

Freedom Through Justice Foundation

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September 9, 2011

VIA FIRST CLASS MAIL AND EMAIL

Honorable Jacob J. Lew, Director
Office of Management and Budget
c/o Lauren Wright, Chief FOIA Officer
725 17th Street, NW, Room 9026
Washington, DC 20503
OMBFOIA@omb.eop.gov

Re: Freedom of Information Act Request

Dear Director Lew:

We write on behalf of the Freedom Through Justice Foundation, a 501(c)(3) nonprofit, nonpartisan public interest firm that uses public policy and legal reform strategies to ensure greater transparency in government, protect taxpayer interests and promote social and economic freedoms. We write out of the public concern that taxpayer-funded agencies are held accountable to political or financial abuse. Accordingly, we request certain documents pursuant to the Freedom of Information Act ("FOIA").

In his January 25, 2011, State of the Union address, President Obama vowed to veto any bill containing earmarks.¹ The current U.S. House of Representatives, as well as the Senate, has similarly embraced a moratorium on earmarks. Yet despite these prohibitions on earmarks, congressional appropriators have made clear their interest in contacting federal agencies directly, outside of public view, to secure earmarks.² Representative Jim Moran (D-VA) has stated that lawmakers are circumventing the earmarks ban by "convincing Obama administration officials to fund their pet projects."³ In response to whether congressional earmark bans have curtailed the Appropriation Committee's power, Moran stated:

No, and I have to say – and I'm going to be as candid as possible – the appropriators are going to be okay because **we know people in agencies** and so on. We will continue to do the best job we can for

¹ *State of the Union 2011: President Obama's Full Speech*, ABCNEWS, (Jan. 25, 2011), available at <http://abcnews.go.com/print?id=12759395> (last visited Sept. 9, 2011).

² John Wonderlich, *Where is Obama on Bush's Earmark Transparency Executive Order*, Sunlight Foundation (Mar. 7, 2011), available at <http://sunlightfoundation.com/blog/2011/03/07/where-is-obama-on-bushs-earmark-transparency-executive-order/> (last visited Sept. 9, 2011).

³ Daniel Strauss, *House appropriator: We know how to get around earmark ban*, (Mar. 3, 2011), available at <http://thehill.com/blogs/blog-briefing-room/news/147347-house-appropriator-we-know-how-to-get-around-earmark-ban> (last visited Sept. 9, 2011).

the country and to some extent for our congressional districts because that's our job as well.⁴

If federal agencies are helping some Members of Congress secure earmarks, these actions would seem to violate Executive Order No. 13457, "Protecting American Taxpayers from Government Spending on Wasteful Earmarks," which requires:

[A]gency decisions to commit, obligate, or expend funds for any earmarks [should be] based on authorized, transparent, statutory criteria and merit-based decisions making. . . . An agency shall not consider the views of a House, committee, Member, officer, or staff of the Congress with respect to commitments, obligations, or expenditures to carry out any earmark unless such views are in writing... All written communications from the Congress, or a House, committee, Member, officer, or staff thereof, recommending that funds be committed, obligated, or expended on any earmark shall be made publicly available on the Internet by the receiving agency, not later than 30 days after receipt of such communication...⁵

Executive Order 13457 is currently in force and federal agencies and departments are responsible for complying with it. Thus, we are concerned that communications from Members of Congress to the agencies regarding federal expenditures are apparently not being made publicly available. We therefore request that you provide the following information:

1. All documents referring or relating to communications to or from Members, Officers or staff of the Congress which contain recommendations that funds should be committed, obligated, or expended on any earmark from January 2009 to the present.
2. Documents identifying which of the aforementioned communications to the agencies regarding federal expenditures have not been made publicly available.
3. All documents referring or relating to efforts taken by the Administration to ensure compliance with E.O. 13457 from January 2009 to the present, including, but not limited to:
 - a. The names and titles of all officials within the Executive Office of the President and the Office of Management and Budget responsible for ensuring and monitoring federal agency compliance with E.O. 13457;
 - b. All communications to federal agencies explaining the requirements of E.O. 13457; and,
 - c. All steps taken to monitor compliance by federal agencies.

⁴ *Id.* (emphasis added).

⁵ E.O. 13457, §2 (Jan. 29, 2008).


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.

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.

Sincerely,



Amber Taylor
Senior Attorney

Encl.