

CAUSE of ACTION

INSTITUTE

Pursuing Freedom & Opportunity through Justice & AccountabilitySM

October 4, 2017

VIA ELECTRONIC MAIL

Ms. Alina M. Semo, Director
Office of Government Information Services (OGIS)
National Archives and Records Administration
8601 Adelphi Road, Room 2510
College Park, MD 20740-6001
E-mail: ogis@nara.gov

Re: Department of Labor FOIA Appeal, No. 150080

Dear Director Semo:

I write on behalf of Cause of Action Institute (“CoA Institute”), a nonprofit strategic oversight group committed to ensuring that government decision-making is open, honest, and fair.¹ In carrying out its mission, CoA Institute uses investigative and legal tools to educate the public about the importance of government transparency and accountability. Foremost among these tools is the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. This letter is a request for the assistance of the Office of Government Information Services (“OGIS”) in contacting the Department of Labor (“DOL”) with respect to a substantially-overdue FOIA appeal determination.

More than three years ago, on September 24, 2014, CoA Institute submitted an administrative appeal to DOL that challenged the agency’s determination on a November 26, 2013 FOIA request.² Specifically, CoA Institute disputed the adequacy of DOL’s search and its use of Exemptions 5 and 6 as grounds for redacting responsive records. CoA Institute re-submitted its appeal four months later, on January 21, 2015, after DOL claimed never to have received it.³ Despite regular attempts to contact DOL and responsible officials—including the FOIA Public Liaison, Raymond Mitten—the agency has failed to provide any update on the processing of CoA Institute’s appeal, except to acknowledge receipt of it.⁴

It has now been 1,106 days since the submission of CoA Institute’s appeal. It has been 1,408 days—nearly four years—since the submission of the underlying request to which DOL provided an adverse determination. CoA Institute’s attempts to contact the FOIA Appeals Unit in DOL’s Office of the Solicitor have proven futile. The agency’s non-responsiveness is entirely unacceptable.

As you know, the FOIA requires an agency to issue a determination on any administrative appeal within twenty working days of receiving it,⁵ or in the case of unusual circumstances, within

¹ See CAUSE OF ACTION INST., *About*, www.causeofaction.org/about (last visited Oct. 4, 2017).

² Letter from CoA Inst. to M. Patricia Smith, Dep’t of Labor (Sept. 25, 2014) (attached as Exhibit 1).

³ E-mail from CoA Inst. to Linda Robinson, Dep’t of Labor (Jan. 21, 2015) (attached as Exhibit 2).

⁴ Letter from Raymond E. Mitten, Jr., Dep’t of Labor, to CoA Inst. (Jan. 28, 2015) (attached as Exhibit 3).

⁵ 5 U.S.C. § 552(a)(6)(A)(ii).

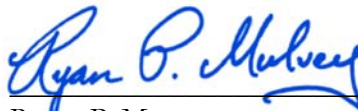
thirty working days.⁶ In this case, DOL never invoked the automatic extension for unusual circumstances. It is hard to imagine that CoA Institute's appeal is so complicated, or the records at issue so voluminous, as to justify so lengthy a delay. At the least, DOL should have responded to CoA Institute's repeated attempts to secure an update on the processing of the appeal, including an estimated date of completion—information that agencies are *statutorily required* to provide for FOIA requests.⁷

Considering the significant delay in the processing of its appeal, CoA Institute requests that OGIS intervene and communicate to DOL the importance of issuing a determination forthwith. Additionally, OGIS should advise DOL to contact CoA Institute and to provide an estimated timeline for its determination and the supplemental production of any re-processed records, if applicable.

A privacy consent statement is not required for OGIS's mediation in this case because DOL has published a Systems of Records Notice governing OGIS's routine use of FOIA-related files. Nevertheless, to the extent that OGIS may need to consult with other agencies, and in accordance with the Privacy Act of 1974, CoA Institute hereby authorizes OGIS to make inquiries on CoA Institute's behalf, including the right to review all documentation that OGIS deems necessary for responding to this request for assistance. CoA Institute understands that documents provided to OGIS may be copied and forwarded to officials at other federal agencies as part of the mediation process. CoA Institute authorizes all federal departments, agencies, or components to release to OGIS any information and records related to CoA Institute's FOIA request/appeal.

