

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

_____	)	
GRANT F. SMITH,	)	
	)	
	)	
<i>Plaintiff,</i>	)	
	)	
v.	)	Civil Action No. 1:18-cv-02048-TSC
	)	
U.S. NATIONAL ARCHIVES	)	
AND RECORDS ADMINISTRATION	)	
	)	
<i>Defendant.</i>	)	
_____	)	

**DECLARATION OF B. JOHN LASTER**

I, B. John Laster, under 28 U.S.C. § 1746, hereby declare and state as follows:

1. I currently serve as the Director of the Presidential Materials Division at the National Archives and Records Administration (“NARA”) located in Washington, D.C. I have held this position since December 30, 2012. Prior to this position, I was a senior policy archivist with the Presidential Materials Division. I hold a degree in history from Auburn University.

2. In my current position I provide policy advice, guidance, training, and oversight to the Presidential Libraries in the application of the Presidential Records Act, the Freedom of Information Act, and Executive Order 13526 (Classified National Security Information) and any related implementing directives, regulations, and procedures concerning the management of, access to, and/or release of Presidential records.

3. Pursuant to Title 44 of the U.S. Code, Chapter 21, the William J. Clinton Presidential Library and the George W. Bush Presidential Library are components of NARA.

4. Due to the nature of my official duties, I am familiar with the procedures followed by the Clinton and Bush Presidential Libraries in responding to requests for Presidential records

from its files pursuant to provisions of the Presidential Records Act of 1978, 44 U.S.C. § 2201, *et seq.* (PRA) and the Freedom of Information Act, 5 U.S.C. § 552 (FOIA). NARA regulations direct that FOIA requests for Presidential records be directed to the Director of the respective Presidential Library for processing. *See* 36 C.F.R. § 1250.22. I serve as FOIA public liaison for requesters seeking assistance with requests made to the Presidential Libraries. I am specifically aware of the handling of the FOIA requests at issue in this case and have been apprised of this litigation by NARA agency counsel.

5. The statements contained in this declaration are based upon my personal knowledge, upon information furnished to me in the course of my official duties, and upon conclusions and determinations reached and made in accordance therewith.

6. This declaration is being submitted in support of Defendant's motion for summary judgment.

**National Archives and Records Administration and its Holdings**

7. The National Archives was established in 1934 by President Franklin Roosevelt to preserve and care for the records of the U.S. Government, but its major holdings date back to 1775. In 1985, the National Archives became an independent executive agency, and it now has over 40 facilities nationwide including field archives, Federal Records Centers, the Federal Register, the National Historical Publications and Records Commission, and the Presidential Libraries.

**Presidential Records Act**

8. The PRA sets forth a scheme for the preservation and disclosure of Presidential and Vice Presidential records. *See* 44 U.S.C. §§ 2201, 2207. Presidential records covered by the PRA include "documentary materials, or any reasonably segregable portion thereof; created

or received by the President, his immediate staff, or a unit or individual of the Executive Office of the President whose function is to advise and assist the President, in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President.” 44 U.S.C. § 2201(2). Documentary materials deemed Presidential records are the property of the United States, 44 U.S.C. § 2202, and may be disclosed to the public under limitations imposed by the PRA. 44 U.S.C. § 2204.

9. The PRA imposes upon the Archivist of the United States (Archivist) an affirmative duty to make [Presidential] records available to the public as rapidly and completely as possible consistent with limitations under the PRA. 44 U.S.C. § 2203(g)(1). However, there is no public access to Presidential records under FOIA until the earlier of (a) five years after the date on which the Archivist obtains custody of the records, or (b) NARA's completion of processing and organization of integral file segments of records. *Id.* § 2204(b)(2). In addition, the President may, before leaving office, “specify durations, not to exceed 12 years, for which access shall be restricted with respect to information” within one of six enumerated categories: (1) classified information designated by Executive order; (2) documents relating to appointments to Federal office; (3) documents specifically exempted from disclosure by statute other than FOIA; (4) trade secrets and commercial or financial information obtained from a person and privileged or confidential; (5) confidential communications requesting or submitting advice, between the President and his advisers, or between such advisers; or (6) personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. *See* 44 U.S.C. §§ 2204(a)(1)-(a)(6). Thus, Presidential records falling into one of the six categories may be

withheld for up to 12 years, even if the record is the subject of a FOIA request. The PRA provides that the Archivist's decision to withhold a record within the 12-year period under one of the six enumerated restrictions of the PRA "shall not be subject to judicial review." *Id.* § 2204(b)(3).

