

# Withdrawn/Redacted Material

## Obama Presidential Library

DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Letter	[Letter] - To: Executive Secretary, ISCAP - From: Matthew Miller	2	05/05/2009	P6/b6;

### COLLECTION TITLE:

Interagency Security Classification Appeals Panel (ISCAP) - Appeal Files

### SERIES:

Unclassified and Closed Appeal Files

### FOLDER TITLE:

Miller, Matthew 5/11/2008 US Army Tank and Automotive Command - "U.S. vs Ryan Andreson" 2009-063

### FRC ID:

59592

### RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

#### Deed of Gift Restrictions

- A. Closed by Executive Order 13526 governing access to national security information.
- B. Closed by statute or by the agency which originated the document.
- C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Records Not Subject to FOIA

Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.

May 5, 2009



LTC Matthew Miller



Executive Secretary, ISCAP  
C/O Information Security Oversight Office  
The National Archives Building  
700 Pennsylvania Avenue, NW, Room 100  
Washington, D.C. 20408

Dear Sir or Ma'am,

Please accept this letter as a formal request for an appeal of a mandatory declassification review conducted by the U.S. Army Tank and Automotive Command (TACOM). The subject matter under review consists of two pages from the Record of Trial in the court-martial case of U.S. v. Ryan Anderson. While the Record of Trial is otherwise a public document, portions of the court proceedings were classified "secret." The two pages specifically at issue in this review are pages 1076 and 1077.

I submitted the appeal to the agency in my capacity as a defense appellate counsel for the U.S. Army at the request of the civilian defense counsel, Mr. Gene Fidell. The original classification authority, Brigadier General Ogg, formally rejected our appeal of the decision not to declassify these two pages on March 30, 2009. The formal rejection letter is attached, as well as the redacted, declassified version of the two pages from the Record of Trial. I have also attached a memorandum for record detailing some of the communications with TACOM officials that strongly suggests that the two pages remain classified for improper purposes (such as a concern over possible embarrassment of government officials). We request that the two pages be declassified to the maximum extent possible based solely on applicable law and regulations.

The two pages at issue are currently within the possession of the following officials at TACOM: Mr. John Simonini, Assistant Deputy Chief for Intelligence and Security, and Mr. Ron Duquette, Technology Protection Officer. They can be reached by phone at [redacted] General Ogg's administrative assistant for this matter was Ms. Judy Zender at [redacted]. The documents are also within the possession of the Court of Appeals for the Armed Forces as part of the Record of Trial.

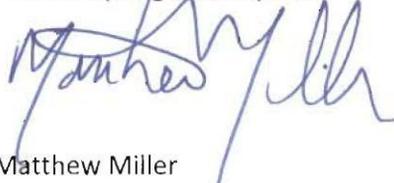
P6/b(6)

The March 30, 2009, classification decision was an administrative appeal with the agency. In the first review, the agency had refused to redact any information. (This first review was coordinated by military defense counsel using the military classified email system.) There is no action pending in the federal courts regarding the information in question, and the information in question has not been the subject of review by the federal courts or the ISCAP within the past two years. I have no reason to believe that the information is exempt from search and review under sections 105C, 105D, or 701 of the National Security Act of 1947 (50 U.S.C. 403-5c, 403-5e, and 431). The information requested does not fall under any of the categories listed in section 3.5 (Presidential documents). Finally, this appeal to the ISCAP is filed within 60 days of the receipt of notification of the agency's final decision regarding the administrative appeal.

P6/b(6)

I am available to answer any questions you may have at [redacted] and my email address is

[redacted] Thank you in advance for accepting this request.



Matthew Miller  
Lieutenant Colonel, U.S. Army  
Deputy Chief,  
Defense Appellate Division

## Interagency Security Classification Appeals Panel

---

c/o Information Security Oversight Office  
700 Pennsylvania Avenue, N.W., Room 100  
Washington, D.C. 20408  
Telephone: (202) 357-5250  
Fax: (202) 357-5907  
E-mail: [iscap@nara.gov](mailto:iscap@nara.gov)

### EXECUTIVE SECRETARY

William J. Bosanko,  
Director  
INFORMATION SECURITY  
OVERSIGHT OFFICE

### MEMBERS

#### CENTRAL INTELLIGENCE AGENCY

Joseph W. Lambert

#### DEPARTMENT OF DEFENSE

Laurence K. Burgess

#### DEPARTMENT OF JUSTICE

Matthew G. Olsen

#### NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Michael J. Kurtz

#### NATIONAL SECURITY COUNCIL

William H. Leary, Chair

#### DEPARTMENT OF STATE

Margaret P. Grafeld

December 28, 2009

The Honorable John M. McHugh  
Secretary of the Army  
Room 3E700  
101 Army Pentagon  
Washington, DC 20310-0101

Mr. Secretary:

**Subject: Interagency Security Classification Appeals Panel decision on the first appeal filed by LTC Matthew Miller**

The Interagency Security Classification Appeals Panel (ISCAP), established under section 5.3 of Executive Order 12958, as amended, entitled "Classified National Security Information," has reached its decision on the first mandatory declassification review appeal filed by Lieutenant Colonel Matthew Miller. This document is among the holdings of the U.S. Army Tank and Automotive Command (TACOM). The document came before the ISCAP classified in part. The ISCAP voted to declassify some portions of the documents and affirm other portions. Enclosed is a chart that describes the document and outlines the ISCAP decision. If you would like to review the portions that the ISCAP has voted to declassify, please contact Laurence K. Burgess, the Department of Defense (DoD) representative to the ISCAP; David K. Daley, DoD liaison to the ISCAP; or the ISCAP staff.

The Department of Army is the agency responsible for the classification status of this document. Therefore, it is within your authority to appeal the ISCAP decision to the President in accordance with Article VIII, Paragraph I of the ISCAP bylaws (69 Fed. Reg. 17055, April 1, 2004). As Executive Secretary of the ISCAP, I will assume your receipt of this letter one week from its date, at which time the 60-day appeal period under Article VIII will commence.

Additional details and procedures with respect to the discharge of your authorities in this matter are set forth in the ISCAP bylaws. If you have any questions, please contact John C. Powers, William C. Carpenter, or me. Our telephone number at the Information Security Oversight Office is (202) 357-5250.

Sincerely,

A handwritten signature in blue ink, appearing to read "W. J. Bosanko". The signature is fluid and cursive, with a long horizontal stroke at the end.

WILLIAM J. BOSANKO  
Executive Secretary

Enclosure

cc: Lieutenant General Richard P. Zahner, USA  
Deputy Chief of Staff, G2

Mr. Laurence K. Burgess  
Deputy Under Secretary of Defense for HUMINT, Counterintelligence, and Security  
Department of Defense Member of the ISCAP

Lieutenant Colonel Matthew Miller

**ISCAP DECISION ON THE FIRST APPEAL FILED BY LTC MATTHEW MILLER**

<b>IDENTIFYING NUMBERS</b>	<b>DESCRIPTION OF DOCUMENT</b>	<b>ACTION</b>
Miller, document No. 1  ISCAP No. 2009-063  Extract from the Record of Trial of U.S. v Ryan Anderson	2 pages  Secret  Pages 1076 and 1077	DECLASSIFY SOME PORTIONS AND AFFIRM THE CLASSIFICATION OF OTHER PORTIONS  E.O. 12958, as amended, §1.4(d)