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Collection: Roberts, John G.: Files

Folder Title: JGR/FOIA

(Freedom of Information Act) (1 of 6)

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WITHDRAWAL SHEET

Ronald Reagan Library

Collection Name

Withdrawer

File Folder

JGR/FOIA (FREEDOM OF INFORMATION ACT) (1 OF 6)

SMF 8/30/2005

FOIA

Box Number

26

F05-139/01

COOK

SF-2

DOC NO	Doc Type	Document Description	No of Pages	Doc Date	Restrictions	
						854
1	MEMO	ROBERTS TO FIELDING (PARTIAL) 115055	1	12/30/1982	B6	831
2	MEMO	FIELDING TO JAMES HALL (PARTIAL) 115055	1	1/5/183	B6	834
3	MEMO	DUPLICATE OF DOCUMENT #2 (NOT COPIED) ; 115055	1	1/5/183	B6	835
4	MEMO	DRAFT DOCUMENT OF #2 (PARTIAL) 115055	1	12/30/1982	B6	836
5	MEMO	TO FIELDING (PARTIAL) 115055	1	12/13/1982	B6 B7(C)	837
6	MEMO	DUPLICATE OF DOCUMENT #5 (PARTIAL) 115055	1	12/13/1982	B6 B7(C)	841
7	LETTER	TO JAMES HALL 115055	1	2/18/1982	B6	842

Freedom of Information Act - [5 U.S.C. 552(b)]

- B-1 National security classified information [(b)(1) of the FOIA]
- B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- B-3 Release would violate a Federal statute [(b)(3) of the FOIA]
- B-4 Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

E.O. 13233

C. Closed in accordance with restrictions contained in donor's deed of gift.

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DOC NO	Doc Type	Document Description	No of Pages	Doc Date	Restrictions	
8	LETTER	RE NOTARIZED RELEASE 115055	1	2/18/1982	B6	844
9	LETTER	TO MARVIN WATSON (PARTIAL) 115055	2	3/10/1967	B6 B7(C)	847
10	LETTER	TO EHRLICHMAN (PARTIAL) 115055	5	11/10/1969	B6 B7(C)	848
11	MEMO	ROBERTS TO FIELDING (PARTIAL) 115056	1	1/4/1983	B6 B7(C)	849
12	MEMO	FIELDING TO JAMES HALL (PARTIAL) 115056	1	1/4/1983	B6 B7(C)	851
13	LETTER	HALL TO FIELDING (PARTIAL) 115056	1	ND	B6 B7(C)	853

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MEMORANDUM

THE WHITE HOUSE

WASHINGTON

September 23, 1982

FOR: FRED F. FIELDING

FROM: SHERRIE M. COOKSEY *SMC*

SUBJECT: Request for Office of Legal Counsel
Opinion on Application of Freedom of
Information Act to Certain Entities
Within the Executive Office of the
President

Attached for your review and signature is a memorandum to Ted Olson requesting an opinion from OLC on the application of FOIA to certain entities within the Executive Office of the President. As we discussed the last comprehensive opinion issued on this subject was in 1973, thus an update would be helpful.

Attachment

THE WHITE HOUSE

WASHINGTON

September 23, 1982

MEMORANDUM FOR THEODORE B. OLSON
ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGAL COUNSEL

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Application of the Freedom of Information
Act to Certain Entities Within the
Executive Office of the President

A question which is recurring with some frequency is that of the applicability of the Freedom of Information Act to the various entities within the Executive Office of the President. To date, we have been guided by the advice on these issues contained in the attached memorandum, from the Office of Legal Counsel to the Honorable John W. Dean III, Counsel to the President, dated January 30, 1973. In view of the fact that the above referenced memorandum is not an up-to-date review of the Act and its applicability to the Executive Office of the President, I am hereby requesting your views on which of the various entities (identified in the attached list) within the Executive Office of the President are "agencies" as defined by 5 U.S.C. § 551(1) and thus subject to the Freedom of Information Act.

Thank you for your prompt consideration and response on these issues.

Attachments

FFF:SMC:sd 9/23/82

cc: FFFielding
SMCooksey
Subject
Chron.

OFFICES IN THE EXECUTIVE OFFICE OF THE PRESIDENT:

White House Office

Council of Economic Advisers

Council on Environmental Quality

Office of Policy Development

National Security Council

Office of Administration

Office of Science and Technology Policy

Office of the U.S. Trade Representative

NOTE: In addition to those listed above, there are two additional offices included within the White House Office which are:

President's Foreign Intelligence Advisory Board
President's Intelligence Oversight Board

THE WHITE HOUSE
WASHINGTON

December 30, 1982

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: FOI/PA Request from [REDACTED] *b6*

James K. Hall, Chief of the FBI FOI/PA Section, has referred two FBI documents, which contain information furnished by the White House, to you for review prior to response to the FOI/PA request of [REDACTED]

The first document, a March 10, 1967 letter from the Bureau to Marvin Watson, responded to a name check requested by Mildred Stegall on 108 individuals. The second, a November 10, 1969, letter from the Bureau to John Ehrlichman, responded to a name check requested on 227 individuals. Each document notes that a separate memorandum is attached on [REDACTED] as well as several other cited individuals. This separate memorandum has not been submitted to us in response to the FOI/PA request. *b6*

I believe that the names of all the individuals (other than [REDACTED] who were subject to the name checks may be excised from the copies to be released pursuant to Exemption 6. This exemption provides that the disclosure requirements of the FOIA do not apply to "personal and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). In its recent decision in United States Department of State v. The Washington Post Co., 102 S. Ct. 1957 (1982), the Court interpreted this provision quite broadly as applicable to any records identifiable as applying to a particular individual. I recommend noting the desirability of deletion of the names in your memorandum to the Bureau. *b6*

Attachment

THE WHITE HOUSE
WASHINGTON

January 5, 1983

MEMORANDUM FOR JAMES K. HALL
CHIEF, FOI/PA SECTION
FEDERAL BUREAU OF INVESTIGATION

FROM: FRED F. FIELDING *Orig. signed by FFF*
COUNSEL TO THE PRESIDENT

SUBJECT: FOI/PA Request from [REDACTED]

b6

This is in response to your memorandum of December 13, 1982 in which you referred to me for review two FBI documents responsive to the above-referenced FOI/PA request. The documents contain information furnished by the White House.

Upon review of this information, we believe that the exemption of 5 U.S.C. § 552(b)(6) should result in the deletion of the names of all the individuals other than [REDACTED] listed in the documents. The Supreme Court has ruled that Exemption 6 is to be interpreted broadly, United States Department of State v. The Washington Post Co., 102 S. Ct. 1957 (1982), and disclosure of the names would be an unwarranted invasion of the privacy of the individuals.

b6

We have no legal objection to the release of these two documents.

