89-F-1277

William Aceves
[redacted]

March 23, 1989

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Rear Admiral J.E. Taylor
Director, Politico-Military Policy
and Current Plans Division (OP-61) 4E575
The Pentagon
Washington, D.C., 20301-1400

RE: Request Ref. 3000, Ser 616/9U611332

Dear Rear Admiral Taylor:

Thank you for your quick response to my FOIA request. This letter is in reference to my Freedom of Information Act Request Ref: 3000, Ser 616/9U611332. Please incorporate my earlier correspondence with your office into this letter.

In your letter dated March 14, 1989, you stated that I should provide additional details to further identify the type of records that I am seeking. Please refer to the enclosed Appendix for additional information on my request. I hope that this will assist you in your search.

In addition, I would like to reaffirm my request for a fee waiver. As you know, both the Department of Defense and the Department of the Navy provide guidelines for the waiver or significant reduction of fees. Consequently, I would like to present the following evidence in support of my claim as a preferred FOIA requester.

The following statements are supported by the Department of Defense guidelines regarding the Freedom of Information Act 32 C.F.R. § 286 et seq. In fact, according to 32 C.F.R. § 286.1 (b), the Department of Defense guidelines take precedence over all Department of Navy regulations that supplement the DoD FOIA Program. Consequently, they are applicable to the United States Department of the Navy. The Department of the Navy has similar provisions for the waiver or reduction of fees. 32 C.F.R.§ 701 notes that the principle fee waiver policy objectives of the FOIA are twofold: (1) to strengthen the ability of citizens to exercise their rights to understand, and by lawful means establish, support, modify, or terminate national laws, programs,

Enclosure (2)

policies of all kinds; and (2) to strengthen major aspects of national life in well-recognized areas of public concern where such strengthening will significantly benefit the general public. The following arguments in support of my petition for the fee waiver or fee reduction are compelling and valid for both the Department of Defense and the Department of the Navy regulations.

I would ask you to review my request for waiver or reduction, keeping in mind the following comments.

The language of the FOIA makes clear that Congress intended that fees not be a bar to private individuals, public interest organizations, or educational institutions seeking access to government records. At the same time, it permitted that fees be charged to corporations and individuals using the act for private gain.

The legislative history of the FOIA fee waiver/reduction provision calls for a liberal interpretation of the phrase "primarily benefitting the public." This suggests that all fees should be waived whenever the release of the information contributes to public debate on an important policy issue and when the person requesting the information is doing so with the intention of contributing to the uninhibited, robust, and wide-open debate that Congress intended to encourage.

This means that all fees should be waived if two criteria are met. First, the information will contribute to public debate on important policy issues. And second, the information is requested so that it can be used for this purpose.

Since the Freedom of Navigation program information fits the criteria spelled out by Congress for waiving fees in the public interest, I believe that your agency should waive such fees, or, at the very least, reduce them substantially.

Moreover, since this request is for material that clearly is of interest to the public, it would be unfair if the first requester were to bear the full financial burden of the initial search, and therefore the search fees should be waived or significantly reduced.

With these thoughts in mind, I present the following arguments in support of my request for a fee waiver or the significant reduction of fees.

First, I would request that I be granted a fee waiver pursuant to 32 C.F.R. § 286.33(d)(1). This section provides that documents will be provided without charge, or at a charge reduced below fees assessed to the categories of requesters in § 286.33(e) when the Component determines that waiver or reduction of the fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations of the Department of Defense or

the Department of the Navy, and the information is not primarily in the commercial interest of the requester.