10. In addition, subject to the limitations on access imposed by § 2204(a) and (b), the PRA incorporates the provisions of the FOIA, including the enumerated exemptions from public access contained in 5 U.S.C. § 552(b), subject to the exception that the (b)(5) exemption, 5 U.S.C. § 552(b)(5), is unavailable. *See* 44 U.S.C. § 2204(c)(1). Applicable FOIA exemptions may apply to records not otherwise covered by one of the PRA restrictions. Such FOIA exemptions, which are applicable in the 12-year period, may also be applied to Presidential records beyond the 12-year PRA restriction period. *See* 44 U.S.C. § 2204(c)(1). The Archivist may therefore withhold documents from disclosure under FOIA exemptions even when they are not subject to restriction under the PRA. Once a Presidential Library intends to disclose Presidential records, NARA must notify the incumbent and the former President, through their designated representatives, in order to provide them an opportunity to review the records for any constitutionally-based privileges that may apply. 36 C.F.R. § 1270.46; 44 U.S.C. §§ 2204(c)(2), 2206, and 2208.

#### **Procedural History of Plaintiff's FOIA Requests**

11. By e-mail dated June 29, 2018, Plaintiff submitted separate requests to the FOIA Coordinator of the Clinton Presidential Library and the Bush Presidential Library under the PRA and the FOIA seeking "an unredacted copy" of a letter written by President Clinton and President Bush "promising not to pressure the Israeli government into signing the Treaty on the Proliferation of Nuclear Weapons (NPT) or discuss Israel's nuclear weapons program." Plaintiff

included the citation to a June 18, 2018 article in *The New Yorker* as a reference. **See Exhibits A and B.**

12. By letter dated July 5, 2018, the Clinton Library responded to Plaintiff's request, which was assigned case number 2018-0887-F. The letter informed Plaintiff that Clinton Presidential Records are processed and reviewed for access under provisions of the PRA, which incorporates the FOIA in substantial part. With respect to Plaintiff's request for a letter from President Clinton referenced in the June 18, 2018 article in *The New Yorker*, the Clinton Library stated that "we can neither confirm nor deny the existence or nonexistence of any records that may be responsive to such a request. The fact of the existence or nonexistence of records containing such information, unless of course the subject has been officially acknowledged, would be classified for reasons of national security under Section 3.3(b)(1) of E.O. 13526."<sup>1</sup> Plaintiff was advised of his administrative appeal rights and provided the contact information for the FOIA public liaison and the Office of Government Information Services. **See Exhibit C.**

13. By letter dated July 6, 2018, the Bush Library responded to Plaintiff's request, which was assigned case number 2018-0219-F. The letter informed Plaintiff that Bush Presidential Records are processed and reviewed for access under provisions of the PRA, which incorporates the FOIA in substantial part. With respect to Plaintiff's request for a letter from President Bush referenced in the June 18, 2018 article in *The New Yorker*, the Bush Library stated that "we can neither confirm nor deny the existence or nonexistence of any records that may be responsive to such a request. The fact of the existence or nonexistence of records containing such information, unless of course the subject has been officially acknowledged,

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<sup>1</sup> Although the letter references Section 3.3(b)(1) of E.O. 13526, it should have referenced 3.6(a).

would be classified for reasons of national security under Section 3.3(b)(1) of E.O. 13526.”<sup>2</sup>

Plaintiff was advised of his administrative appeal rights and provided the contact information for the FOIA public liaison and the Office of Government Information Services. **See Exhibit D.** President George W. Bush invoked the 12-year application of the six statutory restriction categories under the PRA to records of his administration in a July 31, 2002 letter to the then Archivist of the United States, John W. Carlin. In accordance with this assertion, the six statutory restriction categories under the PRA continue to apply to records of the Bush administration until January 2021. As such, Plaintiff’s request made to the Bush Library was processed and reviewed under these PRA restrictions as well as under the FOIA, as incorporated under the PRA.

14. By e-mail dated July 5, 2018, Plaintiff reached out to me as the FOIA public liaison for the Presidential Libraries concerning the response he received from the Clinton Library to his request. Plaintiff challenged the Glomar response provided because “President Clinton would not have classified a letter demanded by, and then given to, the leader of a foreign government” and because many presidential materials are unclassified. Plaintiff also questioned whether a search for the letter was conducted given the timeliness of the response. Plaintiff also alleged that the letter could not be properly classified because “E.O 13526 prohibits the classification of information to ‘conceal violations of the law.’” Plaintiff questioned whether “classifying the Clinton letter in order to foster non-compliance with the [Arms Export Control Act] by continuing to provide foreign aid to a non-signatory nuclear state would be a violation of E.O. 13526.” **See Exhibit E.**

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<sup>2</sup> Although the letter references Section 3.3(b)(1) of E.O. 13526, it should have referenced 3.6(a).

