DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
1322 PATTERSON AVENUE SE SUITE 3000
WASHINGTON NAVY YARD DC 20374

IN REPLY REFER TO:
5720
Ser 14/296
June 30, 2015

Mr. David Delleart
(b) (6) [redacted]

SUBJECT: FREEDOM OF INFORMATION ACT APPEAL DON-NAVY-2015-006919

This responds to your letter of June 17, 2015, which was received by our office on June 19, 2015. Your letter appeals the response to your April 16, 2015 FOIA request by the Naval Criminal Investigative Service (NCIS). In your original letter, you requested "the autopsy report and results of Mr. (b) (6) [redacted] as it relates to the Pearl Harbor Accident of December 10, 2014," as well as "the autopsy report and results of Mr. (b) (6) (b) (6) [redacted] as it relates to the Pearl Harbor Accident of December 10, 2014."

Your appeal is a request for a final determination under the FOIA. For the reasons stated below, your appeal for release of the autopsy reports and results of Mr. (b) (6) (b) (6) [redacted] and Mr. (b) (6) [redacted] is denied at this time.

I have confirmed with NCIS that the responsive documents you requested pertain to an active investigation and release of information compiled for that purpose would compromise further investigative steps. Regarding autopsy materials specifically, public awareness of details on the condition of bodies would limit investigative tactics and impact the integrity of further witness interviews or re-interviews. Accordingly, your appeal is denied pursuant to 5 U.S.C. § 552(b)(7)(a).

Under 5 U.S.C. § 552(b)(7)(a) information is exempted from disclosure that "could reasonably be expected to interfere with" enforcement proceedings. The information here is currently exempt from disclosure because: (1) law enforcement proceedings are pending or prospective; and (2) release of the information could reasonably be expected to cause some articulable harm. *See NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 224 (1978); *FBI v. Abramson*, 456 U.S. 615, 621 (1982). I find that NCIS has satisfied this two-part test, and accordingly, no information contained in this investigation will be released at this time.

Once such enforcement proceedings are complete, to include both criminal and administrative proceedings that may be taken as a result of the information contained in

this investigation; you may resubmit a new request for this information. However, due to the content of this law enforcement investigative material, other FOIA exemptions may apply which may restrict the disclosure of information contained within the investigation. NCIS will nonetheless review the responsive files and determine whether such information can be released at that time. You will again have the opportunity to appeal any additional determination NCIS may make to this office.

I realize you will not know when to submit a new request as you will not know when enforcement proceedings are complete. You may contact the following point of contact to determine when to submit a new request:

Lieutenant (b) (6) [redacted] JAGC, USN
Headquarters, NCIS
27130 Telegraph Road
Quantico, VA 22134-2253
Ph: 571-305-9092
Email: ncisfoia@navy.mil

As the Department of the Navy's designated adjudication official for FOIA/PA appeals, I am responsible for this final decision. You may seek judicial review of this decision. If you have any questions regarding this case, please contact Lieutenant (b) (6) [redacted] (b) (6) [redacted] USN, who may be reached at (b) (6) [redacted] or (b) (6) [redacted].

Sincerely,

(b) (6) [redacted]

G. E. LATTIN
Director
General Litigation Division

Copy to:
DNS-36
NCIS