



U.S. Department of Justice

Office of Legal Counsel

Washington, D.C. 20530

November 15, 2022

Christopher Mirasola
Harvard Law School
cmirasola@law.harvard.edu

Re: FOIA Tracking No. FY23-009

Dear Mr. Mirasola:

This letter responds to your October 25, 2022 Freedom of Information Act request to the Office of Legal Counsel (“OLC”), in which you sought:

1. A copy of a March 1970 DOJ OLC study that “reached the general conclusion that there is inherent authority for the President to use troops when necessary to perform federal functions and that the Posse Comitatus Act is not applicable to such use of troops”[; and]
2. A copy of the November 14, 1969, memorandum from DOJ OLC to the Department of the Army General Counsel stating that the Posse Comitatus Act “appears to prohibit the use of the Army or Air Force to protect foreign embassies in the United States.”

Pursuant to 28 C.F.R. § 16.5(b), your request was processed in the simple track.

We have located the memoranda you have requested. The documents are enclosed.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. § 552(c). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

For any further assistance and to discuss any aspect of your request, you may contact Melissa Golden, OLC’s FOIA Public Liaison, at usdoj-officeoflegalcounsel@usdoj.gov, (202) 514-2053, or at Office of Legal Counsel, United States Department of Justice, 950 Pennsylvania Ave., N.W., Room 5517, Washington, DC 20530.

Additionally, you may contact the Office of Government Information Services (“OGIS”) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi

Road, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

You have the right to an administrative appeal. You may administratively appeal by writing to the Director, Office of Information Policy (“OIP”), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP’s FOIA STAR portal by creating an account following the instructions on OIP’s website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked “Freedom of Information Act Appeal.”

Sincerely,



Jared Kaprove
FOIA and Records Management Attorney

Enclosures