15. By emails dated July 16, 2018, Plaintiff submitted appeals to the Clinton Library and the Bush Library to the attention of the Deputy Archivist of the United States for his respective FOIA requests, 2018-0087-F and 2018-0219-F. **See Exhibits F and G.**

16. NARA did not to respond to Plaintiff's appeals before he filed this action on August 31, 2018.

### **GLOMAR RESPONSE**

17. A *Glomar* response is proper in instances in which, assuming that responsive records existed, even acknowledging their existence would result in a harm protected against by a PRA restriction or FOIA exemption. To be credible and effective, a *Glomar* response must be used in all similar cases regardless of whether responsive records actually exist, including instances in which NARA does not possess records responsive to a particular request. If NARA were to invoke a *Glomar* response only when it actually possessed responsive records, the *Glomar* response would be interpreted as an admission that responsive records exist.

18. Here, based on its familiarity with the records of the respective Presidential administrations, NARA determined that merely acknowledging the existence or non-existence of records responsive to Plaintiff's requests could reasonably be expected to reveal information concerning U.S. foreign relations and foreign activities, the disclosure of which reasonably can be expected to cause damage to national security. Plaintiff's requests necessarily implicate U.S. foreign relations and foreign activities in relation to foreign governments or government officials/employees.


19. Although NARA is the owner of the records at the Clinton and Bush Presidential Libraries, other government entities retain equity in the information contained in the records. In addition, NARA is not an original classification authority, so it has only limited authority to

make classification or declassification determinations regarding information contained in the records it owns. In situations, like here, where the Libraries are presented with a request that implicates national security, NARA responds based on its familiarity with the records and prior direction from equity holding agencies or it will consult directly with the equity holder to determine the appropriate response.

20. In this case, the National Security Council (NSC) in the Executive Office of the President is the equity holder. The NSC is responsible for advising and assisting the President on national security and foreign policies and coordinating these policies among various government agencies. Given the sensitivity of the United States' present and future relationships with foreign countries and the importance of such relationships to our national security, requests like Plaintiff's—which, directly or indirectly, call for records that would relate to sensitive and appropriately classified details of the United States' relationship with foreign government(s)—reflect precisely the situation in which NARA finds it necessary to consult with NSC. Accordingly, NARA asserted the *Glomar* response consistent with and pursuant to direction provided by the NSC.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct, and that Exhibits A through G are true and correct copies.

Executed this 19<sup>th</sup> day of December, 2018.



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B. John Laster  
Director  
Presidential Materials Division  
National Archives and Records Administration



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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GRANT F. SMITH,	)	
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U.S. NATIONAL ARCHIVES	)	
AND RECORDS ADMINISTRATION	)	
	)	
<i>Defendant.</i>	)	
_____	)	

**DECLARATION OF B. JOHN LASTER**

**EXHIBIT A**

**Grant F. Smith**

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**To:** clinton.library@nara.gov  
**Subject:** Freedom of Information Act request for President Bill Clinton's letter promising not to address Israel's nuclear weapons program

FOIA Coordinator  
Clinton Presidential Library  
1200 President Clinton Ave.  
Little Rock, AR 72201

Dear FOIA Coordinator:

This is a request under the Presidential Records Act and the Freedom of Information Act. We would like an unredacted copy of a President Clinton letter described below. The letter is likely addressed to the Prime Minister of Israel, 1-2 pages and written in September or October (or possibly a few months earlier) of 1998.

According to a report in *The New Yorker*, President Bill Clinton became the first of four presidents to issue a letter promising not to pressure the Israeli government into signing the Treaty on the Proliferation of Nuclear Weapons (NPT) or discuss Israel's nuclear weapons program. (Reference, "How Trump and Three Other U.S. Presidents Protected Israel's Worst-Kept Secret: Its Nuclear Arsenal" Adam Entous, *The New Yorker*, June 18, 2018. <https://www.newyorker.com/news/news-desk/how-trump-and-three-other-us-presidents-protected-israels-worst-kept-secret-its-nuclear-arsenal> Quote:

The first iteration of the secret letter was drafted during the Clinton Administration, as part of an agreement for Israel's participation in the 1998 Wye River negotiations with the Palestinians. In the letter, according to former officials, President Bill Clinton assured the Jewish state that no future American arms-control initiative would "detract" from Israel's "deterrent" capabilities, an oblique but clear reference to its nuclear arsenal. Later, Israeli officials inserted language to make clear to Washington that Israel would "defend itself, by itself," and that it would, therefore, not consider the American nuclear arsenal to be a substitute for Israeli nuclear arms."

If there are any fees for searching or copying these records, please inform me if the cost will exceed \$50. However, I would also like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of how foreign and domestic groups attempt to shape foreign policy through lobbying. I am a representative of the media and my articles about Middle East policy and non-proliferation appear frequently in the *Washington Report on Middle East Affairs* and *Antiwar.com*. This information is not being sought for commercial purposes. I am willing to receive the records as .PDF files via email or paper reproductions to the mailing address below.

The Freedom of Information Act requires a response to this request be made within 20 business days. If access to the records I am requesting will take longer than this amount of time, please contact me with information about when I might expect copies or obtain the ability to inspect the requested records.

