

Joseph Durso
MuckRock News DEPT MR 99634
411A Highland Ave
Somerville, MA 02144-2516
502 298 4310
99634-67427587@requests.muckrock.com

20 December, 2020

By Fax and Courier

Judge Advocate General FOIA Appeals Office
ATTN: Freedom of Information Appeal
1322 Patterson Avenue SE, Suite 3000
Washington Navy Yard DC 20374-5066

FREEDOM OF INFORMATION APPEAL

In re FOIA request DON-NAVY-2021-001178, this is to appeal the Navy's incorrect categorization of the request as commercial.

On 7/3/2020 I sent the National Nuclear Security Administration a FOIA request by email requesting a record entitled "W93/MK7 Navy Warhead — Developing Modern Capabilities to Address Current and Future Threats" after that record was mentioned in a news story. In that email I specified I was not making the request for any commercial purpose. On 11/16/2020 I received a FOIAOnline email seemingly indicating that request had been forwarded to the Navy. On 11/24/2020 I received an email from the Navy's Strategic Systems Program office with a letter attached indicating the request had been categorized as commercial, and that fees were due. That letter was dated 11/18/2020, however the email indicated that date was an error and that I had 30 days from 11/24/2020 to proceed.

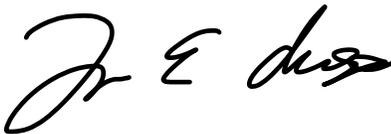
I, Joseph Durso, submitted the original request on my own behalf out of personal interest. I have no commercial, trade, or profit interest in the request or the requested records. I also do not presently claim news media, academic, or scientific requestor status, therefore, in accordance with 32 CFR 701.41(e), I should be categorized as an "All other" requester, and the request should be processed in accordance with that section.

I appeal the Navy's incorrect categorization of my requester status as commercial rather than "All other", and its failure to process the request in accordance with its regulation pertaining to "All other" requests.

I apologize for any confusion if the non-commercial nature of my request was not made clear in the original request, and I recognize this might have been miscommunicated when the request was forwarded between agencies. If in evaluating my appeal I can in some way further clarify my intentions I am happy to do so.

Thank you and stay safe.

Sincerely,

A handwritten signature in black ink, appearing to read "J E Durso". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Joseph Durso

CC: sspfoia@ssp.navy.mil

Attachments:

1. Original request
2. 11/24/2020 email from SSP FOIA Coordinator
3. Fee letter attached to 11/24/2020 email from SSP FOIA Coordinator

From nobody Thu Jul 30 01:11:03 2020
Content-Type: multipart/alternative;
boundary="====4369632204359057251=="
MIME-Version: 1.0
Subject: =?utf-8?q?Freedom_of_Information_Act_Request=3A_W93/MK7_Navy_Warhead_?=
=?utf-8?q?=E2=80=94_Developing_Modern_Capabilities_to_Address_Current_and?=
=?utf-8?q?_Future_Threats?=
From: 99634-67427587@requests.muckrock.com
To: FOIOfficer@nnsa.doe.gov
Date: Thu, 30 Jul 2020 05:11:03 -0000
Message-ID: <20200730051103.9105.36608@b1c7c45d-3c02-4d6a-a0fc-
d5eca04bb10c.prvt.dyno.rt.heroku.com>

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MIME-Version: 1.0
Content-Transfer-Encoding: 8bit

Department of Energy, National Nuclear Security Administration
FOIA Office
P.O. Box 5400
Albuquerque, NM 87185

July 30, 2020

Greetings NNSA FOIA officer,

Pursuant to the Freedom of Information Act, I request the following record(s):

"W93/MK7 Navy Warhead – Developing Modern Capabilities to Address Current and Future Threats."

Please include any attachments, appendices, etc. For reference/locating purposes, I am referring to the record referred to in this news article: <https://www.rollcall.com/2020/07/29/trump-teams-case-for-new-nuke-cites-risks-in-current-arsenal/>

The requested documents will immediately be made freely available to the general public, and this request is not being made for any commercial purpose.

