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- * Nobel Laureate

December 12, 2003
(202)454-4691

MG Trudy H. Clark, Deputy Director
Defense Threat Reduction Agency
8725 John J. Kingman Road
Ft. Belvoir, VA 22060-6201

RE: FOIA Appeal, Case No. 03-125

Dear General Clark:

This is an appeal of the initial denial of my request under the Freedom of Information Act (FOIA) for a copy of an unclassified DTRA-funded report entitled "Lessons from the Anthrax Attacks: Implications for U.S. Bioterrorism Preparedness," April 2002. A copy of the December 12, 2003 DTRA denial letter is enclosed.

I request that you reverse the initial decision and release the requested report, on the following grounds:

1. The cited FOIA exemption 2 (High) is not applicable. In other words, it is not true that the requested document, if disclosed, might be used to circumvent an agency rule or regulation. Invoking exemption 2 (High) in this case is an impermissible attempt to expand the scope of the exemption beyond what Congress intended.

2. The fact that the report discusses potential weaknesses in US biopreparedness is not a sufficient basis for withholding an unclassified report. There is no FOIA exemption for national security-related information which does not rise to the level of classification. Besides, and to the contrary, we believe that disclosure of the report could meaningfully contribute to enhancing US biopreparedness.

[I note that official information of comparable or greater sensitivity regarding potential weaknesses in U.S. biopreparedness has been released into the public domain by authorized U.S. government sources. See, e.g., U.S. General Accounting Office, "Bioterrorism: Public Health Response to Anthrax Incidents of 2001," October 2003, Report No. GAO-04-152, available online at <http://www.fas.org/irp/gao/anthrax.pdf> .]

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3) The Attorney General's October 12, 2001 FOIA policy guidance memorandum cannot and does not create any new exemptions to the Freedom of Information Act. The Attorney General does not have the authority to override the FOIA, or to legislate new restrictions on "the public distribution of information related to homeland security and protection of critical infrastructure."

For these reasons, I believe the initial denial of my FOIA request was in error.

I respectfully request that you reverse that decision.

Sincerely,

Steven Aftergood
Senior Research Analyst

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