If you deny any or all of this request, please cite each specific FOIA exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

A copy of this email request has also been sent via Priority Mail 9405 5118 9956 0379 8511 42

Sincerely,

**Grant F. Smith | Director | Institute for Research: Middle Eastern Policy, Inc.**

Tel: 202.342.7325 | Twitter: @IRmep | [gsmith@irmep.org](mailto:gsmith@irmep.org) | Website: <http://www.IRmep.org> | Podcast Feed  
<http://irmep.org/irmep.xml> | Mail: PO Box 32041, Washington, DC 20007

*To research and improve US-Middle East policy formulation.*

- Research
- Awareness
- Accountability

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

_____	)	
GRANT F. SMITH,	)	
	)	
	)	
<i>Plaintiff,</i>	)	
	)	
v.	)	Civil Action No. 1:18-cv-02048-TSC
	)	
U.S. NATIONAL ARCHIVES	)	
AND RECORDS ADMINISTRATION	)	
	)	
<i>Defendant.</i>	)	
_____	)	

**DECLARATION OF B. JOHN LASTER**

**EXHIBIT B**

## Grant F. Smith

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**To:** gw bush.library@nara.gov  
**Subject:** Freedom of Information Act request for President George W. Bush's letter promising not to address Israel's nuclear weapons program - Grant F. Smith

George W. Bush Presidential Library  
c/o FOIA Coordinator  
2943 SMU Blvd  
Dallas, TX 75205

Dear FOIA Coordinator:

This is a request under the Presidential Records Act and the Freedom of Information Act. We would like an unredacted copy of a President George W. Bush letter described below. The letter is likely addressed to the Prime Minister of Israel, 1-2 pages and written at the very beginning of the first term.

According to a report in *The New Yorker*, President George W. Bush became the second of four presidents to issue a letter promising not to pressure the Israeli government into signing the Treaty on the Proliferation of Nuclear Weapons (NPT) or discuss Israel's nuclear weapons program. (Reference, "How Trump and Three Other U.S. Presidents Protected Israel's Worst-Kept Secret: Its Nuclear Arsenal" Adam Entous, *The New Yorker*, June 18, 2018. <https://www.newyorker.com/news/news-desk/how-trump-and-three-other-us-presidents-protected-israels-worst-kept-secret-its-nuclear-arsenal> Quote:

The first iteration of the secret letter was drafted during the Clinton Administration, as part of an agreement for Israel's participation in the 1998 Wye River negotiations with the Palestinians. In the letter, according to former officials, President Bill Clinton assured the Jewish state that no future American arms-control initiative would "detract" from Israel's "deterrent" capabilities, an oblique but clear reference to its nuclear arsenal. Later, Israeli officials inserted language to make clear to Washington that Israel would "defend itself, by itself," and that it would, therefore, not consider the American nuclear arsenal to be a substitute for Israeli nuclear arms. **George W. Bush, when he became President, followed Clinton's lead, signing a similar letter, former officials told me.**

If there are any fees for searching or copying these records, please inform me if the cost will exceed \$50. However, I would also like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of how foreign and domestic groups attempt to shape foreign policy through lobbying. I am a representative of the media and my articles about Middle East policy and non-proliferation appear frequently in the *Washington Report on Middle East Affairs* and *Antiwar.com*. This information is not being sought for commercial purposes. I am willing to receive the records as .PDF files via email or paper reproductions to the mailing address below.

The Freedom of Information Act requires a response to this request be made within 20 business days. If access to the records I am requesting will take longer than this amount of time, please contact me with information about when I might expect copies or obtain the ability to inspect the requested records.

If you deny any or all of this request, please cite each specific FOIA exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

A copy of this email request has also been sent via Priority Mail #9405 5118 9956 0379 8857 27

Sincerely,

**Grant F. Smith | Director | Institute for Research: Middle Eastern Policy, Inc.**

Tel: 202.342.7325 | Twitter: @IRmep | [gsmith@irmep.org](mailto:gsmith@irmep.org) | Website: <http://www.IRmep.org> | Podcast Feed  
<http://irmep.org/irmep.xml> | Mail: PO Box 32041, Washington, DC 20007

*To research and improve US-Middle East policy formulation.*

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- Accountability





## Clinton Presidential Library

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1200 President Clinton Avenue  
Little Rock, AR 72201

July 5, 2018

Grant F. Smith  
Director  
Institute for Research: Middle Eastern Policy, Inc.  
PO Box 32041  
Washington, DC 20007

FOIA Case: 2018-0887-F

Dear Mr. Smith:

This letter is in response to your Freedom of Information Act (FOIA) request dated June 29, 2018 for access to certain William J. Clinton Presidential records. Your request was received by the Clinton Library on June 29, 2018. FOIA requests for Clinton Presidential records are processed and reviewed for access under provisions of the 1978 Presidential Records Act, as amended (PRA) (44 U.S.C. §§ 2201-2209), which incorporates the Freedom of Information Act (5 U.S.C. § 552) in substantial part.

