

Freedom Through Justice Foundation

2111 Wilson Blvd #700
Arlington, VA 22201
703.875.8625

September 14, 2011

VIA E-MAIL & FIRST-CLASS MAIL

Katherine Norris
Freedom of Information Officer
1600 Clifton Road, N.E., Building 57, Room MS D-54
Atlanta, Georgia 30333
Phone: (404) 639-7270
Fax: (404) 498-1575

Re: Freedom of Information Act Request

Dear Ms. Norris:

We write on behalf of the Freedom Through Justice Foundation, a 501(c)(3) nonprofit corporation that uses public policy and legal reform strategies to ensure greater transparency in government, protect taxpayer interests and promote social and economic freedoms. It has come to our attention that the Department of Health and Human Services' ("HHS") Communities Putting Prevention to Work ("CPPW") grants was used improperly by at least one recipient.¹ The CPPW funding announcement contained an Additional Requirement (AR)-12, "Lobbying Restrictions" which states the Center for Disease Control's ("CDC") policy prohibiting awardees from using any appropriated federal funds for "any activity designed to influence action in regard to a particular piece of pending legislation."²

The CDC determined that at least one CPPW grantee's "actions were not in full compliance with the restrictions in AR-12."³ According to the CDC, "staff funded by a CPPW grant to the South Carolina Department of Health had taken actions including sending email messages and scheduling a press event for the purpose of gaining the support of city council members for a proposed smoke-free ordinance."⁴ In other words, the South Carolina Department of Health used taxpayer dollars to engage in prohibited lobbying activities.

Pursuant to the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. § 552, the Freedom Through Justice Foundation hereby requests that your department produce the following within twenty (20) business days:

¹ LETTER, Jim R. Esquea, Ass't Sec'y for Legislation, U.S. Dep't Health and Human Services, to Darrell Issa, Chrmn., Comm. Oversight & Gov't Ref., (Jun. 17, 2011) at 9.

² *Id.* at 8-9.

³ *Id.* at 9.

⁴ *Id.*

1. All documents pertaining to violations of conditions placed on recipients of Communities Putting Prevention to Work (“CPPW”) grants, including:
 - a. Discussion of the violation of AR-12 by the South Carolina Department of Health;
 - b. Documents pertaining to the investigation of AR-12 violations by any other CPPW grant recipients;
 - c. Discussion of what measures are to be, or have been, taken against the South Carolina Department of Health for violation of AR-12.
2. All documents regarding what activities the Department regards as a violation of AR-12.
3. All documents relating to the Department’s policy on investigation of violations of AR-12.
4. All documents relating to the Department’s policy on what disciplinary actions are to be taken when violations of the AR-12 are uncovered;
 - a. All documents pertaining to what procedures the Department follows to prevent violations of the AR-12 by grantees, including documents relating to occasions when those procedures were not followed.
5. Copies of any other requests for information made by outside groups through FOIA regarding these matters;
6. All applications and their accompanying documents, appendixes, or records for the Communities Putting Prevention to Work grant from anyone who was awarded a CPPW grant, including applications by:
 - a. The Boston Public Health Commission
 - b. The Cherokee Nation Health Service Group
 - c. The City of Chicago (Children's Memorial Hospital & Respiratory Health Association of Metropolitan Chicago)
 - d. The County of Los Angeles Department of Public Health
 - e. The DeKalb County Board of Health
 - f. The Jefferson County Department of Health
 - g. New York City (Fund for Public Health in New York, Inc.)
 - h. The Philadelphia Department of Public Health
 - i. The Santa Clara County Public Health Department
 - j. The Seattle & King County Department of Public Health
 - k. The Southern Nevada Health District
 - l. The City of North Little Rock, Arkansas
 - m. Independence County, Arkansas
 - n. The Cook County (Cook County Department of Public Health/Public Health Institute of Metropolitan Chicago)
 - o. The County of San Diego Health & Human Services Agency
 - p. The Douglas County Health Department

