

The James Madison Project
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27 January 2009

Delores M. Nelson
Central Intelligence Agency
Information and Privacy Coordinator
Washington, D.C. 20505

Re: FOIA Request – CIA “Airbridge” program

Dear Ms. Nelson:

This is a request on behalf of the James Madison Project (“JMP”) under the Freedom of Information Act, 5 U.S.C. § 552, *et seq.*, for copies of all Central Intelligence Agency (“CIA”) documents, including cross-references, pertaining to:

1. The 20 April 2001 shoot down of a small plane carrying Baptist missionaries by the Peruvian Air Force (“the shoot down”);
2. The Department of Justice (“DOJ”) investigation into the shoot down, concluded in 2005;
3. The CIA Inspector General’s report regarding the shoot down and the “Airbridge” program as a whole, concluded in August 2008 (“the IG report”); and
4. Any other investigations performed by other federal agencies into any of the above topics.

Enclosed please find copies of news articles from the *Washington Post* and *CQ Today* referring to the “Airbridge” program, the shoot down, the IG report, and the resulting agency investigations.

You are hereby instructed that the term “record” includes, but is not limited to, all e-mail communications to or from any individual within your office, memoranda, inter-agency communications, sound recordings, tape recordings, video or film recordings, photographs, notes, note-books, indices, jottings, message slips, letters or correspondence, telexes, telegrams, facsimile transmissions, statements, policies, manuals or binders, books, handbooks, business records, personnel records, ledgers, notices, warnings, affidavits, declarations under penalty of perjury, unsworn statements, reports, diaries or

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James Madison, 1822

calendars, regardless of whether they are hand-written, printed, typed, mechanically or electronically recorded or reproduced on any medium capable of conveying an image, such as paper, computer discs, or diskettes. Furthermore, in line with the guidance issued by the DOJ on 9 September 2008 to all federal agencies with records subject to FOIA, agency records that are currently in the possession of a U.S. Government contractor for purposes of records management remain subject to FOIA. Please ensure that your search complies with this clarification on the effect of Section 9 of the OPEN Government Act of 2007 of the definition of a “record” for purposes of FOIA. Please also consider this letter an affirmative rejection of any limitation of your search to CIA-originated records.

If you deny all or part of this request, please cite the specific exemptions you believe justify your refusal to release the information or permit the review and notify us of your appeal procedures available under the law. In excising material, please “black out” rather than “white out” or “cut out.”

We are hereby requesting a waiver of all fees in accordance with our status as a representative of the news media. JMP is a non-profit organization under the laws of the District of Columbia, has the ability to disseminate information on a wide scale, and intends to use information obtained through FOIA in original works. Stories concerning our activities have received prominent mention in many publications including, but not limited to, the *Washington Post*, *Washington Times*, *St. Petersburg Tribune*, *San Diego Union Tribune*, *European Stars & Stripes*, *Christian Science Monitor*, *U.S. News and World Report*, *Mother Jones*, and *Salon Magazine*. Our website, where much of the information received through our FOIA requests is or will be posted for all to review, can be accessed at <http://www.jamesmadisonproject.org>, and information published there has previously been used by third parties in published works. In addition, we also intend to use information obtained through FOIA in our own published opinion editorials, journal articles, and the like. JMP’s Director of FOIA Operations Kel McClanahan has already published information received through FOIA in this manner. Therefore, according to the ruling of *National Security Archive v. Department of Defense*, 800 F.2d 1381 (D.C. Cir. 1989), codified by the 2008 FOIA amendments, defining a representative of the news media as “a person or 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,” JMP should be considered a representative of the news media according to 5 U.S.C. § 552(a)(4)(A)(ii)(II). Similarly, our request for a public interest fee waiver should be granted. Most prior requests submitted by our organization have received fee waivers.

We are also asking for expedited processing. The 1996 amendments to the Freedom of Information Act permit expedited processing when a “compelling need” exists. 5 U.S.C. § 552 (a)(6)(E)(v). Specifically, “compelling need” means “with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.” *Id.* at § 552(a)(6)(E)(v)(II). The CIA has adopted internal regulations governing expedited processing and has determined that a “compelling need” is deemed to exist where the “request is made by a person primarily engaged in disseminating information and the information is relevant to a subject of public urgency concerning an actual or alleged Federal government activity.” See 32 C.F.R. § 1900.34(c)(2).

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There can be no question that the information sought would contribute to the public's understanding of government operations or activities and is in the public interest. In this case, the CIA's own Inspector General concluded that the CIA had acted unlawfully, and that the shoot down may not have been an isolated incident. Release of any documents pertaining to this program and any subsequent investigations will clearly contribute to the public's understanding of government operations or activities.

With respect to expedited processing, as explained above, JMP has been and continues to be primarily engaged in disseminating information on a wide scale and clearly falls within the scope of the statute. A "compelling need" exists due to the clear CIA misconduct already acknowledged by the CIA Inspector General, the details of which will be critically important as the Intelligence Community is being evaluated and reformed by a new administration. I certify this statement to be true and correct to the best of my knowledge and belief.

The CIA is required by law to respond to this request within 20 working days. However, the CIA is required to issue a determination on the request for expedited processing "within 10 days after the date of the request." 5 U.S.C. § 552 (a)(6)(E)(ii)(I). Therefore, the CIA's response is due on or before 6 February 2009. Failure to timely comply may result in the filing of a civil action against your agency in the United States District Court for the District of Columbia. Please note that the denial of expedited processing should not interfere with the normal processing of these requests.

We request that any documents or records produced in response to this request be provided in electronic (soft-copy) form wherever possible. Acceptable formats are .pdf, .jpg, .gif, .tif. Please provide soft-copy records by email, or on a CD if email is not feasible.

Your cooperation in this matter would be appreciated. If you wish to discuss this request, please do not hesitate to contact my Director of FOIA Operations Kel McClanahan at Kel@JamesMadisonProject.org or 301-728-5908.

Please respond to this request by email to Kel@JamesMadisonProject.org or by fax to 240-681-2189.

Sincerely,



Mark S. Zaid
Executive Director

MSZ/km

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