Thank you for your immediate attention to this matter. Please feel free to contact me by telephone at (202) 499-4232 or by e-mail at ryan.mulvey@causeofaction.org.

Sincerely,



RYAN P. MULVEY
COUNSEL

⁶ *Id.* § 552(a)(6)(B)(i).

⁷ *Id.* § 552(a)(7)(B)(ii).

EXHIBIT

1



September 25, 2014

VIA EMAIL

Ms. M. Patricia Smith
Solicitor of Labor
U.S. Department of Labor
Room N-2428
200 Constitution Ave., NW
Washington, D.C. 20210
Email: foiaappeal@dol.gov

Re: Freedom of Information Act Appeal, FOIA Tracking No. 735281

Dear Ms. Smith:

This letter constitutes an administrative appeal under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), and the U.S. Department of Labor (“DOL”) FOIA regulations, 29 C.F.R. § 70.22. As detailed below, Cause of Action disputes the adequacy of DOL’s search as well as DOL’s application of Exemptions 5 and 6 as grounds for redacting/withholding records.

Procedural Background

On November 26, 2013, Cause of Action submitted a FOIA request to DOL seeking records reflecting all communications between the Office of White House Counsel and the DOL Office of the Solicitor concerning the Office of White House Counsel’s review of agency records for the time period of January 1, 2012 to the present.¹ On or about December 24, 2013, DOL acknowledged that it had received Cause of Action’s FOIA request.² DOL provided its final response by letter dated June 27, 2014, producing 57 pages of partially redacted documents.³ DOL redacted information pursuant to Exemptions 5 and 6.⁴

¹ Letter from Cause of Action to Office of the Solicitor, Div. of Mgmt. and Admin. Legal Servs., DOL (Nov. 26, 2013) (enclosed as Exhibit 1).

² Letter from Sharon Hudson, FOIA Coordinator/Departmental FOIA Liaison, Office of the Solicitor, DOL, to Cause of Action (undated) (enclosed as Exhibit 2).

³ Letter from Katherine E. Bissell, Deputy Solicitor for Reg’l Enforcement, DOL, to Cause of Action (June 27, 2014) (enclosed as Exhibit 3).

⁴ *Id.*

Grounds for Appeal

A. DOL Conducted an Inadequate Search by Unilaterally Limiting the Scope of the FOIA Request.

Cause of Action's request explicitly seeks records reflecting White House review of *all agency records*, but DOL only searched for records reflecting White House review of *FOIA requests*.⁵ DOL based its interpretation on a portion of Cause of Action's fee waiver argument, which states that Cause of Action would "educate the public about DOL's FOIA policy and procedures for processing records with White House equities."⁶ DOL's interpretation therefore excluded records of communications pertaining to many other types of document requests, including congressional committee requests, GAO requests, and judicial subpoenas.

Simply put, Cause of Action's request is not limited to White House review of FOIA requests. This is evidenced not only by the plain language of Cause of Action's request,⁷ but also by Cause of Action's fee waiver argument, which applies to *all* document requests subject to White House review.⁸ For example, Cause of Action stated that the "requested records would unquestionably shed light on the 'operations or activities of the government,' namely DOL's policies and procedures *with respect to records involving White House equities*."⁹ Cause of Action also stated that "disclosure would 'contribute significantly' to the public's understanding of DOL's operations" because "DOL has not disclosed to the public – either through its regulations or policy memoranda – *how it processes agency records that are deemed to contain White House equities*."¹⁰ Thus, Cause of Action's fee waiver argument broadly applies to review of agency records subject to *any* document request involving White House equities – not only those made pursuant to FOIA.

Moreover, the scope of a FOIA request is not determined by a requestor's argument in support of a fee waiver. Even if Cause of Action's fee waiver argument had been limited to White House review of FOIA requests, which it was not, that would only affect Cause of Action's obligations to pay applicable fees, not limit the scope of the request. DOL did not have the authority to unilaterally limit the scope of Cause of Action's request in this manner. Accordingly, Cause of Action requests that DOL perform a search for records of communications pertaining to *all* document requests.

⁵ Compare Ex. 1, at 1 (requesting "records reflecting all communications . . . concerning the Office of White House Counsel's review of agency records"), with Ex. 3, at 1 (stating that DOL "interpreted your request to be limited to a request for records showing communications between SOL and OWHC concerning OWHC review of DOL records that are responsive to a FOIA request").

