

U.S. Department of  
Homeland Security

United States  
Coast Guard



Commandant  
United States Coast Guard

2703 Martin Luther King Jr. Ave SE  
Washington, DC 20593-7000  
Staff Symbol: DCO  
Phone: (202) 372-2000  
Fax: (202) 372-8342

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AUG 1 <sup>st</sup> 2014

The Honorable Charles Grassley  
United States Senate  
Washington, DC 20510

Dear Senator Grassley:

We are in receipt of your letter dated July 17th, 2014 regarding the service of a search warrant on the home of Coast Guard employee, Mr. Paul Flanagan. We understand you have outstanding questions, and hope to alleviate your concerns with the below responses, in conjunction with an in-person brief in the weeks following.

**Your Questions With Responses:**

- 1. Is it the Coast Guard's position that Coast Guard Investigative Service was operating within the scope of the Maryland State Police search warrant when Mr. Bosch took the documents marked "FOUO/LES" in order to determine whether they were properly obtained and lawfully outside of government control? If so, please explain what connection the search warrant had to the documents marked "FOUO/LES."*

The documents marked "FOUO/LES" were not within the scope of the Maryland State Police search warrant. Coast Guard Investigative Service (CGIS) Special Agent (S/A) Miguel Bosch and S/A Hoa Cao assisted the Maryland State Police in the execution a lawful search pursuant to a warrant for Mr. Flanagan's home after initially conducting perimeter security of the residence. Their search started in the bedroom, where a loaded AK-47 sat next to the master bed, and moved into the home office shared by Mr. Flanagan and his wife. The office was poorly lit, dusty, and did not have a lot of space in which to move around. In the office, there was a desk where S/A Bosch began flipping through hanging folders of documents looking for items relating to weapons purchases. During this portion of the search, he discovered documents that were marked "Law Enforcement Sensitive" and "FOUO." They were located in a single hanging file with other documents. The file contained documents with DHS/ICE/FAMS letterhead, some of which were marked "FOUO/LES."

He brought these to the attention of the CGIS supervising agent on site, and both agents agreed that they would seize these documents for later review, because they could not review the documents under the circumstances in the home that morning. While the search warrant provided a basis to search records and files that would reasonably contain articles described in the warrant, the warrant did not provide the basis to seize these particular documents that were contained in subfolders within the hanging file. S/A Bosch seized the documents based on his observations. The documents appeared to be

government property. S/A Bosch desired to ensure that those documents were lawfully obtained and within the proper control of Mr. Paul Flanagan and/or his spouse, Ms. Audrey Hudson.

2. *Does the Coast Guard assert that it has authority to seize FOUO or LES documents anytime they are encountered outside of the agency they originated with? If so, what is the statutory basis for that authority?*

FOUO and LES fall into a broad category of information known as “Sensitive but Unclassified” (SBU). Although unclassified, SBU commonly falls under strict controls over its distribution. Department of Homeland Security policy, promulgated in 2005, defines SBU broadly, and defines FOUO as:

The term used within DHS to identify unclassified information of a sensitive nature, not otherwise categorized by statute or regulation, the unauthorized disclosure of which could adversely impact a person's privacy or welfare, the conduct of a federal program, or other programs or operations essential to the national interest.

Markings such as FOUO, LES, SBU, or otherwise marked, indicate that the property is government property intended for limited internal distribution. The documents were seized to safeguard the records for a short period of time to determine whether such records were lawfully obtained under a proper release.

3. *Please provide a list of all other instances in the last five years when Coast Guard Investigative Service has seized FOUO or LES documents, and describe the circumstances of each.*

We do not have a compiled record that identifies the number of general or specific electronic data searches that may have taken place in the past five years.

In cases where a search warrant is exercised on a place of residence, or some other physical location articulated in the search warrant, CGIS is aware of only one other known case of seized FOUO or LES documents. Approximately two years ago, a junior officer was moving into an off-base apartment in Bahrain and found deserted compact discs that he reported. The agents in Bahrain seized approximately 70 compact discs from the apartment with FOUO/LES documents.

