

ATTACHMENT 7

The National Security Archive

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December 22, 2005

Letter by Facsimile

Letter and Attachments by First Class Mail

Scott Koch
Information and Privacy Coordinator
Central Intelligence Agency
Washington, DC 20505

RE: Fee Categorization Determination for FOIA Requests

F-2006-00081	20051532CIA193
F-2006-00098	20051548CIA196
F-2006-00099	20051551CIA197
F-2006-00100	20051559CIA198
F-2006-00106	20051573CIA202
F-2006-00107	20051568CIA201
F-2006-00118	20051586CIA208
F-2006-00129	20051601CIA213
F-2006-00173	20051612CIA214
F-2006-00186	20051619CIA215
F-2006-00187	20051622CIA216
F-2006-00190	20051645CIA220
F-2006-00191	20051637CIA219

Dear Mr. Koch:

This is in response to your letters of November 7, 8, 16, 17, and December 8 and 9, 2005 (Enclosure A) in which you question the categorization of the National Security Archive (the "Archive") as a "representative of the news media" with respect to the thirteen FOIA requests listed above. This letter concerns all thirteen of your responses to these requests and any similar responses to other requests.

Federal Recognition of the Archive as a Representative of the News Media

In *National Security Archive v. U.S. Dep't of Defense*, 880 F. 2d 1381 (D.C. Cir 1989), *cert. denied* (Mar. 19, 1990), the D.C. Circuit held that the National Security Archive is entitled to a waiver of all search and review fees under the FOIA as a "representative of the news media." *Id.* at 1387. The D.C. Circuit's decision was based on the fact the Archive had published one book and intended to publish document sets in the future. The now-Chief Judge of the D.C. Circuit, Judge Ginsburg, writing for a unanimous court, explained: "A representative of the news media is, in essence, a person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." *Id.* As is discussed in greater detail in the next section of this letter, since the time of the court decision, the Archive's publication activity has expanded dramatically. Moreover, the Archive's journalistic work has received numerous

An Independent non-governmental research institute and library located at the George Washington University, the Archive collects and publishes declassified documents obtained through the Freedom of Information Act. Publication royalties and tax deductible contributions through The National Security Archive Fund, Inc. underwrite the Archive's Budget.

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awards, including, most recently, the 2005 Emmy Award for Outstanding Achievement in News and Documentary Research, presented by the National Television Academy at the 26th Annual News & Documentary Emmy Awards.

In the *National Security Archive* decision, the D.C. Circuit also held that FOIA requests submitted by the National Security Archive in furtherance of its publication activities are not for a "commercial use," *Id.* at 1388. Each of the FOIA requests referenced above is for documents that will directly further the publication activities of the National Security Archive.

Further, the D.C. Circuit held that "[a]bsent [] a change in circumstances ... the Archive is entitled to preferred [news media] status." The *National Security Archive* decision was based on a full consideration of the statute and the legislative history. The language of the FOIA prohibiting search and review fees for representatives of the news media is no different today than it was at the time of the *National Security Archive* decision. Moreover, as explained in the next section of this letter, the facts today are even more supportive of the Archive's news media status than they were at the time of the decision.

And, in fact, the D.C. Circuit is bound by that decision. As the Supreme Court has frequently explained, considerations of *stare decisis* are particularly forceful in the area of statutory construction, especially when a unanimous interpretation of a statute has been accepted as settled law for several decades. With respect to the FOIA there is no argument that the CIA is entitled to deference, as the statute and legislative history makes clear that this is not an area of statutory interpretation that is within the particular expertise of the CIA or that has been delegated to the agencies. Recently, Justice Scalia explained how this works: "The Court's unanimous holding in *Neal v. United States*, 516 U.S. 284 (1996), plainly rejected the notion that any form of deference could cause the Court to revisit a prior statutory-construction holding: 'Once we have determined a statute's meaning, we adhere to our ruling under the doctrine of *stare decisis*, and we assess an agency's later interpretation of the statute against that settled law.' *Id.*, at 29."

Moreover, the CIA – and indeed every other federal agency – has for 15 years abided by the *National Security Archive* decision and recognized the National Security Archive as a "representative of the news media" for similar FOIA requests based on our continuing publication of articles and books. This includes the Department of Defense and all of its component agencies, every other intelligence agency, and the Department of State. The CIA's sudden change in policy, without any explanation, is arbitrary and capricious, and appears that way to all the news media organizations we have spoken with. An agency acts arbitrarily and capriciously when it abruptly departs from a position it previously held without satisfactorily explaining its reason for doing so. "Indeed, where an agency departs from established precedent without a reasoned explanation, its decision will be vacated as arbitrary and capricious." *ANR Pipeline Co. v. FERC*, 71 F.3d 897, 901 (D.C. Cir. 1995); *see also Wisconsin Valley Improvement Company v. FERC*, 236 F.3d 738 (D.C. Cir. 2001) (finding sudden imposition of fees on a licensee that was not previously subject to fees arbitrary and capricious and vacating the fees); *AT & T v. FCC*, 974 F.2d 1351, 1355 (D.C. Cir. 1992) (faulting the FCC for failing to explain why it "changed the original price cap rules" and concluding that the Commission's "Reconsideration Order is arbitrary and capricious for want of an adequate explanation"). As the Supreme Court has put it, "an agency changing its course must supply a reasoned analysis...." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 57 (1983) (citation omitted). It is hard to imagine, under the circumstances presented here, that the CIA will be able to come anywhere close to meeting this standard.

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Given this overwhelming precedent, I am troubled that in your recent letter of November 25, 2005, rejecting news media status for five other FOIA requests, you invite the Archive to address your denial of news media status in court. Under the provisions of the FOIA and the CIA's FOIA regulations, the Archive has a right to an administrative appeal before the CIA Agency Release Panel. See, e.g., 32 C.F.R. Sec. 1900.42 ("A right of administrative appeal exists whenever ... a request for a fee waiver is denied."). We intend to exercise that right for the requests denied on November 25, 2005, and - if you reject these requests or any others - we will appeal those as well to the CIA Agency Release Panel. As a matter of good government, it does not appear sensible to use taxpayer money to clog up the CIA's administrative appeal process or cause frivolous legal defenses to be litigated through three courts.

