



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-4704

OCCL

JAN 29 2008

John David Sabow, MD
P.O. Box 5510
Rapid City, SD 57709

Dear Dr. Sabow:

This is in response to your Freedom of Information Act (FOIA) request dated January 3, 2008. You requested "all files and any and all information that may be found in all DoD Offices and data banks including those of the US Marine corps, Dept. of the Navy, Defense Intelligence Agency and the NCIS from the time frame of December 2000 until January 3, 2008 that pertain to Colonel James E. Sabow, USMC who expired on January 22, 1991 and on John David Sabow, MD, SS # 172-32-5371 both of whom were born in Pittsburgh, PA."

I have carefully reviewed the documents responsive to your FOIA request and determined that the enclosed documents that originated with the Office of the Inspector General of the Department of Defense may be released to you with redactions. The redactions are in accordance with the FOIA under the following exemptions:

(b)(2): Information consisting of internal personnel rules and practices of an agency.

(b)(5): Information is predecisional inter/intra agency data that is part of a decision-making process containing opinions and recommendations

(b)(6): The disclosure of information would constitute a clearly unwarranted invasion of personal privacy of individuals.

(b)(7)(C): the disclosure of information could reasonably be expected to constitute an unwarranted invasion of privacy in law enforcement records of individuals. Also, it is used to protect the identity of government law enforcement personnel named in files. If you determine the attached documents that are highlighted should be released, please provide the following appeal information to the requester: Your appeal should be in writing to the Appellate Authority, Department of Defense, Office of the Inspector General:

You have the right to appeal the decision to withhold information from you that is responsive to your FOIA request. If you should appeal, your appeal must be in writing to the Appellate Authority:

Mr. John R. Crane
Assistant Inspector General
Office of Communications and Congressional Liaison
400 Army Navy Drive, Room 1034
Arlington, VA 22202-4704

To be considered your appeal should be postmarked no later than 60 calendar days from the date of this letter. Please give your reasons for the appeal and write "Freedom of Information Act Appeal" printed clearly on the envelope and the letter. Also, reference your FOIA request number 08-0078 in your appeal letter, and include a copy of this letter.

I am the official responsible for this determination and have waived all processing fees. Should you have any questions regarding this matter, please contact Ms. Melanie Tenorio at (703) 604-9779.

Sincerely,



Darryl R. Aaron
Chief
FOIA Requester Service Center/
Privacy Act Office

Enclosures:
As stated

A Statement of Work for the Review of the January 1991 Death of Colonel James E. Sabow

I. Background

This Statement of Work (SOW) was developed specifically to determine the cause of death of Colonel James Emery Sabow at the Marine Corps Air Station, El Toro, California, on January 22, 1991, given the medical and forensic factors associated with that death.

The catalyst for this SOW was the National Defense Authorization Act for Fiscal Year 2004, Section 584. Review of the 1991 Death of Marine Corps Colonel James E. Sabow. Consequently, this Statement of Work (SOW) was developed to fully and comprehensively address the concerns of the Congress. This SOW addresses those Congressional concerns.

II. Purpose

The intent of this SOW is to have an independent medical and forensic expert review of Colonel Sabow's death, i.e., a review conducted by a contractor not affiliated with any agency or activity of the Department of Defense (DoD) or any private practice that has previously had input into or reviewed the death of Colonel Sabow. The expert must be currently Board Certified by the *American Board of Pathology* in Forensic Pathology, or its equivalent. The result of the review will be a determination of the cause of Colonel Sabow's death, given the medical and forensic factors associated with that death; to clarify whether murder or suicide caused Colonel Sabow's death; and to provide those determinations in a comprehensive written report that explains how those determinations were reached.

III. Scope

The contractor will conclude the cause of Colonel Sabow's death, with the supporting evidence indexed within the report and provided as appendices to that report. The report will also include an appendix listing each individual interviewed.

