

28242 S. Salo Rd., Mulino, OR 97042

tel. (503) 710-1515

Friday, November 12, 2010

Federal Aviation Administration
ARC-1, Asst. Administrator for Regions and Center Operations
800 Independence Avenue SW
Washington, DC 20591

Dear Sir or Madam,

Please accept this letter as an **appeal requesting reconsideration** of the full denial response to FOIA request 2010-8248WP, as signed by Regional Administrator William Withycombe, with Mr. Withycombe and Mr. Tim Kubik responsible. I received the denial response letter on 10/22/10.

In my 9/8/10 FOIA request letter, I listed twelve arbitration/MSPB cases and asked for specific documents from those case files (e.g., arbitrator's decision, Agency brief, Narrative Response, proposal letter, decision letter, and settlement agreement). I was unambiguous in the specific records requested for each of the twelve cases. In total, I requested 26-records.

With his full denial response letter, Mr. Withycombe has decided to withhold all requested records, citing both Exemption 6 and Exemption 2. I assert the following:

1. Exemption 2 is not applicable. 5USC552(b)(2) allows an exemption for the release of records under FOIA "*...related solely to the internal personnel rules and practices of an agency.*" Each of the records I requested is clearly not subject to this Exemption, as these were all records either created outside the "internal agency bubble" or created to communicate across the "boundary" of that bubble. Any reasonable person would recognize that these records do not relate solely to internal rules and procedures; they are, by their very nature, external.
2. Exemption 6 is misapplied in Mr. Withycombe's response. For example, a typical arbitrator's decision will list the grievant's name a dozen times or so; however, in the bulk of the decision, the generic term "grievant" is routinely substituted, thus name-redacting is not an onerous task. All other names listed are individuals, placed under oath, submitting a statement to a public process, essentially aiding in the collection of evidence to be weighed by a Judge. Furthermore, given the DoT definition of Personally Identifiable Information (PII), it is arguable that any record disclosing just a name (without an address or SSN, and without additional info such as a license number or biometric) is fully disclosable under FOIA. FAA Order 1280.1B, **Protecting Personally Identifiable Information**, implements the various privacy laws based on the Privacy Act of 1974. In the cover page signed by David Bowen, Order 1280.1B notes that "*...Privacy Act cannot be used to deny to the public that information in systems of records which is required to be disclosed under FOIA.*" Thus, witness names (and, arguably, even grievant

names) are fully disclosable under FOIA, provided the record is redacted of all other PII data.

3. In the larger picture, FAA Order 1270.1 states the following:

"The FOIA, enacted in 1966, established a statutory right of access to agency records, unless those records are specifically exempted from disclosure or specifically excluded in the FOIA. In implementing the FOIA, it is the policy of the DOT to make information available to the public to the greatest extent possible in keeping with the spirit of the statute. Each officer and employee of the Federal Aviation Administration (FAA) is directed to cooperate fully by making records available to the public in a timely manner and to the fullest extent consistent with this policy." [source: para. 4, Background]

This same FAA Order also states:

"Records possessed by the FAA are subject to the Act and must be made available to the public on request, unless specifically exempted or excluded by the FOIA. Reasonably segregable information will be provided from records which contain information that may be withheld." [source: para. 34, FAA FOIA RELEASE POLICY AND DUTY TO SEGREGATE]

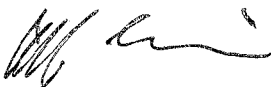
This spirit of openness and transparency, with a goal of governmental accountability through disclosure, is further promoted by President Obama in the commendable memo he issued to all Agency heads on his first day in office (please see attached copy, with underlines added; please see also the attached copy of the related Seattle Times editorial).

To resolve this appeal, I request your office expeditiously remand back to AWP, with instructions to promptly and fully comply by producing all requested records. I request these records be produced consistent with President Obama's guidance, retaining all names unless a name can clearly and indisputably be redacted under FOIA Exemption 6.