⁶ See Ex. 1, at 1-2.

⁷ See *id.* at 1 (stating that Cause of Action seeks communications "concerning the Office of White House Counsel's review of agency records").

⁸ See *id.*, at 1-2; see also Memorandum from Gregory Craig, White House Counsel, to All Executive Department and Agency General Counsels (Apr. 15, 2009) (requesting White House consultation "with respect to all types of document requests").

⁹ Exhibit 1, at 1-2 (emphasis added).

¹⁰ *Id.* at 1 (emphasis added).

B. DOL Improperly Applied Exemption 5 to Redact/Withhold Records.

As an initial matter, Cause of Action seeks clarification as to which privileges DOL has actually relied upon as the basis for redacting/withholding records. While the agency's determination letter seemingly identifies the deliberative process, attorney work-product, and attorney-client privileges, DOL did not expressly invoke them; rather, it merely remarked as a general proposition that "[i]nformation that is deliberative, subject to the attorney/client privilege, and/or is attorney work product has been redacted under FOIA Exemption (b)(5)."¹¹ For purposes of this appeal, Cause of Action will assume that DOL has applied all privileges as grounds for its redactions/withholdings.

1. The Attorney-Client and Work Product Privileges Do Not Protect Communications Between DOL and the Office of White House Counsel.

Cause of Action challenges any withholding of communications between DOL and the White House under the attorney-client and attorney work product privileges. The attorney-client privilege protects confidential communications made by a client to an attorney "for the purpose of securing primarily either (i) an opinion on law or (ii) legal services or (iii) assistance in some legal proceeding."¹² In the governmental context, an agency is the "client" and its departmental counsel is the "attorney."¹³ The privilege properly applies only to communications created in the context of an *actual* attorney-client relationship, and not simply whenever agencies communicate with other entities composed of lawyers.¹⁴ Indeed, the privilege "must be 'strictly confined within the narrowest possible limits consistent with the logic of its principle.'"¹⁵

Quite simply, the Office of White House Counsel does not provide legal services to DOL (or to other federal agencies), but rather provides legal assistance to the President and the White House staff in their official capacities.¹⁶ To the extent that DOL has applied the privilege to White House communications, it has failed to identify any facts or legal authority to support the position that an attorney-client relationship exists between the agency and the Office of White House Counsel. Thus, its reliance, if any, upon the privilege to withhold communications to and from the Office of White House Counsel is improper.

¹¹ Ex. 3, at 1.

¹² *In re Sealed Case*, 737 F.2d 94, 98-99 (D.C. Cir. 1984).

¹³ *See Tax Analysts v. Internal Revenue Serv.*, 117 F.3d 607, 618 (D.C. Cir. 1997).

¹⁴ *See Brinton v. Dep't of State*, 636 F.2d 600, 603 (D.C. Cir. 1980) ("[T]he attorney-client privilege applies only when information is the product of an attorney-client relationship and is maintained as confidential between attorney and client.").

¹⁵ *In re Lindsey*, 148 F.3d 1100, 1108 (D.C. Cir. 1998) (citation omitted).

¹⁶ *In re Lindsey*, 158 F.3d 1263, 1268 n.1 (D.C. Cir. 1998) (referring to White House Counsel's declaration that "White House Counsel's Office provides confidential counsel to the President in his official capacity, to the White House as an institution, and to senior advisors about legal matters that affect the White House's interests").

Similarly, the attorney work-product privilege may be invoked “to protect records reflecting ‘such matters as trial preparation, trial strategy, interpretations, and personal evaluations and opinions.’”¹⁷ The privilege attaches once “some articulable claim, likely to lead to litigation” arises.¹⁸ DOL has failed to articulate the nature of the responsive records to which the privilege has been applied. Thus, insofar as the privilege has been applied to work-product originating with attorneys, but which does not pertain to *legal* matters or trial preparation, DOL has done so improperly.¹⁹

Therefore, to the extent DOL relied upon the attorney-client and work product privileges to redact/withhold records, it has done so improperly and should produce the responsive records.