- q. The Hamilton County General Health District
- r. The Hawaii Department of Health
 - i. Kauai
 - ii. Maui
- s. The Indiana State Department of Health
 - i. Bartholomew County
 - ii. Vanderburgh County
- t. The Louisville/Jefferson County Metro Government
- u. The Maine Department of Health and Human Services
 - i. Healthy Portland, City of Portland Health and Human Services Department, Public Health Division
 - ii. Healthy Lakes, Communities Promoting Health Coalition, People's Regional Opportunity Program
- v. The Miami-Dade County Health Department
- w. The Minnesota Department of Health
 - i. Minneapolis
 - ii. Olmsted County
- x. The Multnomah County Health Department
- y. The North Carolina Division of Public Health
 - i. Appalachian District (Watauga, Ashe, and Alleghany counties), North Carolina
 - ii. Pitt County, North Carolina
- z. Pima County, Arizona
- aa. The Pinellas County Health Department
- bb. Pueblo of Jemez
- cc. The San Antonio Metropolitan Health District
- dd. The Tri-County Health Department
- ee. The West Virginia Department of Health and Human Resources
- ff. The Wisconsin Department of Health Services
 - i. La Crosse County
 - ii. Wood County
- gg. The Alabama Department of Health
- hh. The Austin/Travis County Health and Human Services Department
- ii. The District of Columbia Department of Health
- jj. The Great Lakes Inter-Tribal Council
- kk. The Iowa Department of Public Health
 - i. Linn County
 - ii. Ringgold County
- ll. The Orange County Health Department
- mm. Rhode Island Department of Health
- nn. South Carolina Department of Health and Environmental Control
 - i. Florence County
 - ii. Horry County
- oo. St. Louis County

7. All applications and their accompanying documents, appendixes, or records for the Communities Putting Prevention to Work grant from anyone who was awarded a CPPW grant which was later revoked including the CPPW grant to the Puerto Rico Department of Health.

We call your attention to President Obama's January 21, 2009 Memorandum concerning the Freedom of Information Act, in which he states:

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA. . . .The presumption of disclosure should be applied to all decisions involving FOIA.⁵

If any responsive record or portion thereof is claimed to be exempt from production under FOIA, please provide sufficient identifying information with respect to each allegedly exempt record or portion thereof to allow us to assess the propriety of the claimed exemption. *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974). In addition, any reasonably segregable portion of a responsive record must be provided, after redaction of any allegedly exempt material. 5 U.S.C. § 552(b).

Freedom Through Justice Foundation is entitled to a complete waiver of both search fees and duplication fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii).

In an effort to facilitate record production within the statutory time limit, the Freedom Through Justice Foundation prefers to accept documents in electronic format (e.g. e-mail, .pdfs). When necessary, the Freedom Through Justice Foundation will accept the "rolling production" of documents.

⁵ PRESIDENT BARACK OBAMA, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: *Freedom of Information Act*, (Jan. 21, 2009), available at http://www.whitehouse.gov/the_press_office/FreedomofInformationAct (last visited Aug. 30, 2011).

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Please note that, for purposes of responding to this request, the terms “records,” “communications,” and “referring or relating” should be interpreted consistently with the attached Definitions of Terms. If you do not understand this request or any portion thereof, or if you feel you require clarification of this request or any portion thereof, please contact Amber Taylor at (703) 875-8625. We look forward to receiving the requested documents and a waiver of both search and duplication costs within twenty (20) business days. Thank you for your cooperation.

Thank you for your attention to this matter.

Sincerely,
Daniel Epstein
Executive Director

Encl.

Responding to Document Requests

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Freedom Through Justice Foundation.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Freedom Through Justice Foundation's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. When you produce documents, you should identify the paragraph in the Freedom Through Justice Foundation's request to which the documents respond.
5. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
6. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Freedom Through Justice Foundation staff to determine the appropriate format in which to produce the information.
7. If compliance with the request cannot be made in full, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.
8. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
9. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and

recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.

10. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
11. The time period covered by this request is included in the attached request. To the extent a time period is not specified, produce relevant documents from January 1, 2009 to the present.
12. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
13. All documents shall be Bates-stamped sequentially and produced sequentially.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmation, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email, regular mail, telexes, releases, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.