FFF:JGR:aw 1/5/83

cc: FFFielding
✓ JGRoberts
Subj.
Chron

WITHDRAWAL SHEET

Ronald Reagan Library

Collection Name

ROBERTS, JOHN: FILES

Withdrawer

SMF 8/6/2005

File Folder

JGR/FOIA (FREEDOM OF INFORMATION ACT) (1 OF 6)

FOIA

F05-139/01

COOK

Box Number

26

SF-2

DOC Document Type

No of

Doc Date

Restric-

NO Document Description

pages

tions

3 MEMO

1

1/5/183

B6

835

DUPLICATE OF DOCUMENT #2

115055

Freedom of Information Act - [5 U.S.C. 552(b)]

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E.O. 13233

C. Closed in accordance with restrictions contained in donor's deed of gift.

THE WHITE HOUSE

WASHINGTON

January 5, 1983

MEMORANDUM FOR JAMES K. HALL
CHIEF, FOI/PA SECTION
FEDERAL BUREAU OF INVESTIGATION

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: FOI/PA Request from Jane Glazer on
Behalf of Helen Gordon: FBI #221,872

This is in response to your memorandum of December 13, 1982 in which you referred to me for review two FBI documents responsive to the above-referenced FOI/PA request. The documents contain information furnished by the White House.

Upon review of this information, we believe that the exemption of 5 U.S.C. § 552(b)(6) should result in the deletion of the names of all the individuals other than Mrs. Gordon listed in the documents. The Supreme Court has ruled that Exemption 6 is to be interpreted broadly, United States Department of State v. The Washington Post Co., 102 S. Ct. 1957 (1982), and disclosure of the names would be an unwarranted invasion of the privacy of the individuals.

We have no legal objection to the release of these two documents.

FFF:JGR:aw 1/5/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE
WASHINGTON

December 30, 1982

MEMORANDUM FOR JAMES K. HALL
CHIEF, FOI/PA SECTION
FEDERAL BUREAU OF INVESTIGATION

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: FOI/PA Request from [REDACTED] b6

This is in response to your memorandum of December 13, 1982 in which you referred to me for review two FBI documents responsive to the above-referenced FOI/PA request. The documents contain information furnished by the White House.

Upon review of this information, we believe that the exemption of 5 U.S.C. § 552(b)(6) should result in the deletion of the names of all the individuals other than [REDACTED] listed in the documents. The Supreme Court has ruled that Exemption 6 is to be interpreted broadly, United States Department of State v. The Washington Post Co., 102 S. Ct. 1957 (1982), and disclosure of the names would be an unwarranted invasion of the privacy of the individuals. b6

We have no legal objection to the release of these two documents, ~~provided the names of individuals other than [REDACTED] listed in the documents are deleted.~~ b6

FFF:JGR:aw 12/30/82

cc: FFFielding
JGRoberts
Subj.
Chron

DRAFT

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

Reverts

O - OUTGOING

H - INTERNAL

I - INCOMING

Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: James K. Hall

MI Mail Report

User Codes: (A) _____ (B) _____ (C) _____

Subject: FOI / PA Request of Jane McLean Glazer
FBI / FOI / PA # 221, 872 re: Helen Gordon

ROUTE TO:

ACTION

DISPOSITION

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>W Holland</u>	ORIGINATOR	<u>82 12/14</u>			<u>1 1</u>
	Referral Note:				
<u>WAT18</u>	<u>D</u>	<u>82 12/14</u>		<u>58212128</u>	
	Referral Note:				
		<u>1 1</u>			<u>1 1</u>
	Referral Note:				
		<u>1 1</u>			<u>1 1</u>
	Referral Note:				
		<u>1 1</u>			<u>1 1</u>
	Referral Note:				

ACTION CODES:

- A - Appropriate Action
- C - Comment/Recommendation
- D - Draft Response
- F - Furnish Fact Sheet to be used as Enclosure

- I - Info Copy Only/No Action Necessary
- R - Direct Reply w/Copy
- S - For Signature
- X - Interim Reply

DISPOSITION CODES:

- A - Answered
- B - Non-Special Referral
- C - Completed
- S - Suspended

FOR OUTGOING CORRESPONDENCE:

- Type of Response = Initials of Signer
- Code = "A"
- Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
 Send all routing updates to Central Reference (Room 75, OEGB).
 Always return completed correspondence record to Central Files.
 Refer questions about the correspondence tracking system to Central Reference, ext. 2590.



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

COPY - Reagan Presidential Record

To: The White House
1600 Pennsylvania Avenue, N.W.
Washington, D. C. 20500
Attention: Fred F. Fielding
General Counsel

BY COURIER

H15D55-CU

From: Chief [Signature]
Freedom of Information/Privacy Acts (FOI/PA) Section
Federal Bureau of Investigation

DEC 4 1982

Subject: FOI/PA REQUEST OF [Redacted]
FBI FOI/PA # [Redacted]

b6

In connection with review of FBI files responsive to the above request, the following was surfaced:

- _____ unclassified document(s) which originated with your agency which is/are being referred to you for direct response to the requester. We will advise the requester that your agency will correspond directly concerning this matter, and request that you furnish us a copy of your letter to the requester reflecting final determination regarding the document(s). (See index A).
- 2 FBI document(s) containing information furnished by your agency. Please review your information (outlined in red) and return the document(s) to us, making any deletions you deem appropriate, and citing the exemption(s) claimed. (See index B).
- _____ classified document(s) which originated with your agency which is/are being referred to you for direct response to the requester. We will advise the requester that your agency will correspond directly concerning this matter, and request that you furnish us a copy of your letter to the requester reflecting final determination regarding the document(s). Additionally, please advise us if the classification of the document(s) is changed so that we may amend our files. (See index C).
- _____ classified FBI document(s) containing information furnished by your agency. Please review your information (outlined in red) and return the document(s) to us, making any deletions you deem appropriate, citing the exemption(s) claimed, and advising if the document(s) still warrant(s) classification. (See index D).
- See Continuation Page for additional information.
- A copy of the requester's initial letter, and any other significant correspondence is enclosed for your convenience.

If you have any questions concerning this referral, please contact Karen Rangel
on 324- 4641. * The FBI file number appearing on the lower right-hand corner of the enclosed document(s) as well as on the Index Listing (see reverse) should be utilized during any consultation with this Bureau concerning this referral.

Enclosure(s) (3): _____ classified material attached.



U.S. Department of Justice
Federal Bureau of Investigation

Washington, D. C. 20535

To: **The White House**
1600 Pennsylvania Avenue, N.W.
Washington, D. C. 20500
Attention: Fred F. Fielding
General Counsel

BY COURIER

DEC 13 1982

From: Chief *Jan K. Hall*
Freedom of Information/Privacy Acts (FOI/PA) Section
Federal Bureau of Investigation

Subject: FOI/PA REQUEST OF [REDACTED] *b6*
FBI FOI/PA # [REDACTED]

In connection with review of FBI files responsive to the above request, the following was surfaced:

- _____ unclassified document(s) which originated with your agency which is/are being referred to you for direct response to the requester. We will advise the requester that your agency will correspond directly concerning this matter, and request that you furnish us a copy of your letter to the requester reflecting final determination regarding the document(s). (See index A).
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- _____ classified FBI document(s) containing information furnished by your agency. Please review your information (outlined in red) and return the document(s) to us, making any deletions you deem appropriate, citing the exemption(s) claimed, and advising if the document(s) still warrant(s) classification. (See index D).
- See Continuation Page for additional information.
- A copy of the requester's initial letter, and any other significant correspondence is enclosed for your convenience.

If you have any questions concerning this referral, please contact Karen Rangel on 324- 4641. *The FBI file number appearing on the lower right-hand corner of the enclosed document(s) as well as on the Index Listing (see reverse) should be utilized during any consultation with this Bureau concerning this referral.