Moreover, I direct you to the Conference Report on the 1974 amendments to the FOIA, which was approved by both houses of Congress when the news media provisions were enacted into law. There Congress cautioned: "The conferees intend that fees should not be used for the purpose of discouraging requests for information or as obstacles to disclosure of requested information." S. Rep. No. 93-1200, Conference Report on the 1974 Amendments to the FOIA.

The Archive's News Media Activities

The regulation cited in your above-referenced letters, 32 C.F.R. § 1900.02 (3), states "[r]epresentative of the news media means a request from an individual actively gathering news for an entity that is organized and operated to publish and broadcast news to the American public pursuant to their news dissemination function and not commercial interests." That language is drawn from Office of Management and Budget ("OMB") guidelines that all agencies subject to the FOIA are mandated by Congress to follow. 5 U.S.C. Sec. 552(a)(4)(A)(i) (agency fee schedules should "conform to the guidelines ... promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget."). OMB has indicated that news media be "defined generically as "an entity that is organized and operated to publish or broadcast news to the public." See Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 Fed. Reg. 10,012, 10,012-17 (1987). Furthermore, when establishing qualification as a member of the "news media," OMB advised, "a history of continuing publication ... would suffice." *Id.*

Here, the National Security Archive unquestionably qualifies for "news media" status. The National Security Archive has an extensive publication history, including the production of over 40 books. These include: *The Pinochet File: A Declassified Dossier on Atrocity and Accountability*, by Peter Kornbluh (New York: The New Press, 551 pp.), *The Kissinger Transcripts: The Top Secret Talks with Beijing and Moscow* by William Burr (New York: The New Press, 515 pp.), *Bay of Pigs Declassified: The Secret CIA Report* by Peter Kornbluh (New York: The New Press, 340 pp.), *Atomic Audit: The Costs and Consequences of U.S. Nuclear Weapons since 1940* by Stephen I. Schwartz with Thomas S. Blanton, William Burr et al. (Washington, D.C.: Brookings Institution Press, 680 pp.) A more complete list of books by Archive analysts is attached. (Enclosure B)

The decision to recognize the Archive as a representative of the news media in the *National Security Archive* case was based on the Archive's intention to publish document sets, along with indexes and finding aids. Our most recent document sets, which publish documents obtained through the FOIA, along with commentary, indexes and finding aids, include *U.S. Policy in the Vietnam War, Part I, 1954-1968*, *U.S. Policy in the Vietnam War, Part II: 1969-1975*, *Japan and the United States: Diplomatic, Security, and Economic Relations, Part II, 1977-1992* and *Guatemala and the United States, 1954-1999*. A list of our 26 published document sets is attached as well. (Enclosure C) These sets are available

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digitally and on microfiche, and are distributed to a broad range of libraries, universities, research institutes, and the like. In addition, any member of the public is able to access these for free in our own public reading room.

Articles written by National Security Archive analysts have appeared in *The Washington Post*, *The New York Times*, *The Wall Street Journal*, *Congressional Quarterly*, *The LA Times*, *Harpers Magazine*, *The Miami Herald*, *The Nation*, *The Guardian*, *Vanity Fair*, *The Bulletin of the Atomic Scientists*, *World Policy Journal*, *Foreign Affairs*, *Foreign Policy*, *Newsweek*, *The International Journal of Intelligence and Counterintelligence*, *International Security*, *Intelligence and National Security* and other publications.

Additionally, the National Security Archive actively distributes electronic newsletters, at no cost, on an almost weekly basis to over 7,000 subscribers. These newsletters directly link to documents recently released through the National Security Archive's FOIA activities or update the public on issues pertaining to the operations and activities of the U.S. government. A complete list of our electronic briefing books is available at <http://www.gwu.edu/~nsarchiv/NSAEBB/index.html>.

Archive's Satisfaction of CIA's Additional Criteria for News Media Status

The CIA's definition of "news media" contains additional requirements not found anywhere in the OMB Fee Guidelines or in other agencies' FOIA regulations. Although Congress, in the FOIA, directed that agency fee schedules should "conform to the guidelines . . . promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget," 5 U.S.C. Sec. 552(a)(4)(A)(i), the CIA's regulations do not meet this standard. Interestingly, when the CIA added additional criteria to its regulations in an Interim Regulation published in the Federal Register eight years ago, it stated that the revised regulations would "not alter substantially any existing rights of members of the public." 62 C.F.R. 32479 (June 16, 1997).¹ We and the other news media organizations believe that the new interpretation that the CIA is applying to its regulations does just the opposite. Of course, many of the other news media outlets are profoundly interested in definitions of news media because they have been actively pursuing an expansion of news media definitions to include non-traditional news media, such as the definition in the OPEN Government Act proposed by Senators Cornyn and Leahy.

Since you request a thorough response detailing how each of these requests concerns current events, interests the general public, and enhances public understanding of the operations or activities of the U.S. Government, and since you ask how we plan to disseminate the information to a significant element of the public at minimal cost, the following sections clarify how each of these requests satisfies all of these criteria. Although we feel that we meet these standards, it is the Archive's position that these standards are not the appropriate ones by which to judge whether a FOIA requester is a representative of the news media.

In general, when new information concerning important events is released it is "news" even if the underlying events took place long ago so long as it is of "current interest to the public." See OMB Guidelines ("The term 'news' means information that is about current events or that would be of current

¹ The CIA's additional criteria appear to be drawn from the FOIA's definition of what would qualify for a public interest fee waiver, and the cases decided under that provision. The Archive is requesting news media status and is not requesting a public interest fee waiver. Congress was well aware of how to limit applicability of a fee waiver to information meeting content criteria, as demonstrated by its definition of the standard for a public interest fee waiver. Under elementary principles of statutory construction, it is clear that Congress declined to impose such content criteria for the news media fee waiver.

