



DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
1322 PATTERSON AVENUE SE
SUITE 3000
WASHINGTON NAVY YARD DC 20374

IN REPLY REFER TO:
5720
F11014
Ser 14/59
December 10, 2010

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

Dear Ms. Gallagher:

SUBJECT: FREEDOM OF INFORMATION ACT (FOIA) APPEAL F11014
(DON2010F1315)

This responds to your correspondence of November 8, 2010 in which you appeal the Office of the Chief of Naval Operations' (DNS-36) decision regarding your FOIA request of June 30, 2010. Your initial request was for records related to the Israeli military operation that occurred in the Mediterranean Sea on May 31, 2010. Your appeal is based upon the adequacy of the search performed by DNS-36.

Your appeal is a request for a final determination under the FOIA. I grant your appeal for the following reasons.

Upon receipt of your appeal, our office contacted DNS-36 regarding the procedures used to locate the requested information. As part of their search, DNS-36 contacted several Navy commands they thought might have responsive records. Among those agencies were the Naval Criminal Investigative Service and the Navy's National Historical History Center. The searches conducted by the above entities did not yield any relevant information.

The adequacy of an agency's search under the FOIA is determined by a test of reasonableness, which may vary from case to case. An agency must undertake a search that is reasonably calculated to uncover all relevant documents. In this case, a reasonable search would have included the offices of the Deputy Chief of Naval Operations for

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Operations, Plans and Strategy (N3/N5) and the Deputy Chief of Naval Operations for Information Dominance (N2/N6) and also the fleet command occupying the area of operations in which the incident occurred, the U.S. Sixth Fleet. There is no indication that a search for any responsive information was conducted at N3/N5, N2/N6 or the U.S. Sixth Fleet. Therefore, I find that the Navy did not conduct an adequate search.

Accordingly, I am remanding your request to DNS-36 to coordinate an adequate search within N3/N5, N2/N6 and I am also referring your request to the U.S. Sixth Fleet. These Navy offices will respond directly to you. You will then have the opportunity to appeal the results of the subsequent searches to this office.

As the Secretary of the Navy's designee, I am responsible for this grant of your appeal. Should you have further questions or concerns, my point of contact is Major James Valentine, USMC, who may be reached by email: james.d.valentine@navy.mil or by telephone: 202-685-5476. You have the right to seek judicial review of this decision.

Sincerely,



G. E. LATTIN
Deputy Assistant Judge Advocate General
General Litigation Division
Acting

Copy to:
DNS-36