- 1) The original documents of evidence concerning the cause of Colonel Sabow's death, i.e., the Report of Investigation and the medical and forensic factors associated with his death, will be retained in the Office of the Inspector General, Department of Defense (OIG DoD) (Office of the Deputy Assistant Inspector General for Investigative Policy and Oversight), 400 Army Navy Drive, Arlington, VA 22202.

Those documents will be available on-site to the contractor as of contract award for review and reproduction, with government provided office space and general office equipment.

2) All documents and evidence reproduced by the contractor will be "For Official Use Only." As such, the contractor is not authorized to release those documents or information contained therein to any person or activity unless that release is necessary for making the determinations required in this SOW. No other release of information will be made; rather, requests for information must be formally submitted by the requestor to the OIG DoD for release authorization in advance, in accordance with the guidelines established by the DoD to implement:

- Title 5, United States Code, Section 552, "Freedom of Information Act (FOIA)," as amended,
- Title 5, United States Code, Section 552(a), "The Privacy Act of 1974," as amended.

3) From the contract award, an OIG DoD escort and the original documents will be available to the contractor from 9 a.m. through 5 p.m., Monday through Friday, excluding federal government holidays, unless the contractor makes arrangements in advance that can be supported by the OIG DoD.

4) The contractor will directly contact witnesses, as needed.

5) Exhumation of the body is not authorized.

IV. Deliverables

The contractor shall provide a one to two page informal status update 30 days after contract award, and the completed comprehensive written and indexed report, with supporting documentation, no later than 60 days after contract award. Both the update and completed report will be submitted directly to the OIG DoD. The contractor will provide ten (10) copies of the completed report to the OIG DoD.

INFO MEMO

FOR: DEPUTY INSPECTOR GENERAL FOR INSPECTIONS AND POLICY

THROUGH: Deputy Director for Investigative Policy and Oversight

FROM: [REDACTED] Director of Policy and Programs, Investigative Policy and Oversight

SUBJECT: Review of the 1991 Death of Marine Corps Colonel James E. Sabow

- The Conference Report to Accompany H.R. 1588, National Defense Authorization Act for Fiscal Year 2004, Section 584 (TAB A), signed November 23, 2003, provides that:
 - The "Secretary of Defense shall provide that the evidence concerning the cause of the death of Colonel Sabow and the medical and forensic factors associated with that death shall be reviewed by medical and forensic experts outside the Department of Defense;"
 - This review shall commence "not later than 60 days after the date of enactment of this Act," i.e., January 22, 2004;
 - The focus of the review "shall be to determine the cause of the death;" and
 - The Secretary of Defense shall submit a written report to both the Senate and House Committee on Armed Services within six months (i.e., by May 22, 2004) that provides "(1) the Secretary's conclusions as a result of the review, including the Secretary's conclusions regarding the cause of death of Colonel Sabow, and (2) the conclusions of the experts reviewing the matter."
- Possible OIG DoD actions to meet the requirements set forth in Section 584 include:
 - Accept responsibility. Award a contract to a Forensic Pathologist Certified by the *American Board of Pathology*, not previously involved with any aspect of

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prior actions related to the death investigation of Colonel Sabow, to conduct the review and provide a written report to the OIG DoD stating his/her conclusions. A draft Statement of Work is at TAB B

- Accept responsibility. Request a non-DoD federal government agency known to perform death investigation to conduct the review; e.g., the Department of the Interior, Bureau of Indian Affairs.
- Defer accepting responsibility. The Office of the Under Secretary of Defense Comptroller will hold a meeting (usually in late December) to assign action to DoD components for SecDef reporting requirements contained in the Defense Authorization and Appropriations Acts and committee reports. The OIG DoD may not be assigned action on the review of Colonel Sabow's death or, if it is, will have the opportunity to argue that it should be assigned to another office.

RECOMMENDATION: That you discuss this matter with the IG and encourage him to accept responsibility for the tasker and approve awarding a contract to Board Certified Forensic Pathologist.

