue.

Landmark is a national public interest law firm with a 30-year history of extensive experience and expertise in interpreting and disseminating information obtained through public record disclosure requests. Most recently, Landmark obtained, through a Freedom of Information Act ("FOIA") request, extensive records documenting incidents perpetrated on U.S. military personnel at Guantanamo Bay by detained enemy combatants. Landmark analyzed this data and provided it to media outlets leading to a national news story that was the subject of extensive news article by the Associated Press. Landmark has also received and disseminated information obtained through the FOIA process from numerous other federal agencies, including the Internal Revenue Service, the Environmental Protection Agency, the Fish & Wildlife Service, among others. Moreover, a federal court has ruled definitely that Landmark qualifies for fee waiver status.

Upon receipt of the requested material, Landmark will promptly analyze and disseminate the requested records (and if appropriate, submit additional disclosure requests). Landmark will take the following steps to ensure that vast segments of the public have access to the records. These steps ensure that a release of requested records will contribute to the public understanding of the operations and activities of the Federal Government:

i. Landmark will post the information on its web site (www.landmarklegal.org), which makes the information available to potentially millions of citizens;

ii. Landmark will include the information in its newsletter, which is distributed to thousands of individuals and entities, including those involved in public policy and members of the public;

iii. Landmark will disseminate the information via its "blast fax" technology, which reaches hundreds of media outlets, reporters, editorial writers, commentators and policy makers;

iv. Landmark will consult with numerous journalists at such major news outlets as the AP for the dissemination of the information;

v. Landmark will disseminate the information to key members of Congress either by letter or fax, and its lawyers will be available to discuss the information with members of Congress either in person or in public testimony; and

vi. Landmark's staff will discuss the information on radio and television programs, in particular Landmark's president's daily nationally syndicated radio program. In addition, Landmark staff

members will use the information to author op-ed articles and submit them for publication with major news organizations, a practice that Landmark has successfully employed in the past.

Further, Landmark is entitled to a fee waiver as a member of the news media. National Security Archive v. Department of Defense, 880 F.2d 1331 (D.C. Cir. 1989) (a representative of the news media is defined as an entity that "gathers information of potential interest to a segment of the public" and "uses its editorial skills to turn raw materials into distinct work, and distributes that work to an audience." Id. at 1338.) In addition to the points above, Landmark's president writes a regular column for a major Internet website (nationalreview.com) and is a nationally syndicated talk show host.

Finally, disclosure of the requested material is not in Landmark's commercial interest. Landmark's request does not involve any commercial interest of any kind. Landmark is a 501(c)(3) non-profit law firm which does not engage in, and does not have any, commercial activities or interests.

In the event a fee waiver is not granted, Landmark agrees in advance to pay up to $2,500.00 in search and copy charges related to this request. **Moreover, in order to expedite release of requested records Landmark will advance up to $2,500.00 (one-thousand dollars) pending a substantive fee waiver request determination.**

Conclusion

If this request is denied in whole or part, Landmark requests that the National Archives and/or the Clinton Presidential Library justify all redactions by reference to specific provisions of the Presidential Records Act and/or the Freedom of Information Act. Landmark expects the National Archives and/or the Clinton Presidential Library to release all segregable portions of otherwise exempt material and reserves the right to appeal a decision to withhold any information or to deny the within applications for expedited processing and waiver of fees, including resort to litigation in federal court.

Thank you for your consideration of this request. Please direct all future responses to me at Landmark's Leesburg office, 19415 Deerfield Avenue, Suite 312, Leesburg, Virginia 20176.

Under penalty of perjury, I hereby affirm that the foregoing is true and correct to the best of my knowledge and belief.

Sincerely,

Mark R. Levin
President

Attachments

National Archives and Records Administration

Office of the Inspector General

8601 Adelphi Road
College Park, Maryland 20740-6001

October 13, 2006

Mark R. Levin
President
Landmark Legal Foundation
The Ronald Reagan Legal Center
19415 Deerfield Avenue, Suite 312
Leesburg, Virginia 20176

Re: Your Freedom of Information Act (FOIA) request dated September 29, 2006

Dear Mr. Levin:

This letter memorializes that portion of our phone conversation of today regarding material responsive to your request in possession of the Office of Inspector General (OIG) at the National Archives and Records Administration (NARA).