2. The Deliberative Process Privilege Does Not Protect Communications Between DOL and the Office of White House Counsel.

The use of the deliberative process privilege under Exemption 5 is limited to “inter-agency or intra-agency memorandums or letters.”²⁰ The Office of White House Counsel is not subject to FOIA and therefore by definition cannot engage in “inter-agency” correspondence.²¹ Therefore, the deliberative process privilege should not be used to prevent the disclosure of communications between the Office of White House Counsel and federal agencies.

Even if the Office of White House Counsel qualifies as an agency for Exemption 5 purposes (which, under clear law it does not), its communications with DOL do not meet the remaining two requirements of the deliberative process privilege. First, the communications must be predecisional, that is, “antecedent to the adoption of an agency policy.”²² Second, they must be deliberative, or “a direct part of the deliberative process in that [they] make[] recommendations or express[] opinions on legal or policy matters.”²³

To the extent that the responsive records at issue reflect communications evidencing the Office of White House Counsel’s preemptive screening of DOL’s responses to FOIA requests, or other responsive records that did not originate from the White House, then these responsive

¹⁷ *Adionser v. Dep’t of Justice*, 811 F. Supp. 2d 284, 297 (D.D.C. 2011) (citation omitted); *see also* FED. R. CIV. P. 26(b)(3) (“Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative[.]”).

¹⁸ *Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 865 (D.C. Cir. 1980)

¹⁹ *See Wolfson v. United States*, 672 F. Supp. 2d 20, 30 (D.D.C. 2009) (stating that the privilege extends to records “prepared in advance of trial and in anticipation of litigation . . . [which] would reveal the attorneys’ thought process and litigation strategy and would reveal the agency’s deliberations prior to [a decision to request continued wiretapping]”); *Miller v. Dep’t of Justice*, 562 F. Supp. 2d 82, 115 (D.D.C. 2008) (privilege extends to documents that “reflect such matters as trial preparation, trial strategy, interpretation, personal evaluations and opinions pertinent to . . . [a] case”); *see also* FED. R. CIV. P. 26(b)(3) (expressing how the privilege necessarily involves some connection to trial preparation).

²⁰ 5 U.S.C. § 552(b)(5).

²¹ *Id.* § 552(f)(1) (defining the term “agency”); *see also Judicial Watch, Inc. v. Dep’t of Justice*, 365 F.3d 1108, 1109 n.1 (D.C. Cir. 2004) (“Although the Executive Office of the President is an agency subject to the FOIA . . . the Office of the President is not.”) (citation omitted).

²² *Ancient Coin Collectors Guild v. Dep’t of State*, 641 F.3d 504, 513 (D.C. Cir. 2011).

²³ *Vaughn v. Rosen*, 523 F.2d 1136, 1143-44 (D.C. Cir. 1975).

records would not reflect the “give-and-take of the consultative process” that exemplifies the deliberative process privilege.²⁴ Rather, and as evidenced by documents produced by other agencies, they are more likely directives from the White House, the disclosure of which would not vitiate the purpose of the privilege, *i.e.*, to enhance the quality of *agency* decisions.²⁵

Thus, to the extent that DOL has relied on the deliberative process privilege to redact/withhold records reflecting such communications, DOL has done so improperly and should produce the responsive records.

3. DOL Appears to Have Failed to Reasonably Segregate Portions of Responsive Records.

Even assuming that Exemption 5 applies (which, as set forth above, it does not), DOL applied Exemption 5 in an inappropriately broad manner. A review of the records demonstrates that DOL in some circumstances redacted large portions of emails under Exemption 5. As the Attorney General has explained, agencies “should always be mindful that the FOIA requires them to take reasonable steps to segregate and release nonexempt information. Even if some parts of a record must be withheld, other parts either may not be covered by a statutory exemption, or may be covered only in a technical sense unrelated to the actual impact of disclosure.”²⁶ Accordingly, Cause of Action requests that DOL release all segregable portions of the requested records.

C. DOL Appears to Have Applied Exemption 6 Too Broadly.

To the extent DOL invoked Exemption 6 to withhold the identities of lower-level agency employees, Cause of Action challenges such redactions as improper. For example, DOL redacted the name of a DOL employee who sent scanned documents to the Deputy Solicitor of Labor.²⁷ Exemption 6 does not protect the name of a lower-level employee conducting administrative tasks for a superior.²⁸ For this same reason, Cause of Action disputes the redaction of the identity of the DOL employee who acted on behalf of Joseph Plick, counsel at DOL, during Plick’s absence.²⁹ Cause of Action therefore requests that DOL produce the identities of any lower-level agency employees that it previously redacted/withheld.