Enclosure(s) 3): _____ classified material attached.

Copy - Reagan Presidential Record

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 7/6/82 BY SP-1 GSK/RBG

March 10, 1967

BY LIAISON

Honorable Marvin Watson
Special Assistant to the President
The White House
Washington, D. C.



Dear Mr. Watson:

Mrs. Mildred Stegall has requested name checks on Mr. and Mrs. Cristobal Alórote and 106 other individuals in connection with the March 18th affair.

The central files of the FBI contain no pertinent derogatory information identifiable with the following individuals:



1 - Mr. DeLoach (sent direct)

1 - Mr. Casper (sent direct)

1 - Mr. Callahan (sent direct)

1 - Mr. Mohr (sent direct)

1 - Mr. Bishop (sent direct)

1 - Mr. Casper (sent direct)

1 - Mr. Callahan (sent direct)

1 - Mr. Mohr (sent direct)

1 - Mr. Bishop (sent direct)

61 MAR 20 1967

REC-14

100-421096-70

NOT RECORDED

46 MAR 14 1967

62-0-27917

50

1

11

- Tolson _____
- DeLoach _____
- Mohr _____
- Bishop _____
- Casper _____
- Callahan _____
- Conrad _____
- Felt _____
- Gale _____
- Rosen _____
- Sullivan _____
- Tavel _____
- Trotter _____
- Tele. Room _____

WITHDRAWAL SHEET

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ROBERTS, JOHN: FILES

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JGR/FOIA (FREEDOM OF INFORMATION ACT) (1 OF 6)

FOIA
F05-139/01
COOK

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SF-2

<i>DOC Document Type</i>	<i>No of</i>	<i>Doc Date</i>	<i>Restric-</i>
<i>NO Document Description</i>	<i>pages</i>		<i>tions</i>

8	LETTER	1	2/18/1982	B6	844
	RE NOTARIZED RELEASE				
	115055				

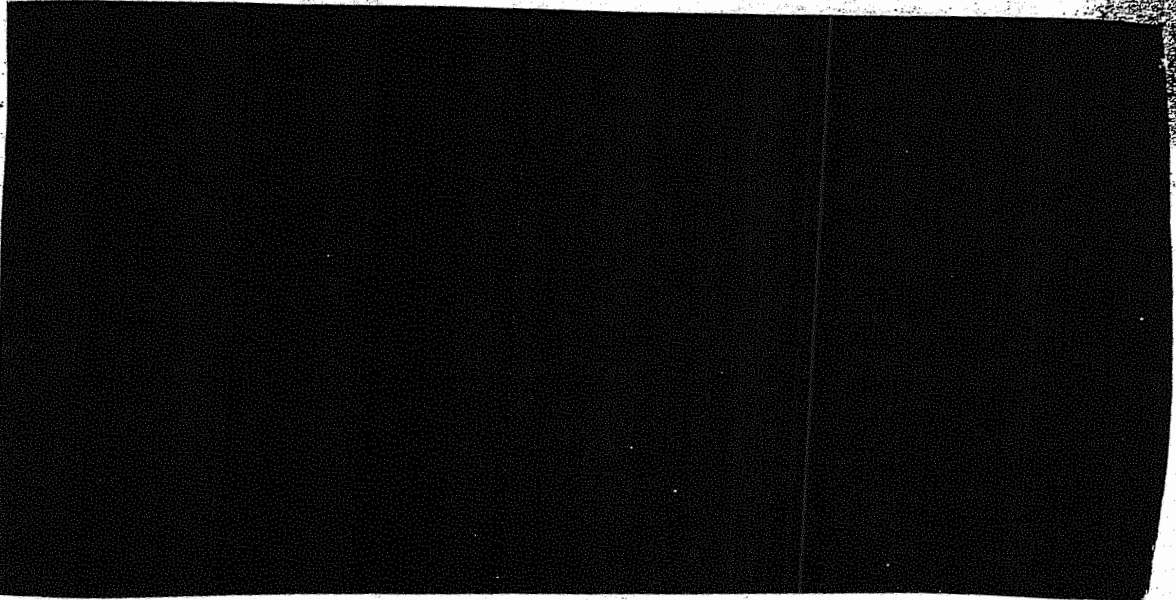
Freedom of Information Act - [5 U.S.C. 552(b)]

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E.O. 13233

C. Closed in accordance with restrictions contained in donor's deed of gift.

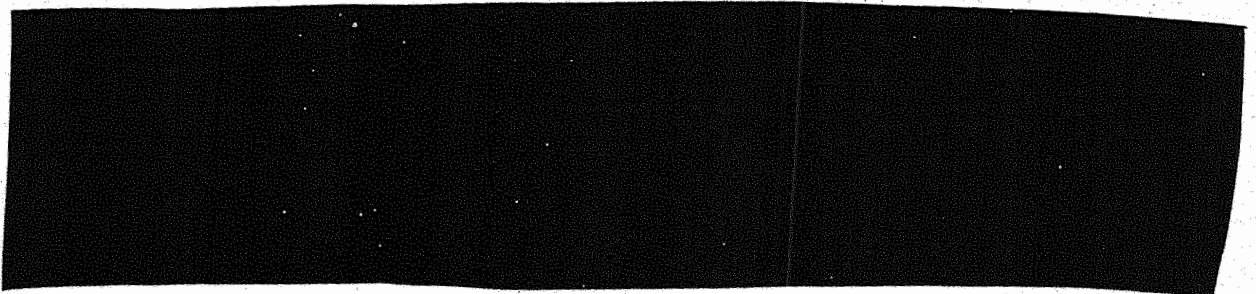
Honorable Marvin Watson



b6

The fingerprint files of the Identification Division of the FBI contain no arrest data identifiable with the above individuals based upon background information submitted in connection with this name check request.

Attached are separate memoranda on the following individuals:



b6

A copy of this communication has not been sent to the Attorney General.

Sincerely yours,

Enclosures (13)

Reagan Presidential Record

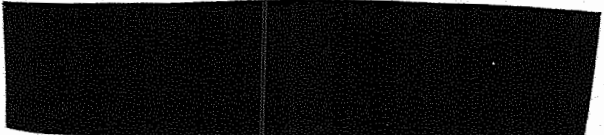
~~CONFIDENTIAL~~

- 1 - Mr. DeLoach
- 1 - Mr. Rosen
- 1 - Mr. Malley
- 1 - Mr. Scatterday

November 10, 1969

BY MAIL

Mr. John D. Ehrlichman
 Counselor to the President for Domestic Affairs
 1100 L Street
 Washington, D. C.