Pursuant to the conversation between you, me, and NARA's FOIA/Privacy Act Officer, Ramona Branch-Oliver, the OIG will interpret that portion of your request for records "that relate to Mr. Bergers's conduct and/or to the records Mr. Berger reviewed, removed, tampered with and/or otherwise destroyed . . . " as a request for the OIG's Report of Investigation (ROI) into the Berger matter.

Processing the ROI to ensure compliance with the FOIA and Privacy Act is underway and OIG will respond to your request with all due diligence.

Please note that this correspondence speaks only to that portion of your request to which OIG maintains responsive material. You, of course, maintain the ability to broaden or narrow your request as you deem appropriate.

Thank you for contacting the National Archives and Records Administration Office of Inspector General.

Sincerely,

Ross W. Weiland
Counsel to the Inspector General
National Archives & Records Administration

National Archives and Records Administration

Office of the Inspector General

8601 Adelphi Road
College Park, Maryland 20740-6001

December 20, 2006

Mark R. Levin
Landmark Legal Foundation
19415 Deerfield Avenue, Suite 312
Leesburg, VA 20176

Re: Your FOIA request dated September 29, 2006

Dear Mr. Levin,

This is in response to your letter of September 29th requesting "records related to the illegal removal and destruction" of documents from the National Archives by Samuel Berger. The Office of Inspector General's Report of Investigation related to the theft of documents from the National Archives by Samuel Berger is responsive to your request.

I have reviewed our report and a redacted version is provided.

Redactions to the report fall under exemptions (b)(2), (b)(5), (b)(6), and (b)(7)(C) to the FOIA. Redactions pursuant to exemption (b)(2) were made under two categories; "high (b)(2)" and "low (b)(2)." High (b)(2) redactions included sensitive internal agency information, the disclosure of which would risk circumvention of an agency regulation or statute and increase NARA's potential vulnerability to some form of outside interference or harm. Low (b)(2) redactions included matters related solely to the internal practices of an agency and are of no significant public interest. Redactions made pursuant to exemption (b)(5) included pre-decisional, deliberative communications subject to a decision-making process. Redactions pursuant to exemption (b)(6) and (b)(7)(C) included information that constituted a clearly unwarranted invasion of personal privacy and/or records compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy.

While your request has been granted substantively, you have the right to administratively appeal the denial of the redacted material by writing to the Archivist, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD, 20740, within 35 calendar days of the date of this letter. If you choose to appeal, your appeal letter and its envelope should be clearly marked "Freedom of Information Act Appeal," and you should explain why you believe NARA should release the withheld information.

Thank you for contacting the National Archives and Records Administration Office of Inspector General.

Sincerely,

Ross W. Weiland
Counsel to the Inspector General
National Archives & Records Administration

Enclosure

The New York Times
WASHINGTON BUREAU
1627 I STREET, N.W.
WASHINGTON, D.C. 20006
(202) 862-0300

October 12, 2006

Ross Weiland
Counsel to the Inspector General
National Archives
Fax: 301-837-3197
Phone: 301-837-2941

FOIA REQUEST
Fee benefit requested
Expedited review requested

Dear Mr. Weiland,

Thank you for your assistance on the phone today.

Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request access to and copies of an investigative report prepared by the Inspector General's office regarding the removal of classified documents from the National Archives by former National Security Adviser Sandy Berger.

I would like to receive the information on paper or in electronic form (for example, by email).

I agree to pay reasonable duplication fees for the processing of this request in an amount not to exceed $1,000. However, please notify me prior to your incurring any expenses in excess of that amount.

As a representative of the news media I am only required to pay for the direct cost of duplication after the first 100 pages. Through this request, I am gathering information on that is of current interest to the public because This information is being sought for dissemination to the general public.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

As I am making this request as a journalist and this information is of timely value, I would appreciate your communicating with me by telephone, rather than by mail, if you have questions regarding this request. My direct telephone number is: 202-746-0389.

