

National Aeronautics and
Space Administration
Office of the Administrator
Washington, DC 20546-0001



June 18, 2003

Ms. Lee Ellen Helfrich
Attorney at Law
Lobel, Novins & Lamont
1275 K Street, NW
Suite 770
Washington, DC 20005-4048

Dear Ms. Helfrich:

By letter dated May 9, 2003, to the NASA Administrator, you appealed, on behalf of your client, Ms. Leslie Kean, an initial determination under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.*, issued by Ms. Sharon S. Holgerson, FOIA Officer at NASA Headquarters. Your client's initial request, dated January 31, 2003, sought "all data of whatever form including correspondence, telegraphic, electronic, photographs, scientific reports, analyses or tests such as metallurgic analysis, collection records, interviews with civilians . . ." relating to a Kecksburg incident in December 1965, or Acme; NASA fragology files for 1962-1967; and any records on Richard M. Schulherr, Project Moon Dust, "Cosmos 96," and "NASA's involvement of the recovery of the satellite, parts or debris thereof, anywhere in the United States or Canada."

In response to your client's request, a search was conducted at the NASA Headquarters History Office, and no responsive records were determined to exist. You have appealed this determination on a number of grounds.

You state that it is clear that documents on this topic are, or were, in the Agency's possession or control because you have enclosed three with your appeal letter and, therefore, question the reasonableness of NASA's search. One document appears to be a list of NASA files in storage at the Federal Records Center, including one entry entitled "Moon Dust." A second document appears to be a description of "Cosmos 96," printed from a NASA Goddard Space Flight Center Web site, and dated May 6, 2003. The third document is a memo dated May 7, 1968, from R. M. Schulherr, who was apparently a NASA employee, to C.N. Jones, on "Moondust from Columbia." Your research indicates that there are also a substantial number of documents related to fragology that were created by NASA, and you question why the only installation apparently contacted by NASA in processing your client's request was the NASA Headquarters History office. You note that you were informed on April 7, 2003, by Ms. Kellie Robinson of the FOIA Office that a previous FOIA request had been received concerning the same events, and documents were located and released. NASA's initial determination issued to your client did not reference or disclose the existence of the previous FOIA requests, nor cite any reasons for not disclosing the correspondence, nor provide any segregable portions of those documents. Therefore, you seek copies of the earlier FOIA requests relating to the same information and NASA's responses to those requests.

Your client's interest in the information concerns her investigation into the U. S. Government's reaction to events that were deemed confidential forty years ago. You assert that "the public's interest now lies in the historical significance of these events, including an evaluation of government decisions, such as a 'confidential' classification There was a reason that NASA and other federal agencies, including the military, took an active interest in events like the one in Kecksburg and it is now time to evaluate why." Moreover, you seek "access to the identities of the people involved. . .", stating that it is a crucial part of your client's research and evaluation. To support your request, you cite case law holding that "FOIA Exemption 6 does not justify the withholding of information regarding individuals, particularly where the privacy interest is minimal and the public interest in disclosure is strong. The balance of interests under Exemption 6 'instructs the court to tilt the balance in favor of disclosure.' Getman v. NLRB, 450 F.2d 670, 674 (D.C. Cir. 1971.)"

Finally, you make an additional request for documents that were not incorporated in your client's initial letter to the FOIA office. These include "(1) a description of the search conducted regarding her request and any documentation (e.g., e-mails) related thereto; (2) a copy of NASA's draft affidavit on FOIA searches or, in lieu thereof, a copy of affidavits that have been filed on NASA's behalf in FOIA disputes; (3) copies of the relevant information management manuals, memoranda, etc., that would have governed the transfer or disposal of documentation during the early 1960s, and including the transfer of the files listed in Exhibit 3; (4) copies of the relevant information management manuals, memoranda, etc., that would have governed the retention, transfer or disposal of FOIA requests at the time that any earlier request was processed; (5) all documentation relating to NASA's processing of any earlier request(s), and (6) copies of instructional or procedural memoranda, manuals, etc., relating to the process for conducting investigations, such as 'fragology,' that were in force in the 1960s."

