United States Department of State

Washington, D.C. 20520

JUN 27 2008

Case Nos.: 200402941, 200501372, 200502767, 200600298, 200704168, 200704596, and 200706194

Scott A. Hodes, Esq.
1410 Aintree Drive
Rockville, Maryland 20850

Dear Mr. Hodes:

Thank you for your letter of May 22, 2008, regarding the FOIA requests at issue in *ACCG et al. v. U.S. Department of State*, No. 07-SV-2074 (D.D.C.), and for subsequently discussing the issues raised in that letter with our legal counsel. We have continued processing the FOIA requests at issue and are pleased to offer the following information about them, pursuant to the ongoing cooperative discussions between you and our counsel aimed toward resolving the outstanding issues without the need for litigation.

The six documents we originally referred to another government office for review have been returned to us. The coordination has now been completed for all six of them, and we find that three may be released with excisions, and three must be withheld in full. All released material is enclosed. Where we have made excisions, the applicable exemptions are marked on each document. Of the documents withheld in full, one was withheld under exemption (b)(5) with some of its material additionally withheld under exemption (b)(2); and two were withheld under exemption (b)(5) with some of their material additionally withheld under exemptions (b)(2), (b)(7c) and (b)(6). An enclosure provides information on Freedom of Information Act exemptions and other grounds for withholding non-releasable material.

Thank you for bringing to our attention that some of the documents released in connection with request number 200402941 were incorrectly marked in light of their classified status. We have confirmed that the unredacted versions of these documents do in fact contain currently and properly classified information, and we have accordingly corrected the markings on the first page of each

document. The same error was corrected on document C1 released in connection with case number 200600298. New copies of these documents, with corrected markings, are enclosed.

In some cases, it was determined that classified material in documents withheld in full or in part under exemption 1 concerns not only "foreign government information," but also "foreign relations or foreign activities of the United States, including confidential sources." See Executive Order (E.O.) 12958, as amended, sections 1.4(b) and 1.4(d). We have enclosed herein new copies of all of these documents if they were released in part, with corrected markings. For any documents at issue in this litigation that were classified after receipt of your clients' FOIA requests, the Department has followed the special procedures for classification mandated by Section 1.7(d) of E.O. 12958, as amended.

We have also carefully re-reviewed all of our withholdings under exemption 6 and have determined that additional material may be released. In this vein, we have reconsidered the withholding of all the names of "Individuals who Submitted Letters to the Committee" on pages 23 and 24 to the CPAC Italy report in case number 200600298. We have determined that all but seven of the names could be released, and have accordingly enclosed a new copy of the list. Similarly, we have determined that the public interest in disclosure outweighs any privacy interest in material previously withheld under exemption 6 in cases 200402941 (see pages 38 and 39 of document E1) and 200704168 (document E11).

With regard to the other exemptions whose application your clients dispute, we have determined that no further material may be released. With regard to the exemption 3 material, we continue to withhold the same material under 19 U.S.C. section 2605(h)-(i). In document E7 of case number 200704168 (the email chain between Andrew Cohen and Danielle Parks noted in your May 22 letter), we reconfirm that the withholdings are clearly proper under section 2605(i)(1).

Upon re-review, we have also confirmed that our withholdings under exemption 5 are proper. In your June 12, 2008 phone call with our counsel, you specified several documents to which your exemption 5 concerns applied.

As to document E2 in case 200704168 (which is a duplicate of document E2 in case 200706194), the material withheld under exemption 5 in this document is the contents of Tab A attached to an Action Memorandum to the Assistant Secretary for Education and Cultural Affairs. The withheld material summarizes and analyzes predecisional, inter- or intra-agency views and recommendations on the policy question whether to extend a Memorandum of Understanding with Cyprus. This material is clearly deliberative and predecisional, and it cannot reasonably be said to have been adopted or incorporated by reference into the final determinations and rationales presented separately elsewhere in this document (on the first page and in Tab B). The material withheld under exemption 5 in this document also contains inter- or intra-agency material protected by the attorney client privilege.