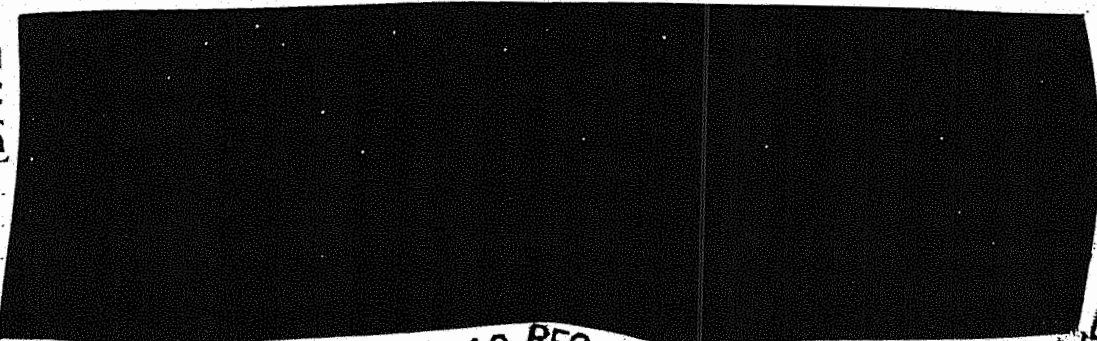
b6

Re Ehrlichman:

By letter dated October 30, 1969, Mr. John T. [redacted] Incentive Assistant to the Deputy Attorney General, [redacted] a list of 231 names, which list was captioned "Action Participants," and requested a review of [redacted] concerning the individuals appearing thereon. [redacted] originated with the Nutrition Group at the [redacted]. On the afternoon of November 4, Honorable Egli [redacted] that the results of the file check requested [redacted] Duffner should be forwarded to you.

On the afternoon of November 5, Miss Brown of [redacted] office advised of 64 of the names which should be [redacted].

Based on the identifying data appearing on the [redacted] furnished by Mr. Duffner, the central files of the [redacted] contain no pertinent derogatory information and the [redacted] files of the FBI Identification Division [redacted] no arrest data concerning the following individuals:



b6

ALL INFORMATION CONTAINED
 HEREIN IS UNCLASSIFIED
 DATE 7/12/82 BY SP-1 GSK/RBB

100-421096-35023

Tolson _____
 DeLoach _____
 Mohr _____
 Bishop _____
 Casper _____
 Callahan _____
 Conrad _____
 Felt _____
 Gale _____
 Rosen _____
 Sullivan _____
 Tavel _____
 Trotter _____
 Tele. Room _____
 Holmes _____
 Gandy _____

ST-110 REC 4

100-421096-

SEE NOTE, PAGE FIVE

NOT RECORDED

46 NOV 18 1969

ENCLOSURE

DECLASSIFIED BY SP-1 GSK/RBB
 ON 7/12/80

127

COPY - Reagan Presidential Record

~~CONFIDENTIAL~~

Honorable John B. Danforth



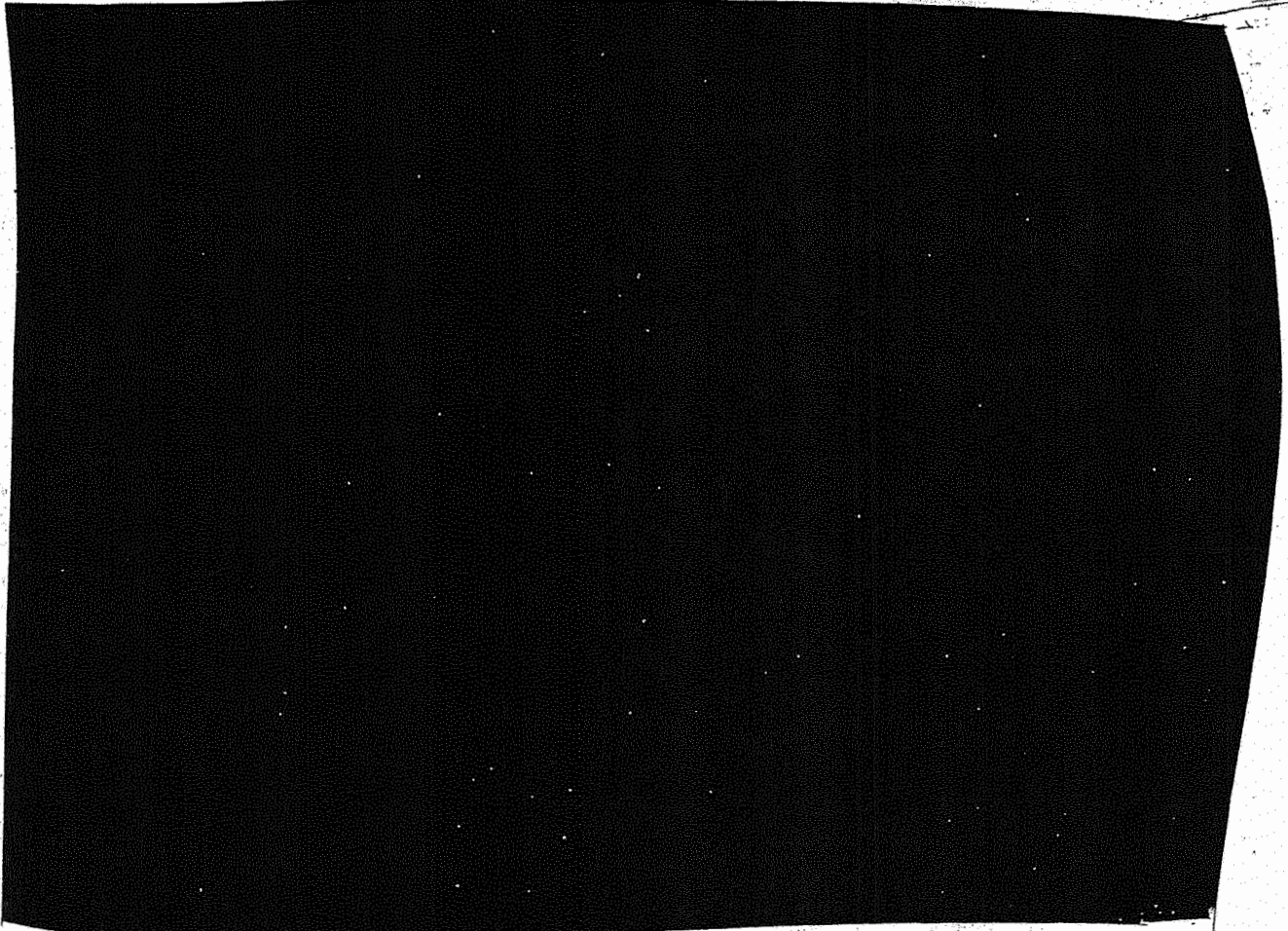
b6

COPY - Reagan Presidential Record

~~CONFIDENTIAL~~

Honorable John D. Ehrlichman

Copy - Reagan Presidential Record

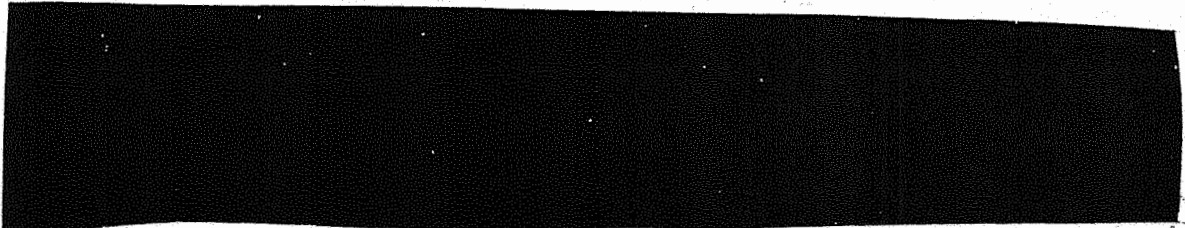


b6

No pertinent derogatory information was located in the central files of the FBI concerning the following persons. However, the files of the Identification Division of the FBI do contain identification records which may pertain to these persons as follows: and copies of these records are attached.