To date, there has been no significant study undertaken by a member ~~of~~ the general public on the Freedom of Navigation program. In fact, it is conspicuously absent from the scholarly periodicals and other works. Given the importance of the Freedom of Navigation program to United States foreign policy, it is imperative that the public be given adequate notice of the program so they can make an educated and informed evaluation of the desirability of such a program. The Freedom of Navigation program has resulted in several military incidents with Libya that have resulted in the deaths of American military personnel as well as Libyan civilians and Libyan military units. In fact, the Gulf of Sidra has become a constant scene of military confrontation between American naval and air units and Libyan military forces. Also, Freedom of Navigation program exercises in the Black Sea recently led to a naval incident between United States naval units and vessels from the Soviet Union. Given this high state of international conflict that has resulted from the implementation of the Freedom of Navigation program, I feel that it is critical for American citizens to have complete knowledge of the program so they can determine its viability. And as I mentioned previously, to date there is no significant information from which American citizens can make such a decision. For the above reasons, I believe that disclosure of the information is in the public interest. I have included statements from Edwin Smith, Professor of Law, at the U.S.C. and Carol Gustin, Associate Director, U.S.C. School of International Relations, in support of this declaration.

As I mentioned in my previous correspondence with your office, the requested information will be used in the preparation of my graduate thesis on the Freedom of Navigation program. Once my thesis has been completed, it will be sent to University Publications for publication and dissemination. Consequently, the information requested will help contribute to the public understanding of the Freedom of Navigation program. After publication by the University, I intend to seek national publication in a major scholarly periodical. However, until I have formally disseminated the information and prepared my thesis, I will be unable to provide further clarification as to these plans for national publication. Nevertheless, this should not limit my request for a fee waiver since the dissemination of the requested material will in and of itself, allow public understanding of the operations of the United States Department of Defense and the Department of the Navy.

For the above reasons, I request that I be granted a waiver of all charges. If this is denied, I request that the charges be significantly reduced. As a student seeking two degrees from the University of Southern California (I am in my third year at the Law Center and have completed my Master's Degree in International Relations.), the fee waiver or fee reduction will significantly

assist me in my scholarly research. Moreover, my efforts to obtain this information will be significantly reduced if the waiver or reduction is not granted since my finances are significantly limited. This is relevant since my inability to finance a—complete disclosure of the Freedom of Navigation materials will effectively prevent the information from being made available to the general public.

If you determine that I am not entitled to the general fee waiver or reduction of fees, I would request that I be included in the "Educational Institution" category. Under this category, fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by an educational institution whose purpose is scholarly research. The only requirement for this category is that the request be made by an educational institution of higher education which operates a program of scholarly research. As a research assistant at the University of Southern California Law School, my request falls within this category since I am affiliated with an institution of higher learning. I have included statements from Edwin Smith, Professor of Law, at the U.S.C. and Carol Gustin, Associate Director, U.S.C. School of International Relations, in support of this declaration.

If you determine that I am not entitled to apply within the "Educational Institution" category, I would remind you that according to 32 C.F.R. § 286.33 (d)(8), the "Other" category may still be eligible for a waiver or reduction of fees if such is in the public interest as defined under 32 C.F.R. § 286.33(d)(1).

If my request for a waiver or reduction of fees is not substantially granted, I request an itemization of the charges I am being assessed. As you know, the FOIA permits fees to be charged only for the search and copying costs and not for the review of the material. Moreover, pursuant to 32 C.F.R. § 286.(e)(iii), I request that an estimate of assessable fees by sent to me. While I recognize that search situations will vary among requests, according to the above-mentioned regulations, I am entitled to an estimate before I commit to a willingness to pay. Finally, as I am sure you are aware, the FOIA provides that search fees are to be waived -- even before the requested documents are located and reviewed for possible exemptions -- if the prospective release of any such material could be expected to benefit the public. [See Eudey v. CIA, 478 F.Supp. 1175 (D.D.C. 1979).]

I appreciate your assistance in this matter and look forward to hearing from you shortly. I would also request the name and telephone number of the official in your office who will actually be handling this request and to whom I can address further inquiries on its progress.

As provided in the FOIA, I will expect a reply within ten

working days. If you have any questions regarding this matter, please do not hesitate to contact me at the above address.

