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NATIONAL SECURITY AGENCY  
CENTRAL SECURITY SERVICE  
FORT GEORGE G. MEADE, MARYLAND 20755-6000

FOIA Case: 75611A  
14 March 2016

JOHN GREENEWALD  
[REDACTED]  
[REDACTED]

Dear Mr. Greenewald:

This is an interim response to your Freedom of Information Act (FOIA) request of 14 November 2013, which was received by this office on 15 November 2013, for "a copy of all records pertaining to the NSA's use of the computer program PROMIS." As previously provided, your request has been assigned Case Number 75611. We have interpreted this request to be for only records on the NSA database PROMIS, "Product Related on-line Management Information System." This letter indicates that we have begun to process your request. There is certain information relating to this processing about which the FOIA and applicable Department of Defense (DoD) and NSA/CSS regulations require we inform you.

For purposes of this request and based on the information you provided in your letter, you are considered an "all other" requester. You must pay for search time in excess of 2 hours and duplication in excess of 100 pages.

There is a two-pronged test a requester must satisfy to qualify for a fee waiver. First, the requested information must be in the public interest. Second, the request must not be primarily in the requester's commercial interest. The following six factors further define the two-pronged waiver test, and a requester must meet all of the first four factors to qualify under the public interest prong:

1. The subject of the request must concern the "operations and activities of the government."
2. The disclosure of information is "likely to contribute to an understanding of government operations and activities."

3. The disclosure of the requested information will “contribute to public understanding.”
4. The disclosure is likely to contribute “significantly” to public understanding of government operations and activities.
5. The requester has a commercial interest that would be furthered by the requested disclosure.
6. Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, thereby rendering the disclosure “primarily in the commercial interest of the requester.”

I have carefully reviewed your request and the information you provided and determined the following regarding the public interest:

- The information would not contribute to public understanding because it would not inform the general public about “intelligence gathering” of the government. Thus, the second requirement for a fee waiver is not met.
- The disclosure of the requested information will not increase the understanding of the public at large because you have not demonstrated that you have the intent and ability to effectively convey the information to a broad segment of the public. This factor generally means that a requester can disseminate the information to the general public. You do not describe specifically your qualifications, the nature of your research, and the purpose for which you intend to use the requested information. Specialized knowledge may be required to extract, synthesize, and effectively convey the information to the public. You do not provide evidence of past analysis on this subject matter nor any evidence of past use of materials gained through FOIA requests. You do not demonstrate with particularity that the information will be communicated to the public. You pointed only to your website where you merely post documents. Thus, the third requirement for a fee waiver is not met.
- The information would not likely contribute significantly to public understanding. The NSA’s use of an historical off-the-shelf commercial database product will not contribute significantly to the operations and activities of the government. Thus, the fourth requirement for a fee waiver is not met.

In analyzing these four criteria, I have determined that you do not meet three of the factors required to meet the public interest prong. Since you have not provided evidence to sufficiently meet the standards of factors 2, 3, and 4 of the public interest prong, you do not qualify for a fee waiver, because you have not satisfied the public interest requirement of the FOIA.

You may appeal this decision. If you decide to appeal, you should do so in the manner outlined below.

- The appeal must be in writing and addressed to the:

NSA/CSS FOIA/PA Appeal Authority (DJ4),  
National Security Agency  
9800 Savage Road STE 6248  
Fort George G. Meade, MD 20755-6248

- It must be postmarked no later than 60 calendar days of the date of this letter.
- Please include the case number provided above.
- Please describe with sufficient detail why you believe this denial was unwarranted.
- NSA will endeavor to respond within 20 working days of receiving your appeal, absent any unusual circumstances.

We have expended your two free hours of search and some responsive records were located within that timeframe. A detailed review to determine the releasability of this information is required. We estimate that the costs involved to further search for material responsive to your request will be approximately \$440.00. Fees are assessed in accordance with DoD Regulation 5400.7-R. Search fees are computed at \$44.00 an hour.


Please be advised that your agreeing to incur this fee will not necessarily result in the disclosure to you of any additional information you seek. If additional records are found that are responsive to your request, a detailed review to determine the releasability of the information would follow. It has been our experience that any records responsive to your request, if such records exist, may be classified or otherwise exempt from release in accordance with the exemption provisions of the FOIA. The application of these exemptions to NSA information has been consistently approved by the Federal Judiciary.

This is only an estimate. If, after receipt of payment, as we continue the search, we determine that fees will be greater than the estimate, we will so notify you before searching further. In addition, please be aware that an estimate for duplication fees is not included in the above amount because we cannot determine the number of pages to be released until the entire case has been processed. With the documents located to date using your two free hours of search, we do not anticipate that there will be an assessable duplication fee.

If you would like us to proceed with the continued search for information responsive to your request, we request that you remit to the FOIA office (see below for address) a check or money order made payable to the Treasurer of the United States in the amount of \$220.00. This amount represents one-half of the total search estimate. Since this is only an estimate, our procedure is to request half of the estimated search costs up front, allowing us to charge any remaining difference upon completion of the entire request. Please include the number assigned to your case on any correspondence to ensure that your account is properly credited. If we do not hear from you within 30 days of the date of this letter, we will assume that you are not interested in pursuing a further search, and the responsive documents located to date will be processed to a release decision, i.e., the data will be placed in the first-in, first-out processing backlog queue.

Correspondence related to your request should include the case number assigned to your request, which is included in the first paragraph of this letter. Your letter should be addressed to National Security Agency, FOIA Office (DJ4), 9800 Savage Road STE 6248, Ft. George G. Meade, MD 20755-6248 or may be sent by facsimile to 443-479-3612. If sent by fax, it should be marked for the attention of the FOIA office. The telephone number of the FOIA office is 301-688-6527.

Sincerely,

*for* 

JOHN R. CHAPMAN  
Chief, FOIA/PA Office  
NSA Initial Denial Authority