

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STEVEN AFTERGGOOD)

Plaintiff,)

v.)

Civil Action No. 05-1307 (RBW)

NATIONAL RECONNAISSANCE OFFICE)
14675 Lee Highway)
Chantilly, VA 20151-1715)

Defendant.)

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
UNDER THE FREEDOM OF INFORMATION ACT**

1. This is an action under the Freedom of Information Act (FOIA), 5 U.S.C. §552. Plaintiff *pro se* Steven Aftergood seeks disclosure of unclassified portions of the National Reconnaissance Office (NRO) Congressional Budget Justification Book for Fiscal Year 2006. Defendant NRO has refused to release the requested records, on the asserted grounds that they are exempted “operational files.”

2. The NRO Congressional Budget Justification Book (CBB) is prepared each year in support of NRO’s annual budget request.

3. As indicated by its title, the CBJB is intended for delivery to Congress and is not primarily for internal agency use.
4. The FY 2006 CBJB has been disseminated in its entirety outside of the defendant's agency (e.g. to Congress). There is no portion of the FY 2006 CBJB that has not been disseminated.
5. Intelligence files that are disseminated in their entirety are explicitly excluded from the statutory definition of NRO "operational files." See 50 U.S.C. 403-5e(a)(2)(B) and (a)(4)(D).
6. As disseminated files, the unclassified portions of the FY 2006 CBJB cannot be "operational files," as NRO erroneously asserts.
7. In the past, NRO has released unclassified portions of its CBJB under the Freedom of Information Act. For example, after initially invoking the operational files exemption in response to a prior FOIA request from plaintiff, NRO last year reversed itself on administrative appeal and released substantial unclassified portions of the FY 1998 CBJB.
8. NRO's present refusal to release the requested information is a violation of the Freedom of Information Act.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action pursuant to the Freedom of Information Act, 5 U.S.C. sec. 552(a)(4)(B), the Administrative Procedure Act, 5 U.S.C. sec 701 et seq., and 28 U.S.C. sec. 1331 and 1361.

10. Venue lies in this district under 5 U.S.C. sec. 552(a)(4)(B).

PARTIES

11. Plaintiff Steven Aftergood is a resident of Washington, DC concerned with public accountability for intelligence-related expenditures. A prior lawsuit brought by the plaintiff, on behalf of his employer the Federation of American Scientists, led to disclosure of the total amount appropriated for intelligence in 1997 (Case No. 97-1096). Another lawsuit brought by the plaintiff led to a court order this year compelling the Central Intelligence Agency to furnish plaintiff with the 1963 Agency budget figure (Case No. 01-2524, order of 4 April 2005).

12. Defendant National Reconnaissance Office is an agency of the United States government which has possession of the information requested by plaintiff under the Freedom of Information Act.

STATEMENT OF THE CASE

13. By letter dated March 22, 2005, plaintiff Aftergood, pursuant to the Freedom of Information Act, requested a copy of all unclassified portions of the NRO Congressional Budget Justification Book (CBB) for Fiscal Year 2006 [NRO case number F05-0030].

14. By letter dated March 29, 2005, the NRO denied the request in its entirety, asserting that the requested unclassified records were “operational files” that are exempt from search, review and disclosure under the FOIA.

15. By letter dated April 7, 2005, plaintiff administratively appealed the Agency's refusal to provide the requested information.

16. By letter dated May 18, 2005, defendant NRO denied plaintiff's administrative appeal, persisting in the claim that the requested records are exempted "operational files."

CAUSES OF ACTION

17. Plaintiff incorporates each allegation of paragraphs 1- 16 as if fully set forth herein.

18. Defendant NRO's failure to release the requested information violates the Freedom of Information Act, 5 U.S.C. sec. 552.

PRAYER FOR RELIEF

WHEREFORE, plaintiff requests that the Court:

- a. declare that the defendant's refusal to produce the requested information is unlawful;
- b. order defendant to release to plaintiff all unclassified portions of the NRO Congressional Budget Justification Book for Fiscal Year 2006;
- c. award plaintiff his costs in this action; and
- d. grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

Steven Aftergood
Plaintiff *pro se*

June 30, 2005