In regard to your request for records relating to the letter from President Clinton referenced in the June 18, 2018 article in the *New Yorker* we can neither confirm nor deny the existence or nonexistence of any records that may be responsive to such a request. The fact of the existence or nonexistence of records containing such information, unless of course the subject has been officially acknowledged, would be classified for reasons of national security under Section 3.3(b)(1) of E.O. 13526.

At this time, you have the right to file an administrative appeal of this determination. The appeal must be submitted in writing to the attention of the Deputy Archivist of the United States, c/o Clinton Presidential Library 1200 President Clinton Avenue Little Rock, AR 72201. You can also send the appeal electronically to [Clinton.library@nara.gov](mailto:Clinton.library@nara.gov). You should explain why you believe this response does not meet the requirements of the FOIA and you should also include a copy of your original request and our denial. Both the letter and the envelope (or email subject line) should be clearly marked "FOIA Appeal." To be considered timely, your appeal must be postmarked or electronically submitted within 90 calendar days from the date of this letter.

If you would like to discuss our response before filing an appeal to attempt to resolve your dispute without going through the appeals process, you may contact our FOIA Public Liaison John Laster for assistance at: Presidential Materials Division, National Archives and Records Administration, 700 Pennsylvania Avenue, NW, Room G-7, Washington, DC 20408-0001; email at [libraries.foia.liaison@nara.gov](mailto:libraries.foia.liaison@nara.gov); telephone at 202-357-5200; or facsimile at 202-357-5941.

If you are unable to resolve your FOIA dispute through our FOIA Public Liaison, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies. The contact information for OGIS is: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road – OGIS, College Park, MD 20740-6001; email at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you have any questions regarding your FOIA request, please contact our staff at 501-244-2877 or [Clinton.library@nara.gov](mailto:Clinton.library@nara.gov). Your case log number is 2018-0887-F. Please have this number accessible for reference during any future contact concerning this FOIA request.



Sincerely,

A handwritten signature in cursive script that reads "Dana Simmons". The signature is written in black ink and is positioned above the printed name.

DANA SIMMONS

Supervisory Archivist

William J. Clinton Presidential Library and Museum

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

_____	)	
GRANT F. SMITH,	)	
	)	
	)	
<i>Plaintiff,</i>	)	
	)	
v.	)	Civil Action No. 1:18-cv-02048-TSC
	)	
U.S. NATIONAL ARCHIVES	)	
AND RECORDS ADMINISTRATION	)	
	)	
<i>Defendant.</i>	)	
_____	)	

**DECLARATION OF B. JOHN LASTER**

**EXHIBIT D**



## George W. Bush Presidential Library and Museum

2943 SMU Boulevard  
Dallas, Texas 75205

July 6, 2018

Grant Smith  
PO Box 32041  
Washington, DC 20007

Dear Mr. Smith:

This letter is in response to your Freedom of Information Act (FOIA) request dated June 29, 2018 for access to certain George W. Bush Presidential records. Your request was received by the George W. Bush Library on June 29, 2018. FOIA requests for Bush Presidential records are processed and reviewed for access under provisions of the 1978 Presidential Records Act, as amended (PRA) (44 U.S.C. §§ 2201-2209), which incorporates the Freedom of Information Act (5 U.S.C. § 552) in substantial part.

In regard to your request for records relating to a letter as reported in *The New Yorker* on June 18, 2018, we can neither confirm nor deny the existence or nonexistence of any records that may be responsive to such a request. The fact of the existence or nonexistence of records containing such information, unless of course the subject has been officially acknowledged, would be classified for reasons of national security under Section 3.3(b)(1) of E.O. 13526.

At this time, you have the right to file an administrative appeal of this determination. The appeal must be submitted in writing to the attention of the Deputy Archivist of the United States, c/o the George W. Bush Library and Museum, 2943 SMU Boulevard, Dallas, TX 75205. You should also include a copy of your original request and our denial. Both your appeal letter and the envelope should be clearly marked "FOIA Appeal." You have 90 calendar days from the date of this letter to file your appeal. The Library will coordinate your appeal with the appropriate authority.

If you would like to discuss our response before filing an appeal to attempt to resolve your dispute without going through the appeals process, you may contact our FOIA Public Liaison John Laster for assistance at: Presidential Materials Division, National Archives and Records Administration, 700 Pennsylvania Avenue, NW, Room G-7, Washington, DC 20408-0001; email at [libraries.foia.liaison@nara.gov](mailto:libraries.foia.liaison@nara.gov); telephone at 202-357-5200; or facsimile at 202-357-5941.

