



UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF INSPECTOR GENERAL

Washington, D.C. 20250



SEP 20 2013

Mr. Allan Blutstein
Senior Counsel
Cause of Action
1919 Pennsylvania Avenue, NW
Suite 650
Washington, DC 20006

Subject: Log No. 13-00104

Dear Mr. Blutstein:

This letter responds to your May 30, 2012, Freedom of Information Act (FOIA)¹ request sent to the Department of Agriculture's (USDA) Office of Inspector General (OIG). You requested a copy of OIG's response letter to an inquiry made by Senator Charles Grassley and Representative Darrell Issa. They inquired whether political appointees at USDA were made aware of FOIA requests and played decision-making roles in those requests.

We have enclosed three pages of records responsive to your request.

You have the right to appeal the decision by OIG to withhold information by writing to the Inspector General, U.S. Department of Agriculture, 1400 Independence Avenue SW., Whitten Building, Suite 441-E, Washington, D.C. 20250-2308. Your appeal must be received within 45 days of this letter. The outside of the envelope should be clearly marked "FOIA APPEAL."

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

¹ 5 U.S.C § 552

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For information about OIG, please refer to our website at www.usda.gov/oig/home.htm. Should you have any questions or need additional information, you may contact our FOIA Servicing Center at (202) 720-5677.

Sincerely,

A handwritten signature in black ink, appearing to read "Alison Decker". The signature is fluid and cursive, with a prominent initial "A".

Alison Decker
Assistant Counsel

Enclosure: Document



UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF INSPECTOR GENERAL



OCT - 8 2010

Washington, D.C. 20250

The Honorable Darrell Issa
Ranking Member
Committee on Oversight
and Government Reform
U.S. House of Representatives
B-350A Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Issa:

This is in response to your letter of August 23, 2010, cosigned by Senator Charles E. Grassley. The letter expressed concerns about a news article that reported the involvement of political appointees in a Federal department's Freedom of Information Act (FOIA) processes. You requested that the Office of Inspector General (OIG) conduct an inquiry into the Department of Agriculture's (USDA) FOIA practices to determine the extent to which political appointees may be involved in several aspects of departmental FOIA operations. This letter provides our response to your request; a similar letter is being provided to Senator Grassley.

In response to your request, OIG evaluated information on USDA FOIA policies and procedures and contacted a number of senior personnel engaged in the Department's FOIA activities. To conduct our inquiry, OIG met with the Department's FOIA Officer (DFO), the Associate Chief Information Officer, and the senior FOIA officers for each of three major USDA program agencies.¹ The DFO has responsibility for providing guidance and oversight to all USDA FOIA offices and serves as the *de facto* FOIA officer for the Office of the Secretary and its subcomponents. OIG also contacted those USDA Under Secretaries responsible for overseeing the agencies that have jurisdiction for the FOIA offices included in our inquiry.

Our legal and audit staff developed and submitted a series of questions for the four FOIA officials and three Under Secretaries regarding the FOIA issues and concerns raised in your letter. Our queries focused on the potential involvement of USDA political appointees in addressing FOIA requests. OIG thereafter had followup discussions with relevant USDA personnel to request additional information and clarify certain responses. The following descriptions of FOIA processes at USDA are based upon the information provided by the FOIA offices and Under Secretaries that were involved in OIG's inquiry.

I. Notification to Senior Officials about High-Profile FOIA Requests at USDA

The officials responding to OIG's queries advised that routine practices exist for senior managers and political appointees to potentially be made aware of some high-profile FOIA requests. These

¹ The three agency FOIA offices and DFO that were included in OIG's inquiry processed over 5,100 FOIA requests in fiscal year 2009.

notifications may occur most frequently via the weekly activity reports that FOIA offices provide to senior personnel. Each of the USDA offices we queried advised that they sometimes provide or receive notifications of high-profile (and "national interest") requests via weekly agency activity reports or related communications.² However, the fact that a high-profile FOIA request may be noted in a FOIA office activity report does not ensure that it will be included in the comprehensive weekly reports that are ultimately submitted to senior-level political appointees.

