



UNITED STATES MARINE CORPS  
3D MARINE AIRCRAFT WING, MARFORPAC  
MCAS MIRAMAR  
PO BOX 452038  
SAN DIEGO CA 92145-2038

IN REPLY REFER TO:  
5720  
JSJA/CIV  
MAR 20 2009

Dear FOIA Requester:

SUBJECT: FREEDOM OF INFORMATION ACT (FOIA) REQUEST MCASMIR  
200900033

This responds to your FOIA request in which you are seeking a copy of the command investigation into the F/A-18 aircraft mishap that occurred on December 8, 2008 in University City, California and a copy of the command briefing materials. Your request was received by this office on March 5, 2009 and assigned the above file number.

We regret any delay in processing this request. The delay is attributable to the time that was needed to review and redact the requested documents. All releasable documents responsive to your request, 614 pages of the command investigation and 17 pages of the command briefing materials, are enclosed.

Pursuant to paragraph 0219 of the Judge Advocate General Manual, your request was reviewed under the FOIA and Privacy Act. During our analysis, we discovered that some of the information requested is exempt from disclosure under exemptions 5 U.S.C. 552(b)(3), (5), (6), and (7)(C) of the FOIA. A breakdown of those exemptions follows:

5 U.S.C. 552(b)(3) protects information specifically exempted by other statutes. 10 U.S.C. § 130 provides that the Secretary of Defense may withhold from public disclosure any technical data with military or space application in the possession of, or under the control of, the Department of Defense, if such data may not be exported lawfully outside the United States without an approval, authorization, or license under the Export Administration Act of 1979 (50 U.S.C. App. 2401-2420). Therefore, this information was withheld under the exemption mentioned above.

5 U.S.C. 552(b)(5) incorporates the "deliberative process privilege." The documents you have requested contain the opinions and recommendations of the Investigating Officer, as presented to the Convening Authority. Under the deliberative process privilege, these opinions and recommendations are withheld in order to prevent injury to the quality of agency decisions. These opinions and recommendations are non-factual, pre-decisional, and deliberative. They are not final agency decisions or statements of agency policy and therefore are withheld from disclosure under 5 U.S.C. 552(b)(5).

5 U.S.C. 552(b)(6) exempts a record containing personal data on other individuals that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy (i.e., social security numbers, home addresses, and so on).

5 U.S.C. 552(b)(7)(C) provides protection for law enforcement information the disclosure of which "could reasonably be expected to constitute an unwarranted invasion of personal privacy."

The following portions of the investigative report have been removed completely: enclosure (11), consisting of 6 pages has been withheld under FOIA exemption (b)(6); and enclosure (37), consisting of 3 pages and enclosure (48), consisting of 16 pages have been withheld under FOIA exemption (b)(3).

Other documents have been removed because they were generated by other U.S. Government agencies and thus are not under our control. We have forwarded those portions of the investigation to the appropriate agencies for a release determination. These agencies will provide a response to you.

a. The release authority for enclosure (8), consisting of 12 pages is Commanding Officer, Naval Medical Center San Diego, Attention: FOIA, 34800 Bob Wilson Drive, San Diego, California 92134-5000.

b. The release authority for enclosure (20), consisting of 2 pages; enclosure (21), consisting of 1 page; and enclosure (66), consisting of 7 pages, is Commander, Naval Air Force, Code N0IJ, PO Box 357051, San Diego, California 92135.

c. The release authority for enclosure (25), consisting of 32 pages; enclosure (26), consisting of 14 pages; enclosure (28),

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consisting of 7 pages; enclosure (31), consisting of 8 pages; enclosure (36), consisting of 74 pages; enclosure (38), consisting of 52 pages; enclosure (40), consisting of 7 pages; enclosure (55), consisting of 4 pages; enclosure (67), consisting of 18 pages; enclosure (68), consisting of 3 pages; enclosure (72), consisting of 3 pages; and enclosure (86), consisting of 2 pages is Commander, Naval Air Warfare Center Aircraft Division, Office of Counsel, Code (11.5), Building 435, Suite A, 47076 Liljenkrantz Road, Patuxent River, Maryland 20670-1550.

d. The release authority for enclosure (34), consisting of 10 pages is Commanding Officer, Naval Air Technical Data and Engineering Service Command, Naval Air Station North Island, PO Box 357031, Building 90 Distribution, San Diego, California 92135-7031.

e. The release authority for enclosure (50), consisting of 9 pages and enclosure (51), consisting of 1 page is Office of General Counsel, Attention: FOIA, National Geospatial-Intelligence Agency, Mail Stop D-10, 46500 Sangamore Road, Bethesda, Maryland 20816-5003.

f. The release authority for enclosure (108), consisting of 2 pages is National Transportation Safety Board, FOIA Staff, 490 L'Enfant Plaza, SW, Washington, DC 20594.

g. The release authority for enclosure (109), consisting of 4 pages is Commander, Naval Safety Center, Attention: Code 03 FOIA, 375 A Street, Norfolk, Virginia 23511.

Finally, certain documents were generated by agencies outside the U.S. Government. Although they were included in the investigation as enclosures, we cannot consider them for release because they remain under the control of the civilian agencies that originated and maintain these records. If you would like to obtain copies of the documents maintained by the following agencies, you may contact them directly at the addresses listed below:

a. To obtain a copy of enclosure (93), the San Diego Medical Examiner report, consisting of 46 pages, you may write directly to Office of the Medical Examiner, 5555 Overland Avenue, Suite 1411, San Diego, California 92123-1245. If you have any questions regarding the release of these documents, you may call the Office of the Medical Examiner at (858) 694-2895.

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b. To obtain a copy of enclosure (94), the San Diego Incident Report #08120015827, consisting of 15 pages, you may write directly to San Diego Police Department, Records Division, 1401 Broadway Street, San Diego, California 92101.

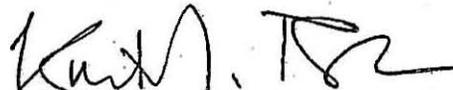
c. To obtain a copy of enclosure (106), San Diego Fire-Rescue Incident Detail Report FS08120009, you may write directly to San Diego Fire-Rescue Department, Fire Prevention Bureau, 1010 Second Avenue, #400, San Diego, California 92101-4903.

Because your request has been denied in part, you are advised of your right to appeal this determination. Please address your written appeal to: Judge Advocate General of the Navy (Code 14), 1322 Patterson Avenue, SE Suite 3000, Washington Naval Yard, Washington, DC 20374-5066.

Your appeal must be postmarked no later than 60 calendar days after the date of the initial denial letter pertaining to the subject FOIA request. A rational statement as to why your appeal should be granted along with a copy of this letter and any supporting documentation should be attached as well. I recommend that the appeal letter and the envelope containing the appeal both bear the notation, "Freedom of Information Act Appeal."

The fees associated with the processing of your request are waived in this instance. If there are any questions concerning this matter please contact the Joint Law Center FOIA Coordinator at (858) 577-1864. I am the official responsible for the partial denial of your FOIA request.

Sincerely,



KURT J. BRUBAKER  
Colonel, U.S. Marine Corps  
Staff Judge Advocate  
By direction of the  
Commanding General

Enclosure: 1. Command Investigation of 5830 SJA of 1 March 2009  
2. Command Briefing Material

Copy to: File