If you are unable to resolve your FOIA dispute through our FOIA Public Liaison, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies. The contact information for OGIS is: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road – OGIS, College Park, MD 20740-6001; email at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you have any questions regarding your FOIA request, please contact our staff at 214-346-1557 or [gwbush.library@nara.gov](mailto:gwbush.library@nara.gov). Your case log number is 2018-0219-F. Please have this number accessible for reference during any future contact concerning this FOIA request.

Sincerely,

SHANNON JARRETT  
Supervisory Archivist  
George W. Bush Library and Museum

SJ: MAC





John Laster <john.laster@nara.gov>

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## FW: Clinton Library FOIA request 2018-0887-F

1 message

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Grant F. Smith <gsmith@irmep.org>

Thu, Jul 5, 2018 at 5:11 PM

Reply-To: gsmith@irmep.org

To: libraries.foia.liaison@nara.gov

Cc: clinton.library@nara.gov

FOIA Public Liaison

Presidential Materials Division

National Archives and Records Administration  
700 Pennsylvania Avenue, NW, Room G-7  
Washington, DC 20408-0001

RE: 2018-0887-F, this is not a FOIA or FOIA appeal;

Dear John Laster,

The attached FOIA denial suggests that you may be of assistance to me in answer some questions before we file a FOIA appeal or FOIA lawsuit for Clinton records.

Today our June 29, 2018 FOIA request (below) for a Clinton administration letter was denied (attached).

1. The FOIA denial neither confirms nor denies the existence of the letter in question, reported in *The New Yorker*, claiming " The fact of the existence or nonexistence of records containing such information, unless of course the subject has been officially acknowledged, would be classified for reasons of national security under Section 3.3(b)(1) of E.O. 13526." We do not believe that is so, because President Clinton would not have classified a letter demanded by, and then given to, the leader of a foreign government. Also, many presidential materials, whether acknowledged or not, are unclassified. Do you believe such a blanket response complies with FOIA and is proper?
2. The speed of the FOIA denial seems to indicate no search or examination of the requested letter was even attempted. Do you believe such an assumption-laden administrative process complies with FOIA and is proper?
3. The purpose of the letters (Clinton's was only the first of four) is to ensure that U.S. Presidents do not comply with longstanding Arms Export Control Act provisions conditioning U.S. foreign assistance to foreign nuclear weapons states that are not signatories to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). Section 1.7 (2) of E.O. 13526 prohibits classification of information to "conceal violations of the law." Do you concur that classifying the Clinton letter in order to foster non-compliance with the AECA by continuing to provide foreign aid to a non-signatory nuclear state would be a violation of E.O. 13526? Do you agree that public release of such a letter to foster public debate would only improve good governance?

Please advise,

**Grant F. Smith | Director | Institute for Research: Middle Eastern Policy, Inc.**

Tel: 202.342.7325 | Twitter: @IRmep | gsmith@irmep.org | Website: <http://www.IRmep.org> | Podcast Feed <http://irmep.org/irmep.xml> | Mail: PO Box 32041, Washington, DC 20007

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**From:** Dana Simmons <clinton.library@nara.gov>  
**Sent:** Thursday, July 5, 2018 3:11 PM  
**To:** gsmith@irmep.org  
**Subject:** re: Clinton Library FOIA request 2018-0887-F

Dear Mr. Smith:

Please see attached regarding your FOIA request.

Sincerely:

Dana Simmons  
 Supervisory Archivist  
 Clinton Presidential Library

Clinton Library Official Website  
 @WJCLibrary on Twitter  
 Clinton Library on Facebook

FOIA Coordinator  
 Clinton Presidential Library  
 1200 President Clinton Ave.  
 Little Rock, AR 72201

Dear FOIA Coordinator:

This is a request under the Presidential Records Act and the Freedom of Information Act. We would like an unredacted copy of a President Clinton letter described below. The letter is likely addressed to the Prime Minister of Israel, 1-2 pages and written in September or October (or possibly a few months earlier) of 1998.

According to a report in *The New Yorker*, President Bill Clinton became the first of four presidents to issue a letter promising not to pressure the Israeli government into signing the Treaty on the Proliferation of Nuclear Weapons (NPT) or discuss Israel's nuclear weapons program. (Reference, "How Trump and Three Other U.S. Presidents Protected Israel's Worst-Kept Secret: Its Nuclear Arsenal" Adam Entous, *The New Yorker*, June 18, 2018. <https://www.newyorker.com/news/news-desk/how-trump-and-three-other-us-presidents-protected-israels-worst-kept-secret-its-nuclear-arsenal> Quote:

The first iteration of the secret letter was drafted during the Clinton Administration, as part of an agreement for Israel's participation in the 1998 Wye River negotiations with the Palestinians. In the letter, according to former officials, President Bill Clinton assured the Jewish state that no future American arms-control initiative would "detract" from Israel's "deterrent" capabilities, an oblique but clear reference to its nuclear arsenal. Later, Israeli officials inserted language to make clear to Washington that Israel would "defend itself, by itself," and that it would, therefore, not consider the American nuclear arsenal to be a substitute for Israeli nuclear arms."