It is the policy of one USDA agency to provide informational copies of FOIA requests involving Members of Congress, media entities, and Recovery Act³ activities to the agency's Legislative and Public Affairs Office. Managers in that office then determine on a discretionary basis whether to notify senior agency officials and political appointees of any particular request. (The review and processing of such FOIA requests at the agency remains the responsibility of its FOIA office.) A separate USDA agency with a high volume of FOIA requests uses its discretion to notify its Legislative and Public Affairs Office about FOIA requests that are likely to generate media interest or potential changes in agency policy. One Under Secretary's office advised OIG that in the past year, of approximately 2,500 requests processed by one of its subordinate FOIA offices, senior officials were notified of requests pertaining to two national interest issues.

The DFO advised OIG that no formal policy exists to notify political appointees in the Office of the Secretary about high profile FOIA requests (e.g., Members of Congress, media entities, and advocacy groups). Notifications by the DFO are a discretionary matter and occur infrequently; the DFO estimated that such requests have been mentioned in weekly FOIA activity reports on two or three occasions in the past year. Some USDA agencies such as Rural Development and Forest Service have decentralized FOIA processing offices at the State or regional level. For those agencies, notifications by FOIA personnel to appointed senior officials can occur in the respective State or regional offices.

II. Review of and Decisions on High-Profile FOIA Requests at USDA

Under Secretaries and FOIA officials advised OIG that political appointees do not engage in "decision-making" on high-profile FOIA requests. None of the USDA officials involved in OIG's inquiry recalled situations wherein political appointees made FOIA-release decisions. They advised that the employees making document-release decisions and potential redactions on high-profile FOIA requests are career FOIA personnel. Regarding the Secretary of Agriculture, the Deputy Secretary, and their immediate staffs, the DFO advised that political appointees do not participate in determinations (or review) on FOIA requests.

The DFO and agency FOIA offices noted they consult with USDA's Office of the General Counsel and the Department of Justice's Office of Information Policy on complex FOIA requests as necessary, regardless of whether the requests are from high-profile sources or the general public.

² Senior officials in USDA are notified of FOIA requests for which their activities are the subject, in order for them to potentially search for and/or produce responsive information.

³ The American Recovery and Reinvestment Act of 2009, Public Law 111-5, February 17, 2009.

The Honorable Darrell Issa
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Regarding your question about whether political appointees review information being considered for release pursuant to FOIA, the USDA offices we contacted stated that such reviews are rare. One Under Secretary's office advised that its senior officials reviewed FOIA information on two national interest-level issues in the past year. A second Under Secretary's office commented that its one involvement in FOIA "review" was advising agency staff to improve the formatting and clarity of certain documents for the benefit of requestors. The third Under Secretary's Office in our inquiry stated that its political appointees engaged in no prior review of information pertaining to FOIA requests.

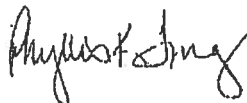
We queried each of the USDA officials in our inquiry about several of the problems that were described in the news article referenced in your letter, such as the delays reportedly experienced in the Federal department it discussed. In brief, the responses of the Under Secretaries and FOIA officials to OIG did not indicate any similar concerns. The DFO advised that unlike the department described in the news article, no directive or established practices exist at USDA to involve the Office of the Secretary or other senior appointees in systematic reviews and decisions on high-profile FOIA requests.

III. Conclusion

The USDA offices participating in OIG's inquiry advised that decisions on high-profile FOIA requests are made by career FOIA analysts and managers. Political appointees and senior officials may be notified of high-profile FOIA requests via weekly activity reports or other agency practices. Based on our discussions with USDA personnel and the information we assessed, it does not appear that political appointees have undue involvement in the Department's FOIA operations.

We hope this information is responsive to your request. While senior USDA officials and FOIA offices can best provide further information about their specific FOIA practices, please feel free to contact me if you have questions regarding OIG's inquiry. Should your staff have questions regarding the information contained in this response, they may contact Ms. Christy Slamowitz, Acting Counsel, at (202) 720-9110.

Sincerely,



Phyllis K. Fong
Inspector General