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interest to the public.”) (emphasis added); 32 C.F.R. 1900.02 (“the term news means information which ... would be of current interest to the general public”). That is the case with many of the requests described below. The public’s desire for knowledge is not satisfied with the mere passage of time. For example, a few weeks ago *The New York Times* published a story about the 1964 Gulf of Tonkin incident and the role intelligence failures at the National Security Agency’s played in that incident. Just this week recently uncovered documents from Guatemala’s civil war in the late 1970s and 80s made major news, including an Associated Press story “Official Says Guatemala Killed Leftists,” from December 14, 2005, which was reproduced in over twenty print publications. New, definitive or official information on these events, some of which took place decades ago, are still some of today’s most important news stories because the information is revelatory for the public’s understanding of their own histories, and of events that have changed the course of history and that impact current events.

In addition, as to how the Archive will disseminate the information to a significant element of the public at minimal cost, the same response applies to every one of the Archive’s FOIA requests. As the National Security Archive has repeatedly done in the past, publication and public dissemination of these documents will be accomplished by one or more methods, all with the explicit goal of reaching the largest audience possible at the lowest cost possible. If the document is released and contains new information not previously widely known to the public, or policy not previously widely documented in the public record, we will immediately publish a briefing book explaining the significance of the document and providing relevant historical background with the document. We also publish short electronic briefing books (collections of 5-50 documents that describe a specific event or a specific U.S. government policy). These are circulated at no cost to our over 7000 subscribers and made available at no cost on our Web site for all members of the public. See www.nsarchive.org. The documents themselves will be available on our Web site, at no cost, indefinitely, for anyone with Internet access to view, copy, download, disseminate and further utilize. We provide a comprehensive full-text keyword search so that people can locate documents related to their research even if they don’t know exactly what document they are looking for.

In addition, the Archive’s centerpiece publications are its document sets. If the requested documents contain substantive information, they will be included in a published document set. These document collections are published in microfiche (available at any of the hundreds of libraries that purchase access to our sets), paper copies of documents (available in our reading room to anyone present or via mail to anyone who sends an inquiry), or through the Digital National Security Archive, a database that contains full-text searchable and chronologically organized images of released government documents. For these published sets, the National Security Archive will take between 2-5 years to gather all recently declassified documents on a particular issue. Each set focuses on specific U.S. government policies on a region or an issue and provides an unparalleled resource of declassified government documents to the public.

F-2006-00081 20051532CIA193

Concern Current Events and of Interest to the General Public:

In 2004 the Indonesian Parliament passed legislation providing for the establishment of a Truth and Reconciliation Commission charged with investigating human rights abuses during the “New Order” period of President Suharto from 1966 to 1998. Such efforts in Indonesia to document past human rights abuses and the historical context of political conflict are crucial to its ongoing democratic transition and thus of clear interest to the U.S. general public. Questions of human rights and efforts to hold former

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officials accountable for abuses are always issues that remain newsworthy and of widespread interest to the general public. Human rights abuses have consistently been a topic of current events.²

During the New Order period, military repression of university students was a potent symbol of the Suharto regime's determination to prevent the emergence of widespread dissent. In May 1998, for example, the killing of six university students at Trisakti University in the capitol of Jakarta triggered mass protests which played a crucial role in the downfall of the Suharto regime. As such, efforts to document military repression of student activists are of clear interest and concern to the public's efforts to place the human rights abuses of the Suharto regime in their proper historical context.

Enhance public understanding of the operations or activities of the U.S. government:

A crucial component of the National Security Archive's efforts involves establishing the international context in which New Order era human rights abuses took place, such as the awareness of the U.S. government of such abuses. Documents concerning U.S. government knowledge of Indonesian military repression of political activity by university students will thus help increase public understanding of the workings and activities of the U.S. government, in particular the degree to which U.S. officials in Indonesia were aware of ongoing human rights abuses. Such events are also of clear interest to the general public in both Indonesia and the United States, where recent decisions to lift conditions on the provision of military assistance and training to the Indonesian armed forces have generated substantial publicity and concern among nongovernmental organizations in both countries (See attached article **Enclosure D**).

Disseminate the information to a significant element of the public at minimal cost:

For this and other requests submitted by the National Security Archive for the Indonesia/East Timor project:

The National Security Archive is collaborating with U.S. and Indonesian nongovernmental organizations to investigate and document the history of U.S.-Indonesian military relations and human rights abuses in Indonesia during the New Order period. In November 2005 the Archive published a selection of similar documents that it provided to East Timor's Commission for Reception, Truth and Reconciliation, generating widespread publicity as a result and demonstrating their relevance to current events, interest to the general public, method of dissemination, and enhancing of public understanding of the operations or activities of the U.S. government (<http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB174/index.htm>).

In addition to the general means of disseminating the information described above, the Archive recently donated copies of over 1,000 declassified documents it obtained through the FOIA to the truth commission in East Timor, making copies accessible to thousands of members of the general public in the United States and in Asia. The analyst making these requests has several previous print publications on U.S.-Indonesia relations and human rights abuses in East Timor that have used declassified U.S. government documents obtained through the FOIA. As an example, see "‘Illegally and Beautifully’: The United States, the Indonesian Invasion of East Timor and the International Community, 1974-76," published in *Cold War History* Vol. 5, No. 3, August 2005, pp. 281-315. (**Enclosure E**).

² "Turkey's human rights in spotlight as author goes on trial for insulting nation," *The Independent*, December 16, 2005. "Timor truth commission set to examine bloodshed," *Reuters Newswire*, December 16, 2005. "Afghan war crimes plan hailed, but key tests ahead," *Reuters Newswire*, December 15, 2005. "Mass grave exhumed with remains of 100 people killed in riots 24 years ago in Morocco," *Associate Press Newswire*, December 13, 2005.

