OFFICE OF THE SECRETARY OF DEFENSE
1950 DEFENSE PENTAGON
WASHINGTON, DC 20301-1950

ADMINISTRATION AND
MANAGEMENT

18 SEP 2007

Ref: 06-A-1532

Mr. David Barstow
42 Stephen Street
Glen Ridge, NJ 07028

Dear Mr. Barstow:

This is in response to your July 11, 2007, Freedom of Information Act (FOIA) appeal. You appealed the April 13, 2007, withholding of information under FOIA exemption (b)(5) by the Office of the Assistant Secretary of Defense, Public Affairs in response to your April 28, 2006, FOIA request.

The attached documents are the documents previously provided to you in which information was withheld pursuant to exemption (b)(5). All information previously withheld under exemption (b)(5) is now released. The remaining redacted information in these documents and the others provided to you on April 13, 2007, is exempt from release pursuant to 5 U.S.C. § 552(b)(2) and (b)(6). The withholding of this information is not considered a denial since you specifically did not appeal the initial denial pursuant to exemptions (b)(2) and (b)(6). Therefore, this response is considered a grant of your appeal.

Sincerely,

James P. Hogan
Chief, FOIA Policy, Appeals and Litigation
Branch

Attachments:
As stated

Transcript
Conference call with military analysts
Thursday, June 1, 2006
Subject: Haditha
Host: Tara Jones, OSD-Public Affairs
Briefers: [redacted]
Transcriber: Murphy
ON BACKGROUND

Jones: Again, thanks for joining us this afternoon. This is obviously a hot topic and an important one and we appreciate you taking time out.

I have with me [redacted] He is the [redacted] And I also have [redacted] So he'll be also able to speak to you on the subject.

This call is on background, so as always, we ask that you only quote senior DoD officials with the information that you receive on this call. So with that, I am going to go ahead and hand it over to the general and the colonel, so they will make brief opening remarks and then we're, you know, free to take questions.

[redacted] Gents, thank you again. [redacted] here. Again, I am the deputy director of public affairs for the Marine Corps. We do appreciate you taking the time. Hopefully we can give you some information that will be of use to you, as I am sure you are being pressed – maybe not as much as we have – but certainly enough to comment on this situation.

As you all recognize, we are in a pretty tenuous situation here, with an ongoing investigation which constrains us from what we are able to say. We are certainly helped by those of you who have an understanding of the system and aren't on active duty. You have a little bit more freedom to talk about things, so we're hoping that we can give you information that's useful in allowing you to do those things when you are asked to comment.

I guess, just as a - I'll do a quick background on the situation just in case anybody isn't completely up to speed. Incidents of 19 November 2005 in Haditha in western Iraq. At the time it was Two Marine Expeditionary Force, which had command of that area of operations in Anbar Province. The third battalion, 1st Marines, which is normally part of the First Marine Division, was attached to 2 MEF for those operations. Three-one, I'll use the shorthand – is back in the U.S. now, has redeployed to their home base at Camp Pendleton. If there is from the investigations that are ongoing any type of follow-up legal action it is likely to be handled at Camp Pendleton because again that's where the unit that is involved is based currently.

As you may all may know already, Time Magazine is the ones who kind of brought this to the military that started at first an initial inquiry by Multi-National Corps – Iraq. They found enough there to convene a second AR15-6 investigation, which is headed by Major General (Eldon) Bargewell, which is ongoing at this point. And Major General (Richard C.) Zilmer, who is the current commander of Multi-National Force – West convened a -- Naval Criminal Investigative Service investigation. So those are the two ongoing investigations -- the AR15-6 and the NCIS investigation.

I am sure you have been asked, as we have, about when those are going to wrap up. We don't know. It is certainly not expected to be imminent, despite reports that you see. Again, can't put a time frame on it, and [redacted] can probably talk more about why it's so difficult to kind of nail down how long investigations take and he'll talk process stuff.