I am willing to pay all applicable fees, but if fees will exceed \$50 please inform me of the total charges before proceeding. I would prefer the request be filled electronically, by e-mail attachment if available or CD-ROM if not.

Thanks for your help. I understand this request may be delayed due to the ongoing public health situation.

Stay safe,

Joseph Durso

Filed via MuckRock.com
E-mail (Preferred): 99634-67427587@requests.muckrock.com
Upload documents directly: https://accounts.muckrock.com/accounts/login/?next=https%3A%2F%2Fwww.muckrock.com%2Faccounts%2Flogin%2F%3Fnext%3D%252Faccounts%252Fagency_login%252Fdepartment-of-energy-national-nuclear-security-administration-7207%252Fw93mk7-navy-warhead-developing-modern-capabilities-to-address-current-and-future-threats-99634%252F%253Femail%253DFOIOfficer%252540nnsa.doe.gov&url_auth_token=AAAdU97cR4aFp5xUQIIIdarSQTr4%3A1k10qL%3ALu-0z_gUSgJie02ePPEDJutejG4
Is this email coming to the wrong contact? Something else wrong? Use the above link to let us know.

For mailed responses, please address (see note):

MuckRock News
DEPT MR 99634
411A Highland Ave
Somerville, MA 02144-2516

PLEASE NOTE: This request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests. Also note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.

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Content-Type: text/html; charset="utf-8"
MIME-Version: 1.0
Content-Transfer-Encoding: 8bit

<p>
Department of Energy, National Nuclear Security Administration
FOIA Office
P.O. Box 5400
Albuquerque, NM 87185</p>

<p>July 30, 2020</p>

<p>Greetings NNSA FOIA officer,</p>

<p>Pursuant to the Freedom of Information Act, I request the following record(s):</p>

<p> "W93/MK7 Navy Warhead – Developing Modern Capabilities to Address Current and Future Threats."</p>

<p>Please include any attachments, appendices, etc. For reference/locating purposes, I am referring to the record referred to in this news article: <https://www.rollcall.com/2020/07/29/trump-teams-case-for-new-nuke-cites-risks-in-current-arsenal/></p>

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<p>Thanks for your help. I understand this request may be delayed due to the ongoing public health situation.</p>

<p>Stay safe,</p>

<p>Joseph Durso</p>

<p>Filed via MuckRock.com
E-mail (Preferred): 99634-67427587@requests.muckrock.com
Upload documents directly: https://accounts.muckrock.com/accounts/login/?next=https%3A%2F%2Fwww.muckrock.com%2Faccounts%2Flogin%2F%3Fnext%3D%252Faccounts%252Fagency_login%252Fdepartment-of-energy-national-nuclear-security-administration-7207%252Fw93mk7-navy-warhead-developing-modern-capabilities-to-address-current-and-future-threats-99634%252F%253Femail%253DFOIofficer%252540nnsa.doe.gov&url_auth_token=AAAdU97cR4aFp5xUQIIIdarSQTr4%3A1k10qL%3ALu-0z_gUSgJie02ePPEDJutejG4
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note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.

<p></p>

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Respectfully,

SSP FOIA Coordinator



DEPARTMENT OF THE NAVY
DIRECTOR, STRATEGIC SYSTEMS PROGRAMS
1250 10TH STREET SE, SUITE 3600
WASHINGTON NAVY YARD, DC 20374-5127

5720
Ser SP100/111620008
18 Nov 20

Joseph Durso (Sent via e-mail: 99634-67427587@requests.muckrock.com)
Dept MR 99634
411 A Highland Ave
Somerville, MA 02144