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In addition to working in support of Indonesia's Truth Commission process, the National Security Archive's Indonesia and East Timor Documentation Project is preparing to undertake a collaborative publishing effort with *Tempo*, Indonesia's leading weekly print news magazine. This collaborative effort will involve the regular publication of articles exploring important events in recent Indonesian history and U.S.-Indonesian relations using recently declassified U.S. documents. This effort will support Indonesian public access advocates seeking to expand the reach of Indonesia's own freedom of information legislation by modeling examples of open access from other countries. Several of these FOIA requests have been made specifically for media collaboration with *Tempo*.

F-2006-00098 20051548CIA196

Concern Current Events and of Interest to the General Public:

This FOIA request concerns President-elect Bill Clinton's first meeting with a foreign leader – Mexican President Carlos Salinas in Austin, Texas on January 8, 1993. The central issue discussed by the two men was the status of the North American Free Trade Agreement (NAFTA). Although the free-trade accord was ratified and well developed by the time of this meeting, critical disagreements between U.S. and Mexican negotiators about environmental and labor standards – among other issues – had not yet been settled. President-elect Clinton used the meeting to assure Salinas that he supported the agreement, but that he believed the two countries had to hammer out side arrangements to protect American workers and the environment. He told the Mexican President that he would back rapid implementation of NAFTA after those remaining issues were settled.

According to *The New York Times* (1/9/93, p.A1), President-elect Clinton told reporters that the trade talks were vital not only to the U.S.-Mexican relationship, but also could "lay the foundation for further trade agreements between the United States and other nations in Central and South America." As the two presidents met inside the Texas Governor's mansion for an hour and a half, demonstrators opposed to the accord marched and chanted outside. The demonstrators were a reminder of the divisions within the Democratic Party over NAFTA and the difficulties Clinton would face in trying to assuage his supporters that the U.S. would not lose jobs as a result of the treaty.

The information sought is of tremendous relevance to discussions under way today between the U.S. and Latin America. As the administration of President George W. Bush continues to negotiate for a Central American free trade agreement – as well as a broader pact that would cover the entire hemisphere – these early discussions of the North American Free Trade Agreement are of intense current public interest to Americans and Latin Americans alike. Many of the issues that were debated by the United States and Mexico in the final months leading up to the implementation of NAFTA have bearing on the current U.S. position toward free trade, and information about those early discussions would help scholars, journalists, and policy analysts understand the current debate. They include the details of what bilateral differences remained (on topics such as labor, health and the environment), how other political issues – such as democratic governance, domestic social programs and support for U.S. foreign policy goals – may have affected the talks, and how negotiations over the international treaty affected the domestic political dynamic in the United States.

Enhance public understanding of the operations or activities of the U.S. government:

Not only does information regarding the 1993 meeting in Austin have bearing on current events, but it will assist scholars of the United States to better understand the operations and policies of the U.S. government. Complex bilateral and multilateral treaties such as the North American Free Trade Agreement unfold before the public's eyes in very limited, controlled ways – while behind the scenes, government negotiators spend months or years hammering out every detail they believe important. Today,

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more than a decade after the passage of NAFTA, gaining insight into how the U.S. government participated in the drafting, discussing, changing and finally passing such a critical bilateral accord will help the public comprehend how the government functions in similar circumstances – such as the negotiations now under way between the U.S. and many other Latin American nations for a wider trade accord.

Disseminate the information to a significant element of the public at minimal cost:

For this and other requests submitted by the National Security Archive for the Mexico and Mexico/U.S. Relations project:

The Archive's Mexico Project, which has existed since 1994, in addition to the general means described above, has a variety of means for sharing the information we obtain through our FOIA requests. Much of the information is disseminated through publications that are distributed to over 7000 subscribers and made available for free on the Archive's Web site (www.nsarchive.org/mexico). Further, the Project publishes regularly in the mainstream media in both Mexico and the United States (see, for example, our monthly series in the well-known Mexican newsweekly print magazine *Proceso*). In addition the analyst who made the requests writes for scholarly journals (see, for example, "Forgetting Is Not Justice," *World Policy Journal*, Summer 2003), speaks at conferences and teaches classes on both sides of the border. For your consideration, I've attached examples of some of these articles. (Enclosure F)

F-2006-00099 20051551CIA197

Concern Current Events and of Interest to the General Public:

This FOIA request concerns a crucial set of meetings between President George H.W. Bush and President Carlos Salinas of Mexico in late 1990. The background to the meetings was a formal proposal to President Bush by President Salinas during the previous summer for a free trade agreement, much in agreement with U.S. government goals. As an article from *The New York Times* pointed out (11/11/90, p. F12), the accord, heavily favored by Bush, "would go a long way toward the Administration's goal of creating a hemispheric free-trade zone." Even before the negotiations got under way, U.S. critics were already expressing their fears about the flight of manufacturing and agriculture jobs to Mexico, where labor was cheap and environment and labor regulations lax.

President Bush's first visit to President Salinas's home town, Agualeguas – on November 26, 1990 – was important as a symbol of the unprecedented warmth between Salinas and Bush, but also offered the first opportunity for the two presidents to speak personally in an informal setting before the intense negotiations on the proposed free trade agreement got under way. In addition, it provided Bush a chance to press his counterpart on political freedom in Mexico, a key issue in the wake of what were allegedly fraudulent recent elections.

The Monterrey meeting on the following day (November 27, 1990) was critical for beginning to clarify details of the proposed agreement. Contemporary news reports stated that for the first time Salinas began to mention publicly the possibility that Canada could be included in a free-trade zone, as both Canada and the U.S. had proposed. Although formal ratification of the accord was still two years away, after Monterrey the United States and Mexico appeared to be closer than ever to reaching an agreement to eliminate trade barriers between the two nations. Peripheral issues also benefited from the bilateral discussions. Treasury Secretary Nicholas Brady told reporters, for example, that the talks might lead to access for U.S.-owned oil drilling companies to Mexican oil fields for the first time, a privilege long sought by the American-owned firms.