4. *The Maryland State Police inventory form the Coast Guard provided describes item number 27 as “miscellaneous paperwork located in upstairs office.” Did this paperwork include any handwritten notes or other handwritten documents?*

The files did contain some pages of handwritten notes. All of the documents seized were located in a single hanging file containing subfolders. After S/A Bosch came across these files containing documents DHS / ICE/ FAMS letterhead, some of which were marked “FOUO/LES”, he and the supervising agent agreed that they would seize the documents contained in the hanging folder for later review, because they could not

review the documents under the circumstances in the home that morning. The records were later reviewed by S/A Bosch in the Maryland State Police facility. This review was limited to that level necessary to determine that the documents were likely released and properly obtained under FOIA.

*a. If so, how many pages?*

While the files did contain some pages of handwritten notes or documents, the number of pages is unknown. S/A Bosch reviewed the documents only to explain the contents of the files to TSA in an effort to ensure the documents were within the proper control of Mr. Flanagan and/or Ms. Hudson. Once assured the documents were likely lawfully held, the files were quickly returned, without any copies made or further reproduction.

*b. If so, did those handwritten documents contain United States Government markings? If not, what was the legal justification for taking the handwritten notes, and why was this not addressed in the Coast Guard's response to my previous letter?*

The agents do not recall handwritten pages with Government markings, but because no copy was made of the documents we cannot respond with certainty one way or the other.

*c. If so, were Ms. Hudson's typed or handwritten notes shared with any entity other than the Maryland State Police or the Coast Guard Investigative Service after they were seized, such as the Federal Air Marshals? If so, please list all individuals the notes were shared with, the entity they belong to, and the date they were shared with each individual.*

No, the handwritten notes were not shared with any other entity or agency outside the Maryland State Police and CGIS.

5. *Did any entity make copies of the documents seized, take notes on the contents of the documents, or otherwise reproduce the contents of the documents?*

Brief notes were taken on the contents of the documents seized. The documents were not copied or otherwise reproduced.

*a. If so, please explain the legal justification for doing so.*

S/A Bosch took limited notes, approximately 1.5 pages, on the documents seized in order to identify and describe the contents of some of the documents to TSA in an effort to determine whether the documents were in the proper control and lawful possession of Mr. Flanagan and/or Mrs. Hudson. S/A Bosch then consulted with the TSA Agent, who, based on the information provided, advised S/A Bosch that the files could be returned. S/A Bosch then returned the documents to Mr. Flanagan at the request of Ms. Hudson. In total, the documents were retained approximately 30 days.

- b. If so, please provide a list of all individuals with copies, notes, or other reproductions on the contents of the documents. For each individual, please list the date they accessed the documents and any government entity they are associated with.*

The Coast Guard did not make any copies or other reproduction of the contents of the documents. No representative of the United States has made any public disclosure of the contents of the papers, taken any adverse action against any other person based on the contents of the papers, or made any copies of the papers. DHS retains neither paper nor electronic reproductions of the seized documents.

On October 28, 2013, after Ms. Hudson made public statements regarding the seized documents, S/A Bosch scanned his notes and sent them to his management within CGIS. He specifically sent them to: S/A Brett Simpson, S/A Brian Jeanfreau, S/A Richard Bergeron, and S/A Hoa Cao. S/A Brett Simpson forwarded an electronic copy of the email to CGIS Deputy Director John Buchanan. Notes were shared with counsel for the Coast Guard, DHS, and the U.S. Attorney's Office for Maryland.

- 6. If so, your response states that after Mr. Bosch ascertained there was no basis to continue to hold Ms. Hudson's files, the files were transferred to Mr. Bosch so that he could return them to Ms. Hudson.*
- a. Were all the seized documents returned to Ms. Hudson in their entirety? Please provide any logs, records, or other document supporting this claim.*

All documents seized were returned to Ms. Hudson in their entirety via her husband, Mr. Paul Flanagan, on September 10th, 2013. Please see the attached Chain of Custody Log.