Very truly yours,

William Aceves

Enclosures

Also sent to:
DoD encompasses JCS
Dept of Air Force
National Sec Council
Dept of State

APPENDIX II

For the purposes of this request for information under the Freedom of Information Act (5 U.S.C. § 552), the United States Department of Defense Rules governing the Availability of Information (DoD Directive 5400.7, 32 C.F.R. § 286 et seq), and the Department of the Navy Rules governing the Availability of Information (32 C.F.R. § 701 et seq), I request that any and all information relating to the following be made available to me:

A. In January 1979, the Carter Administration authorized a study of navigation rights and American interests towards the freedom of the sea. The study was presented to the National Security Council. In March 1979, Zbigniew Brzezinski directed the Department of Defense to develop a plan for implementing the decision to exercise these rights on the high seas. The plan was worked out by the Joint Chiefs of Staff and approved by Brzezinski and recommended a show of the flag to demonstrate American resolve. In July 1979, the Joint Chiefs sent directives to the Navy and Air Force commanders instructing them that they were authorized to approach coastal states to within three miles.

B. In August 1979, the Carter Administration ordered the Navy and the Air Force to undertake a policy of

deliberately sending ships and planes into and over the disputed waters of nations that claim a territorial limit of more than the three miles accepted by the U.S. and 21 other nations.

C. On August 12, 1981, elements of the Sixth Fleet began exercises in the Mediterranean Sea, near the Gulf of Sidra, Libya. Naval units involved included: U.S.S. Nimitz (CVN-68), U.S.S. Forrestal (CV-59). American naval aircraft operating approximately 60 miles from the coast of Libya were attacked by Libyan forces. The attack occurred at 0520 GMT Libya on August 19, 1981. The exercise concluded on August 19, 1981.

D. On July 25-26, 1984, U.S. forces entered the Gulf of Sidra. Naval units involved included: U.S.S. Saratoga (CVN-60)

E. **Operation Attain Document** I: First Phase: 24-31 January 1986. Naval units involved included: U.S.S. **Coral Sea**, and U.S.S. **Saratoga** (CVBGs). Operations conducted in the Mediterranean Sea in the vicinity of Libya. Also referred to as Operations in the Vicinity of Libya I (OVL-I).

F. **Operation Attain Document** II: Second Phase: 10-15

February 1986. Naval units involved included: U.S.S. Coral Sea, and U.S.S. Saratoga (CVBGs). Operations conducted in the Mediterranean Sea in the vicinity of Libya. Also referred to as Operations in the Vicinity of Libya II (OVL-II).

G. Operation Attain Document III: Third phase: 23-30 March 1986. Naval units involved included: U.S.S. Coral Sea, U.S.S. Saratoga, U.S.S. America (CVBGs), U.S.S. Scott, U.S.S. Caron, U.S.S. Ticonderoga. Operations conducted in the Mediterranean Sea in the vicinity of Libya and in the Gulf of Sidra. Also referred to as Operations in the Vicinity of Libya III (OVL-III).

H. On February 12, 1988, U.S. warships in the Black Sea, transiting through Soviet territorial waters in innocent passage, were intentionally bumped by Soviet naval units. Naval units involved included: U.S.S. Yorktown (CG-48), U.S.S. Caron (DD-970).

I. Communications by the Sixth Fleet, U.S. Commander-in-Chief, Europe (US-CinCEur) relating to any activities or information referred to in this appendix.

J. Activities by the Sixth Fleet in the Mediterranean Sea involving the Freedom of Navigation program.

K. JCS Memorandum 59-83 (MJCS-83) relating to any activities or information referred to in this appendix.

L. Peacetime Rules of Engagement (PROE) relating to any activities or information referred to in this appendix.

M. The Worldwide Peace-time Rules of Engagement relating to any activities or information referred to in this appendix.

N. Procedures of the Crisis Planning System in volume IV of the Joint Operation Planning System relating to any activities or information referred to any in this appendix.

O. Comprehensive policy statements by any office, department, organization, bureau, or component on the Freedom of Navigation program.