Name

FBI Identification Record Number

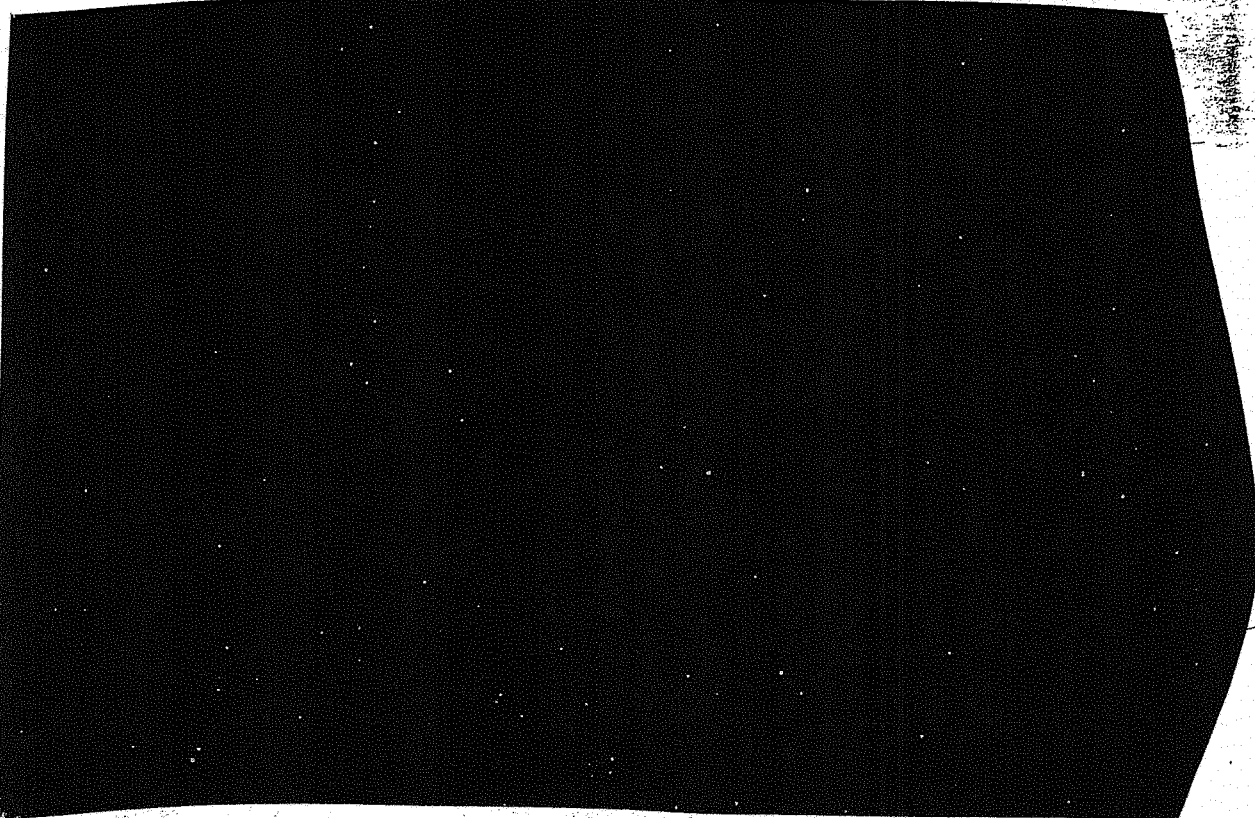


b6

~~CONFIDENTIAL~~

Mr. John D. Ehrlichman

COPY - Reagan Presidential Record



bb

Attached are separate memoranda concerning the
names of individuals. In those instances where an FBI
investigative record was located which could possibly
relate to these individuals, a copy of such record is
attached to the memorandum.



bb

~~CONFIDENTIAL~~

Honorable John D. Ehrlichman

Upon removal of the classified enclosures,
this document becomes unclassified.

Sincerely yours,

Enclosures (76)

NOTE: Duffner separately advised by letter 11/6/69 that
the results of the request submitted by him are being forwarded
direct to Mr. Ehrlichman.

Information that list originated with the Nutrition
Group at the White House was received from Mr. Krogh.

~~CONFIDENTIAL~~

THE WHITE HOUSE
WASHINGTON

January 4, 1983

FOR: FRED F. FIELDING
FROM: JOHN G. ROBERTS *JGR*
SUBJECT: FOIA Request from [REDACTED] *b6*

James K. Hall, Chief of the FBI FOI/PA Section, has submitted two documents from FBI files for your review as to sensitivity prior to response to the requester. The documents are a request for a name check on the FOIA requester from Mildred Stegall, dated June 13, 1967, and the Bureau's response to that request. The name check request indicates [REDACTED] was being considered for a Presidential appointment; the Bureau response reveals that he had been the subject of security investigations in the 1940's and 1950's, and had been a member of the Communist Party from 1937-1940. Hall does not view the information as sufficiently sensitive to warrant redactions pursuant to the FOIA, and I agree. *b6*

I have prepared a memorandum to Hall for your signature.

THE WHITE HOUSE
WASHINGTON

January 4, 1983

MEMORANDUM FOR JAMES K. HALL
CHIEF, FOI/PA SECTION
RECORDS MANAGEMENT DIVISION
FEDERAL BUREAU OF INVESTIGATION

FROM: FRED F. FIELDING *Orig. signed by FFF*
COUNSEL TO THE PRESIDENT

SUBJECT: FOIA Request of [REDACTED] *bb*

This is in response to your letter of December 14, 1982 in which you requested my review of two documents responsive to the above-referenced FOIA request. We have reviewed the two documents and have no legal objection to their release to the requester.

bcc: FFFielding
JGRoberts
Subject
Chron

*documents
returned
to Hall.*

Roberts ID # 115056 CU
FED10-01

**WHITE HOUSE
 CORRESPONDENCE TRACKING WORKSHEET**

- O - OUTGOING
- H - INTERNAL
- I - INCOMING

Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: James K. Hall

MI Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: FOIA Request from Budd Schulberg for records pertaining to himself

ROUTE TO:

ACTION

DISPOSITION

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>W Holland</u>	<u>ORIGINATOR</u>	<u>82.12.14</u>			<u>1 1</u>
<u>W AT18</u>	<u>D</u>	<u>82.12.14</u>		<u>5</u>	<u>82.12.28</u>
	Referral Note:				
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	Referral Note:				

ACTION CODES:

- A - Appropriate Action
- C - Comment/Recommendation
- D - Draft Response
- F - Furnish Fact Sheet to be used as Enclosure

- I - Info Copy Only/No Action Necessary
- R - Direct Reply w/Copy
- S - For Signature
- X - Interim Reply

DISPOSITION CODES:

- A - Answered
- B - Non-Special Referral
- C - Completed
- S - Suspended

FOR OUTGOING CORRESPONDENCE:

- Type of Response = Initials of Signer
- Code = "A"
- Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
 Send all routing updates to Central Reference (Room 75, OEOB).
 Always return completed correspondence record to Central Files.
 Refer questions about the correspondence tracking system to Central Reference, ext. 2590.



