



Judicial Watch

Because no one is above the law!

VIA FACSIMILE AND CERTIFIED MAIL

June 16th, 2003

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US Agency for International Development
Acting FOIA Coordinator
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Washington, DC 20523-1608

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Directorate for Freedom of Information
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United States Army
TAPC-PDD-FP
7798 Cissna Road, Suite 205
Springfield, VA 22150-3166

Re: Freedom of Information Act Request

Dear Sir/Madam:

Judicial Watch, Inc., pursuant to the Freedom of Information Act (5 U.S.C. § 552) requests that the Department of Defense (DOD), United States Agency for International Development (USAID), and the United States Army to produce all correspondence, memoranda, documents, reports, records, statements, audits, lists of names, applications, diskettes, letters, expense logs and receipts, calendar or diary logs, facsimile logs, telephone records, call sheets, tape recordings, video/movie recordings, notes, examinations, opinions, folders, files, books, manuals, pamphlets, forms, drawings, charts, photographs, electronic mail, and other documents and things that refer or relate to the following in any way, within twenty (20) business days:

1) The decision of the US Army to grant a contract to Kellog, Brown and Root (KBR) to restart Iraq's oil production leading up to and after the 2003 Iraq war (January 1st 2003 through June 15th, 2003) including but not limited to:

- Contract costs, deadlines, compensation, spending limits, and bonus scales

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- Monthly cost over runs, costs per month, itemized reports of all activities billed to the U.S. Government concerning KBR's (or any related subsidiary including the parent company of Halliburton) activities in Iraq between February 1st 2003 to June 16th 2003.

3) All information or correspondence related to the replacement of KBR's original contract estimated to happen in or about August 2003.

- All correspondence dated between January 1st, 2003 and June 16th, 2003, related to the competitive bid/award process planned by the U.S. Government related to restarting oil production in Iraq.
- All correspondence to or from Lt. Col. Eugene Pawlik pertaining to his comments that the Corps would not meet the August timetable because of "all the requirements that are out there". (Quoted in Washington Post, Halliburton Iraq Oil Work May Last Longer, June 13th, 2003)

If any responsive record or portion thereof is claimed to be exempt from production under the Freedom of Information Act ("FOIA"); the DOD, USAID, and Army must provide sufficient identifying information (with respect to each allegedly exempt record or portion thereof) to allow Judicial Watch, Inc. to assess the propriety of the claimed exemption. *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir 1973), *cert. denied*, 415 U.S. 977 (1974). In addition, any reasonably segregable portion of a responsive record must be provided to Judicial Watch, Inc. after redaction of any allegedly exempt material. 5 U.S.C. § 552(b).

Judicial Watch, Inc. is entitled to a waiver of search and duplication fees because the records it seeks are not sought for a commercial use and Judicial Watch, Inc. is a member of the news media. 5 U.S.C. § 552(a) (4)(A)(ii)(II). As a 501 (c)(3) not-for-profit organization, Judicial Watch, Inc. has no commercial purpose. It is a non-profit, tax-exempt educational foundation organized to increase public understanding of government operations and activities, as well as the importance of ethics and the rule of law in government. Judicial Watch, Inc. regularly requests information about the operations of government through FOIA and other means, uses its editorial skills to turn this information into distinct works, and regularly publishes and disseminates its work to the public in furtherance of its educational mission.

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Judicial Watch, Inc. uses the following means, among others, to disseminate its works to the public:

(1) Judicial Watch, Inc. produces several live radio programs, including a two-hour program entitled "The Judicial Watch Report," which airs nationally once every week on approximately 43 radio stations. Judicial Watch, Inc. has produced an hour long Spanish language program that airs twice weekly on WQBA -- 1140 AM in Miami, Florida. Since October 29, 2001, Judicial Watch, Inc. also has produced a two-hour program that airs daily on the USA Radio Network. Judicial Watch, Inc.'s weekly and the daily radio programs also can be heard via the Internet at www.USARadio.com and www.JudicialWatch.org.

(2) Judicial Watch, Inc. also maintains an Internet site, www.JudicialWatch.org, on which the public can view and inspect records obtained through FOIA, records obtained through civil litigation, press releases, editorial works, deposition transcripts and court opinions, among other materials. This website is viewed by over 1,700 people per day on average, and on several occasions, has logged up to 600,000 visitors in a single day.

(3) Judicial Watch, Inc. also publishes a monthly newsletter, which is sent to approximately 210,000 individuals. FOIA documents are presented, analyzed and explained in each issue. It also utilizes an E-mail Infonet service which sends out updates of Judicial Watch's activities over the Internet on nearly a daily basis to 13,700 persons.

(5) Judicial Watch, Inc. also produces several editorial works each week in the form of press releases, which are "blast faxed" to hundreds of radio and television stations, as well as newspapers throughout the country

(6) Judicial Watch, Inc. also publishes periodic reports. For example, on September 28, 1998, Judicial Watch, Inc. published its Interim Report on Crimes and Other Offenses Committed by President Bill Clinton Warranting His Impeachment and Removal from Elected Office. This 145-page report was accompanied by nearly 4,000 pages of supporting documentation, and was crafted, in part, from the raw materials obtained by Judicial Watch, Inc. through FOIA requests. This distinct work has been disseminated widely to the public. On or about August 10, 1999, Judicial Watch,

Inc. published its Filegate Status Report, which is 136 pages long and is supported by nearly 1000 pages of documentation. Another recent report by Judicial Watch, Inc. is The Judicial Watch Florida Recount, an independent, non-partisan analysis of the results of Florida's hotly contested 2000 Presidential election based upon a sampling of ballots reviewed by Judicial Watch, Inc. pursuant to Florida's version of FOIA. This document was published on March 22, 2001. In addition, Judicial Watch, Inc. published The Judicial Watch 2002 "State of the Union" Report, Bush Administration Ethics Enforcement: "A Failure of Leadership," in February 1, 2002, and its most recent publication is Fatal Neglect: The US Governments Continuing Failure to Protect American Citizens from Terrorists, published September 11, 2002.

