



ADMINISTRATION AND
MANAGEMENT

OFFICE OF THE SECRETARY OF DEFENSE
1950 DEFENSE PENTAGON
WASHINGTON, DC 20301-1950

Ref: 03-A-0108
OCT 25 2013

Dr. Alasdair Roberts
Suffolk University Law School
Room 320C
120 Tremont Street
Boston, MA 02108

Dear Mr. Roberts:

This responds to your April 17, 2003, Freedom of Information Act (FOIA) appeal, regarding the partial denial determination you received in response to your October 19, 2002, FOIA request. I apologize that this response was not provided in a more timely manner.

During the appellate review of your request, I was advised that the documents originally found responsive to your request could not be located. The Office of the Under Secretary of Defense (Policy), the office which had physical custody of the records at the time of your request, no longer has the records in their possession.

After a thorough investigation, I have determined the records you requested were misidentified as working papers not subject to the Office of the Secretary of Defense's (OSD) Records Disposition Schedule. These files were scheduled to be held for one year and no longer than five years and then destroyed. Additionally, the office in control of the records at the time of your request has moved three times and in an effort to conserve space, files and papers that were no longer needed and records not transferred to the Washington National Records Center, were destroyed.

Although Policy's original records were destroyed, copies of the records should have been held in a FOIA case file, which should have been retained under FOIA retention guidelines within their office. Unfortunately, this did not happen. At that time, the Department of Defense issuance governing the processing of FOIA requests within the OSD, did not require components to provide copies of denied documents to the OSD FOIA office. However, we have since recognized the potential of a mistake like this occurring and have changed the policy.

In an effort to recover the destroyed records, Policy conducted a new search for files and documents related to your initial request. For your appeal, Policy performed searches in the NATO Security Policy file, the Australia General Security of Information Agreement file, and the email account for Peter Batten to include archive ".pst" files. These searches included hardcopy records, e-mail files, electronic records, and tracking systems. The search terms used phrases such as: "NATO Security Policy," "NATO Ad-hoc Working Group (AHWG)," "NATO

Ad-hoc Security Working Group (ADSWG),” “Fundamental Review for NATO Security Policy (FRNSP),” and “Australia General Security of Information Agreement (AUS GSOIA).” Unfortunately, they were unable to locate responsive records. I apologize for the Department’s improper handling of records in this matter and any inconvenience this may have caused you.

You have the right to judicial review of this decision in a United States District Court, in accordance with 5 U.S.C. § 552(a)(4)(B).

Sincerely,


William E. Brazis,
Deputy Director