So hopefully that brings you all up to speed. If I have repeated or said anything that you are already aware of I apologize, but I just wanted to make sure we are starting on a level playing field. I'll let [redacted] now talk about some of the legal issues associated with where we are today.

[redacted] Good afternoon, [redacted] here. I am the [redacted]

One of the reasons we took this opportunity to talk with you gentlemen is to reiterate some things which I think you all probably know, but to make the points concerning what it is we can and cannot say at this time as these investigations are being completed.

First of all, with the pending investigation – the old statement that you don't know what you don't know. The investigators are out there gleaning facts each and every day, and you don't know what they have uncovered each and every day, so whatever you say could probably be wrong about the investigation or the status of the investigation, and you don't want to interfere with their processes.

But the other thing that really constrains us that I was asked to discuss is, you know, the topic of unlawful command influence. Most of you are aware of it. Most of you – especially General Scales and General Shepperd – have probably had SJAs tell you about this in the past. But it becomes critical now for us to make sure that we do not do anything or say anything that will prejudice our ability to bring whatever charges or whatever wrongdoing is uncovered in the investigations to the proper level or the proper forum for accountability.

We have to – and that puts us in the bad position, if you will, with the media of not being able to tell them all that they want to know or confirm items that they find from other sources that they wanted to talk about that perhaps in other settings local district attorneys would be more than happy to talk about -- but their system doesn't have the same features that ours does.

So I wanted to stress the topic of unlawful command influence and why there is frustration – there is frustration on our part as to what we can and cannot talk about.

So I will leave it at that and let's see if you gentlemen have questions and items that we could address for you.

Q: Yeah, this is Bob Scales real quick. I – this is a little short-fused but I am supposed to – I have written an essay, if you will, on the subject, which I am supposed to talk about and record this afternoon. I wonder if I might just send it to you just for a truth check, if that's okay.

[redacted] Yes, sir. [redacted] here. My email address – and all of you feel free to email me if you need to – is [redacted] at USMC dot mil.

Q: Well thank you very much. I appreciate it.

Q: Don Shepperd. Process question here. The AR15-6 and the naval criminal investigation are two separate investigations. What happens to the AR15-6 report if it goes to -- when the facts are found, who does it go to? And who decides whether or not to prefer charges? And is that – is that decision to prefer charges or not independent of the NCIS? In other words, if they decided not to, could NCIS also go ahead and prefer charges?

[redacted] here. NCIS does not prefer charges. A convening authority would have to prefer charges. The AR15-6 is an administrative investigation that is looking the two topics that you have heard about before – the training and the reporting (report?). Those are the two items they are looking at. That is an administrative investigation, and they will produce their findings and that is going to General Chiarelli in Iraq and Casey-- General Casey had him do that.

And I think the flow will be Chiarelli to Casey to us – to the Marine component, and perhaps, back through Abizaid as well. Up and down the chain of command.

NCIS investigation was convened by General Zilmer, the Multi-National Force-West commander, but he is in the operational chain of command as well. We expect that investigation to flow up the same chain of command. We expect those cases, those findings, to come back to the Marine Corps, to the Marine Component at least, which is Marine Forces Central Command, for us to take action.

That's how the processing of those investigations should follow. There will be – there could be the preferal (sp) of charges by the Marine Corps based upon the 15-6, but if they find some other criminal conduct we could go back to NCIS and say investigate further on another avenue of inquiry.

Q: So Marine Corps Central Command will be the one to decide after it goes through the chain of command and the recommendations decide whether to prefer charges is what I hear you saying?

[redacted] I think that's what the process worked out by the commanders has been. It's an operational chain of command issue and that's how I believe it's going to work out.

Q: What's the name that goes with that?

[redacted] Sattler. You all know John (LtGen John Sattler), right?

Q: Yes. Absolutely.

[redacted] I think John is the one on this situation who has been tagged, with the concurrence of General Abizaid and others, that that's how it's going to work.

Q: This is Jeff McCausland. I understand that – if I have got this – that the 15-6 with the training and (inaudible) reporting. Can you comment at all on – apparently there have been reports that the battalion commander was relieved. Can you comment on that? And can you also comment as far as the Navy criminal investigation just in terms of how many Marines are at least subject to the investigation, or does that go too far?