²⁴ *Coastal States Gas Corp.*, 617 F.2d at 867; *see also Public Citizen, Inc. v. Office of Mgmt. & Budget*, 598 F. 3d 865, 875 (D.C. Cir. 2010) (concluding that “[t]o the extent the documents at issue in this case neither make recommendations for policy change nor reflect internal deliberations on the advisability of any particular course of action, they are not predecisional and deliberative despite having been produced by an agency that generally has an advisory role”).

²⁵ *See Nat’l Labor Relations Bd. v. Sears, Roebuck & Co.*, 421 U.S. 132, 151 (1975) (observing that the “ultimate purpose of this long-recognized privilege is to prevent injury to the quality of agency decisions”).

²⁶ Attorney General Holder’s Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act 1 (Mar. 19, 2009).

²⁷ Email from [redacted] to Deborah Greenfield, Office of the Solicitor, DOL (Nov. 6, 2013, 5:15 PM) (enclosed as Exhibit 4).

²⁸ *Gordon v. Fed. Bureau of Investigation*, 388 F. Supp. 2d 1028 (N.D. Cal. 2005) (holding that Exemption 6 does not apply to the names of agency’s “lower-level” employees).

²⁹ Email from Joseph Plick, Office of the Solicitor, DOL, to Deborah Greenfield, Office of the Solicitor, DOL (Dec. 19, 2012, 3:18 PM) (enclosed as Exhibit 5).

Ms. M. Patricia Smith
September 25, 2014
Page 6

Thank you for your attention to this matter. If you have any questions, please contact Ryan Mulvey at (202) 499-4232, or via email at ryan.mulvey@causeofaction.org.

Sincerely,


RYAN MULVEY, ESQ.
COUNSEL

Encls.

EXHIBIT

1



November 26, 2013

VIA E-MAIL

U.S. Department of Labor
Office of the Solicitor
Division of Management and Administrative Legal Services
200 Constitution Avenue, N.W., Room N-2420
Washington, D.C. 20210
Fax: (202) 693-5389
E-mail: foiarequests@dol.gov

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Cause of Action hereby requests records reflecting all communications between the Office of White House Counsel¹ and the U.S. Department of Labor (DOL) Office of the Solicitor concerning the Office of White House Counsel's review of agency records. The time period for this request is January 1, 2012 to the present.

Please note that we do not seek access to the actual records that were forwarded to the Office of White House Counsel for review, but only to records that reflect that such consultations occurred (for example, cover e-mails).

Request for public-interest fee waiver

Cause of Action requests a waiver of any and all applicable fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). This provision provides that requested records shall be furnished without or at reduced charge if "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."² The requested records would unquestionably shed light on the "operations or activities of the government,"³ namely DOL's policies and procedures with respect to records involving White House equities. Moreover, disclosure would "contribute significantly" to the public's understanding DOL's operations.⁴ To date, DOL has not disclosed to the public—either through its regulations or policy memoranda—how it processes agency records that are deemed to contain White House equities. Cause of Action has both the intent and ability to make the results of this request available to a reasonably broad public audience through various media. Our staff members have a wealth of experience

¹ For purposes of this FOIA request, the Office of the White House Counsel includes all employees of that Office—not merely the White House Counsel.

² 5 U.S.C. § 552(a)(4)(A)(iii).

³ *Id.*

⁴ *Id.*

and expertise in government oversight, investigative reporting and federal public interest litigation. These professionals will analyze the information responsive to this request, use their editorial skills to turn raw materials into a distinct work, and share the resulting analysis with the public, whether through Cause of Action's regularly published online newsletter, memoranda, reports, or press releases.⁵

Further, Cause of Action, a non-profit organization as defined under Section 501(c)(3) of the Internal Revenue Code, does not have a commercial interest in making this request. The requested information will be used solely to educate the general public regarding DOL's heretofore undisclosed FOIA policy and procedures for processing records with White House equities.

