

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
Leslie Kean,)	
Plaintiff,)	
)	
v.)	Case No. 03-2509 (EGS)
)	
National Aeronautics and)	
Space Administration.)	
Defendant.)	
_____)	

STIPULATION OF SETTLEMENT IN PART

In this case brought pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, the parties have stipulated to the following process for resolution of the dispute, subject to approval by the Court:

1. National Aeronautics and Space Administration (NASA) will designate Judi A. Hollingsworth (FOIA Officer, Marshall Space Flight Center) to manage and oversee compliance with the settlement agreement. Ms. Hollingsworth shall also serve as the liaison and contact person for Leslie Kean (Ms. Kean).

2. Within 45 days of the Court's entry of this stipulation, NASA will conduct a preliminary review of its stored file database for all documents submitted to storage by its Office of Administrator, the Office of International Affairs (and its successors) and the Office of Manned Space Flight (and its successors). This search will be directed at identifying the universe of documents dated 1962 to 1967 submitted to storage by these entities (or their successors). This search will involve a review of the Standard Form 135s for documents submitted to storage through at least 1977.

3. Within the period set out in paragraph 2, NASA will provide to Ms. Kean copies

of all of the Standard Form 135s identified, designating by highlighting those files that NASA intends to retrieve and review under the provisions of paragraph 4. Within 30 days of receipt of the information required to be produced under this paragraph, Ms. Kean will notify NASA of any files she believes were omitted from its designations under this paragraph and paragraph 4. If NASA objects to any file designated by Ms. Kean under this paragraph because such file falls outside the categories set out under paragraph 4, Ms. Kean may proceed to designate the file under paragraph 5.

4. NASA agrees that the following categories of files will be retrieved from the relevant federal record center: (a) all files with a geographic designation (*e.g.*, Ecuador, London); (b) all files with a launch, project or mission designation, U.S. or otherwise (*e.g.*, Sputnik, Apollo, Blue Book, Moondust); (c) all files designated by an official's name or title (*e.g.*, diaries of Abernathy, files of the Administrator); (d) all files referencing a U.S. military or State Department entity or otherwise indicating liaison activities between NASA and a military and/or State Department entity (*e.g.*, DoD, Air Force, Fort Henry); (e) all files referencing as contents manuals, instructions, MOUs, and rules; (f) all files referencing orbital debris activities; (g) all files with file designations containing the terms fragments, debris, space junk, objects, satellites, rockets, launches, missiles, launchers, space vehicles, tests, experiment, tracking, samples, landings, crashes, meteor, meteorite and military; (h) all files that suggest that the files contain manuals or instructions relating to NASA's practices in dealing with media or other public inquiries or that suggest that the files contain documents relating to NASA's public relations efforts or contacts with the media, and (i) all files with designations substantially equivalent to categories 4(a) through 4(h), such as, for example, files labeled "press releases" [4(h)], files labeled "retrieval operations" [4(f) and 4(g)] or files labeled "liaison with local

governments” [4(a)].

5. For purposes of retrieval of files falling within the categories set forth in paragraph 4, NASA’s obligation to retrieve files does not include those where the file designation, on its face, indicates that it would not contain any document(s) relating or referring to the launch, re-entry, recovery, retrieval, investigation, or analysis of space vehicles or other objects or debris. [For example, a file labeled “Apollo – Congratulatory Photos” or a file labeled “Office of the Administrator – fiscal year 1963 budget” would fall within the preceding condition and thus NASA would not be obligated to retrieve or review that file].

Notwithstanding the foregoing, if a file designation does not provide sufficient information to determine the file’s contents or is otherwise ambiguous regarding the subject matter(s) of the documents within the file, NASA shall retrieve the file for review under the process set out in paragraph 8. [For example, NASA would be required to retrieve and review the contents of a file labeled “Press releases--1964” or a file labeled “Administrator’s correspondence--1966”].

6. In addition to the file categories covered under paragraph 4 above, within 30 days of receipt of the Standard Form 135s, Ms. Kean may designate for retrieval and review additional files from the Standard Form 135s referenced in paragraph 3 and the boxes referenced in paragraph 7, which were retrieved from the record center in connection with this case. Under this paragraph, Ms. Kean may designate up to 75 additional files not otherwise designated for retrieval under the preceding paragraphs. Files designated by Ms. Kean under this paragraph will be retrieved from the relevant federal record center and reviewed for purposes of disclosing documents responsive to Ms. Kean's FOIA request (*see* paragraph 8) and/or for determining whether to assert an exemption from disclosure under FOIA (*see* paragraphs 11 and 12).

7. NASA's search will include all of the files in the record boxes previously

retrieved from a federal record center in connection with this case. NASA's search will also include a search of the Office of Manned Space Files, space debris files and "UFO" files in its Headquarters' History Office.