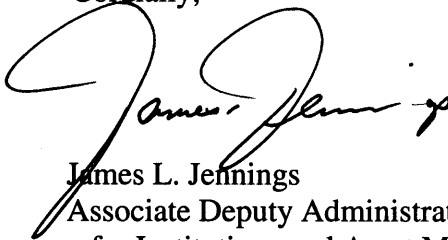
Your appeal has been reviewed pursuant to NASA FOIA regulations, 14 CFR Part 1206. This process has involved a review of the initial determination, the search conducted at NASA Headquarters, and your statement of appeal. I conclude that, based on the circumstances of this particular FOIA process, the search may not have been fully adequate, especially because only the NASA History Office was asked to conduct a search on behalf of the Agency. I will, therefore, remand this case to the FOIA Office and direct that the original request be sent to all NASA Centers for further processing in accordance with this appeal.

With respect to the issue you raised about previous FOIA requestors that, in the past, were provided information on the same subject, a new search was conducted in the NASA Headquarters FOIA Office for all responsive records. These documents will be reviewed for releasability under the FOIA, and the Headquarters FOIA Office will issue an initial determination in this regard. One of these documents, which I am releasing to you herewith, is a letter dated March 28, 1996, from the Washington National Records Center to the NASA Records Manager. It states that the National Records Center could not locate the two boxes identified as fragology files, with the accession number 255-68A-2062 (and included in your appeal letter as documents that should have been located as responsive to your client's request). However, NASA will initiate a new search to include these NASA files that may be located at the Washington National Records Center or other NASA archives. These searches will be conducted on an expedited basis, to the degree possible, given that retrieval of any historical documents from NASA archives, stored in remote locations, takes additional time.

I am also directing, by copy of this letter, that the NASA searches include the additional records you requested for the first time in your appeal letter. This new, broader search for NASA records responsive to your client's original request may obviate the need to address, at this time, the other issues raised in your appeal letter. After you and your client receive the initial determinations concerning any NASA records located as a result of this new search, you would be free to renew, at that time, your assertions with regard to those records.

Based on this review, I reverse the Agency's initial determination and direct that additional searches of NASA records be conducted in accordance herewith. This is a final determination and is subject to judicial review under the provisions of 5 U.S.C. § 552 (a)(4), a copy of which is enclosed.

Cordially,

A handwritten signature in black ink, appearing to read "James L. Jennings". The signature is fluid and cursive, with a large initial "J" and "L".

James L. Jennings
Associate Deputy Administrator
for Institutions and Asset Management

2 Enclosures

cc:

PSN/Ms. Holgerson



Washington National Records Center

Washington, DC 20409

March 28, 1996

Paul M. Willis
Headquarters Records Manager
NASA Headquarters Mail Code CO
Washington DC 20546-0001

Dear Mr. Willis:

In response to your recent request, we regret to inform you that we cannot locate the two boxes of records, identified as Fragology Files, from National Aeronautics and Space Administration (NASA) accession 255-68A-2062. Our records indicate that the boxes were identified as missing in 1987 and have not been located since that date.

Given the length of time the records have been missing and the fact that we have searched extensively for them, it is unlikely that we will locate the boxes.

We regret any inconvenience this may cause NASA.

Sincerely,

Velevia Chance

VELECIA K. CHANCE, Chief
Reference Service Branch

5 U.S.C. Section 552 (a)(4)

(4) (A) (i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

(ii) Such agency regulations shall provide that --

(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose primary purpose is scholarly or scientific research; or a representative of the news media; and

(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purposes of withholding any portions exempt from disclosure under this section. Review costs may include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section. No fee may be charged by any agency under this section --

(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

(II) for any request described in clause (ii) (II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

(v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed \$250.

(vi) Nothing in this subparagraph shall supersede fees charged under a statute specifically providing for setting the level of fees for particular types of records.

(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo: *Provided*, That the court's review of the matter shall be limited to the record before the agency.

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action.

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

[**(D)** Repealed. Pub. L. 98-620, title IV, § 402(2), Nov. 8, 1984, 98 Stat. 3357.]

(E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the office or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.