Request for news media status

For fee purposes, Cause of Action also qualifies as a "representative of the news media" under 5 U.S.C. §552(a)(4)(A)(ii)(II). Cause of Action is organized and operated, among other things, to publish and broadcast news, *i.e.*, information that is about current events or that would be of current interest to the public. Cause of Action gleans the information that it regularly publishes from a wide variety of sources and methods, including whistleblowers/insiders, government agencies, universities, scholarly works, and FOIA requests. Cause of Action routinely and systematically disseminates information acquired from such sources to the public through various media. For example, Cause of Action distributes articles, blog posts, published reports, and newsletters about current events of interest to the general public through its website, which has been viewed just under 120,000 times in the past year alone.⁶ Cause of Action also disseminates news to the public via Twitter and Facebook, and it provides news updates to subscribers via e-mail. As a result of these activities, federal agencies have continually recognized Cause of Action's news media status in connection with its FOIA requests.⁷

Record production and contact information

In an effort to facilitate record production, please provide the responsive records in electronic format (*e.g.*, e-mail, .pdf). If a certain set of responsive records can be produced more readily, we respectfully request that those records be produced first and that the remaining records be produced on a rolling basis as circumstances permit.

⁵ See <http://www.causeofaction.org>.

⁶ *Google Analytics* for <http://www.causeofaction.org> (on file with Cause of Action).

⁷ See, *e.g.*, FOIA Request CFPB-2014-010-F, Consumer Fin. Prot. Bureau (Oct. 7, 2013); FOIA Request 2013-01234-F, Dep't of Energy (July 1, 2013); FOIA Request 2013-145F, Consumer Fin. Prot. Bureau (May 29, 2013); FOIA Request 2013-073, Dep't of Homeland Sec. (Apr. 5, 2013); FOIA Request 2012-RMA-02563F, Dep't of Agric. (May 3, 2012); FOIA Request 2012-00270, Dep't of Interior (Feb. 17, 2012); FOIA Request 12-00455-F, Dep't of Educ. (Jan. 20, 2012).

November 26, 2013
Page 3

If you have any questions about this request, please contact me by e-mail at Robyn.Burrows@causeofaction.org, or by telephone at (202) 499-4232. Thank you for your attention to this matter.

A handwritten signature in black ink, appearing to read "Robyn Burrows", written over a horizontal line.

ROBYN BURROWS
COUNSEL

EXHIBIT

2

U.S. Department of Labor

Office of the Solicitor
Washington, D.C. 20210



Robyn Burrows
CAUSE ACTION
1919 Pennsylvania Avenue, NW
Suite 650
Washington, D.C. 20006

Re: Freedom of Information Act (FOIA) Request
FOIA Tracking Number 735281

Dear Ms. Burrows:

This correspondence is to acknowledge receipt of your Freedom of Information Act request dated November 26, 2013, wherein you requested "records reflecting all communications between the Office of White House Counsel and the U.S. Department of Labor (DOL) Office of the Solicitor concerning the Office of White House Counsel's review of agency records. The time period for this request is January 1, 2012 to the present . . . Please note that we do not seek access to the actual records that were forwarded to the Office of White House Counsel for review, but only to records that reflect that such consultations occurred (for example, cover e-mails)."

Your request has been assigned the tracking number noted above and is being processed by the Office of the Solicitor. Please refer to this tracking number within any inquiries relative to this request. You can expect to receive a response within 20 business days from the date in which your request was received at the Department of Labor. However, the actual processing time may depend upon the complexity of the request.

You may also track your request at the Department of Labor's FOIA Public Portal at www.dol.gov/foia/FOIASearch.aspx. The status will be updated as the request moves between stages of processing. If you have questions or concerns, please feel free to contact this office at the following address and phone number:

U.S. Department of Labor
Office of the Solicitor
Management and Administrative Legal Services Division
ATTN: Sharon Hudson, FOIA Coordinator
200 Constitution Avenue, NW
Room N2420
Washington, D.C. 20210
(202) 693-5406

Sincerely,

A handwritten signature in cursive script that reads "Sharon A. Hudson".

Sharon A. Hudson
Office of the Solicitor FOIA Coordinator/
Departmental FOIA Liaison

EXHIBIT

3



June 27, 2014

Robyn Burrows
Cause of Action
1919 Pennsylvania Ave., NW
Suite 650
Washington, DC 20006

Dear Ms. Burrows:

This letter serves as a response to your request for information, dated November 26, 2013, made pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (FOIA). In response, the Office of the Solicitor (SOL), U.S. Department of Labor (DOL) is providing documents that have been identified as responsive to your FOIA request.