[redacted] Well, on the commander of the battalion – 3rd battalion, 1st Marines, was relieved by the commanding general of 1st Marine Division. And it was done for the traditional stated reason of loss of confidence. I cannot tell you, and the commander does not have to explain to us, if there was something more – (were they involved?) the event that's the subject of all the media attention now, or whether there are other actions? You know, there could have been failures of inspections. There could have been a higher disciplinary rate than other commands. I don't know other than the commander of the 1st Marine Division lost confidence in the ability of that lieutenant colonel to command that battalion. And I think that's what we have reported before.

Now the second question about –

Q: How many Marines, at least in raw numbers, are the subject of the Navy criminal investigation?

[redacted] Now, I don't – I don't think I know an exact number so I hesitate to give you a number.

Q: Okay.

[redacted] They are talking to a number of people. They have been interviewing any number of individuals, and some of those individuals they may interview you for one purpose, but then find

out that perhaps there is some other reason they had to talk with them further, or they might have done something else wrong that may have nothing to do with this. So I would be very hesitant to throw out a number, because I am pretty confident I would be wrong.

[redacted] And just to jump on again, on the first part of the question, the battalion commander of 3-1 was relieved, as were two of the company commanders within that organization as well. And as the general said, the relief was done by the commanding general of the 1st Marine Division because the unit was back at Camp Pendleton at that time and so 3-1 fell under the 1st Marine Division because they were back in the States, and they weren't forward when these reliefs took place.

[redacted] And to reinforce that, the general did that, General Natonski and that's been reported before, he could have figured out stuff or seen stuff upon their return from Iraq that was enough for him to decide to relieve him, and I have – you know, I would not tell you and I do not know his mental calculations he went through before he did that.

It could have been any number of events that led him to that conclusion, and I don't think it is centered on this investigation because this investigation – or the investigations relating to (Haditha?) have not been completed yet.

Q: Ok.

Q: Gents, Jed Babbin. Two questions. Number one, can you tell us if K31 (sp) was brought back early because of the suspicion of these events and number two, can you also tell us going back to the command influence point, how strongly you guys have been counseling both the military and civilian leadership to basically clam up so we don't screw up the prosecution?

[redacted] here. On the first part, no, 3-1 rotated back on their normal schedule; they were not brought back early. An aside to that, the other incident that has been recently discussed involves 3rd battalion, 5th Marines. That unit still is in country, and members of that unit have been returned to the United States pending the investigation into those allegations.

So in the case of 3-1, the Haditha incident, they were not brought back to the States early. But 3rd battalion, 5th Marine, separate incident – Hamandiyah – that just happened more recently, some of those individuals have been returned to the States early pending the investigation.

[redacted] On the unlawful command influence issue, what we have done is you have probably all seen the press release done by the commandant. That includes - you know, that was carefully crafted by us, if you read those words, and I know General (inaudible, sounds like reid?) has read those words carefully, to take it above, and keep it above any claim where we are trying to influence the course of the investigation, or influence the discretion that subordinate commanders will have to exercise in the course of any investigation, any court martial that may or may not result, or any administrative action.

As you all know, there are a variety of people who will now have roles to play, from members of court martials, judges, lawyers who make decisions as to what the charges should or should not be, and the convening authorities.

We could have people who get charged for some not obvious offense by some other subordinate commander that we can't predict today. So we are trying to put out the word to the Marine Corps, through the commandant's words, and other things I do through the SJA channels, to make sure everybody keeps it at the right level so we retain our ability to use the military justice system for the purpose for which it was intended – to provide good order and discipline for the force, and to hold people accountable when necessary. So that's what we're working on, Jed.

Q: That's great. Hey, appreciate that. One quick follow up. Have the Iraqis squawked at all about bringing any of these guys back, early or late?

[redacted] This is [redacted] I have no idea. I haven't heard.

