



NOV 04 2010

Mr. David Cole



Dear Mr. Cole,

This letter serves as the final response to your Freedom of Information Act (FOIA) request (Log # 10-202) to the National Institute of Standards and Technology (NIST), in which you requested: "a copy of the batch of photos that the NIST scientists used for the NIST Report, if there is no fee."

Enclosed you will find an external hard drive containing six thousand, seven hundred and fifty-three (6,753) images released in their entirety.

Some of the images being released were provided to NIST by the City of New York. The City of New York has provided NIST with the following notices:

"Please take notice that the City of New York ("City") has asserted that each of the enclosed NYPD photographs is protected under the Copyright Act, 17 U.S.C. sections 101 et seq. The City expressly reserves its rights in these materials, and requires that you obtain the City's permission prior to any reproduction, modification, adaptation, recompilation, or other derivative use of each photograph, and prior to the commercial distribution of any photograph, or reproduction thereof in any medium, by sale, rental, lease, lending or other means. The City requires that the instant notice accompany any photograph that you disseminate for any reason, including dissemination that complies with the fair use authorized by section 107 of the Copyright Act, and requires that each recipient of these materials comply with the instant Notice. Please write to the New York City Police Department, Legal Bureau, 1 Police Plaza, Room 1406, New York, NY 10038, for information about obtaining an appropriate license.

"Please take notice that the City of New York ("City") has asserted that each of the enclosed FDNY photographs is protected under the Copyright Act, 17 U.S.C. sections 101 et seq. The City expressly reserves its rights in these materials, and requires that you obtain the City's permission prior to any reproduction, modification, adaptation, recompilation, or other derivative use of each photograph, and prior to the commercial distribution of any photograph, or reproduction thereof in any medium, by sale, rental, lease, lending or other means. The City requires that the instant notice accompany any photograph that you disseminate for any reason, including dissemination that complies with the fair use authorized by section 107 of the Copyright Act, and requires that each recipient of these materials comply with the instant Notice. Please call the Counsel to the New York City Fire Department at (718) 999-2040 for information about obtaining an appropriate license.

Additionally, two thousand seven hundred and forty-seven (2,747) images are being withheld from disclosure pursuant to FOIA exemption 5 U.S.C. § 552 (b) (4): "Trade secrets and commercial or financial information obtained from a person and privileged or confidential."

You have the right to appeal this determination. Such an appeal must be made in writing and received within 30 calendar days of the date on this letter addressed to:

Assistant General Counsel for Administration (Office)
Room 5898-C
U.S. Department of Commerce
14th and Constitution Avenue, N.W.
Washington, D.C. 20230

Your appeal should include a copy of your original request, a copy of this determination, and a statement of the reason(s) you believe this determination to be in error and why these records should be made fully available to you. Both your letter and the envelope in which it is mailed should be prominently marked "Freedom of Information Act Appeal."

Sincerely,

A handwritten signature in cursive script, appearing to read "Cath S. Fletcher".

Catherine S. Fletcher
Freedom of Information Act Officer

Enclosure