In your letter, you requested records reflecting all communications between the Office of White House Counsel (OWHC) and the U.S. Department of Labor, Office of the Solicitor concerning OWHC review of agency records. You stated that the time period for your request is January 1, 2012 to present. You also stated that you do not seek access to the actual records that were forwarded, but only to records that reflect that such consultations occurred.

In support of your request for a public interest fee waiver, you stated that Cause of Action intends to use the information responsive to your request to educate the public about DOL's FOIA policy and procedures for processing records with White House equities. Therefore, SOL has interpreted your request to be limited to a request for records showing communications between SOL and OWHC concerning OWHC review of DOL records that are responsive to a FOIA request. You represent that Cause of Action is a non-profit organization with no commercial interest in making the request. Accordingly, SOL has determined that a fee waiver is justified under 5 U.S.C. § 552(a)(4)(A)(iii).

In response to your request, SOL is providing 57 pages of partially redacted documents comprised of emails between OWHC and SOL. Information that is deliberative, subject to the attorney/client privilege, and/or is attorney work product has been redacted under FOIA Exemption (b)(5), 5 U.S.C. § 552 (b)(5). Information about individuals has been redacted under FOIA Exemption (b)(6), 5 U.S.C. § 552 (b)(6), if its disclosure would constitute a clearly unwarranted invasion of personal privacy.

SOL determined that additional information could have been withheld from these documents pursuant to the deliberative process privilege under FOIA Exemption (b)(5). However, SOL is making a discretionary disclosure of this material at this time. See President Obama's FOIA

Memorandum of January 21, 2009, and Attorney General Holder's FOIA Guidance
Memorandum of March 19, 2009.

SOL is releasing all documents identified as responsive to your request. With respect to multiple emails that became part of an email chain, SOL is providing only the last email in the chain that contains copies of all the earlier emails. Where earlier emails in a chain included attachments not reflected in the chain, those duplicates have been provided separately. In addition, SOL is not releasing any attachments to these emails because you specified in your request that you do not seek the actual records that were forwarded to OWHC.

We do not consider this a denial of your request, but if you do, you have the right to appeal this decision with the Solicitor of Labor within 90 days of the date of this letter. The appeal must state, in writing, the grounds for the appeal, including any supporting statement or arguments. To facilitate processing, you may wish to fax your appeal to (202) 693-5538. If mailed, both the envelope and the letter of appeal itself should be clearly marked: "Freedom of Information Act Appeal." The appeal should include a copy of your initial request and a copy of this letter. The appeal must be addressed to:

Solicitor of Labor
U.S. Department of Labor
Room N-2428
200 Constitution Ave., N.W.
Washington, DC 20210

Appeals also may be submitted by email to foiappeal@dol.gov. Appeals submitted to any other email address will not be accepted. 29 C.F.R. § 70.22(c).

Sincerely,



Katherine E. Bissell
Deputy Solicitor for Regional Enforcement

Enclosures

EXHIBIT

4

From: [Greenfield, Deborah - SOL](#)
To: [Baker, Lamar](#)(b) (6)
Subject: FW: Scanned Documents
Date: Wednesday, November 06, 2013 6:05:00 PM
Attachments: [MacFarlane Letter.pdf](#)
[Related Jobs Report doc.pdf](#)
[Team Lead Check In Call Emails.pdf](#)

Per my voicemail. The first document memorializes our current agreement that limits the FOIA request. The second pdf is the set of documents responsive to the first request. The second pdf is the set of documents responsive to the other request. Both sets are currently unredacted. (b) (5)

Let's talk whenever you've had a chance to review.

Deborah Greenfield
Deputy Solicitor
U.S. Department of Labor
200 Constitution Ave. NW
Suite S-2002
Washington, D.C. 20210
(b) (6)

This message may contain information that is privileged and exempt from disclosure under applicable law. Do not share or copy without consulting the Office of the Solicitor. If you think you received this e-mail in error, please notify the sender immediately.

From: (b) (6) - SOL
Sent: Wednesday, November 06, 2013 5:15 PM
To: Greenfield, Deborah - SOL
Subject: Scanned Documents

Per your request...

