



United States
Department of
Agriculture

Office of the
General
Counsel

Washington,
D.C.
20250-1400

FEB 27 2014

Robyn Burrows, Esq.
Cause of Action
1919 Pennsylvania Ave., N.W.
STE 650
Washington, DC 20006

Dear Ms. Burrows:

This letter responds to the Freedom of Information Act (FOIA) request you submitted to the U.S. Department of Agriculture on November 26, 2013, in which you requested “communications between (1) The Office of the White House Counsel and the U.S. Department of Agriculture, and (2) The Office of the White House Counsel and the USDA Office of the General Counsel (OGC), concerning the Office of the White House Counsel’s review of agency records” from January 1, 2012, to November 26, 2013. On December 13, 2013, your request was forwarded to the USDA Office of the General Counsel (OGC), where it was assigned tracking number ECM-7944830. This letter constitutes the final response for USDA records.

After completing our thorough search for records within OGC’s files, we located 51 pages of responsive records. Of the 51 pages of responsive records, we are withholding approximately 1 page in full and 41 pages in part pursuant to Exemption 5 of the FOIA. U.S.C. § 552(b)(5). In addition, we redacted a minimal amount of information pursuant to Exemption 6 of the FOIA. 5 U.S.C. § 552(b)(6). We are releasing approximately 9 pages in full, and where possible, we have released segregable, non-exempt information.

Exemption 5

The records withheld in part or in full pursuant to Exemption 5 include communications (emails) between USDA agencies and OGC or between OGC and the Office of the White House Counsel. Exemption 5 permits the Government to withhold “inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency.” 5 U.S.C. 552(b)(5). Courts have construed the exemption to exempt records that would be subject to evidentiary privileges available in judicial proceedings.

One such privilege is the attorney-client privilege, which protects confidential communications between an attorney and client relating to a legal matter for which the client has sought professional advice. This privilege also encompasses any opinions the attorney gives to the client based upon those facts, as well as communications between attorneys that reflect client-supplied information. We have withheld information from the responsive records, including confidential communications between OGC and the Office of the White House Counsel, internal, confidential

communications between OGC attorneys and client agencies, and other records reflecting the advice of counsel with regard to legal matters.

Another privilege incorporated into Exemption 5, the deliberative process privilege, protects the quality of agency decision making. To qualify for protection, the information must be pre-decisional and deliberative. Three policy purposes constitute the basis for the deliberative process privilege: (1) to encourage open, frank discussions on matters of policy between subordinates and supervisors; (2) to protect against premature disclosure of proposed policies before they are finally adopted; and (3) to protect against public confusion that might result from disclosure of policies and rationales that do not ultimately serve as the basis for agency action. Information was withheld from some responsive records because the information would reveal the opinions and guidance provided to the decision-maker in advance of an agency decision.

Exemption 6

Exemption 6 of the FOIA protects against disclosure of information in personnel and medical files and similar files if disclosure would constitute a clearly unwarranted invasion of personal privacy. 5 U.S.C. § 552(b)(6). Courts have broadly construed “similar files” to include a wide variety of files including litigation and administrative files maintained by an agency. The records at issue in your FOIA appeal fall squarely within the meaning of “similar files” and therefore meet the threshold test of Exemption 6. The minimal redactions were made to protect cell phone numbers and a few email addresses of federal employees. Release of this information would not shed light on the activities of the government. The privacy interest in these types of information far outweighs the minimal or nonexistent public interest in release of this information. Accordingly this information was redacted in accordance with Exemption 6.

You are advised of your right to appeal our responses to your FOIA request within 45 days of receiving this letter, if you are not satisfied with our responses. You should write on the envelope in capital letters “FOIA APPEAL,” and address your appeal to:

Ms. Ramona Romero
General Counsel
Room 107-W Jamie L. Whitten Federal Building
U.S. Department of Agriculture
1400 Independence Avenue, S.W.
Washington, DC 20250-1400

There are no fees assessed for this response to your FOIA request.

Sincerely,

A handwritten signature in blue ink that reads "Shawn S. McGruder". The signature is written in a cursive style with a large initial 'S'.

Shawn S. McGruder
Assistant General Counsel
General Law and Research Division

Enclosures

Bcc: ECM-7944830

Elmore 2/20/14

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