COORDINATION:

OCCL _____

Attachments:

As stated

Prepared by: [REDACTED] (703) 604 [REDACTED]

b(6)
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**Department of Defense Appeal
FY 2004 Defense Authorization Bill**

Subject: Investigation into the 1991 Death of Marine Corps Colonel James E. Sabow

Language/Provision: Section 568 of the House bill provides that "the Secretary of Defense shall commence a new investigation into the death of Colonel James E. Sabow, United States Marine Corps, who died on January 22, 1991, at the Marine Corps Air Station, El Toro, California". The Senate included no similar provision.

DoD Position: The Department opposes this provision because a review of the investigation into the death of Col. Sabow has already been conducted by the Office of the Inspector General in accordance with Section 1185 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160. An investigation by the Navy Criminal Investigative Service in 1991 concluded that Col. Sabow died as a result of a self-inflicted gunshot wound. Sec. 1185 required the Inspector General of the Department of Defense to review certain deaths of members of the Armed Forces who died while on active duty from a cause determined to be self-inflicted and to conduct any additional investigation considered necessary to determine the cause of death. A thorough review of the NCIS investigation into the death of Col. Sabow was conducted by the Inspector General and the results provided to several members of Congress in 1996. Information pertaining the IG review was also provided to the Senate Armed Services Committee in connection with the September 12, 1996, hearing on Deaths of Military Personnel which May Have Resulted from Self-Inflicted Causes. Further investigation at this time is unlikely to provide any new information into the cause of death of Col. Sabow.

The Department urges exclusion of this provision.

Comptroller Internal Control Notes:

Submitter: Office of the Inspector General/Mr. Crane/604-8324

Page/Section References: House, Sec. 568

Reviewing directorate/analyst:

Director's recommendation/rationale:

DISCUSSION PAPER
on the
1991 Death of Colonel James E. Sabow

- On April 13, 1994, the Office of the Inspector General, Department of Defense (DoD IG), initiated a review concerning the investigations into the death of Colonel James Emery Sabow, United States Marine Corps (USMC). This review was accomplished under the provisions of Section 1185 of the National Defense Authorization Act for Fiscal Year 1994, Title 10, United States Code, Section 113, note, "Investigations of Deaths of Members of the Armed Forces from Self-Inflicted Causes."
- The OIG DoD review included an examination of the Naval Investigative Service (NIS), now the Naval Criminal Investigative Service (NCIS), investigation; two U.S. Navy Judge Advocate General Manual (JAGMAN) investigations; the Inspector General of the Marine Corps (IGMC) report of investigation concerning misconduct and/or criminal activity involving Colonel Sabow, the IGMC oversight review of the NIS death investigation; Laboratory reports; and death scene and autopsy photographs.
- At the request of the Marine Corps Air Station, El Toro, the Orange County Sheriff-Coroner's Office (OCSCO) – an independent state entity outside the DoD – reported to the scene, transported Colonel Sabow's body, and conducted an autopsy. The autopsy revealed that Col Sabow's death "...was determined to be from massive cerebral contusions and lacerations due to a shotgun wound to the head. The manner of death was determined to be suicide."¹
- Two U.S. Navy Judge Advocate General Manual (JAGMAN) investigations were conducted.
 - The first investigation consisted of a review of the written statements obtained from [REDACTED] and another USMC colonel, the NIS diagram of the [death] scene, and other official records.
 - The second JAGMAN investigation, conducted at the request of Colonel Sabow's brother, Dr. John D. Sabow, consisted of interviews of NIS special agents as well as a review of forensics laboratory examinations.
 - HQ USMC compared the two JAGMAN investigations and the NIS investigation. According the OIG DoD report, "No variation in the essential findings of fact in the three investigations was found and the significant conclusions and findings were the same. The investigations all concluded that the shotgun wound to the head that killed Col Sabow was self-inflicted and there was no evidence of foul plan..."
- The Inspector General of the Marine Corps conducted a review of the NIS investigation. A paid consultant to Dr. Sabow motivated the IGMC review. The consultant alleged that Colonel Sabow was murdered.

¹ OIG DoD Report, June 5, 1996