8. Within 60 days of completing the review referenced in paragraph 2, NASA will retrieve all files designated under paragraphs 4, 5, 6, and 7 and conduct a search, by hand, for documents responsive to Ms. Kean's FOIA request. If Ms. Kean exercises her rights under paragraph 6, this period will be extended by 30 days. Within these same time periods and subject to paragraphs 11 and 12, NASA will turn over to Ms. Kean all information responsive to her FOIA request concerning which NASA will not assert a FOIA exemption. Responsive information includes, but is not limited to, information that: (a) relates to, explains, describes, mentions, references or discusses, in whole or in part, the discovery, retrieval, investigation, or analysis of any object or debris, which fell, landed or crashed in or during the years 1962, 1963, 1964, 1965, 1966, and 1967; and/or (b) relates, explains, describes, mentions, references or discusses the policies or procedures for the discovery, retrieval, investigation, and analysis of any such objects or debris, which were operational in or during the years 1962, 1963, 1964, 1965, 1966, and 1967. Documents which may contain such responsive information include, but are not limited to, those that address inter-agency or inter-departmental activity, foreign relations, contacts with state or local governments or with members of the public, and public or media relations or contacts. NASA acknowledges that the documents to be retrieved and reviewed under this agreement include, but are not to be limited to, retrieval and review of documents that relate to, explain, describe, mention, name, reference or discuss Kecksburg, Pennsylvania; Acme, Pennsylvania; December 9 or 10, 1965; Cosmos 96; "fragology"; "unidentified flying objects" ("UFOs"); and Richard M. Schulherr. Routine, uneventful U.S.

government launches and landings are not encompassed by this paragraph.

9. Within 60 days of Ms. Kean's receipt of responsive documents, NASA and Ms. Kean will jointly confer on whether the search efforts revealed information that suggests that additional responsive documents may be retrievable through a search of additional files, additional accessions, other NASA offices or installations, other data systems or through use of different search terms or categories. The determination by NASA to conduct a further search will be based solely upon the documents revealed during the search and any outside historical, technical or archival information known to NASA or Ms. Kean. NASA shall continue the search if the documents referenced above suggest:

- (a) that another NASA office or installation was involved in the retrieval, investigation or analysis of any object or debris that fell, landed or crashed in or during the years 1962, 1963, 1964, 1965, 1966 or 1967;
- (b) that during the period 1962 through 1967 NASA used terminology or referencing methods, not employed in NASA's search efforts under the preceding paragraphs, for purposes of maintaining information on the retrieval, investigation or analysis of any object or debris that fell, landed or crashed in or during the years 1962, 1963, 1964, 1965 or 1967; or
- (c) that files of the Office of Administrator, Office of Manned Space Flight or Office of International Affairs had been retrieved from storage by a NASA official or employee and were either (i) not returned to a federal record center, or (ii) reorganized for purposes of storage.

NASA will confer with Ms. Kean in the design and implementation of any such additional search.

10. All documents disclosed to Ms. Kean will be segregated in a manner that clearly indicates the file from which they were retrieved and, where relevant, the associated SF 135. The documents in each file will be numbered consecutively by NASA (*e.g.*, Bates stamping or other means).

11. With respect to any information located responsive to Ms. Kean's FOIA request, NASA may assert that entire documents or segregable portions of documents are exempt from disclosure under FOIA. Consistent with the FOIA, NASA shall not exempt an entire document when segregation of exempt material is reasonable. For each exemption asserted, NASA will provide to Ms. Kean, within 30 days after NASA completes the actions under paragraph 8, a citation to the asserted exemption and description of the category or types of information withheld under the exemption asserted (*e.g.*, social security number). Ms. Kean reserves the right to challenge in this case any exemption asserted NASA. Prior to filing in court, NASA and Ms. Kean will meet and confer to attempt resolution of any dispute over an exemption.

12. If any file contains information the release of which requires the approval of another federal agency, within ten days of the completion of its search under paragraph 8, NASA will refer the information to the relevant agency and will request expedited review. NASA will also request that any other federal agency, should it assert a FOIA exemption, provide a citation to the exemption and a description of the category or type of information withheld from disclosure. If the federal agency does not respond to NASA within 90 days, NASA will contact that federal agency and notify Ms. Kean of the delay and the reasons therefor. Ms. Kean reserves the right to challenge in this case any exemption asserted by another federal agency with respect to information referred to it by NASA under this paragraph.

13. Within 90 days after the processes set forth in paragraphs 8, 11, or 12, whichever

is later, Ms. Kean will notify NASA whether she will challenge any exemptions asserted by NASA or any other federal agency with respect to the information at issue in this case. If no challenge to an exemption asserted will be made, NASA and Ms. Kean shall file a joint motion to dismiss this case within ten days of Ms. Kean notifying NASA that no challenge to an exemption asserted will be made. The parties agree that the only challenge that may be raised to the search to be performed by NASA will be a claim that NASA failed to comply with the terms of this Stipulation.

14. Upon the giving of 5 days notice prior to the expiration of any time period established in one of the preceding paragraphs, either NASA or Ms. Kean may extend the time period set under that paragraph for up to 30 days. No time period set under any paragraph may be extended more than once without the written consent of the other party.

15. The United States of America, on behalf of NASA, agrees to pay Ms. Kean the total sum of \$50,000.00 in attorneys' fees and litigation costs in full satisfaction of any such fees and costs incurred to date. After approval of this Stipulation by the Court, counsel for NASA shall make a request within ten (10) days to the Judgment Fund of the U.S. Department of the Treasury for payment to Ms. Kean, through counsel, of the amount set forth in this paragraph.

Executed this 11th day of October, 2007.

