DEPARTMENT OF THE NAVY
NAVAL SEA SYSTEMS COMMAND
1333 ISAAC HULL AVENUE
WASHINGTON NAVY YARD DC 20376-2101

IN REPLY REFER TO

5720
Ser SEA 00A5/DON-NAVY-2017-009820F
October 24, 2017

Ms. Courtney Mabeus
The Virginian-Pilot
150 West Brambleton Avenue
Norfolk, VA 23510

SUBJECT: YOUR FREEDOM OF INFORMATION ACT CASE DON-NAVY 2017-009820

Dear Ms. Mabeus:

This is a final response to your August 22, 2017, Freedom of Information Act (FOIA) request for a copy of the Naval Sea Systems Command Inspector General investigation into allegations of any unsanctioned police forces operated at the Navy public shipyards, including but not limited to Norfolk Naval Shipyard.

I considered your request under the FOIA (5 U.S.C. 552), as amended, and the Secretary of the Navy Instruction 5720.42F. After reviewing your request, the FOIA exemptions and the instruction, I am partially denying your request under FOIA exemptions (b)(3), (b)(5), (b) (6), and (b)(7)(C).

FOIA Exemption 3 requires the withholding of information prohibited from disclosure by another statute provided that the statute "(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue or (B) establishes a particular criteria for withholding or refers to particular types of matters to be withheld."

In this instance, 10 U.S.C. § 128 prohibits the release of unclassified information pertaining to security measures, including security plans, procedures, and equipment for the physical protection of special nuclear material. Norfolk Naval Shipyard is a nuclear shipyard, warranting the use of exemption (b)(3) in this instance.

The report also contains information that is protected under Exemption (b)(5) of the FOIA. Exemption 5 protects agency decision-making processes by allowing agencies to withhold pre-decisional and deliberative process information. In this

instance, the requested documents responsive to your request contain the candid opinions and recommendations of the investigator provided in an effort to assist in the decision making process. This information has been redacted from the report because it would reveal pre-decisional and deliberative process information, conclusions, recommendations, and opinions that are simply part of the decision making process rather than the final decision. Revealing such information would harm the decision-making process since it would negatively impact the ability of investigators to provide candid recommendations in the future.

Additionally portions of the requested documents have been redacted under exemptions (b)(6) and (b)(7)(C) which protect personal privacy.

Exemption (b)(6) requires withholding of information in files where disclosure "would constitute a clearly unwarranted invasion of personal privacy." In applying Exemption (b)(6), a balancing test must be done, weighing the privacy interests of the individuals named in a document against the public interest in disclosure of the information requested. The public interest in disclosure is one that will "shed light on an agency's performance of its statutory duties." Dep't of Justice v. Reporters Committee, 489 U.S. 749, 773 (1989).

In this request, all material that is covered by Exemption (b)(6) is also covered by exemption (b)(7)(C), the law enforcement records privacy exemption, as the records are law enforcement records. The threshold requirement in any exemption (b)(7) inquiry is whether the documents were compiled for law enforcement purposes, that is, as part of or in connection with an Agency law enforcement proceeding. F.B.I. v. Abramson, 456 U.S. 615, 622 (1982). A "record compiled for law enforcement purposes" is much broader than simply looking at whether the office that created/obtained/used the record is an office that traditionally enforces the law. So, for instance, a command directed inquiry/investigation report, professional responsibility investigation report, or other report investigating alleged misconduct, discipline, or enforcement of rules are considered "records compiled for law enforcement purposes." The responsive records you seek are properly considered records compiled for law enforcement purposes. Accordingly, withholding information in the record under Exemption (b)(7) and its subparagraphs is required, as appropriate.

FOIA Exemption (b)(7)(C)'s privacy standard weighs more heavily in favor of redaction than FOIA Exemption (b)(6), but only protects privacy information contained in records compiled for a law enforcement purpose. Exemption (b)(7)(C) requires withholding of records or information compiled for law enforcement purposes, where disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy."

In the requested documents, exemptions (b)(6) and b(7)(C) have been used to protect the identities of witnesses and individuals who were the subject of inquiry. Under both balancing tests, the privacy interests of these individuals outweigh the public's interest in disclosure and therefore the names, identifiers, position titles, and other related information that would reveal the identities of the witnesses have been redacted. Release of these names or other related information would do little or nothing to shed light on the agency's performance of its statutory duties, and therefore the information is properly redacted.

I am the official responsible for the decision regarding your request. Should you decide to file an appeal, it must be received within 90 calendar days from the date of this letter and should contain a copy of your original requests, a copy of this letter, and a statement indicating why you think your appeal should be granted. Attach a copy of this letter to the appeal and mark the appeal and the envelope "Freedom of Information Act Appeal." Mail the original to Department of the Navy, Office of the General Counsel, Attn: FOIA APPEALS, 1000 Navy Pentagon, Room 5A532, Washington, DC 20350-1000. Please mail a copy of the appeal to Commander, Naval Sea Systems Command (SEA 00A5), 1333 Isaac Hull Ave SE, Washington Navy Yard, DC 20376-1021

As an alternative to filing an appeal, you may seek Alternate Dispute Resolution (ADR). You may submit your request for ADR either to DONFOIA-PA@navy.mil or you can call the Navy FOIA Service Center at 202-685-0214 or via mail to the Chief of Naval Operations (DNS-36), Attn: FOIA/PA Service Center, c/o - Head, SECNAV/CNO FOIA/PA Program Office, 2000 Navy Pentagon, Washington, DC 20350-2000.

Fees for processing your request have been waived in this instance. However, fees are assessed on a case-by-case basis and you may be charged fees on future requests.

If you have any questions concerning the foregoing, please contact Ms. Ginger Dolan at 202-781-3359.

Sincerely,

JAVIER MARTINEZ
Initial Denial Authority

Enclosure