

To Whom It May Concern:

Pursuant to the Freedom of Information Act, I hereby request the following records:

(NOTE FROM THE AUTHOR: I submitted this request to the Defense Logistics Agency as well as the U.S. Navy office called "U.S. Fleet Forces Command." To the extent another office at the Navy is more closely involved with procurement of battleships, I respectfully request that a staff member of Fleet Forces Command forward the request to that office. Many thanks.)

I request the following records:

1. All suggestions and/or complaints filed about the U.S.S. Zumwalt, its build quality, or what it lacks, by sailors or other U.S. military staff who work with or on that ship.
2. All documents subject to the FOIA that constitute a record of the approval process that the Zumwalt class went through before it was approved and its contracts were finalized.
3. Documents sufficient to show any rule or regulation or policy that outlines what information the Navy (and the DOD, to the extent they are different) needs before it agrees to fund research and development efforts of a ship, plane, or weapons system.
4. Documents sufficient to show whether the Zumwalt-class destroyer project met all the standards or requirements the Navy/DOD has for funding R&D, as described in part (3) to this FOIA request.
5. All documents that constitute proof, evidence, or information that the contractor(s) of the Zumwalt project gave to the Navy/DOD that satisfied the Navy/DOD's requirements for funding R&D as described in part (3) to this FOIA request.
6. All documents that constitute proof, evidence, or information that the Navy/DOD used to determine that it would purchase fewer Zumwalt-class ships than it had planned previously. This request refers to each and every time the Navy/DOD reduced the order, from the highest initial number to the current order of three ships. Please keep in mind the DOJ's guidance to the FOIA about so-called "predecisional-deliberative" material and about trade secrets, both of which I have outlined below.
7. Documents sufficient to show whether the Zumwalt class of ships, or the U.S.S. Zumwalt specifically, is the subject of a currently-open DOD IG investigation.
8. Documents sufficient to show what the nature of any computer simulations of the Zumwalt designs were, that were shown to the Navy/DOD prior to contracting the project. I also request documents sufficient to show any scoring rubric on which the Navy/DOD judged the simulations, and what scores the Zumwalt simulations/designs received on said rubric(s).
9. Documents sufficient to show how Zumwalt performance data received from contractors—at each and all points where Navy/DOD decreased the Zumwalt order—differed from the simulations shown to Navy/DOD in part (8) of this FOIA.
10. The full text and information contained in all contracts that the Navy/DOD entered into with the primary contractors of the Zumwalt class ships.

11. Documents sufficient to show whether the DOD/Navy has any recourse following payment, to a contractor, of funds slated for research and development, if a project ultimately doesn't or can't do what the contractor had, prior to contracting, suggested it could do. In common parlance, does the Navy/DOD have any recourse available to it to recoup funds paid for R&D, in the event said R&D fails at what it was attempting? If so, I request documents sufficient to show such a mechanism of recourse. I also request documents sufficient to show whether such a mechanism was implemented in the contracting process for the Zumwalt-class ships.

12. Documents sufficient to show whether any computer security audits have been performed on the Zumwalt's "total ship computing environment." (In the private sector, these 'security audits' are sometimes also called 'penetration testing.' In essence, their purpose is to test for how vulnerable a given system is to hacking.) To the extent any security audits have been conducted on the Zumwalt's "computing environment," I do not request the full results of said tests, as that would clearly be a risk to national security if any vulnerabilities the auditors found have not yet been fixed. However, I do request something more general, such as a number of vulnerabilities—and their level of severity, if the auditors ranked them as such—for each security audit the Navy/DOD has undertaken. With this data I intend to ask officials at Navy/DOD roughly what percentage of these have been patched, and whether they intend to patch them all by the time the first mission of the first ship begins.

13. Documents sufficient to show whether the Navy has determined, as of the date of this request, whether the Zumwalt will be able to carry and deploy SM-class air defense missiles.

14. Documents sufficient to show whether the Navy has issued an RFP, or even decided in a final sense, on a type of ammunition that can be fired from the guns of the Zumwalt. (I am referring, if there is more than one type of mounted gun on the Zumwalt, to the guns whose initial proposed ammunition was cancelled by the Navy some time ago.) To the extent any proposals have been made, or the Navy has picked one of them, I request documents sufficient to show the general specifications of this ammunition, including but not limited to its effective range (or proposed effective range) when used in the Zumwalt's guns.

15. Any document(s) that constitute a public announcement, about a reduction in the Zumwalt's capabilities, made over the 2018 calendar year.

Helpful tips about the FOIA and the caselaw that has bearing on it, compiled from the website of the DOJ's Office of Information Policy. DOJ OIP maintains the official record of what caselaw has bearing on the FOIA, and organizations such as Reporter's Committee for Freedom of the Press have compiled DOJ OIP's records into helpful guides.

#### ON TRADE SECRETS EXEMPTION(S):

As to the concern of whether or not the material you may be releasing is considered a "trade secret" for the purposes of the FOIA, please see the following guide I wrote in consultation with the Department of Justice's guidelines on using this exemption, Exemption 4.

Exemption 4 applies ONLY to information/documents submitted to government entities by private entities. So if that's not the case, your office can't claim this exemption. But if it is the case, the below bullets also apply and thusly limits the government's ability to redact under the exemption.

- “Trade secret” has a fairly limited meaning: information that is generally not known in the trade, but is commercially valuable, secretly maintained, and is used for the making, preparing, compounding or processing of trade commodities. It must also be the end product of either innovation or substantial effort.

- To withhold documents as “commercial or financial information,” the government must be able to prove the information is “confidential.” However, a mere promise of confidentiality to the one who supplied the information does not merit use of this exemption. Courts have said that information is “confidential” only if its disclosure would be likely either (1) “to impair the government’s ability to obtain necessary information in the future” or (2) “to cause substantial harm to the competitive position” of the person from whom the information was obtained.

- “Substantial harm” itself has a limited definition: “data revealing assets, profits, losses and market shares, (or) detailed information filed to qualify for loans and government contracts.”

#### ON PREDECISIONAL-DELIBERATIVE EXEMPTION(S):

The part of Exemption 5 that refers to “pre decisional-deliberative” information has many guidelines and, like all exemptions, must be interpreted “narrowly.” The exemption:

- Can be used to withhold “advice, recommendations and opinions”

- CANNOT BE USED to withhold statements of fact. So if someone compiles a fact-based report, the only redact-able parts are those parts which are the opinion of the author.

- NO LONGER APPLIES if a decision-maker “clearly adopts the position set forth” in the deliberative document in question.

- “Final opinions” and “post-decisional” documents explaining an agency position are not exempt.

- Also DOES NOT APPLY if the original “source” of the information is not the government agency

- To withhold a piece of information, disclosure would have to “adversely affect the purposes of the exemption,” and to determine that, courts ask “whether the document is so candid or personal in nature that public disclosure is likely in the future to stifle honest and frank communication within the agency.”

#### REDACT, DON’T WITHHOLD:

Lastly, we remind you of your burden to redact pieces of information and not to withhold entire pages on which exempt material may appear. This burden of yours is well outlined in caselaw.

If any whole piece correspondence is exempted, I request the metadata from that piece of correspondence—which includes things like to/from, date/time of sending, and the subject line. As a rule of thumb, metadata of this nature can almost never be redacted.

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 20 business days, as the statute requires.

Sincerely,

Brandon Smith