Q: On that, two quick follow-ups. One is, for those who have not – at least I haven't seen this press release by the commandant, Tara, could you possibly have that sent out to us? That'd be great.

Jones: Yeah, absolutely.

[redacted] I can get it to you. And I will also – well, I will get it to Tara and let her pass it to you. The other thing, too, is those of you who read Tom Ricks's story this morning probably saw reference to some other guidance we put out on this very subject, again, to make sure that anybody who – anybody out there who was being approached on the issue of Haditha knew where the out-of-bounds lines were and why. I can get you some of that guidance, as well.

Q: That'd be great. (inaudible) couple of TV spots. Second question is, what Jed just said. The Iraqis have announced that they are going to do their own investigation, and maybe it's too soon to comment on that. But will there be any coordination between what we're doing, NCIS in particular, with the Iraqis, or do you guys see that as being totally out of bounds?

[redacted] Don't know at this point. We have not heard anything along those lines. Obviously we have seen the comments coming out of the Iraqi government, but it hasn't translated into any action at our point at this juncture.

Q: This is Bob Maginnis. Question on press release that came out earlier today, I think out of Iraq, out of the Corps. Is this being typified as a training stand down? Or, I saw the commandant's message a couple days ago. What exactly is he doing in country? What are the messages he's sending? Can you go over that again, just for clarification?

[redacted] Sure. Two separate things, obviously. The commandant had a trip previously scheduled in which he was going to be visiting Iraq. It was not a trip that was put together for this purpose, but since he was going, he wanted to talk to his Marines.

The things that he talked to the Marines about were the importance of our core (Corps?) values – honor, courage and commitment, talking about doing the right thing. Also, making the point that the vast majority of Marines are doing the right thing – day in, day out, under very challenging circumstances both in combat and out of combat.

Wanted to get the message to them that even though there has been a lot of attention paid to this incident and these allegations that he believes that most Marines – that this is an aberration, that most Marines are doing the right thing. He wanted to reinforce that. But he also wanted to talk about the importance of doing the right thing, of having moral courage, of adhering to our core (Corps?) values again. Those are some of the things that he wanted to talk about. It was not intended to be a training in the way that this MNC-I announcement came out, done separately by General Chiarelli for whatever reasons.

I don't have any indications here that there would be any kind of training stand down. Obviously those guys across the battlefield are busy, and they can't afford to have everybody stop what they are doing but I think – and again I am talking a little bit out of school because it's an MNC-I issue, but I don't get the sense it's a stand down as much as making sure that commanders are reinforcing those training aspects on some type of schedule.

Q: As a follow up, perhaps Tara or someone in OSD can clarify whether the Corps has put out something that is in fact – I am hearing through other people is being interpreted as a training stand down, and that's why I wanted some clarification.

A follow up question about this particular battalion, 3-1. Wasn't this their third tour, and were the people we are talking about that are being investigated, were they on their third tour with this battalion?

[redacted] The battalion itself, it was their third time back, but remember, the people in the battalion change out all the time, so it's not as if the entirety of the battalion was there for the third time, you would have variations throughout the ranks. In fact, I am sure they had people that were on their first tour at this time.

The second part of the question was – oh, whether the individuals that were involved – don't know to that level of detail in terms of if it was this person's first time or third time. Again, as [redacted] said, it's a pretty wide net. It'd be tough to decide who it was that is considered, you know, part of the investigation.

Q: Thank you.

Q: Don Sheppard. I got hit with a question on radio the other day about – it had been reported that $2,500 payments were made by the Marine Corps to some of the families involved, and it was not the normal policy to pay reparations in the field.

I am not sure this is your area, but do you know anything about that?

[redacted] Well I think, one thing is that we call it salatia payments and they're done a lot in Iraq. They are done in other parts of the world, as well. And what they are is – and they range from things like when we have automobile accidents, when we damage property through either operational damage or through other damage; you know, our big trucks run into buildings on a regular basis, or run into Iraqi cars, and we offer them compensation for the damage that they suffered. And in this case, there was some salatia payments done to the families – or paid to the families, and I would not classify it as being unusual.