Enhance public understanding of the operations or activities of the U.S. government:

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The National Security Archive seeks news media status in the review and declassification of CIA documents concerning these talks because the information is of tremendous relevance to discussions under way right now between the U.S. and Latin America. As the administration of George W. Bush continues to negotiate for a Central American free trade agreement – as well as a broader pact that would cover the entire hemisphere – these early discussions of what would become the North American Free Trade Agreement are of intense current public interest to Americans and Latin Americans alike. Many of the issues that were debated by the United States and Mexico four years before NAFTA went into effect have bearing on the current U.S. position toward free trade, and information about those early discussions would help scholars, journalists, and policy analysts understand the current debate. They include the details of what bilateral tensions may (or may not have) existed at the beginning of the talks, how other political issues – such as democratic governance, domestic social programs and support for U.S. foreign policy goals – may have affected the talks, and how the more complicated bilateral issues (such as environment and labor standards) were approached.

Disseminate the information to a significant element of the public at minimal cost:

See prior explanation of how any documents released to the Archive's Mexico and U.S./Mexico Relations Project will be disseminated to the general public at minimal cost. This request is directly related to our publication activities for the Mexico and U.S./Mexico Relations Project.

F-2006-00100 20051559CIA198

Concern Current Events and of Interest to the General Public:

See Background Explanation provided for Request F-2006-00081 20051532CIA193. In addition, the 1978 elections in which Suharto won a second consecutive term occurred at a crucial moment in U.S.-Indonesian relations, shortly before the May 1978 visit of Vice President Walter Mondale to Jakarta and following the release of 30,000 political prisoners by the Suharto regime. This major political event in Indonesia is thus of great interest to Indonesians and Americans seeking to understand the evolution of the U.S.-Indonesian relationship in the 1980s. It is also of clear relevance for enhancing public understanding of the operations or activities of the U.S. government, which was seeking to encourage greater respect for human rights and political openness at the time of the elections.

Enhance public understanding of the operations or activities of the U.S. government:

In support of this process the National Security Archive is collaborating with Indonesian nongovernmental organizations to investigate and document the history of U.S.-Indonesian military relations and human rights abuses in Indonesia during the New Order period. In November 2005 the Archive published online a selection of similar documents that it provided to East Timor's Commission for Reception, Truth and Reconciliation, generating widespread publicity as a result and demonstrating their relevance to current events, interest to the general public, method of dissemination, and enhancing of public understanding of the operations or activities of the U.S. government (<http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB174/index.htm>).

Disseminate the information to a significant element of the public at minimal cost:

See prior explanation of how any documents released to the Archive's Indonesia/East Timor Project will be disseminated to the general public at minimal cost. This request is directly related to our publication activities for the Indonesia/East Timor Project.

F-2006-00106 20051573CIA202

Concern Current Events and of Interest to the General Public:

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See Background Explanation provided for Request F-2006-00081 20051532CIA193. In addition, During the New Order period, anti-Chinese riots served as a potent expression of popular discontent with the Suharto regime, which cultivated Indonesia's economically powerful Chinese community as a political constituency. The May, 1998, protests which brought down the Suharto regime, for example, included widespread anti-Chinese rioting and attacks on Chinese women and business interests, some of which was orchestrated by Indonesian military units. As such, efforts to document the history of anti-Chinese violence are of clear interest and concern to Indonesians and Americans currently seeking to place the human rights abuses of the Suharto regime in their proper historical context.

Enhance public understanding of the operations or activities of the U.S. government:

A crucial component of the National Security Archive's efforts to support the Truth Commission process under way in Indonesia involves establishing the international context in which New Order era human rights abuses took place, such as the awareness of foreign governments of such abuses. Documents concerning U.S. government knowledge of the causes and consequences of anti-Chinese riots will thus help increase public understanding of the workings and activities of the U.S. government, in particular the degree to which U.S. officials in Indonesia were aware of ongoing human rights abuses.

Disseminate the information to a significant element of the public at minimal cost:

See prior explanation of how any documents released to the Archive's Indonesia/East Timor Project will be disseminated to the general public at minimal cost. This request is directly related to our publication activities for the Indonesia/East Timor Project.

F-2006-00107 20051568CIA201

Concern Current Events and of Interest to the General Public:

The requested documents regard the development of U.S. policy in Afghanistan five months before President Carter signed the July 3, 1979 Presidential Finding authorizing U.S. aid to the Mujahadeen opposing the Soviet-backed Afghan regime. (For your reference, the Carter Library declassified this July document in its entirety in March 2004.) The requested March 1979 documents are key pieces of information that would significantly aid researchers, scholars and general members of the U.S. public to better understand how the U.S. policy of providing aid to the Mujahadeen in the late 1970s and 1980s developed. Without these documents, there is no insight into the how the SCC at the NSC made the decision to aid the Mujahadeen - a decision which continues to have tremendous ramifications for the safety and security of the U.S. public today, as many of these same Mujahadeen fighters currently now advocate and participate in terrorist activities against U.S. interests and the U.S. public. The terrorism that has bred in Afghanistan since 1979 is very much a current event.

Additionally, it is beyond any doubt that terrorism against the American public is within the public interest and concerns current events. Fortunately, there has been no major attack on U.S. territory in over four years, but the issue of combating terrorism and understanding the events that led up to September 11, 2001 is absolutely of current interest. Please see the hundreds of news stories from December 4, 2005 - December 7, 2005 regarding the 9/11 Commission.³ The 9/11 Commission was an entity established by the president to investigate the events of September 11, 2001, including the history leading up to 9/11 which includes the topic of this request, U.S. policy in Afghanistan in the late 1970s. The requested

³ Shenon, Philip. "9/11 Panel Issues Poor Grades for Handling Terror," *The New York Times*, December 6, 2005. Yen, Hope. "9/11 Commission Says U.S. Not Doing Enough," *Associated Press*, December 5, 2005. Eggen, Dan. "U.S. Is Given Failing Grades By 9/11 Panel," *The Washington Post*, December 6, 2005. Also See White House Press Release, "Fact Sheet: Progress on the 9/11 Commission Recommendations," December 5, 2005.

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documents are directly related to the decision to take action in Afghanistan supporting organizations that currently threaten the American public and therefore concern not only current, but overwhelmingly important current events.