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

BY COURIER

115056 cu

Copy - Reagan Presidential Record

Mr. Fred Fielding
General Counsel
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D. C. 20500

Dear Mr. Fielding:

The Federal Bureau of Investigation (FBI) has received a Freedom of Information (FOIA) request from [REDACTED] for records pertaining to himself. b6

The responsive files of the FBI contain documents from Mrs. Mildred Stegall. I am referring the enclosed records to you for any comments or recommendations you may have as to the sensitivity of this material prior to our response to the requester. In my opinion this information is not of sufficient sensitivity to warrant redactions pursuant to the FOIA.

Please return the documents to me at the above address. b6

Also enclosed is a copy of [REDACTED] initial request and notarized signature.

Should you have any questions, please telephone Perry L. Baker on 324-4639.

Sincerely yours,

James K. Hall
James K. Hall, Chief
Freedom of Information-
Privacy Acts Section
Records Management Division

Enclosures (4)



JAN 11 1983

Assistant Attorney General

Washington, D.C. 20530

January 7, 1983

TO: Heads Of All Federal Departments
And Agencies

FROM: Jonathan C. Rose *JCR*
Assistant Attorney General
Office of Legal Policy

SUBJECT: Freedom of Information Act Fee Waivers

Because of some confusion and inconsistency among different agencies in the administration of the fee waiver provisions of the Freedom of Information Act (FOIA), 5 U.S.C. §552, as amended, this Office is providing the following fee waiver policy guidance on behalf of the Attorney General, see 28 C.F.R. §0.23(c) (1981), and in accordance with 5 U.S.C. §552(d). This guidance supersedes the guidance issued by the Department of Justice on this subject in late 1980 and early 1981. Through this restatement of fee waiver policy, the Department of Justice expects that agencies will more consistently and successfully apply the statutory standard that a FOIA fee be waived or reduced "where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public." 5 U.S.C. §552(a)(4)(A) (emphasis added).

The Department of Justice remains committed to encouraging agencies to waive FOIA search and duplication fees where the disclosure of requested information will primarily benefit the general public. In such cases, the granting of a waiver is in the public interest. However, it must also be noted that federal agencies are obligated to safeguard the public treasury by refusing to provide search and duplication services at reduced or no cost under circumstances in which waivers are not provided for by the statute. Thus, all agency personnel should be aware of the dual policy objectives embodied in the statutory fee waiver provisions: (1) the fostering of disclosure of nonexempt agency records where it will primarily benefit the general public, and (2) the preservation of public funds where there will be insufficient public benefit derived from disclosure. See Burriss v. Central Intelligence Agency, 524 F. Supp. 448, 449 (M.D. Tenn. 1981). Fee waivers must not be granted simply because it is the course of least resistance but, rather, only where the statutory standard is met.

Decisions on fee waiver requests are matters committed to the exercise of sound agency discretion. See Lybarger v. Cardwell, 577 F.2d 764, 766 (1st Cir. 1978). Judicial application of this principle has resulted in the upholding of such agency determinations unless they are found to be "arbitrary and capricious." See, e.g., Diamond v. Federal Bureau of Investigation, 548 F. Supp. 1158, 1160 (S.D.N.Y. 1982); Sellers v. Webster, 2 GDS ¶81,243 (S.D. Ill. 1981). While this standard appropriately accommodates the expertise of each individual agency, there are five general factors which should be considered by any agency determining whether there is sufficient public benefit to be derived from disclosure to warrant the granting of a fee waiver. An analysis undertaken according to these five criteria will provide a sound and proper basis for all such determinations.

First, an agency must determine whether there is a genuine public interest in the subject matter of the documents for which a fee waiver is sought; absent such a public interest, there is no basis for granting a waiver. See Newsome v. Federal Bureau of Investigation, 1 GDS ¶79,142 (M.D.N.C. 1979). There is no universal formula by which the existence and extent of legitimate public interest in the subject matter of FOIA requests can be evaluated, so each agency must draw on its unique expertise in making these judgments about the subject matter of its own records. The "public" to be benefited need not be so broad as to encompass all citizens, but it must be distinct from the requester alone. An interest which is personal to the requester is insufficient, see, e.g., Heimerle v. Department of Justice, 3 GDS ¶82,261 (D.D.C. 1982), nor is it in the public interest to grant a waiver solely on the basis of a requester's indigency, see, e.g., Rizzo v. Tyler, 438 F. Supp. 895, 900-01 (S.D.N.Y. 1977).

The second factor which agencies must examine is the value to the public of the records themselves. A fee waiver is appropriate only if the disclosable contents of the records are in fact informative on the issue found to be of public interest. See, e.g., Common Cause v. Internal Revenue Service, 1 GDS ¶79,188 (D.D.C. 1979), aff'd, 646 F.2d 656 (D.C. Cir. 1981). No matter how interesting or vital the subject matter of a request, the public is benefited only if the information released meaningfully contributes to the public development or understanding of the subject. See, e.g., Shaw v. Central Intelligence Agency, 3 GDS ¶83,009 (D.D.C. 1982). Where the information that can be disclosed in response to a FOIA request is of only marginal value in informing the public, the public benefit derived from disclosure is diminished accordingly.

A third factor to be considered is whether the requested information is already available in the public domain. This factor is one that occasionally is overlooked. Agency personnel should ascertain whether material being considered for a fee waiver has been published or is otherwise available on the public record.

Where requested information is already in the public domain, particularly in an agency's public reading room, the denial of a fee waiver is appropriate. See, e.g., Blakey v. Department of Justice, 549 F. Supp. 362, 364-65 (D.D.C. 1982).

Fourth, while the identity of a FOIA requester is usually not a proper factor for agencies to consider in granting or denying access, it should be considered in acting on a request for a fee waiver. See Mahler v. United States Bureau of Prisons, 2 GDS ¶82,031 (D.D.C. 1980). A requester's identity and qualifications--e.g., expertise in the subject area and ability and intention to disseminate the information to the public--should be evaluated. See, e.g., Lykins v. Rose, 3 GDS ¶82,485 (D.D.C. 1982). Specialized knowledge is often required to extract and effectively convey information to the public and requesters vary in their ability to do so. Therefore, requesters should specifically describe their qualifications, the nature of their research, and the purposes for which they intend to use the requested materials. See, e.g., Blakey v. Department of Justice, 549 F. Supp. at 364. Bare assertions by requesters that they are "researchers" or have "plans to author a book" are insufficient. Burriss v. Central Intelligence Agency, 524 F. Supp. at 449.

The final criterion requires an assessment, based upon information provided by the requester as well as information independently available to the agency, of any personal interest of the requester reasonably expected to be benefited by disclosure. Such interests of course include any commercial interest, as well as the interests of first-party requesters in records pertaining to themselves and the interests of parties seeking records for use in litigation. See, e.g., Dorta v. Federal Bureau of Investigation, 3 GDS ¶82,349 (D.D.C. 1982). It is necessary to assess the magnitude of any such personal interest, and then to compare it with that of any discernable public benefit, because a fee waiver or reduction is appropriate under the statute only where the benefit to the general public is primary. See Eudey v. Central Intelligence Agency, 478 F. Supp. 1175, 1177 (D.D.C. 1979); Rizzo v. Tyler, 438 F. Supp. at 900.