Please provide expedited review of this request, which concerns a matter of urgency. As a journalist, I am primarily engaged in disseminating information. The public has an urgent need for information about this report because of calls in recent days for a Congressional investigation

of the removal of the documents by Mr. Berger. I certify that my statements concerning the need for expedited review are true and correct to the best of my knowledge and belief.

I look forward to your reply within 20 business days, as the statute requires.

Thank you for your assistance.

Sincerely,

Philip Shenon

National Archives and Records Administration

Office of the Inspector General

8601 Adelphi Road
College Park, Maryland 20740-6001

December 20, 2006

Philip Shenon
The New York Times
1627 I Street, N.W.
Washington, D.C. 20006

Re: Your FOIA request dated October 12, 2006

Dear Mr. Shenon,

This is in response to your request for a copy of the Office of Inspector General's Report of Investigation related to the theft of documents from the National Archives by Samuel Berger.

I have reviewed the material responsive to your request and a redacted report is provided.

Redactions to the report fall under exemptions (b)(2), (b)(5), (b)(6), and (b)(7)(C) to the FOIA. Redactions pursuant to exemption (b)(2) were made under two categories; "high (b)(2)" and "low (b)(2)." High (b)(2) redactions included sensitive internal agency information, the disclosure of which would risk circumvention of an agency regulation or statute and increase NARA's potential vulnerability to some form of outside interference or harm. Low (b)(2) redactions included matters related solely to the internal practices of the agency and are of no significant public interest. Redactions made pursuant to exemption (b)(5) included pre-decisional, deliberative communications subject to a decision-making process. Redactions pursuant to exemption (b)(6) and (b)(7)(C) included information that constituted a clearly unwarranted invasion of personal privacy and/or records compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy.

While your request has been granted substantively, you have the right to administratively appeal the denial of the redacted material by writing to the Archivist, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD, 20740, within 35 calendar days of the date of this letter. If you choose to appeal, your appeal letter and its envelope should be clearly marked "Freedom of Information Act Appeal," and you should explain why you believe NARA should release the withheld information.

Thank you for contacting the National Archives and Records Administration Office of Inspector General.

Sincerely,

Ross W. Weiland
Counsel to the Inspector General
National Archives & Records Administration

Enclosure

National Archives and Records Administration

Office of the Inspector General

8601 Adelphi Road
College Park, Maryland 20740-6001

December 20, 2006

Eric Lichtblau
The New York Times
1627 I Street, N.W., Suite 700
Washington, D.C. 20006

Re: Your FOIA request

Dear Mr. Lichtblau,

This is in response to your request for a copy of the Office of Inspector General's Report of Investigation related to the theft of documents from the National Archives by Samuel Berger.

I have reviewed the material responsive to your request and a redacted report is provided.

Redactions to the report fall under exemptions (b)(2), (b)(5), (b)(6), and (b)(7)(C) to the FOIA. Redactions pursuant to exemption (b)(2) were made under two categories; "high (b)(2)" and "low (b)(2)." High (b)(2) redactions included sensitive internal agency information, the disclosure of which would risk circumvention of an agency regulation or statute and increase NARA's potential vulnerability to some form of outside interference or harm. Low (b)(2) redactions included matters related solely to the internal practices of an agency and are of no significant public interest. Redactions made pursuant to exemption (b)(5) included pre-decisional, deliberative communications subject to a decision-making process. Redactions pursuant to exemption (b)(6) and (b)(7)(C) included information that constituted a clearly unwarranted invasion of personal privacy and/or records compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy.

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Thank you for contacting the National Archives and Records Administration Office of Inspector General.

Sincerely,

Ross W. Weiland
Counsel to the Inspector General
National Archives & Records Administration

Enclosure

THE NEW YORK SUN

Reply Address:
814 Potrero Avenue
San Francisco, CA 94110

October 18, 2006

Mr. Ross Weiland, Esq.
Counsel
Office of the Inspector General
National Archives and Records Administration
8601 Adelphi Road, Room 1300
College Park, MD 20740-6001

Via Fax No. (301) 837-3197
Re: A Freedom of Information Act Request

Dear Mr. Weiland:

This is a request for an agency record, brought pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552.

I hereby request one copy of the OIG's final report on an investigation into mishandling of classified information at a NARA facility in October 2003, during a review of documents for the September 11 commission.

