



**UNITED STATES MARINE CORPS**  
U.S. MARINE CORPS FORCES CENTRAL COMMAND  
7115 SOUTH BOUNDARY BOULEVARD  
MACDILL AIR FORCE BASE, FLORIDA 33621-5101

5720  
SJA

17 MAR 2010

Mr. Chuck Goudie  
ABC-7 Chicago  
190 N. State Street  
Chicago, IL 60601

Dear Mr. Goudie:

This will respond to your request under the Freedom of Information Act (FOIA) dated March 16, 2010. Please find enclosed a redacted copy of the Preliminary Inquiry (PI) into the death of Lance Corporal Joshua H. Birchfield, USMC.

This PI was conducted under the authority of and in accordance with chapter II of Judge Advocate General Instruction (JAGINST) 5800.7E dated 20 June 2007, with change 2. This directive is commonly called "the JAG Manual."

Under paragraph 0212.b of the JAG Manual, the purpose of this PI was to ascertain whether LCpl Birchfield's death occurred in the line of duty and whether his death was due to his own misconduct. The Investigating Officer (IO) found the preponderance of the evidence supports a finding that LCpl Birchfield died in the line of duty and not due to his own misconduct ("not due to his own misconduct" is a legal term of art, and should NOT be construed to imply that LCpl Birchfield was involved in any misconduct.) You will note in the First Endorsement that the Convening Authority concurred with the IO, thus making the IO's finding official.

The purpose of this PI was not to gather evidence that would support criminal justice procedures or to assign culpability for LCpl Birchfield's death. That function is properly performed by the Naval Criminal Investigative Service (NCIS). The JAG Manual contemplates different investigations for different purposes and specifically enumerates NCIS' role in paragraph 0201.c(6)

If you wish to inquire into NCIS' role in this matter, you may write them at the following address:

Information and Privacy Coordinator (FOIA/PA)  
Headquarters, Naval Criminal Investigative Service  
716 Sicard Street SE Suite 2000  
Washington, DC 20388-5380

This PI was reviewed under the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Secretary of the Navy Instruction 5720.42F. Pursuant to that review, some information has been redacted in accordance with the following FOIA exemptions:

- a. 5 U.S.C. § 552 (b)(2) High;

- b. 5 U.S.C. § 552 (b) (3), incorporating 10 U.S.C. § 130b;
- c. 5 U.S.C. § 552 (b) (4);
- d. 5 U.S.C. § 552 (b) (6); and
- e. 5 U.S.C. § 552 (b) (7).

We also removed Enclosures (6)-(9), 22 pages, as they are proprietary to NCIS. We have referred these documents to NCIS and requested that they process them and reply directly to you.

The scope of the redactions is narrow, and information that was removed does not prevent one from gaining an understanding of the facts and circumstances surrounding LCpl Birchfield's death.

While only limited parts of the report have been redacted, your request has been partially denied. Thus, you are advised of your right to appeal this determination in writing to the following address:

Judge Advocate General (Code 14)  
1322 Patterson Avenue, SE, Suite 3000  
Washington Navy Yard, DC 20374-5066

The appeal must be received within 60 calendar days from the date of this letter, and you should enclose a copy of this letter and a statement regarding why your appeal should be granted. We recommend that the letter of appeal and the envelope both bear the notation "Freedom of Information Act Appeal."

I am the official responsible for the partial denial of your request.

Sincerely,



K. J. KUMAGAI  
Lieutenant Colonel, U.S. Marine Corps  
Deputy Staff Judge Advocate  
By direction

Encl:

(1) Redacted copy of Report of Investigation: 17 pages