In conclusion, we again urge agencies to conduct thorough reviews of all fee waiver requests, on a case-by-case basis, and to grant waivers or reductions only in those cases in which the requester establishes that the disclosure of the information will primarily benefit the general public. Only then can the public be assured that government agencies are honoring the Congressional mandate to disclose records at reduced or no charge where their release primarily benefits the general public, while in other cases preventing "a drain upon agency appropriations that Congress never intended." Blakey v. Department of Justice, 549 F. Supp. at 365.



FOIA UPDATE

Justice Issues Fee Waiver Guidance

The Department of Justice has issued new governmentwide policy guidance on the determination of requests for fee waivers under the Freedom of Information Act.

The new guidance memorandum, issued by Assistant Attorney General Jonathan C. Rose on January 7, 1983, supersedes the guidance previously issued by the Department of Justice on the subject of fee waivers in late 1980 and early 1981.

The new guidance concisely sets forth five criteria by which agencies should determine whether a fee waiver

is warranted in that disclosure would "primarily benefit the general public." It requires an analysis of: (1) the public interest in the subject matter of the request; (2) the nature of the disclosable contents of the records; (3) whether the requested information is already in the public domain; (4) the intention and ability of the requester to disseminate the information; and (5) whether any disclosure benefit to the requester is outweighed by benefit to the general public.

Emphasizing that the Department of Justice "remains committed to

encouraging agencies to waive FOIA search and duplication fees" in all appropriate cases, the new policy statement also cautions that "federal agencies are obligated to safeguard the public treasury by refusing to provide search and duplication services at reduced or no cost under circumstances in which waivers are not provided for by the statute."

The full text of this new guidance memorandum appears on pages 3-4 of this issue of *FOIA Update*. Additionally, a discussion of related procedural considerations follows on page 4.

Federal agencies are authorized under the FOIA to set fees for search and duplication which are "limited to reasonable standard charges for document search and duplication and provide for recovery of only the direct costs of such search and duplication." 5 U.S.C. §552(a)(4)(A).

While FOIA personnel readily acknowledge that fee schedules in many agencies are in need of revision because they do not reflect current copying costs and salary scales, they also observe that fee schedules are generally regarded as of small concern because agencies never recover their costs, no matter how current their fee schedules. This is in part because under existing law the cost of FOIA administration and of review and redaction of documents cannot be charged to the requester. Agency personnel well know that document review and excision is a particularly costly process which involves many layers of personnel and which accounts for most of the expense of FOIA administration.

A different problem, but one which also bears on fee schedules, stems from the fact that moneys



On Agency Practice: Fees

paid by requesters do not go to agencies, but instead are funneled into the Treasury. Hence, an agency spends its own appropriated funds and uses its own resources for search and duplication, but reaps no direct reimbursement.

"There's little incentive to expend additional resources to charge fees and process the checks," says one government worker who deals with the FOIA every day.

Legislation before the 97th Congress addressed several of these concerns. The Administration-endorsed bill, S. 1730, provided that agencies would be allowed to keep a portion

of their FOIA fees; authorized agencies to charge "for all costs reasonably and directly attributable" to a request, including search, duplication, and processing; and directed the Office of Management and Budget to issue guidelines to assist agencies in promulgating uniform fee regulations. Such legislation will be reintroduced in the 98th Congress.

Agencies Surveyed

The Office of Information and Privacy recently surveyed 80 federal agencies, including all cabinet-level departments, in an effort to compile an overall sketch of agency practices in the area of fees and fee schedules. Findings were:

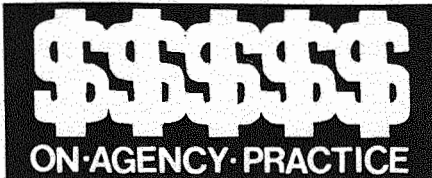
- Many agencies still charge 10 cents per page for photocopies, but published schedules show copying charges as high as 25 to 45 cents at some agencies.
- Existing search charge practices reveal a widespread failure to update regulations to reflect present federal salaries, which have increased yearly by several percentage points.
- Several agencies contract out photocopying or other duplication

Cont'd on next page

... Agencies' Fee Schedules Surveyed

work done in connection with FOIA requests. Decisions of the Comptroller General support this practice.

The OIP survey revealed that 49 agencies use 10 cents per page as a standard photocopying rate, although several charge more per page for the first few pages and then drop to the lower rate. Some, on the other hand, waive charges under a few dollars, which in effect makes small copying jobs free to requesters.



Agencies which recently revised or are currently in the process of revising their fee schedules include the National Credit Union Administration and the Department of Transportation. At NCUA, an analysis of cost factors there has led to a determination that 25 cents a page is a reasonable charge. At Transportation, FOI Officer Rebecca H. Lima polled personnel in relevant units such as graphics and publishing and sampled other agencies before proposing a change to 20 cents a page.

At the Library of Congress, costs range from 45 cents a page for the first 24 pages to 35 cents a page for larger requests. There is a minimum fee of \$4 on every request. Charges were set "at

what is necessary to cover expenses," according to Richard A. Glasgow in the general counsel's office. In the case of the Library of Congress, as well as at some other government units, costs reflect the actual current salaries of personnel involved in handling the document. Other libraries in the Washington area are charging as much as 20 cents for self-service use of copying machines.

By contrast, many agencies maintain a 10-cents-a-page charge. An example is the General Services Administration where Roger H. Kidd, chief of printing and distribution, considers 10 cents a reasonable price, given all of the factors which must be considered in pricing out a charge at that agency. "You've got to look at the rental or purchase price of your equipment, plus the maintenance...for example, on one of our machines we pay \$130 a month rental and for that \$130 we get 4,000 copies." He also takes a number of other cost factors into consideration, including the total volume of copies purchased.

Search Fees

Search fees among the 80 agencies surveyed reflect both salaries for clerical and professional staff personnel, but with a wide divergence at both levels. Charges for clerical time range from \$4 to \$8 an hour; professional time charges range from \$5 to \$26 an hour.



Personnel in several agencies admit that their search fees have not been increased to keep pace with government pay. In fact, one agency currently in the process of updating its FOIA regulations was found to have maintained the same search fee schedule for more than seven years.

The Department of Defense has a three-tiered fee schedule, reflecting the recognition that high-level personnel sometimes must be involved in FOIA search work.

Defense's fee schedule calls for an \$8 an hour fee for clerical and for personnel from the enlisted ranks; \$16 an hour for GS levels 9-15 and for second lieutenants through colonels; and \$26 an hour for GS-16 and above, Senior

Executive Service, and for admirals and generals.

The schedule under consideration at Transportation ranges from \$7 an hour for clerical to \$20 an hour for senior level personnel.

Contracting Out

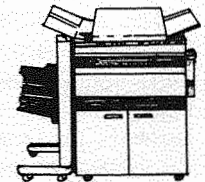
At several agencies, photocopying is handled by a private contractor which bills and collects directly from the FOIA requester. Use of this procedure dates back to the 1960's at the Securities and Exchange Commission where FOI Officer Edward A. Wilson says the practice has "never been challenged and never caused a problem."

SEC employs Disclosure Inc., a private contractor, to handle microfilming and other copying of its material. Disclosure Inc. then sells copies of material in the public domain directly to the public. Rates vary from 10 cents a page for regular copy service to 45 cents a page for an expedited service.