[redacted] The other important aspect is that salatia payments are not an admission of guilt, either. Again, they are a way to recompense individuals, families, whatever, for damages of one type or another. Again I know – in fact, to take it to the lowest level, when I was in Haiti two and a half years ago, we were paying people for breaking locks off their doors when we doing searches. I mean, it goes from the very small level to the very large level.

Q: This is Jeff McCausland again. Can you guys comment at all about this one young Marine, I think he is still on active duty out in California, apparently he has released a bunch of photographs. His mother has been on TV. He claims he was part of the quote unquote clean-up crew, but also has gone on to make allegations about the fact that – or his mother has at least – that the Marine Corps has not addressed this kid's PTSD and all the problems associated with this Haditha thing. Have you got any comment on that as well?

[redacted] The Marine in question did do an interview with the Los Angeles Times. He has since stopped doing interviews, from what I understand, of his own volition – nobody told him – again, as far as I understand nobody told him not to. But his mother is carrying the case. She has done a number of interviews. Again, her focus has been more on the PTSD issue and she has talked somewhat about what her son told her he saw and experienced.

[redacted] He's also been accused of a variety of crimes in the local community there, which is reported in that article from the LA Times. I don't think we've seen anything official or unofficial

about his claims of PTSD and whether he's being treated and stuff in (and?) that. We have not explored that yet.

Q: Bob Maginnis again. The LA Times today, a town awoke to slaughter. Very detailed. Were these two reporters on the ground, or are they basing what they are saying in here on second and tertiary sources?

[redacted] Well the – and I am just going off memory from reading the story this morning because I think that it mentioned that they wouldn't reveal the name of the reporter for security reasons, one who may have gone into Haditha to conduct the interviews, but also believe that they conducted interviews with individuals, so various levels of sourcing in terms of people who may have seen what happened, may have been involved, or may have heard from others - so it could have been second- or third-hand information. I didn't get the indication that the reporters were there when any of this happened, but then went back afterwards to talk to the townspeople. Does that – does that help at all?

Q: Yeah, it is littered with quotes that are very incendiary, so I am just curious as to the sourcing, so if that's what you have, that's what you have.

Q: Jed Babbin again, guys. In terms of the Congress, we're hearing that Senator Warner might want to have hearings or something, I mean, what requirements or what requests are these helpful folks levying on you these days?

[redacted] We have – I am not aware of having received any official request for information or documents or people to testify, et cetera, yet. They have all said that, you know, we are going to have hearings on this some time. We have not gotten, as you characterize it, the helpful requests so that they can help clarify the issues for us.

It does raise Jed, as you know, a significant number of legal issues. Are they going to subpoena witnesses? Are these witnesses going to be people that will have to get some level of immunization to testify at the Congress? How does it impact cases in the future if there are cases? Evidence, other information. It does not make life simpler.

Q: It's precisely the kind of help you really don't need.

[redacted] From the legal standpoint, I would love for everybody to keep their mouths shut so we can get the investigations done so people will keep talking to us, so we can get all the evidence gathered without having any taints and people running and hiding with information when they find out, you know, their name is going to be plastered all over the media, and get that all concluded so we could proceed in an orderly fashion without the helpful people from other sources.

So the Congress – that will be problematic, as you can imagine. And just go back to the prior history – you know, the last, I don't – go back 30 years, 25 years, 20 years – think of all the problems when they wanted to have Ollie North before the criminal investigation was done, and how that impacted the ability to prosecute and defend, et cetera.

Q: Thanks.

[redacted] One other note on the congressional piece, too. As I am sure you are aware, the commandant did go over to the Hill, again not on specific request, but in order to keep the leadership apprised of what was going on in these cases and his legislative director followed him and did some briefing as well.

Q: The nature of the enemy that was being fought on November the 19th in Haditha, were they characterized in the immediate after action as just Sunni insurgents, or were there evidence of foreign jihadists that were embedded and perhaps were even using children, women as shields?