Thanks,

(b) (6)
Office of The Solicitor
Front Office Division
202.693.5260 / main
(b) (6)

EXHIBIT

5

From: Plick, Joseph - SOL

Sent: Wednesday, December 19, 2012 3:18 PM

To: Greenfield, Deborah - SOL

Cc: Mandel, Steven - SOL; Goshi, Allen K - SOL; (b) (6) - SOL

Subject: Mining News FOIA Re "Pattern of Violations"

Hello Deborah,

It's been awhile since I've had to deal with a FOIA request involving White House/OMB equities. Are you still taking the lead on getting their review of our proposed FOIA responses?

MSHA/MSH have sent to MALS proposed responses to a request from Ellen Smith of Mine Safety and Health News for notes and correspondence between MSHA/DOL officials and OMB/OIRA concerning meetings last June and July on "Pattern of Violations."

Let us know how you want us to get you the files (they're pretty thing) or work with OMB directly.

Joe

PS I'm on leave after today so (b) (6) will be acting for me the rest of this week.

EXHIBIT

2

From: Ryan Mulvey
To: ["robinson.linda@dol.gov"](mailto:robinson.linda@dol.gov)
Subject: FW: 2014 9 25 FOIA Appeal to DOL
Date: Wednesday, January 21, 2015 9:47:00 AM
Attachments: [2014 9 25 FOIA Appeal to DOL.PDF](#)

Ms. Robinson,

Please find attached the FOIA appeal we discussed on the phone. Thank you for your help.

Best regards,

Ryan Mulvey

Ryan Mulvey | Counsel | Cause of Action

1919 Pennsylvania Avenue NW | Suite 650 | Washington, DC 20006

Ryan.Mulvey@causeofaction.org

202.400.2729

Admitted to the practice of law in New York State and the District of Columbia

Confidentiality

The information contained in this communication may be confidential, is intended only for the use of the recipient named above, and may be legally privileged. It is not intended as legal advice, and may not be relied upon or used as legal advice. Nor does this communication establish an attorney client relationship between us. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please re-send this communication to the sender and delete the original message and any copy of it from your computer system. Thank you.

From: Catalina Lehmann
Sent: Thursday, September 25, 2014 10:41 AM
To: foiaappeal@dol.gov
Cc: Ryan Mulvey
Subject: 2014 9 25 FOIA Appeal to DOL

Hello,

Please find a FOIA appeal attached.

Thanks!

Catalina Lehmann | Cause of Action
1919 Pennsylvania Ave, NW, Suite 650
Washington, D.C. 20006
202-499-2418
Catalina.Lehmann@causeofaction.org

EXHIBIT

3



Appeals Unit
Freedom of Information Act/Privacy Act
Division of Management and Administrative Legal Services
200 Constitution Avenue, N.W., Suite N-2420
Washington, DC 20210
Phone: (202) 693-5503
Fax: (202) 693-5538

January 28, 2015

To: RYAN MULVEY
CAUSE OF ACTION
1919 PENNSYLVANIA AVE, N.W.
SUITE 650
WASHINGTON, D.C. 20006

FEB 02 2015

From: Raymond E. Mitten Jr.
Counsel for FOIA Appeals, Paperwork
Reduction Act, Federal Records Act

Re: Your Appeal to the Solicitor of Labor under the Freedom
of Information Act and/or Privacy Act

RE: TRACKING NO. 735281.

Date of your letter: 1/21/2015

Appeal Reference No.: 150080

This is to acknowledge receipt of your letter appealing a denial of information by a Department of Labor official. Your appeal is being processed.

The law generally requires that appeals be sequenced for action on a first-in first-out basis, consistent with the guidance provided by the courts. *See Open America v. Watergate Special Prosecution Force*, 547 F.2d 605 (D.C. Cir. 1976). You should be aware that the number of appeals currently awaiting review and decision is very substantial. We are authorized, however, to schedule for faster action those appeals which require limited staff time – i.e., those that involve limited scope or complexity.

Should you have any questions about the status of your appeal, have any additional information which you believe should be brought to our attention, or wish to limit or withdraw your appeal, please contact this office at the phone or address listed above.

To help us serve you, please direct your inquiries to Linda Robinson at the number noted above, and use our appeal reference number. Thank you.