



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20570

April 9, 2012

Amber Taylor, Senior Attorney
Cause of Action
2100 M Street, NW, Suite 170-247
Washington, DC 20037

Re: Freedom of Information Act
FOIA ID: LR-2012-0125

Dear Ms. Taylor:

Your appeal from the Freedom of Information Officer's reply to your request for complete, unredacted copies of documents with FOIA identification numbers 00002849, 00002852, 00002855, 00002858, 00002861, 00002865, 00002870, 00002875, 00002880, 00002885, 00002890, 00002895, 00002904, 00002908, 00002926, 00002929, 00002932, 00002935, 00002942, 00003139, 00003140, 00003143, 00003670, 00003673, 00003676, 00003681, 00003686, and 00003690 has been carefully considered. With respect to document 00003139, we have reviewed the Agency's initial disclosure of this record, and it appears that no redactions were ever made on this document. Additionally, your initial December 7, 2011 request for 29 documents seemed to include a repeat of document number 00002932. Thus, aside from document 00003139 and the repeated request for document 00002932, our consideration of your appeal focused on the remaining 27 documents of the request. For the reasons that follow, although your request for the documents in total unredacted form is denied, we have nevertheless removed some portions of redactions in certain documents. Redactions remain intact on the remainder of the documents pursuant to Exemption 5 of the FOIA since they reflect deliberative process records, and thus are privileged from disclosure. The enclosed disc contains all of the requested documents, but with some revisions to the original redactions, where applicable.

It was concluded that the FOIA Officer's reliance on Exemption 5 was proper in this case, as the internal discussions at issue concern deliberations regarding a press inquiry made to the Agency in April 2011. The deliberative process privilege is designed to protect and promote the objectives of fostering frank deliberation and consultation within the Agency in the predecisional stage, and to prevent a premature disclosure that could disrupt and harm the Agency's decision-making process. See *NLRB v. Sears, Roebuck & Co.*, 421 U.S. at 150-151, 152. The protected status of a predecisional document is not altered by the subsequent making of a decision. See, e.g., *Wolfe v. HHS*, 839 F.2d 768, 776 (D.C. Cir. 1988) (en banc); *Judicial Watch, Inc. v. Clinton*, 880 F.Supp. 1, 13 (D.D.C. 1995). Moreover, the District Court for the District of Columbia generally holds that agency discussions about how to explain its actions to the public

are protected by the Exemption 5 deliberative process privilege. See *Krikorian v. Dep't of State*, 984 F.2d 461 (D.C. Cir. 1993); *Judicial Watch, Inc. v. Dept. of Justice*, 800 F.Supp.2d 202 (D.D.C. 2011)(records created in order to prepare public statements about the litigation of a particular case and to respond to media inquiries on issues related to the dismissal of the case, are covered by the deliberative process privilege); *Judicial Watch, Inc. v. Dep't of Treasury*, 796 F.Supp.2d 13 (D.D.C. 2011)(deliberative process privilege applied to e-mails reflecting deliberations regarding responding to a press inquiry about the agency's earlier decision to award TARP funding to a bank); *Judicial Watch, Inc. v. Dep't of Homeland Security*, 736 F.Supp.2d 202, 208 (D.D.C. 2010)(deliberative process privilege protected e-mail messages discussing how to respond to ongoing inquiries from the press and Congress regarding an earlier agency decision). The previously redacted portions of these documents, in fact, demonstrate that Agency's internal deliberations were structured to specifically respond to the two questions posed by the CNN producer.

Also contrary to your contention on appeal, the communications at issue were not improper and thus remain protected under Exemption 5 of the FOIA. The cases you cite on appeal to argue that the communications were improper are factually and legally distinct.

Yvonne T. Dixon, at the direction of and pursuant to the policies established by the Acting General Counsel, Lafe E. Solomon, is responsible for this determination under the FOIA. Judicial review of this determination may be obtained by filing a complaint in the District Court of the United States in the district in which the complainant resides, or in which the records are situated, or in the District of Columbia, as provided in the FOIA, 5 U.S.C. § 552(a)(4)(B).


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Sincerely,

Lafe E. Solomon
Acting General Counsel

By 
Yvonne T. Dixon, Director
Office of Appeals

Disc enclosed
Freedom of Information Act Officer
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