I also request all records of any enforcement or disciplinary proceedings conducted in connection with the above-referenced incident, including but not limited to the proceeding that led to the rejection of my November 2005 FOIA request on the same subject. If your office cannot provide these records, I ask that you refer this portion of the request to the appropriate office for action.

I am employed full-time as a reporter for The New York Sun, a daily newspaper, and I am seeking this information in connection with news stories I am preparing on this subject. I ask that this request be considered as one from a representative of the news media, under the fee provisions of FOIA.

I ask that any fees associated with this request be waived because disclosure of the requested record will enhance public understanding of government efforts to safeguard classified information.

I would like to arrange for pick-up, e-mail or overnight delivery of the responsive records. I can be reached at (415) 695-0484 to make those arrangements, or to answer any questions about this request.

Many thanks for your assistance.

Sincerely,

Josh Gerstein

National Archives and Records Administration

Office of the Inspector General

8601 Adelphi Road
College Park, Maryland 20740-6001

December 20, 2006

Josh Gerstein
The New York Sun
814 Potrero Avenue
San Francisco, CA 94110

Re: Your FOIA request dated October 18, 2006

Dear Mr. Gerstein,

This is in response to your letter of October 18 requesting "OIG's final report on an investigation into mishandling of classified information at a NARA facility in October 2003." I have reviewed the responsive report and a redacted version is provided.

Redactions to the report fall under exemptions (b)(2), (b)(5), (b)(6), and (b)(7)(C) to the FOIA. Redactions pursuant to exemption (b)(2) were made under two categories; "high (b)(2)" and "low (b)(2)." High (b)(2) redactions included sensitive internal agency information, the disclosure of which would risk circumvention of an agency regulation or statute and increase NARA's potential vulnerability to some form of outside interference or harm. Low (b)(2) redactions included matters related solely to the internal practices of the agency and are of no significant public interest. Redactions made pursuant to exemption (b)(5) included pre-decisional, deliberative communications subject to a decision-making process. Redactions pursuant to exemption (b)(6) and (b)(7)(C) included information that constituted a clearly unwarranted invasion of personal privacy and/or records compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy.

You also requested "records of any enforcement or disciplinary proceedings conducted" in relation to our report. The Office of the Inspector General is an independent department within the National Archives. As such, we have no control or authority over records kept and maintained by the National Archives, but only those records that are generated within this office. Therefore, I have forwarded your request to Mr. Jason Baron, Office of General Counsel, who will respond to you as appropriate pursuant to the FOIA. You can contact the Mr. Baron at the following address:

The National Archives and Records Administration
Office of General Counsel, Suite 2600
8601 Adelphi Road
College Park, MD 20740-6001

While your request has been granted substantively, you have the right to administratively appeal the denial of the redacted material by writing to the Archivist, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD, 20740, within 35 calendar days of the

date of this letter. If you choose to appeal, your appeal letter and its envelope should be clearly marked "Freedom of Information Act Appeal," and you should explain why you believe NARA should release the withheld information.

Thank you for contacting the National Archives and Records Administration Office of Inspector General.

Sincerely,

Ross W. Weiland
Counsel to the Inspector General
National Archives & Records Administration

Enclosure

National Archives and Records Administration

Office of the Inspector General

8601 Adelphi Road
College Park, Maryland 20740-6001

December 20, 2006

Larry Margesak
Associated Press

Re: Your FOIA request

Dear Mr. Margesak,

This is in response to your FOIA request for the Office of Inspector General's Report of Investigation related to the theft of documents from the National Archives by Samuel Berger.

I have reviewed our report and a redacted version is provided.

Redactions to the report fall under exemptions (b)(2), (b)(5), (b)(6), and (b)(7)(C) to the FOIA. Redactions pursuant to exemption (b)(2) were made under two categories; "high (b)(2)" and "low (b)(2)." High (b)(2) redactions included sensitive internal agency information, the disclosure of which would risk circumvention of an agency regulation or statute and increase NARA's potential vulnerability to some form of outside interference or harm. Low (b)(2) redactions included matters related solely to the internal practices of an agency and are of no significant public interest. Redactions made pursuant to exemption (b)(5) included pre-decisional, deliberative communications subject to a decision-making process. Redactions pursuant to exemption (b)(6) and (b)(7)(C) included information that constituted a clearly unwarranted invasion of personal privacy and/or records compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy.