If there are any fees for searching or copying these records, please inform me if the cost will exceed \$50. However, I would also like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of how foreign and domestic groups attempt to shape foreign policy through lobbying. I am a representative of the media and my articles about Middle East policy and non-proliferation appear frequently in the *Washington Report on Middle East Affairs* and *Antiwar.com*. This information is not being sought for commercial purposes. I am willing to receive the records as .PDF files via email or paper reproductions to the mailing address below.

The Freedom of Information Act requires a response to this request be made within 20 business days. If access to the records I am requesting will take longer than this amount of time, please contact me with information about when I might expect copies or obtain the ability to inspect the requested records.

If you deny any or all of this request, please cite each specific FOIA exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

A copy of this email request has also been sent via Priority Mail 9405 5118 9956 0379 8511 42

Sincerely,


**Grant F. Smith | Director | Institute for Research: Middle Eastern Policy, Inc.**

Tel: 202.342.7325 | Twitter: @IRmep | gsmith@irmep.org | Website: <http://www.IRmep.org> | Podcast Feed <http://irmep.org/irmep.xml> | Mail: PO Box 32041, Washington, DC 20007

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 **Smith 2018-0887-F.pdf**  
141K

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

_____	)	
GRANT F. SMITH,	)	
	)	
	)	
<i>Plaintiff,</i>	)	
	)	
v.	)	Civil Action No. 1:18-cv-02048-TSC
	)	
U.S. NATIONAL ARCHIVES	)	
AND RECORDS ADMINISTRATION	)	
	)	
<i>Defendant.</i>	)	
_____	)	

**DECLARATION OF B. JOHN LASTER**

**EXHIBIT F**



## Google Groups

## FOIA Appeal - Case: 2018-0887-F

Grant F. Smith <gsmith@irmep.org>

Jul 16, 2018 11:48 AM

Posted in group: **Clinton Library**

Deputy Archivist of the United States - FOIA Appeal

c/o Clinton Presidential Library

1200 President Clinton Avenue

Little Rock, AR 72201

RE: Appeal of July 5, 2018 FOIA Denial 2018-0887-F

Dear Deputy Archivist:

This is an appeal of the above-referenced FOIA denial (attached) of our June 29, 2018 FOIA request (attached) and is filed within the statutory time limits of the Freedom of Information Act (5 U.S.C. § 552) which is incorporated in substantial part into the 1978 Presidential Records Act, as amended (PRA) (44 U.S.C. §§ 2201-2209).

1. The FOIA denial neither confirms nor denies the existence of the letter reported in the New Yorker claiming instead that, " The fact of the existence or nonexistence of records containing such information, unless of course the subject has been officially acknowledged, would be classified for reasons of national security under Section 3.3(b)(1) of E.O. 13526."

We do not believe the letter is classified, because President Clinton would not have classified a letter originally demanded by, and then given to, and circulated by, the leader of a foreign government. Also, many presidential materials, whether publicly acknowledged or not, are unclassified and may be freely released to the public upon request.

2. The speed of the FOIA denial seems to indicate no required search was even attempted much less an examination of the requested letter for FOIA release. Under the Freedom of Information Act (5 U.S.C. § 552) which is incorporated in substantial part into the 1978 Presidential Records Act, as amended (PRA) (44 U.S.C. §§ 2201-2209).

the Clinton Presidential Library was required to conduct a bona fide search upon receipt of our request.

3. The core purpose of the Clinton letter was to assure the Israeli government that as acting U.S. President he would not comply with longstanding Arms Export Control Act subsections conditioning U.S. foreign assistance to foreign nuclear weapons states that are not signatories to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). See 22 U.S. Code § 2799aa-1 - Nuclear reprocessing transfers, illegal exports for nuclear

explosive devices, transfers of nuclear explosive devices, and nuclear detonations. That is why, as described in the New Yorker, the Israelis were so adamant about getting an early written promise that Clinton would violate the AECA.

Section 1.7 (2) of E.O. 13526 prohibits classification of information to "conceal violations of the law." Even if the letter were classified, which it probably is not, the requested letter could not have been properly classified, and may not be withheld under classification guidelines, because classification guidelines do not permit concealing violations of the law via classification.

4. The balance of equities favor immediate unredacted public disclosure of the requested letter so that the American public may better understand the function of government—as actually practiced, rather than merely espoused. We request that you avoid burdening the American public more than it already has been, by forcing us to file what would surely be a costly lawsuit that the Department of Justice would have to defend at taxpayer expense. We are confident that in camera review of the letter by a judge would reveal it to be releasable. The length of the letter and presumed bad faith involved in both writing and concealing it mean in camera review would be required "Where the record contains a showing of bad faith, the district court would likely require In camera inspection." *Ray v Turner*, 587 F.2d 1187, 1195 (D.C. Cir 1978); see also *Allen v CIA*, 636 F.2d 1287, 1298 (D.C. Cir. 1980). Also, "In cases that involve a strong public interest in disclosure there is...a greater call for in camera inspection." *Allen v CIA*, 636 F.2d 1287, 1294 (DC. Cir 1980).

