

JONES DAY

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October 27, 2010

VIA OVERNIGHT COURIER AND EMAIL

Lt. General Michael C. Gould
Superintendent
2304 Cadet Drive
Suite 3300
USAF Academy, Colorado 80840-5001

Re: Military Religious Freedom Foundation FOIA Request

Dear Lt. General Gould:

Our law firm represents the Military Religious Freedom Foundation (MRFF: www.militaryreligiousfreedom.org) in connection with its Freedom of Information Act (FOIA) request for the results of the U.S. Air Force Academy's 2010 Climate Survey. As I am sure you know, on September 28, 2010, Michael L. "Mikey" Weinstein, Founder and President of the MRFF, and nine other co-signors, wrote a letter to Secretary Gates and demanded, among other things, release of the results of the Climate Survey. The MRFF followed this letter by submitting a FOIA request for the Climate Survey results directly to you on October 15, 2010. In response, Ms. Barbara Barger, a senior Pentagon official, wrote a letter to Mr. Weinstein on October 19, 2010, stating that the "Academy Superintendent has scheduled release of survey information to the Freedom of Information Act requesters for October 29, 2010 together with context information." Our understanding is that you have scheduled a press conference for that purpose on Friday, October 29, 2010 at 8:00 A.M. Lt. Col. John Bryan, however, has subsequently informed my client that the MRFF cannot attend that press conference and that only credentialed media will be invited. That directly contradicts Ms. Barger's representation that the release would include the FOIA requesters, of which MRFF is one.

It violates the law for the United States Air Force Academy to discriminate among FOIA requesters when responding to multiple FOIA requests for the same information. *See* Freedom of Information Act, 5 U.S.C. § 552) and the Air Force FOIA Policy Handbook (available at <http://www.foia.af.mil/shared/media/document/AFD-070702-060.pdf>). The case law clearly supports this conclusion. *See Painting and Drywall Work Preservation Fund, Inc. v. Department of Housing and Urban Development*, 936 F.2d 1300, 1302 (D.C. Cir. 1991) ("Because FOIA requires disclosure to 'any person,' the balancing of the privacy against the public interest cannot depend on the identity and specific purpose of the party requesting the information. If it must be released to one requester, it must be released to all, regardless of the uses to which it might be put.") (citations omitted); *see also Federal Labor Relations Authority v. United States Dep't of Commerce*, 962 F.2d 1055, 1060 (D.C. Cir. 1992) ("We have emphasized that a requester's

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intended use of information plays no role in assessing the invasion of privacy, for if information ‘must be released to one requester, it must be released to all, regardless of the uses to which it might be put.’”) (citing *Painting and Drywall Work Preservation Fund*, 936 F.2d at 1302); *Center for Auto Safety v. Nat’l Highway Traffic Safety Admin.*, 809 F. Supp. 148, 149 (D. D.C. 1993) (“This position reflects full recognition that material released under FOIA to one person ‘must be released to all.’”) (citing *Painting and Drywall Work Preservation Fund*, 936 F.2d at 1302).

We believe that the exclusion of MRFF from the press conference, where results from the 2010 Climate Survey will be released, is contrary to FOIA and the cited case law and discredits the United States Air Force Academy. Accordingly, we demand that you expeditiously reconsider and allow MRFF to attend Friday’s press conference in accordance with federal law. Additionally, we demand that you timely confirm in writing that you will not discriminate against MRFF in any way when you respond to FOIA requests directed to the 2010 Climate Survey results. It is my hope that we can resolve these issues amicably, but if we can not, we are prepared to pursue immediately all legal options available to protect MRFF’s rights.

Very truly yours,



Caroline N. Mitchell

cc: Michael B. Donley, Secretary of the Air Force (via U.S. mail)
General Norton A. Schwartz, Chief of Staff of the United States Air Force (via U.S. mail
and email)
Michael L. “Mikey” Weinstein, Esq., Founder and President, MRFF (via email)