Lastly, I offer a compromise to expedite closure on this FOIA Appeal. In the two months since I filed this FOIA request, I have learned that arbitration decisions can be surprisingly large, exceeding 50-pages. In light of this, and to reduce the work burden for your office and for AWP, I will accept a smaller FOIA response. Specifically, I offer that, if AWP promptly produces the entirety of records requested for items #4, #7, #8, #10 and #11, I will withdraw the remaining items from this request.

Thank you for assisting in protecting my right to appeal this full denial. Please call if you have any questions, or if you have difficulties obtaining the files from AWP, as I will gladly provide you with fresh and legible copies.

Sincerely,



Jeff Lewis

ATTACHED:

1/21/09, Memorandum by President Obama, SUBJ: FOIA
1/22/09, Seattle Times editorial

"Sunlight is said to be the best of disinfectants."

-- Supreme Court Justice Louis Brandeis

THE WHITE HOUSE

Office of the Press Secretary
For Immediate Release

January 21, 2009

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Freedom of Information Act

A democracy requires accountability, and accountability requires transparency. As Justice Louis Brandeis wrote, "sunlight is said to be the best of disinfectants." In our democracy, the Freedom of Information Act (FOIA), which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open Government. At the heart of that commitment is the idea that accountability is in the interest of the Government and the citizenry alike. The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails.

The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve. In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public.

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA.

The presumption of disclosure also means that agencies should take affirmative steps to make information public. They should not wait for specific requests from the public. All agencies should use modern technology to inform citizens about what is known and done by their Government. Disclosure should be timely.




I direct the Attorney General to issue new guidelines governing the FOIA to the heads of executive departments and agencies, reaffirming the commitment to accountability and transparency, and to publish such guidelines in the *Federal Register*. In doing so, the Attorney General should review FOIA reports produced by the agencies under Executive Order 13392 of December 14, 2005. I also direct the Director of the Office of Management and Budget to update guidance to the agencies to increase and improve information dissemination to the public, including through the use of new technologies, and to publish such guidance in the *Federal Register*.

This memorandum does not create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Director of the Office of Management and Budget is hereby authorized and directed to publish this memorandum in the *Federal Register*.

BARACK OBAMA

Originally published Thursday, January 22, 2009 at 4:37 PM

 Comments (0)  E-mail article  Print view

Editorial

President Obama: Let freedom of information ring

President Obama's directions to increase transparency in federal responses to Freedom of Information Act requests and across all agencies represents a stark change from the Bush administration's secrecy. With this renewed commitment to a more open government, Obama is inviting citizens to hold his administration more accountable.

Seattle Times editorial

ON his first full day in the Oval Office, President Obama signaled a new approach to government transparency that will help restore trust in government.

As if opening the Bush administration's musty drapes in the Oval Office, Obama issued a memo urging agencies to err on the side of disclosure rather than on the side of secrecy, when responding to Freedom of Information Act (FOIA) requests. Also, he directed the Office of Management and Budget to issue recommendations on making the federal government more transparent.

Perhaps as dramatic as closing Guantánamo Bay detention center, the government-transparency changes are significant after eight years of the Bush administration's exceptional secrecy.

If the Bush administration could be characterized as the Government That Knew Best, Obama has set the tone for the Government Not Afraid to Be Held Accountable.

On Oct. 12, 2001, then-Attorney General John Ashcroft issued a memo saying the Department of Justice would defend any federal agency's assertions of FOIA exemptions "unless they lack a sound legal basis." In other words, agencies were discouraged from releasing information. Ashcroft's memo represented a 180-degree reversal from his predecessor Janet Reno's view that requested information should be released unless the agency could make a case of "foreseeable harm."

No wonder a March 2008 Sunshine Week poll found that 74 percent of American adults thought the federal government was too secretive. That was up a dozen points from two years earlier.

Obama is inviting accountability. The president's decision to set this tone of transparency on his first day bodes well for restoring citizens' trust in government.