[redacted] Don't know the answer to that one. That may be something that comes out in the course of the investigation, but I do not know. I was there at the time in terms of – in Iraq – we felt, in our intelligence, you know, verified that the foreign fighter influence – influence, I should – the numbers of foreign fighters in western Iraq was pretty small. Obviously they had a big influence. But most of the guys we were fighting in western Iraq were local Sunni insurgents.

Q: Okay.

Jones: All right gentlemen, any other questions?

Q: Yeah, I just sent that email to you David. Could you just read that over and make sure it's okay?

[redacted] Will do, sir.

Q: Tara, are you going to follow up with the Corps to find out if they sent out something on a training stand down, because I am confused by what is on the web page.

Jones: Yeah, no, we'll get that to you.

[redacted] I don't think they have used the term stand down. I am looking at the press release, and they just talked about a training, commander direct training.

Q: They even said one report I got (inaudible – that it?) would be conducted over the next 30 days.

Voice (?): Right, that's what it says in here.

Q: Tara, anything you can get on that, I've got to go on two TV programs here, that would be great, as well as that press release by the commandant of the Marine Corps.

Jones: Sure.

[redacted] And, [redacted] again. Just one last point I'd like to make, and I think [redacted] will probably jump on. As you can imagine, we have received a lot of requests from media to get the commandant out there to talk, to do interviews, to have media tag along as he goes and talks to Marines. Obviously, lots of concerns with that on a number of levels, not the least of which is, again, perceptions of unlawful command influence. So we are getting a lot of pressure, but the commandant's talks to his Marines are intended to be that, for him to talk to his Marines.

Again, we do not want to put the commandant in a position based on, you know, the media's desire to get him to talk that's going to pollute the system. So, while he is obviously concerned, he has serious concerns with these allegations, he is not in a position to address them while there are ongoing investigations. Sir?

[redacted] I would just reinforce, you know, the statement that he has made on Marine virtue is the kind of statement that you would expect the senior Marine, our leader, to talk about with Marines when there's investigations pending, to talk about how we expect each of us to behave, and at what level to behave, and how we can comport ourselves to comply with our honor, courage and commitment. And that's the kind of things he needs to go out and reinforce.

Talking to specifics to all of the Marines in the Marine Corps doesn't do any good. That's not what he needs to reinforce. He needs to reinforce the basic virtue. So that's what he is going when he goes out; he is talking to his Marines about how we expect Marines to behave, whether it is on liberty, on duty, on the battlefield or off the battlefield.

Q: Could you say again the exact title of AR15-6 investigation, what do you call it in the Marine Corps?

[redacted] Well, in the Marine Corps terms we'd call it like a JAG manual investigation. And that the 15-6 again is – the Army guys can tell you this – is AR15-6 that refers to the regulation that guides it. It's an administrative investigation that commanders can use for a variety of reasons – to find out why their supply system is losing gear, to find out why people are getting in trouble in town – they can use it for any number of reasons. In this case it's to look at why the reporting was not accurate, and also was the level of training of the Marines involved prior to the event sufficient? And those are characterized as administrative investigations. And then if they find the criminal investigation – criminal matters that they think exists, then they can turn it over to NCIS, or the commander can take some administrative and disciplinary action based up on that investigation.

Q: This is Jeff McCausland again. Sadly, I don't think this is going to go away any time soon -- I sure hope to God it does -- but it might be useful [redacted] and [redacted] if you can have Tara send us some contact info in addition to [redacted] email address and you all's offices in case we need to make a quick check on the legal side or on the public affairs side as this thing goes on for however long it goes on.

Jones: Yeah, I am happy to do that. All right gentlemen, thanks again for joining us, and I will send – and I will be sending out stuff this afternoon. Keep us posted for media that you do on this.

Q: Yeah, I'll be on O'Reilly tonight Tara.

Q: CNN in the morning, Tara.

Jones: Okay, great.

Q: Thanks very much guys.

Jones: Let us know if we can do anything else for you.

Q: Bye.