Judicial Watch also uses records it obtains pursuant to FOIA at public events such as conferences, seminars and speeches. For example, in October of 2001, Judicial Watch held its third annual "Ethics in Government Conference" in Miami, Florida. Previous conferences were held in Pasadena, California (1999), and Washington, DC (2000). Judicial Watch also works with other media organizations to publish new stories that are in the public interest. The Chairman and President of Judicial Watch, Inc. also frequently appear on nationally broadcast television and radio programs. Judicial Watch is a member of the National Religious Broadcast Association and has been granted press credentials at a number of national conventions and other events.

Judicial Watch, Inc. therefore qualifies as a member of the media and is entitled to a waiver of search fees. *See National Security Archive v. U.S. Department of Defense*, 880 F.2d 1381 (D.C. Cir. 1989). In fact, Judicial Watch, Inc. has been recognized previously as a member of the media in other FOIA litigation. *See Judicial Watch, Inc. v. U.S. Department of Justice*, 133 F. Supp.2d 52 (D.D.C. 2000).

Judicial Watch, Inc. also is entitled to a waiver of both search fees and duplication fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). Again, because Judicial Watch, Inc. has no commercial purpose, its request is not "in the commercial interest of the requestor."

Judicial Watch, Inc.'s request is likely to contribute significantly to the public's understanding of government operations and activities. Typically, agencies look to the following four points in making this determination: (1) whether the subject of the request concerns the operations or activities of government; (2) whether disclosure of the requested records is likely to contribute to an understanding of government operations or activities; (3) whether disclosure of the requested records will contribute to a "reasonably

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broad" audience and whether the requestor has the "ability and intention" to disseminate the information to the public; and (4) whether disclosure of the requested record will contribute "significantly" to the public understanding.

Without question, the subject of this request will contribute significantly to the public understanding of the operations and activities of government, as it addresses a specific decision by the U.S. Army, namely the decision to grant Kellogg, Brown and Root (KBR), a subsidiary of the Halliburton Co., once chaired by Vice-President Richard Cheney, a contract for restarting Iraqi's oil production. The decision to grant Halliburton this contract raises concerns of the appearance of a conflict of interest or favoritism, with Halliburton still having connections to Cheney and to other administration officials. According to press reports, no time limit or dollar limit have been set on the contract. The contract was given to Halliburton without a bidding process, sparking heavy criticism from other potential bidders and from members of congress.¹ In addition the contract was not announced to the public until after it was approved. This coupled with the apparent "backing off" of the estimated time frame to replace this non-bid contract with a competitive-bid contract in August, is extremely troubling to the American taxpayer as well as members of Congress.²

Second, disclosure of the requested records will contribute to an understanding of this particular decision, as the requested records relate directly to the decision grant KBR this non-competitive bid contract in Iraq while not pursuing a competitive-bid replacement as originally estimated.

Third, disclosure of the requested records will contribute to the understanding of "a reasonably broad audience of persons interested in the subject." Specifically, Judicial Watch, Inc. has a demonstrable "ability and intention" to convey the information to the public, as evidenced by the description of its various media outlets outlined above. A "reasonably broad" audience obviously is interested in the subject-matter of this request, as demonstrated by the articles that already appeared *Washington Post*, *Associated Press*, and *CBS news*, among other print and broadcast media.³ Judicial Watch, Inc. will disseminate the information it obtains in response to this FOIA request via its other media outlets.

Fourth, and finally, disclosure of the requested records will enhance public understanding of this noteworthy decision to a significant extent because little is currently known about how and why the Army decided to grant the contract to KBR and

¹ David Williams. "US army under fire over Iraq oil firefighting contract." *Agency France Presse*. March 26, 2003.

² Larry Margasak. "Halliburton Iraq Oil Work May Last Longer." *Washington Post*, June 13th, 2003

³ See articles attached

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why they are refusing to bid this competitively. In a June 13th, 2003 article in *The Washington Post*, Lt. Gen. Robert B. Flowers, stated "that the Corps was moving ahead with plans for a replacement contract 'if needed.'"⁴ The records requested by Judicial Watch, Inc. undoubtedly will shed additional light on this decision.

Given these compelling circumstances, Judicial Watch, Inc. is entitled to a public interest fee waiver of both search costs and duplication costs. 5 C.F.R. § 16.11(k)(2)(i) - (iv). We look forward to receiving the requested documents and a full public interest fee waiver within twenty (20) business days.

Sincerely,

JUDICIAL WATCH, INC.



Christopher J. Farrell

CJF/mrw

⁴Larry Margasak. "Halliburton Iraq Oil Work May Last Longer." *Washington Post*, June 13th, 2003