In the June 12 phone call with our counsel, you also specified that your clients' "inter- or intra-agency" threshold concerns also applied to the documents we mentioned in the last paragraph of our May 9, 2008 letter to you in case number 200502767. As noted in our earlier letter, we determined that these documents were not responsive to the FOIA request. This determination was based on our good faith interpretation of the request that we presented in our May 9 letter, which you have not contested. In any event, we again confirm that even if these documents were responsive, their entire contents would fall within exemption 5 as predecisional deliberative material, prepared by a consultant who was paid by the Department of State, who did not have an interest in the Department's ultimate decision, and who was not advocating benefits at the expense of third parties.

In these as in all the documents reviewed in response to your clients' FOIA requests, we confirm that all non-exempt material that is reasonably segregable from the exempt material has been released.

In regard to your clients' concerns regarding the Chinese request for import restrictions at issue in case number 200501372, we reiterate, in an effort to eliminate any perceived ambiguity, that the English-language text was created by the Chinese government, not by the Department. The English-language text, and only the English-language text, formed the basis of the public summary that the Department created and published. The Chinese-language

text did not constitute an official request under the treaty and was never used by the Department in any way. Accordingly, we have regarded the English-language text as the one responsive to your request.

As discussed in the June 12 phone call, we have also reviewed the fees for the two FOIA cases for which your clients were charged. Upon reexamination, we agree that the original fees were excessive and apologize for the error. The new fees are the following: For case number 200402941 the total charge is $326.40 (consisting of $68 for 1 hour of search time @$68/hour; $248.50 for 3.5 hours of review time @$71/hour; and $9.90 for the duplication of 66 pages @$0.15/page). For case 200600298, the total charge is $250.90 (consisting of $34 for .5 hours of search time @$68/hour; $213 for 3 hours of review time @$71/hour; and $3.90 for the duplication of 26 pages @$0.15/page).

Enclosed please find the checks which you submitted earlier, and which we have not processed in light of the fee correction. Please make your new checks or money orders for the new balances payable to the Treasurer of the United States, and mail them to the Office of Information Programs and Services, Room 8100, SA-2, Department of State, Washington, D.C., 20511-8100. Please be sure to write the case number on each of your checks or money orders.

Further, we wish to raise a few points regarding the Department's searches in your May 22 letter, in the hope that further information will help clarify the thoroughness of the Department's search efforts. In case number 200704168, we note that, although for administrative purposes we clustered the responsive material into ten "documents," the actual number of responsive records is higher than ten.

With regard to item 2 of this request ("Any documentation evidencing the extension of import restrictions to coins of Cypriot types for the period January 25, 2007 to July 31, 2007") we have interpreted it as referring to evidence that the Department decided to extend the Memorandum of Understanding and to include coins in the import restriction. This appears to be the most logical reading of item 2, for it reduces the degree to which item 4 of the same request constitutes mere surplusage. This interpretation also follows from the difference in phrasing between this request and your clients' similar requests in

case numbers 200503753 (see your clients' letter of August 25, 2005, seeking documents "evidencing the *potential* inclusion of coins") and 200502767 (see your clients' letter of July 6, 2005, seeking documents "evidencing the inclusion of coins in the list of items *proposed* to be restricted") (emphasis added).

As for the requested correspondence in item 4 of case number 200704168, we have already located responsive material involving most of the individuals and entities identified in your April 17, 2008 letter as supplemented by your emails to Assistant U.S. Attorney Brian Hudak of April 23 and June 13, 2008. We have now located additional responsive material (including items related to the organizations noted in your June 13 email). We have determined that it may be released in full, and have enclosed it with this letter. In the cases of some individuals or entities, we believe that no responsive correspondence exists. With respect to your concerns involving the Cyprus American Archaeological Research Institute (CAARI), we have been informed that a CAARI officer did assist, by telephone, in arranging a meeting among Cypriot officials and Cultural Heritage Center staff, but that no one from CAARI attended that meeting and that no responsive records involving CAARI were generated beyond what we have enclosed here.

As discussed in your June 12 phone conversation with our counsel, we are re-examining our searches of paper and electronic records, and we will let you know if additional responsive material is located. If you have concerns about anything discussed in this letter, please contact Assistant U.S. Attorney Brian Hudak at (202) 514-7143 or brian.hudak@usdoj.gov.

Sincerely,

for

Margaret P. Grafeld, Director
Office of Information Programs and Services

Enclosures:
As stated.