

October 26, 2015

Naval Investigative Service Headquarters Code LJF

27130 Telegraph Road

Quantico, VA 22134—2253

FREEDOM OF INFORMATION ACT REQUEST

Dear Sir or Madam:

This letter constitutes a request under the Freedom of Information Act “FOIA”, 5 U.S.C. Section 552 for all institutional records which refer or pertain to the following documents and information. It seeks the production of all responsive documents in the possession of the U.S. Navy including those generated or retained by its naval installations in its Headquarters in Alexandria, Virginia, Alameda County Naval Air Station (since decommissioned), Subic Bay Navy Base in the Philippines (since decommissioned), San Francisco Field Office, Whidbey Island Naval Air Station, Hawaii Field Office, Far East Field Office, West Coast Field Office

A. Interest of Requesting Parties

Mike Withey is an attorney who represented the Estates of Silme Domingo and Gene Viernes in federal court in *Estates of Domingo and Viernes v. Ferdinand and Imelda Marcos et al*, C-82-1055V U.S. District Court for the Western District of Washington which resulted in a \$15.1 million verdict for the Plaintiffs against all defendants in 1989. The Plaintiffs proved and a jury and judge found that Ferdinand Marcos, Imelda Marcos, Dr. Leonilo Malabed and Constantine Tony Baruo were liable for the June 1, 1981 murders of Silme Domingo and Gene Viernes in Seattle. He is writing a book about these murders of Silme Domingo and Gene Viernes.

Sharon Maeda is a documentary filmmaker who is working on a movie about the lives and deaths of Domingo and Viernes.

A. Background

In June of 1982 the Estates, along with the Union of Democratic Filipinos, Katipunan Ng Mga Demokratikong Filipino (KDP) and others brought a FOIA requests of the US Navy, Naval Intelligence and the Naval Investigative Service seeking all files on Silme Domingo, Gene Viernes and the KDP, amongst others. Although some heavily redacted documents were provided, much of the documentation sought was redacted, citing various claimed exemptions to the FOIA. These responses of the NIS at Alameda Naval Air Station bore the reference numbers NAVINSERVRA ALAMEDA ROI/5-25-76/1462318Z and participating agent D.E. Usrey, S/A (NAVINSERVO SAN FRANCISCO). The report was numbered 1801616Z and bore a distribution of //MH-NOO22/MC-N12HQ/MA-NOO22/MI-N83HQ//. The “Control” number stated was 12-05-75N12-3ANA/F.

Various NIS Special Agents, including E. A. Nowicke, D.E. Usrey, M. Henry, J.F. Donnelly, NIS-22, 59146 and one confidential informant, Marcelino “Monty” Martinez, JR/HM3 USN, were identified in these documents. The documents also state that the Director of the NIS at its headquarters in Alexandria Virginia had sent a report to Subic (File N83HQ) written by J. F. Donnelly, NIS-22, 59146 which authorized the penetration of the KDP and its supporters at Subic

Bay by the recruitment of an informant who was to be “programmed” to re-contact the KDP in Oakland. It was dated in 1976 and stated:

“... Katipunan Pg Mga Demokratikong Filipin (KDP) is headquartered in Oakland, CA, and is a revolutionary organization seeking to embrace all Philippine activists who are opposed to U.S. Imperialism and committed to the People’s struggle for revolutionary change. The KDP has a hard core cadre of about fifteen members in the San Francisco area and these individuals are predominately second generation Filipinos. Although the KDP has goals involving the political regime of a foreign nation, its membership and structure subject any operational endeavor involving its penetration by the NIS to the guidelines set forth by Executive Order 11905 and the Defense Investigative Review Council (DIRC)”

Another report stated that on June 23, 1976 Commander H.H. Sowers, MSC, USN, Executive Officer, NRMCO Oakland was provided a verbal briefing of the contents of Martinez’s information. The FBI SF was copied on the reports as was NAVINSERVO HQ, in Alexandria VA. The report, labeled “Top Secret” stated that the informant’s “primary function for the NIS will be to obtain information relating to efforts by the New People’s Army (NPA); Communist Party of the Philippines (CPP) or any other such organization as my surface, to procure U.S. government property from U.S. military bases in the Philippines to support their cause. Any counter-intelligence information obtained regarding these groups or the KDP will be provided to the Philippine authorities or the legal attaché, as appropriate. The asset will be operated strictly as a “deep cover” source and his identity protected even at the expense of a particular operational endeavor emanating from his information.”

These documents also indicate that “Continuing coordination has been maintained with FBI San Francisco during the course of this investigation.” They further state: “This investigation was predicated upon the request of the Commanding Officer, Naval Investigative Service Office, San Francisco, CA of 7-20-76.” Statements of two confidential informants who were directed by the NIS to infiltrate and monitor the activities of the KDP and its leadership and membership were included but heavily redacted. In addition, the documents establish that various reports, documents, telexes and files were provided to the “Legat Manila” referring to the Legal Attache of the US embassy in Manila, Republic of the Philippines.

I have attached to this FOIA request prior requests that were submitted to the U.S. Navy in the 1980s for your reference. Any redactions, deletions or exemptions made in the response to these requests should be reviewed and full and unredacted copies of such documents should be provided. See attached requests.

A. Documents Requested:

Over 39 years have passed since the Executive Order referred to in these documents was obtained in 1976 and it’s been 34 years since the Domingo and Viernes murders. The passage of time and death of various personnel identified in these documents justify the present and new FOIA request that all of these documents and responsive documents to the other requests sought herein be provided in full without exemptions or redactions.

This request asks that the responding agencies provide to them all documents which refer or pertain to how NIS/US Navy obtained the authority to investigate the KDP, its leadership or members, Silme Domingo or Gene Viernes under Executive Order 11905 and Defense Investigative Review Council (DIRC) directive allowing the NIS to penetrate, infiltrate, monitor, surveil and/or operate against the KDP and/or its leadership and membership, Silme

Domingo, and/or Gene Viernes.

This request includes:

1. all documents, information, statements, reports or any other materials that were provided to the Executive branch of the US government in order to secure said Executive Order and DIRC authority.
 2. all documents, information, statements, reports or any other materials that were written, provided or generated by the NIS pursuant to said Executive Order and/or DIRC authority.
 3. any legal, regulatory or military justification or reasons why obtaining this Executive Order was justified.
 4. This request seeks any documents which were provided on the KDP, its leadership and members, Silme Domingo and Gene Viernes from 1972 through 1986 to
 - a. the Legal Attache, Manila and/or
 - b. to "Philippine authorities", including but not limited to the various military and military intelligence units of the Republic of the Philippines and its military command structure, or Ferdinand Marcos or General Fabian Ver.
1. This requests seeks any documents that were provided to the FBI. related to the KDP, its leadership or members, Silme Domingo or Gene Viernes
 2. This requests seeks any documents which refer to the identity of any NIS personnel who were assigned to any of these investigations referred to in said documents.

Please provide these documents within 20 days. Thank you for your prompt attention to these requests,

Dated this 26 day of October, 2015

Michael E. Withey

Att. a/s

cc Fred Diamondstone, Attorney at Law

Sharon Maeda Co-Requestor