While your request has been granted substantively, you have the right to administratively appeal the denial of the redacted material by writing to the Archivist, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD, 20740, within 35 calendar days of the date of this letter. If you choose to appeal, your appeal letter and its envelope should be clearly marked "Freedom of Information Act Appeal," and you should explain why you believe NARA should release the withheld information.

Thank you for contacting the National Archives and Records Administration Office of Inspector General.

Sincerely,

Ross W. Weiland
Counsel to the Inspector General
National Archives & Records Administration

Enclosure

National Archives and Records Administration

Office of the Inspector General

8601 Adelphi Road
College Park, Maryland 20740-6001

December 20, 2006

Doug Waller
Time Magazine
555 12th Street, N.W., Suite 600
Washington, D.C. 20004

Re: Your FOIA request

Dear Mr. Waller,

This is in response to your request for a copy of the Office of Inspector General's Report of Investigation related to the theft of documents from the National Archives by Samuel Berger.

I have reviewed the material responsive to your request and a redacted report is provided.

Redactions to the report fall under exemptions (b)(2), (b)(5), (b)(6), and (b)(7)(C) to the FOIA. Redactions pursuant to exemption (b)(2) were made under two categories; "high (b)(2)" and "low (b)(2)." High (b)(2) redactions included sensitive internal agency information, the disclosure of which would risk circumvention of an agency regulation or statute and increase NARA's potential vulnerability to some form of outside interference or harm. Low (b)(2) redactions included matters related solely to the internal practices of the agency and are of no significant public interest. Redactions made pursuant to exemption (b)(5) included pre-decisional, deliberative communications subject to a decision-making process. Redactions pursuant to exemption (b)(6) and (b)(7)(C) included information that constituted a clearly unwarranted invasion of personal privacy and/or records compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy.

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Thank you for contacting the National Archives and Records Administration Office of Inspector General.

Sincerely,

Ross W. Weiland
Counsel to the Inspector General
National Archives & Records Administration

Enclosure

Room 307
475 E Hastings St
Vancouver BC
Canada V6A4L6

please send the report on Samuel

Berger's unauthorized removal of classified documents

Charles Slade
dec 27, 06

National Archives and Records Administration

Office of the Inspector General

8601 Adelphi Road
College Park, Maryland 20740-6001

February 2, 2007

Charles Slade
475 East Hastings Street, Room 307
Vancouver, BC
Canada V6A4L6

Re: Your FOIA request dated December 27, 2007

Dear Mr. Slade,

This is in response to your letter of December 27, 2007, requesting "the report on Samuel Berger's unauthorized removal of classified documents." A redacted version of the Office of Inspector General Report of Investigation is attached.

Redactions to the report fall under exemptions (b)(2), (b)(5), (b)(6), and (b)(7)(C) to the Freedom of Information Act (FOIA). Redactions pursuant to exemption (b)(2) were made under two categories; "high (b)(2)" and "low (b)(2)." High (b)(2) redactions included sensitive internal agency information, the disclosure of which would risk circumvention of an agency regulation or statute and increase NARA's potential vulnerability to some form of outside interference or harm. Low (b)(2) redactions included matters related solely to the internal practices of the agency and are of no significant public interest. Redactions made pursuant to exemption (b)(5) included pre-decisional, deliberative communications subject to a decision-making process. Redactions pursuant to exemption (b)(6) and (b)(7)(C) included information that constituted a clearly unwarranted invasion of personal privacy and/or records compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy.

While your request has been granted substantively, you have the right to administratively appeal the denial of the redacted material by writing to the Archivist, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD, 20740, within 35 calendar days of the date of this letter. If you choose to appeal, your appeal letter and its envelope should be clearly marked "Freedom of Information Act Appeal," and you should explain why you believe NARA should release the withheld information.

Thank you for contacting the National Archives and Records Administration Office of Inspector General.

Sincerely,

Ross W. Weiland
Counsel to the Inspector General
National Archives & Records Administration

Enclosure