As suggested in the FOIA denial letter, we did contact the Office of the Deputy Archivist about this denial (see attachment), but no response was forthcoming in a timely manner.

A copy of this email request has also sent via Priority Mail 9405 5118 9956 0338 6033 24.

**Grant F. Smith | Director | Institute for Research: Middle Eastern Policy, Inc.**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

_____	)	
GRANT F. SMITH,	)	
	)	
	)	
<i>Plaintiff,</i>	)	
	)	
v.	)	Civil Action No. 1:18-cv-02048-TSC
	)	
U.S. NATIONAL ARCHIVES	)	
AND RECORDS ADMINISTRATION	)	
	)	
<i>Defendant.</i>	)	
_____	)	

**DECLARATION OF B. JOHN LASTER**

**EXHIBIT G**

Google Groups

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## FOIA Appeal - Case: 2018-0219-F

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Grant F. Smith <gsmith@irmep.org>

Jul 16, 2018 11:48 AM

Posted in group: **GWBush Library**

Deputy Archivist of the United States - FOIA Appeal  
George W. Bush Presidential Library

2943 SMU Blvd

Dallas, TX 75205

RE: Appeal of July 6, 2018 FOIA Denial 2018- 0219-F

Dear Deputy Archivist:

This is an appeal of the above-referenced FOIA denial (attached) of our June 29, 2018 FOIA request (attached) and is filed within the statutory time limits of the Freedom of Information Act (5 U.S.C. § 552) which is incorporated in substantial part into the 1978 Presidential Records Act, as amended (PRA) (44 U.S.C. §§ 2201-2209).

1. The FOIA denial neither confirms nor denies the existence of the letter reported in the New Yorker claiming instead that, " The fact of the existence or nonexistence of records containing such information, unless of course the subject has been officially acknowledged, would be classified for reasons of national security under Section 3.3(b)(1) of E.O.13526."

We do not believe the letter is classified, because President Bush would not have classified a letter originally demanded by, and then given to, and circulated by, the leader of a foreign government. Also, many presidential materials, whether publicly acknowledged or not, are unclassified and may be freely released to the public upon request.

2. The speed of the FOIA denial seems to indicate no required search was even attempted much less an examination of the requested letter for FOIA release. Under the Freedom of Information Act (5 U.S.C. § 552) which is incorporated in substantial part into the 1978 Presidential Records Act, as amended (PRA) (44 U.S.C. §§ 2201-2209) the George W. Bush Presidential Library was required to conduct a bona fide search upon receipt of our request.

3. The core purpose of the George W. Bush letter was to assure the Israeli government that as acting U.S. President he would not comply with longstanding Arms Export Control Act subsections conditioning U.S. foreign assistance to foreign nuclear weapons states that are not signatories to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). See 22 U.S. Code § 2799aa-1 - Nuclear reprocessing transfers, illegal exports for nuclear explosive devices, transfers of nuclear explosive devices, and nuclear detonations.

That is why, as described in the New Yorker, the Israelis were so adamant about getting an early written promise that Clinton would violate the AECA.

Section 1.7 (2) of E.O. 13526 prohibits classification of information to "conceal violations of the law." Even if the letter were classified, which it probably is not, the requested letter could not have been properly classified, and may not be withheld under classification guidelines, because classification guidelines do not permit concealing violations of the law via classification.

4. The balance of equities favor immediate unredacted public disclosure of the requested letter so that the American public may better understand the function of government—as actually practiced, rather than merely espoused. We request that you avoid burdening the American public more than it already has been, by forcing us to file what would surely be a costly lawsuit that the Department of Justice would have to defend at taxpayer expense. We are confident that in camera review of the letter by a judge would reveal it to be releasable. The length of the letter and presumed bad faith involved in both writing and concealing it mean in camera review would be required “Where the record contains a showing of bad faith, the district court would likely require In camera inspection.” *Ray v Turner*, 587 F.2d 1187, 1195 (D.C. Cir 1978); see also *Allen v CIA*, 636 F.2d 1287, 1298 (D.C. Cir. 1980). Also, “In cases that involve a strong public interest in disclosure there is...a greater call for in camera inspection.” *Allen v CIA*, 636 F.2d 1287, 1294 (DC. Cir 1980).

A copy of this email request has also sent via Priority Mail 9405 5118 9956 0338 6843 23.

**Grant F. Smith | Director | Institute for Research: Middle Eastern Policy, Inc.**

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