



**U.S. Department of Justice**  
Office of Information Policy  
*Sixth Floor*  
*441 G Street, NW*  
*Washington, DC 20530-0001*

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*Telephone: (202) 514-3642*

Emma Best  
MuckRock News  
DEPT MR 61845  
411A Highland Avenue  
Somerville, MA 02144-2516  
[61845-94220919@requests.muckrock.com](mailto:61845-94220919@requests.muckrock.com)

Re: Appeal No. DOJ-AP-2019-005855  
Request No. 1396779-001  
JNW:PJA

**VIA: Email**

Dear Emma Best:

You appealed from the fee waiver determination made by the Federal Bureau of Investigation on your Freedom of Information Act request for access to records concerning an investigation of a leak at Rand, presumably relating to Ellsberg and the Pentagon Papers.

On the basis of all of the information available to me, I have concluded that your request for a waiver of fees was properly denied. In order to obtain a public-interest fee waiver, you must meet three criteria set forth in 5 U.S.C. § 552(a)(4)(A)(iii). "Disclosure of the requested information must: (1) shed light on 'the operations or activities of the government'; (2) be 'likely to contribute significantly to public understanding' of those operations or activities; and (3) not be 'primarily in the commercial interest of the requester.'" Cause of Action v. FTC, 799 F.3d 1108, 1115 (D.C. Cir. 2015).

With regard to the second criterion for obtaining a fee waiver, I considered together "the degree to which [public] 'understanding' of government activities will be advanced" by the release of the requested information, "and the extent of the 'public' that the information is likely to reach." Cause of Action, 799 F.3d at 1116. You state that your "primary purpose is to inform about government activities by reporting on it and making the raw data available" and that "there is an obviously amount of public interest both in the material and the government's handling of it." However, you have failed to explain how providing this information will contribute significantly to public understanding of the operations and activities of the government. See 5 U.S.C. § 552(a)(4)(A)(iii). Numerous records concerning the Pentagon Papers have already been made publically available by the FBI. The re-release of FBI records already available in the public domain would not contribute to the public's understanding of this subject. Therefore, you have failed to satisfy the second criterion.

Please be advised that this Office's decision was made only after a full review of this matter. Your appeal was assigned to an attorney with this Office who thoroughly reviewed and

analyzed your appeal, your underlying request, and the actions of the FBI in response to your request.

If you are dissatisfied with my action on your appeal, the FOIA permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).

For your information, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; email at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. If you have any questions regarding the action this Office has taken on your appeal, you may contact this Office's FOIA Public Liaison for your appeal. Specifically, you may speak with the undersigned agency official by calling (202) 514-3642.

Sincerely,

1/17/2020

X 

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Matthew W. Hurd  
Acting Chief, Administrative Appeals Staff  
Signed by: MATTHEW HURD