The 9/11 Commission Report, which discusses the events of 9/11 and historic U.S. involvement in Afghanistan, was available free on the Internet, and yet still sold over 600,000 copies of a \$10 print edition. Steve Coll's *Ghost Wars*, a *New York Times* bestseller, only addresses the history behind 9/11 (not the actual events of 9/11), and goes into great detail regarding CIA and White House documents from 1979 and 1980, the topic of this request. There clearly is widespread continuing interest from the general public in U.S. policy in Afghanistan in the late 1970s, as this policy has greatly impacted current U.S. policies, as well as current terrorist threats and questions of public safety. Indeed, the Archive's publications concerning Afghanistan have generated some of the greatest interest from subscribers and others.

Enhance public understanding of the operations or activities of the U.S. government:

President Carter authorized U.S. aid to the Afghan Mujahadeen in July 1979. The requested documents are related in whole or in part to the March 5, 1979 action memoranda sent from the CIA to the SCC regarding Afghanistan. These March documents would elucidate what information was provided by the CIA that was used by the SCC to create U.S. government policy. The release of these requested documents would clarify how information flowed from the CIA to the SCC, resulting in this major foreign policy decision, and what U.S. government action the requested "action memoranda" detailed. These documents are fundamentally and directly related to U.S. government operations and activities in Afghanistan.

Disseminate the information to a significant element of the public at minimal cost:

For this and other requests submitted by the National Security Archive for the Afghanistan project:

In addition to the general explanation for how the Archive intends to disseminate the information requested, the analyst who made the request is currently working on a briefing book that provides recently released documents on U.S. aid to the Mujahadeen between January 1979 and January 1992. Any documents that contain substantive information released in response to this request, which asked for all documents related to the March 5, 1979 action memoranda sent from the CIA to the SCC regarding Afghanistan, will certainly be included in this briefing book and would be published and disseminated to thousands.

The National Security Archive already published a collection on Afghanistan, 1979-1990 in March 1991. However, since many important documents related to U.S. policy in Afghanistan from 1979-1990 are just now being reviewed and released, the Archive is planning to update this published set with new documentation that will help the public understand the actions of the U.S. government in Afghanistan.

F-2006-00118 20051586CIA208

Concern Current Events and of Interest to the General Public:

The U.S. monitoring of Soviet activity in 1979 greatly concerns current events as the U.S. invasion of Afghanistan in 2001 and the current major U.S. military presence in Afghanistan were instigated by the terrorist attacks of 9/11 - events that have clear roots in the Soviet invasion of Afghanistan in 1979. The background that leads up to this U.S. military involvement does not have diminished importance because it is historical or background material for these current events. As the CIA

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is well aware, events do not happen in vacuums, but are direct products of their histories. The Soviet invasion of Afghanistan, which the requested documents directly monitor, gave the Mujahadeen, the Afghan resistance fighters, an opportunity to train in guerrilla warfare, organize, and gain confidence that they could defeat a global superpower such as the Soviet Union. Many of these same Soviet-jihad trained Mujahadeen fighters, including Mullah Omar, supreme leader of the Taliban and Osama bin Laden, the most wanted terrorist in the world, (certainly a man who has shaped current events) continue to plot against U.S. citizens and U.S. interests. The history, including the requested documents that relate to the September 14, 1979 and December 19, 1979 "Alert" memoranda authored by CIA Director Admiral Stansfield Turner regarding Afghanistan, are pieces of critical information needed in order to put together the history of the Soviet invasion of Afghanistan and the subsequent jihad that first trained many of the virulent anti-American terrorists who threaten the current safety and security of the U.S. public. The release of this information would provide overwhelmingly important background to current events related to terrorism and Afghanistan. The release of these documents would be undoubtedly newsworthy.

As I'm sure the CIA appreciates, the terrorists that carried out the 9/11 attacks were operating out of Afghanistan. Since 9/11 there has been no larger concern to the general U.S. public than the threat of terrorism. Additionally, current and ongoing U.S. military activity is of overwhelming concern to the general public. As discussed in the previous paragraph, the requested materials, documents pertaining in whole or in part to September 14, 1979 and December 19, 1979 "Alert" memoranda authored by CIA Director Admiral Stansfield Turner relating to Afghanistan, would shed light on the Soviet invasion of Afghanistan, an event that is directly linked to the 2001 U.S. invasion and ongoing occupation of Afghanistan and is directly related to the terrorism concerns that pervade the general public today. Without the Soviet invasion of Afghanistan the Mujahadeen would not have gained the strength, unity and momentum they eventually did. Many of these Mujahadeen are now active anti-American terrorists and therefore the history of Afghanistan's recent history, including the Soviet invasion, is of overwhelming general public interest.

Enhance public understanding of the operations or activities of the U.S. government:

Access to primary documents used by U.S. government policymakers to create policy shaping the operations of the government is extraordinarily important to understanding these government policies and activities. Understanding the decision for action taken by the government directly enhances public understanding of how government operates and how the government responds to information with action. Discussing the requested September 14, 1979 "Alert" memoranda, former Director of Central Intelligence Robert Gates states in his book, *From the Shadows*, New York: Simon & Schuster Inc., 1996, p. 133, "However hedged, the "alert" memorandum did galvanize action at the White House. On September 20, a week after the paper was issued, there was an interagency meeting at the Old Executive Office Building to discuss contingency planning against the possibility of Soviet military intervention in Afghanistan. The focus was on action that might be taken--diplomatic, political, and propaganda--in advance of an intervention to sensitize the countries most concerned." The requested "Alert" memo directly prompted an enormous U.S. government response, and is therefore critical to public understanding of the operations of the U.S. government.

Disseminate the information to a significant element of the public at minimal cost:

See prior explanation of how any documents released to the Archive's Afghanistan Project will be disseminated to the general public at minimal cost. This request is directly related to our publication activities for the Afghanistan Project.

F-2006-00129 20051601CIA213

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Concern Current Events and of Interest to the General Public:

See Background Explanation provided for Request F-2006-00081 20051532CIA193.

