Illegal Payments to Colombian Terrorist Groups: Chiquita Banana Giant Blocking Release of Files

By The National Security Archive

Global Research, April 09, 2013

The National Security Archive 8 April 2013

Banana Giant Fears National Security Archive "Media Campaign". Company Says SEC Should Withhold Info on Illegal Transactions.

Washington, D.C. – Chiquita Brands International last week filed a "reverse" Freedom of Information lawsuit to block the release of records to the National Security Archive on the company's illegal payments to Colombian terrorist groups, according to the complaint filed in U.S. District Court. At issue are thousands of documents the company turned over to the Securities and Exchange Commission (SEC) from 1998-2004 as part of an investigation of the company's illegal transactions with leftist insurgents and right-wing paramilitaries from the United Self-Defense Forces of Colombia (AUC).

Two years ago, the Archive published "The Chiquita Papers," a declassified collection of more than 5,000 pages of internal Chiquita documents turned over to the Department of Justice and the Federal Bureau of Investigation as part of a criminal investigation of more than $1.7 million in payments to the AUC over six years, and for nearly three years after the group was formally designated as a terrorist organization. That case resulted in a 2007 sentencing agreement in which Chiquita admitted to more than ten years of payments to a variety of Colombian guerrilla and paramilitary groups.

The Chiquita Papers included evidence that Chiquita and its Colombian subsidiary had received tangible benefits from those transactions, undermining one of the key aspects of the company's defense: that it had *never* received "any actual security services or actual security equipment in exchange for the payments." Chiquita's "reverse" FOIA complaint now claims that the news headlines based on the documents were part of "a media campaign to publicize biased mischaracterizations of the documents."

"We strongly reject Chiquita's assertion that we mischaracterized information found in their own corporate records," said Michael Evans, director of the Archive's Colombia Documentation Project. "Chiquita admitted to more than a decade of regular payments to death squads and narcotraffickers," he added. "Now, Chiquita wants to cover up the documents that would let us judge for ourselves whether those payments were extortion or security for banana operations, or both."

Among the evidence that Chiquita did, in fact, benefit from its "sensitive payments" is a 1994 legal memo indicating that Colombian insurgents provided security at some of Chiquita's plantations in Colombia. The memo says that the general manager of Chiquita operations in Turbó told company attorneys that "Guerrilla Groups" were "used to supply security personnel at the various farms." A subsequent draft of the same memo includes

| 1

annotations asking, "Why is this relevant?" and, "Why is this being written?"

[Another document](#) published by the Archive in April 2011 shows that Chiquita also paid right-wing paramilitary forces for security services-including intelligence on guerrilla operations-after the AUC wrested control of the region from insurgents in the mid-1990s. The March 2000 memo, written by Chiquita Senior Counsel Robert Thomas and based on a conversation with managers from Chiquita's wholly-owned subsidiary, Banadex, indicates that paramilitaries formed a front company to disguise "the real purpose of providing security." The unidentified Banadex official said Chiquita "should continue making the payments," because the company "can't get the same level of support from the military."

The "reverse" FOIA filing is the latest development in a four-and-a-half-year Archive legal effort to document Chiquita's financial relationships with illegal armed groups responsible for some of the worst human rights atrocities of Colombia's decades-old civil war. A "reverse" FOIA is a common lawsuit strategy, mostly used by contractors to prevent their cost-plus or profit-margin figures from being released by government agencies.

The new case is the direct outgrowth of a 2010 lawsuit in which the Archive sought to compel the SEC to process a pair of FOIA requests relating to the Chiquita investigation. More than three years later the agency made its final decision with respect to legal, financial and other documents Chiquita turned over to the SEC during the course of its inquiries, granting confidential treatment to only 45 pages among some 23 boxes of responsive material. Chiquita's "reverse" FOIA action follows multiple attempts on its part to convince the SEC to reverse that decision.

In making its case against disclosure of the "Chiquita Payment Documents," the company cites FOIA Exemption (7)(B), which exempts from disclosure "records or information compiled for law enforcement purposes" to the extent that production "would deprive a person of a right to a fair trial or an impartial adjudication." 5 U.S.C. § 552(b)(7)(B). Chiquita claims that it is subject to two pending "adjudications," a consolidated civil suit filed in Florida on behalf of victims of the terrorist groups that Chiquita funded, and a preliminary criminal investigation now underway in Colombia.

Dismissing those arguments, SEC Associate General Counsel Richard M. Humes found that while the Florida case did indeed qualify as a "trial or adjudication," he also determined "that Chiquita did not demonstrate that public disclosure of the Chiquita Payment Documents 'would seriously interfere with the fairness of the pending adjudication.'"

With respect to the Colombia matter, Humes concluded that "the criminal investigation pending in Colombia against current and former Chiquita employees and those of its subsidiary" does not meet the standard necessary to withhold information, since Exemption 7(B) refers "specifically to 'a right to a fair trial or an impartial adjudication' but does not apply to 'investigations.'" Humes points out that Chiquita accurately characterized the Colombian matter as an "investigation" in several previous filings and "only began referring to the investigation as the 'Colombian _Fiscalía_Proceeding' in its request for reconsideration."

The Archive is represented in the FOIA litigation against the SEC by Jeffrey Gutman, director of the Public Justice Advocacy Clinic at The George Washington University Law School.

Edited by Michael Evans

For more information contact:
Michael Evans 202/994-7000 or mevans@gwu.edu

The original source of this article is [The National Security Archive](#)
Copyright © [The National Security Archive](#), [The National Security Archive](#) , 2013

[Comment on Global Research Articles on our Facebook page](#)

[Become a Member of Global Research](#)

Articles by: [The National Security Archive](#)