Subj: FREEDOM OF INFORMATION ACT CASE NUMBER DON-NAVY-2021-001178

Mr. Durso,

1. This is in reference to your Freedom of Information Act (FOIA) request of July 29, 2020. The request was initially sent to the National Nuclear Security Administration, who then provided it to the Department of Energy and ultimately it was provided to Strategic Systems Programs on November 6, 2020. Due to errors with the FOIA Online tracking system, the case was officially provided a tracking number on November 16, 2020. The case was provided the tracking number DON-NAVY-2021-001178. Specifically, you requested:

“...Pursuant to the Freedom of Information Act, I request the following record(s):
“W93/MK7 Navy Warhead - Developing Modern Capabilities to Address Current and Future Threats.”

Please include any attachments, appendices, etc. For reference/locating purposes, I am referring to the record referred to in this news article:
[https://www.rollcall.com/2020/07/29/trump-teams-case-for-new-nuke-cites-risks-in-current-arsenal/...](https://www.rollcall.com/2020/07/29/trump-teams-case-for-new-nuke-cites-risks-in-current-arsenal/)”

2. Please be advised that we anticipate fees to exceed the amount you have agreed to pay. You have agreed to pay **\$50.00** in fees.

3. Your request has been placed in the commercial category, which will require you to pay for all hours of search and review time. We estimate the search time for this item will be under one hour and review time will be approximately two hours.

4. On the basis of our two-hour estimate, the cost of processing your request is estimated to be at least \$96.00. Fees are estimated at **zero** hours of search time and **two** hour of review at the “professional” rate of \$48.00. DoD FOIA regulations require a written commitment from requesters to pay all assessable fees for the processing of requests, or as an alternative, an agreement to limit the scope of the request in order to reduce the amount of processing fees (see DOD 5400.7-R, § C1.4.2 and 32 C.F.R. § 286.28 (e) (2) (i) (A)). If you wish to proceed with your request as worded, we ask that you forward a check or money order to:

Subj: FREEDOM OF INFORMATION ACT CASE NUMBER DON-NAVY-2021-001178

**Director, Strategic Systems Program
1250 10th St SE STE 3600 (Attn: FOIA)
Washington Navy Yard, DC 20374-5127**

5. The check needs to be payable to the U.S. Treasury in the amount of \$96.00, citing the case number above. When our office receives a written commitment, we will commence processing your request.

6. In accordance with 32 CFR 701.8 (d)(1), we will not proceed further with your request until these fee concerns are resolved. If we do not hear from you within 30 workdays of the date of this letter (i.e., by December 30, 2020), we will assume you are no longer interested in pursuing this request and will close the file with the disposition "Fee-Related Reason".

7. If you are not satisfied with this action, under 32 CFR §701.12(a), you may appeal the extension of the statutory 2 days for processing your request by writing to:

Office of the Judge Advocate General
1322 Patterson Ave SE STE 3000
Washington Navy Yard, DC 20374-5066

8. Your appeal must be postmarked within 90 calendar days from the date of this letter. A copy of your initial request and this letter must accompany the appeal. The appeal should be marked "FREEDOM OF INFORMATION APPEAL" on both the envelope and the face of the letter. In order to expedite the appellate process and ensure full consideration of your appeal, your appeal should contain a brief statement of the reasons you believe this initial decision to be in error.

9. For this determination, you have the right to seek dispute resolution services from either the DoD Navy Component FOIA Public Liaison, Mr. Chris Julka, at: Christopher.a.julka@navy.mil, via phone: (703) 697-0031; or by contacting the Office of Government Information Services at: (<https://ogis.archives.gov/>), (202) 741-5770, ogis@nara.gov.

10. Any questions regarding the action this office has taken to process your request may be directed to our FOIA Service Center via email at SSPFOIA@ssp.navy.mil.

BURTON.MATTHEW
W.SETH.11112883
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Digitally signed by
BURTON.MATTHEW.SETH.1111
288360
Date: 2020.11.23 16:04:36 -0500

M. S. BURTON
By direction