In support of this process the National Security Archive is collaborating with U.S. and Indonesian nongovernmental organizations to investigate and document the history of U.S.-Indonesian military relations and human rights abuses in Indonesia during the New Order period. In November 2005 the Archive published online a selection of similar documents that it provided to East Timor's Commission for Reception, Truth and Reconciliation, generating widespread publicity as a result and demonstrating their relevance to current events, interest to the general public, method of dissemination, and enhancing of public understanding of the operations or activities of the U.S. government.
(<http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB174/index.htm>).

Enhance public understanding of the operations or activities of the U.S. government:

The July 1982 visit of Indonesian Defense Minister Mohammed Jusuf took place shortly before the first visit of Indonesian President Suharto to the U.S. and shortly after the country's 1982 elections in which Suharto's Golkar party scored a massive victory. This visit by a high-ranking Indonesian official is thus of great interest to Indonesians and Americans seeking to understand the evolution of the U.S.-Indonesian relationship in the 1980s. It is also of clear relevance for enhancing public understanding of the operations or activities of the U.S. government, which was seeking to improve relations with the Suharto regime at the time of Jusuf's visit.

Disseminate the information to a significant element of the public at minimal cost:

See prior explanation of how any documents released to the Archive's Indonesia/East Timor Project will be disseminated to the general public at minimal cost. This request is directly related to our publication activities for the Indonesia/East Timor Project.

F-2006-00173 20051612CIA214

Concern Current Events and of Interest to the General Public:

The request concerns current events and is of current interest to the public because of the controversy in the media and in Congress over intelligence briefings to the President of the United States. In recent years, Presidential Daily Briefs (PDBs) prepared by the CIA for President Bush on such subjects as terrorist threats and weapons of mass destruction have been the subject of major media attention. The 9/11 Commission process led to the disclosure of a PDB on Osama bin Laden. More recently, Senator Edward Kennedy called for the declassification of PDBs bearing on Iraq. In light of the ongoing controversy, it is important to look back at the early days of the CIA to see how it first began briefing the president. Harry Truman, the first president to receive such briefings, presided over the creation of the Agency. To show what daily information on international crises the CIA provided to President Truman, the Archive analyst has requested issues of the "Daily Summaries" for several days leading up to the crises--the coup in Czechoslovakia (February 1948), Berlin Crisis (June 1948), a major battle in the Chinese civil war (January 1949), the first Soviet atomic test (August 1949), the outbreak of the Korean war (June 1950) and the Chinese intervention in the fighting in Korea (October 1950).

Enhance public understanding of the operations or activities of the U.S. government:

The documents, to the extent that they are released, will do much to "enhance public understanding of the operations or activities of the United States government." They will show the results of activity by U.S. government officials--CIA analysts--to cull on a daily basis the intelligence information at their disposal to update the President of the United States on the critical events of the day. President Truman saw the CIA summaries as his own "newspaper" which confirms the significance of

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these documents to understanding government operations. By showing what intelligence information became available to the president the declassification of the summaries will enhance the public's understanding of a significant U.S. government activity during an important time in U.S. history. Moreover, releasing these documents would be consistent with the recommendations of the CIA's Historical Advisory Committee, which has urged declassification of top-level CIA records from its early years.

Disseminate the information to a significant element of the public at minimal cost:

In addition to the general means of dissemination described above, depending on how much is released, this requester sees several possible paths for disseminating the information. To contribute to the Archive's ongoing series of electronic briefing books, he will publish the summaries for distribution to our over 7000 subscribers and on our Web site at no cost. The documents will be published with commentary putting them in broad historical context. Finally, if enough documents are released, he will write and publish an article about intelligence briefings for President Truman for one of the scholarly historical journals such as *Diplomatic History* or *Journal of Cold War History*. Through such methods it should be possible to disseminate information on presidential briefings to a large, even possibly global, audience.

F-2006-00186 20051619CIA215

Concern Current Events and of Interest to the General Public:

See Background Explanation provided for Request F-2006-00081 20051532CIA193.

Enhance public understanding of the operations or activities of the U.S. government:

The Indonesian government's efforts between 1983 and 1985 to compel allegiance to the Pancasila as a state doctrine came at a time of enormous political turmoil in Indonesia, which included the Tanjung Priok killings of September 1984, the "Petition of Fifty" movement, and a campaign of "mysterious killings" in Jakarta and other major cities. They represented a clear attempt to contain and roll back rising dissent among the Indonesian public against the Suharto regime. As such, efforts to document these events are of clear interest and concern to Indonesians and Americans currently seeking to place the human rights abuses of the Suharto regime in their proper historical context (see the referenced article for contemporary discussion of the Tanjung Priok killings).⁴

A crucial component of the National Security Archive's efforts to support the Truth Commission process under way in Indonesia involves establishing the international context in which New Order era human rights abuses took place, such as the awareness of foreign governments of such abuses. Documents concerning U.S. government knowledge of Indonesian government efforts to repress dissent and tighten control of the political system will thus help increase public understanding of the workings and activities of the U.S. government, in particular the degree to which U.S. officials in Indonesia were aware of ongoing human rights abuses. Such events are also of clear interest to the general public in both Indonesia and the United States.

Disseminate the information to a significant element of the public at minimal cost:

See prior explanation of how any documents released to the Archive's Indonesia/East Timor Project will be disseminated to the general public at minimal cost. This request is directly related to our publication activities for the Indonesia/East Timor Project.

⁴ "Govt ready to set up truth, reconciliation commission," The Jakarta Post, Jakarta, April 4, 2005.

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F-2006-00187 20051622CIA216

Concern Current Events and of Interest to the General Public:

See Background Explanation provided for Request F-2006-00081 20051532CIA193.