- b. How were these documents marked and/or tracked to ensure every piece of paper was returned to Ms. Hudson? Please provide any supporting logs or records.*

These documents were contained within file folders, seized, and checked into evidence, with controlled access and chain of custody. The documents remained secured in the custody of the Maryland State Police, until released to S/A Bosch. The documents were released by S/A Bosch to Mr. Paul Flanagan on September 10th, 2013, in their entirety.

We hope the above information is responsive to your request, but do look forward to providing you a full brief on this matter. My Senate Liaison Office at (202) 224-2913 would be pleased to respond to any further questions you or your staff may have.

Sincerely,



Charles D. Michel  
Vice Admiral, U.S. Coast Guard  
Deputy Commandant for Operations

# RELEASE OF Item\* 27

MARYLAND DEPARTMENT OF STATE POLICE

## REQUEST FOR LABORATORY EXAMINATION- CHAIN OF CUSTODY LOG

LABORATORY FILE #	
AGENCY TELEPHONE # <b>(410) 953-8200</b>	
CASE # <b>13-40 01346</b>	PROPERTY HELD #

INSTALLATION/AGENCY <b>40-CED</b>	
SUSPECT <b>FLANAGAN, PAUL</b>	VICTIM <b>STATE OF MARYLAND</b>
OFFENSE <b>FIREARMS INVESTIGATION</b>	DATE OF OFFENSE <b>8/6/13</b>
COUNTY <b>ANNE ARUNDEL</b>	
TYPE EXAMINATION REQUESTED	
EXAMINATION REQUESTED BY	
TRACE EVIDENCE ONLY (SEX, RACE, D.O.B. OF VICTIM AND/OR SUSPECT - BRIEFLY DESCRIBE LOCATION OF CRIME SCENE AS TO OWNERSHIP AND IMMEDIATE SURROUNDINGS - EXAMPLE - BEDROOM, CAR, WOODS, ETC.)	

LIST OF ARTICLES

ITEM# 1 KEY (LOCATED ON FLANAGAN'S PERSON)

ITEM# 13 GALLS BALLISTEC VEST

ITEM# 23 MISL. MAIL ADDRESSED TO PAUL FLANAGAN

ITEM# 27 MISL. DOCUMENTS

Released to: Miguel Bosch, SA  
on 9/5/13 via Miguel Bosch

Released to: Paul FLANAGAN on behalf  
of Audrey HUNSON on 9/10/13

*[Signature]*

I, THE UNDERSIGNED, HEREBY CERTIFY THAT THE EVIDENCE SUBMITTED IN THIS CASE, AND LISTED ABOVE, WHILE IN MY CUSTODY, REMAINED AND WAS DELIVERED IN ESSENTIALLY THE SAME CONDITION AS WHEN I RECEIVED IT, EXCEPT THAT MATERIAL OR PORTION THEREOF CONSUMED IN THE ANALYTICAL PROCESS AT THE CRIME LABORATORY, AND THAT I RECEIVED AND DELIVERED IT TO THE PERSON INDICATED ON THE DATE AND TIME STATED.

See Instructions on Back of Page 5

Print and Sign Name or Location	Date	Time	Print and Sign Name or Location	Date	Time
Original Source: location or person from which evidence was obtained			13.		
1. 4728 IDLEWILDE RD			14.		
2. TFC V. HODGEN	8/6/13	0500	15.		
3. CED EVIDENCE	8/6/13	1130	16.		
4. Miguel Bosch SA C415	9/3/13	0930	17.		
5. CED Prop Room	9/2/13	1030	18.		
6.			19.		
7.			20.		
8.			21.		
9.			22.		
10.			23.		
11.			24.		
12.			25.		