This list is not a complete inventory of all activities or information relating to the Freedom of Navigation program. The absence of any activity, exercise, or information involving the Freedom of Navigation program from this list shall not be construed to deny my desire to acquire such documentation and information.

THE LAW CENTER
UNIVERSITY OF SOUTHERN CALIFORNIA
UNIVERSITY PARK
LOS ANGELES 90089-0071

EDWIN M. SMITH
PROFESSOR OF LAW

(213) 743-7381

March 20, 1989

RE: Freedom of Information Act Request Relating to the Freedom of Navigation Program

Dear Freedom of Information Officer:

This is to certify that William Aceves is formally affiliated with the University of Southern California (U.S.C.). His research on the Freedom of Navigation program is conducted in conjunction with the U.S.C. School of International Relations and the U.S.C. Law Center. I am serving as faculty adviser to Mr. Aceves in the Law Center. I also employ him as my research assistant.

The FOIA allows agencies to reduce or waive fees if it would be "in the public interest because furnishing the information can be considered as primarily benefitting the public." [5 U.S.C. 552(a)(4)(A)] I teach both international law and U.S. foreign relations law, and I served during 1987-1988 as Special Counsel for foreign policy to Senator Daniel Patrick Moynihan, a member of the Foreign Relations Committee. I can assure you that Mr. Aceves' research on the Freedom of Navigation program will significantly contribute to a greater understanding of the government's operations and activities. I have found no significant scholarly examination of the Freedom of Navigation program. In fact, discussion of the structure and objectives of the program is conspicuously absent from the legal periodicals that analyze the international legal issues raised by incidents such as those which have occurred recently in the Black Sea and the Gulf of Sidra. Given the importance of the Freedom of Navigation program to United States foreign policy and to international law, information on the program must be made available in order that an educated and informed evaluation of the program may be undertaken by scholars and by the citizens who bear the impact of the military encounters which occasionally result from the program.

Mr. Aceves has not requested this waver for any commercial purpose. Since this research will provide the general public with a greater knowledge of the Freedom of Navigation program, I believe that a waiver or a significant reduction of the search and duplication fees would be consistent with the intent of Congress and should be approved.

I have specifically approved the project undertaken by Mr. Aceves, and the Law Center will continue to support him. If you have any questions, please do not hesitate to contact me.

Sincerely,

Edwin M. Smith

SCHOOL OF INTERNATIONAL RELATIONS
(213) 743-6278

20 March 1989

RE: Freedom of Information Act Request Relating to the Freedom of Navigation Program

Dear Freedom of Information Officer:

This is to certify that William Aceves is affiliated with the University of Southern California (USC). His research on the Freedom of Navigation Program has been conducted in conjunction with the USC School of International Relations and the USC Law Center.

As you know, the FOIA provides that agencies may reduce or waive fees if it would be "in the public interest because furnishing the information can be considered as primarily benefitting the public." [5 USC 552 (a) (4) (A)]. The School of International Relations feels that Mr. Aceves's research on the Freedom of Navigation Program will significantly contribute to a greater understanding of the government's operations and activities. There has been no significant study undertaken by a member of the general public on the Freedom of Navigation Program. In fact, it is conspicuously absent from the scholarly periodicals and other scholarly works. Given the importance of the Freedom of Navigation Program to United States foreign policy, it is imperative that information be disclosed to the public about the program, so that they can make an educated and informed evaluation of whether the program should be continued by the U.S. government.

Since this research will provide the general public with a greater knowledge of the Freedom of Navigation Program, we feel that his request for a waiver or a significant reduction of the search and duplication fees should be approved. It should also be noted that his request is not in his commerical interest since it is a scholarly endeavor. Consequently, we feel that Mr. Aceves's FOIA request fits the criteria spelled out by Congress for waiving fees in the public interest. We believe that your agency should waive such fees, or, at the very least, reduce them substantially.

For these reasons, his research has been approved and is supported by the USC School of International Relations. If you have any questions, please do not hestitate to contact me.

Sincerely,

Carole Gustin

Carole Gustin
Associate Director