Enhance public understanding of the operations or activities of the U.S. government:

The visit to Indonesia of a high ranking official, especially the President of the United States, is an inherently significant political event and is thus of clear interest and concern to Indonesians and Americans currently seeking to place the human rights abuses of the Suharto regime in their proper historical context. But this visit -- though cancelled -- is important for its timing as well. President Reagan's trip came in the midst of Indonesia's campaign of "Mysterious Killings," a program of state-sponsored murder and disappearance aimed at alleged street criminals in the capital of Jakarta and other major Indonesian cities. Documents pertaining to the planned visit of an American president would clearly enhance public understanding of how the U.S. government plans such official visits, how the American delegation was preparing to deal with the issue of human rights in Indonesia and general U.S.-Indonesian relations.

Disseminate the information to a significant element of the public at minimal cost:

See prior explanation of how any documents released to the Archive's Indonesia/East Timor Project will be disseminated to the general public at minimal cost. This request is directly related to our publication activities for the Indonesia/East Timor Project.

F-2006-00190 20051645CIA220

Concern Current Events and of Interest to the General Public:

See Background Explanation provided for Request F-2006-00081 20051532CIA193. In addition the emergence of the "petition of 50" group in Indonesia in the fall of 1984 represented one of the first open civilian challenges to the Suharto regime. The regime's suppression of the group came in the wake of the military's killing in September of at least 30 Muslim demonstrators in the Jakarta port area of Tanjung Priok. As such, efforts to document military repression of dissidents are of clear interest and concern to Indonesians and Americans currently seeking to place the human rights abuses of the Suharto regime in their proper historical context (see the referenced article for contemporary discussion of the Tanjung Priok killings).⁵

Enhance public understanding of the operations or activities of the U.S. government:

In 2004 the Indonesian Parliament passed legislation providing for the establishment of a Truth and Reconciliation Commission charged with investigating human rights abuses during the "New Order" period of President Suharto from 1966 to 1998. Such efforts in Indonesia to document past human rights abuses and the historical context of political conflict are crucial to its ongoing democratic transition and thus of clear interest to both the Indonesian and U.S. general public. Questions of human rights and efforts to hold former officials accountable for abuses are always issues that remain newsworthy and of widespread interest to the general public. Human rights abuses have consistently been a topic of current events.⁶

A crucial component of the National Security Archive's efforts to support the Truth Commission process under way in Indonesia involves establishing the international context in which New Order era human rights abuses took place, such as the awareness of foreign governments of such abuses.

⁵ See Note 7

⁶ See Note 2.

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Documents concerning U.S. government knowledge of Indonesian military repression of political activity by intellectuals will thus help increase public understanding of the workings and activities of the U.S. government, in particular the degree to which U.S. officials in Indonesia were aware of ongoing human rights abuses. Such events are also of clear interest to the general public in both Indonesia and the United States. (See Enclosure G)

Disseminate the information to a significant element of the public at minimal cost:

See prior explanation of how any documents released to the Archive's Indonesia/East Timor Project will be disseminated to the general public at minimal cost. This request is directly related to our publication activities for the Indonesia/East Timor Project.

F-2006-00191 20051637CIA219

Concern Current Events and of Interest to the General Public:

See Background Explanation provided for Request F-2006-00081 20051532CIA193.

Enhance public understanding of the operations or activities of the U.S. government:

The visit to Indonesia of a high ranking official, especially the Vice President of the United States, is an inherently significant political event and thus of clear interest and concern to Indonesians and Americans currently seeking to place the human rights abuses of the Suharto regime in their proper historical context. But this visit is important for its timing as well. Vice President Bush's trip came on the heels of a similar trip by Secretary of State George Schultz before which 22 U.S. Senators wrote urging him to raise the issue of East Timor in his meetings. The visit also came just after a visit to the U.S. by Portuguese Prime Minister Mario Soares, before which more than 130 Portuguese politicians and intellectuals urged President Ronald Reagan to find a solution to the Indonesian occupation of East Timor.

Documents pertaining to this visit will thus offer a crucial window into the workings and activities of the U.S. government at a crucial time in its relationship with Indonesia, in particular the degree to which U.S. officials were aware of ongoing human rights abuses in East Timor or raised them with Indonesian officials.

Disseminate the information to a significant element of the public at minimal cost:

See prior explanation of how any documents released to the Archive's Indonesia/East Timor Project will be disseminated to the general public at minimal cost. This request is directly related to our publication activities for the Indonesia/East Timor Project.

In a democracy the public acts as a check on government conduct. As the Supreme Court recognized in *Grosjean v. American Press Co.*, 297 U.S. 233, 250 (1936), "informed public opinion is the most potent of all restraints upon misgovernment." The power of the public to act as a check on government misconduct is directly impacted by the ability of news media organizations such as the National Security Archive to research government activity and disseminate information to the public. Again, in the Supreme Court's words: "[w]ithout publicity, all other checks are insufficient: in comparison of publicity, all other checks are of small account." *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 569 (1980). In carrying out its civic role in our society, the public is entitled to the wide range of information that can be useful to inform debate, to act as a check against abuse, and to impact government policy.

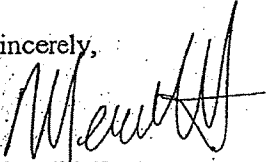
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I hope to receive your response granting news media fee status related to FOIA requests F-2006-00081, F-2006-00098, F-2006-00099, F-2006-00100, F-2006-00106, F-2006-00107, F-2006-00118, F-2006-00129, F-2006-00173, F-2006-00186, F-2006-00187, F-2006-00190, F-2006-00191.

Furthermore, if you decide to deny news media status for any of the above-listed requests or any other requests that the Archive has filed, please specifically indicate which of the criteria in 32 C.F.R. Sec. 1900.02 you have determined is not met. Your failure to specify which criterion has not been satisfied will be viewed by the Archive, as well as by the news media organizations that have been briefed, as further evidence of your effort to interfere with the Archive's legitimate FOIA activities. As you noted in your November 25, 2005 letter, it would assist the CIA if the Archive addresses these factors on its initial request. Our ability to do so would be enhanced by an understanding of which criteria the CIA believes are not met.

Please feel free to contact me by telephone if you wish to discuss this further. I can be reached on my direct line at 202-994-7059.

Sincerely,



Meredith Fuchs
General Counsel