SEC personnel use the same contractor for copy work for FOIA requests. Requests are first reviewed and prepared for copying by the SEC staff and then turned over to Disclosure Inc. for copying. Disclosure Inc. bills the FOIA requester at the rate of 10 cents a page. These fees go to the contractor, not the Treasury.

The Federal Election Commission has extended the concept of contracting out to the sale of microfilm copies of candidate and committee reports and has received a favorable ruling from the Comptroller General of the United States for applying the procedure to the voluminous filings made in connection with election financing.

The Comptroller General has held that contracting for this kind of FOIA processing is proper "so long as the proposed procedures were not used to delay or deny access to information or otherwise circumvent the intent or specific provisions of the Freedom of Information Act, 5 U.S.C. §552(a)(4), or the User Charge Statute, 31 U.S.C. §483a...." See Comptroller General Decisions No. B-205151, Mar. 1, 1982; No. B-166506, Oct. 20, 1975. See also Comptroller General Decisions, No. B-193157.2, Aug. 21, 1979; No. B-193157, Apr. 12, 1979; B-179038, Feb. 13, 1974.



FOIA UPDATE

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Co-Directors:

Richard L. Huff
Daniel J. Metcalfe

Deputy Director:

Miriam M. Nisbet

Editorial Staff:

Managing Editor
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Bonnie L. Quinto
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Fee Waiver Policy Guidance

[The following is the full text of the Department of Justice fee waiver policy guidance memorandum issued to the heads of all federal departments and agencies on Jan. 7, 1983, by Jonathan C. Rose, Assistant Attorney General, Office of Legal Policy]

Because of some confusion and inconsistency among different agencies in the administration of the fee waiver provisions of the Freedom of Information Act (FOIA), 5 U.S.C. §552, as amended, this Office is providing the following fee waiver policy guidance on behalf of the Attorney General, see 28 C.F.R. §0.23(c) (1981), and in accordance with 5 U.S.C. §552(d). This guidance supersedes the guidance issued by the Department of Justice on this subject in late 1980 and early 1981. Through this restatement of fee waiver policy, the Department of Justice expects that agencies will more consistently and successfully apply the statutory standard that a FOIA fee be waived or reduced "where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public." 5 U.S.C. §552(a)(4)(A) (emphasis added).

The Department of Justice remains committed to encouraging agencies to waive FOIA search and duplication fees where the disclosure of requested information will primarily benefit the general public. In such cases, the granting of a waiver is in the public interest. However, it must also be noted that federal agencies are obligated to safeguard the public treasury by refusing to provide search and duplication services at reduced or no cost under circumstances in which waivers are not provided for by the statute. Thus, all agency personnel should be aware of the dual policy objectives embodied in the statutory fee waiver provisions: (1) the fostering of disclosure of nonexempt agency records where it will primarily benefit the general public, and (2) the preservation of public funds where there will be insufficient public benefit derived from disclosure. See *Burriss v. Central Intelligence Agency*, 524 F. Supp. 448, 449 (M.D. Tenn. 1981). Fee waivers must not be granted simply because it is the course of least resistance but, rather, only where the statutory standard is met.

Decisions on fee waiver requests are matters committed to the exercise of sound agency discretion. See *Lybarger v. Cardwell*, 577 F.2d 764, 766 (1st Cir. 1978). Judicial application of this principle has resulted in the upholding of such agency determinations unless they are found to be "arbitrary and capricious." See, e.g., *Diamond v. Federal Bureau of Investigation*, 548 F. Supp. 1158, 1160 (S.D.N.Y. 1982); *Sellers v. Webster*, 2 GDS ¶81,243 (S.D. Ill. 1981). While this standard appropriately accommodates the expertise of each individual agency, there are five general factors which should be considered by any agency determining whether there is sufficient public benefit to be derived from disclosure to warrant the granting of a fee waiver. An analysis undertaken according to these five criteria will provide a sound and proper basis for all such determinations.

First, an agency must determine whether there is a genuine public interest in the subject matter of the documents for which a fee waiver is sought; absent such a public interest, there is no basis for granting a waiver. See *Newsome v. Federal Bureau of Investigation*, 1 GDS ¶79,142

(M.D.N.C. 1979). There is no universal formula by which the existence and extent of legitimate public interest in the subject matter of FOIA requests can be evaluated, so each agency must draw on its unique expertise in making these judgments about the subject matter of its own records. The "public" to be benefited need not be so broad as to encompass all citizens, but it must be distinct from the requester alone. An interest which is personal to the requester is insufficient, see, e.g., *Heimerle v. Department of Justice*, 3 GDS ¶82,261 (D.D.C. 1982), nor is it in the public interest to grant a waiver solely on the basis of a requester's indigency, see, e.g., *Rizzo v. Tyler*, 438 F. Supp. 895, 900-01 (S.D.N.Y. 1977).

The second factor which agencies must examine is the value to the public of the records themselves. A fee waiver is appropriate only if the disclosable contents of the records are in fact informative on the issue found to be of public interest. See, e.g., *Common Cause v. Internal Revenue Service*, 1 GDS ¶79,188 (D.D.C. 1979), *aff'd*, 646 F.2d 656 (D.C. Cir. 1981). No matter how interesting or vital the subject matter of a request, the public is benefited only if the information released meaningfully contributes to the public development or understanding of the subject. See, e.g., *Shaw v. Central Intelligence Agency*, 3 GDS ¶83,009 (D.D.C. 1982). Where the information that can be disclosed in response to a FOIA request is of only marginal value in informing the public, the public benefit derived from disclosure is diminished accordingly.

A third factor to be considered is whether the requested information is already available in the public domain. This factor is one that occasionally is overlooked. Agency personnel should ascertain whether material being considered for a fee waiver has been published or is otherwise available on the public record. Where requested information is already in the public domain, particularly in an agency's public reading room, the denial of a fee waiver is appropriate. See, e.g., *Blakey v. Department of Justice*, 549 F. Supp. 362, 364-65 (D.D.C. 1982).

Fourth, while the identity of a FOIA requester is usually not a proper factor for agencies to consider in granting or denying access, it should be considered in acting on a request for a fee waiver. See *Mahler v. United States Bureau of Prisons*, 2 GDS ¶82,031 (D.D.C. 1980). A requester's identity and qualifications—e.g., expertise in the subject area and ability and intention to disseminate the information to the public—should be evaluated. See, e.g., *Lykins v. Rose*, 3 GDS ¶82,486 (D.D.C. 1982). Specialized knowledge is often required to extract and effectively convey information to the public and requesters vary in their ability to do so. Therefore, requesters should specifically describe their qualifications, the nature of their research, and the purposes for which they intend to use the requested materials. See, e.g., *Blakey v. Department of Justice*, 549 F. Supp. at 364. Bare assertions by requesters that they are "researchers" or have "plans to author a book" are insufficient. *Burriss v. Central Intelligence Agency*, 524 F. Supp. at 449.

The final criterion requires an assessment, based upon information provided by the requester as well as information independently available to the agency, of any personal interest of the requester reasonably expected to be benefited

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(cont'd from page 3)

by disclosure. Such interests of course include any commercial interest, as well as the interests of first-party requesters in records pertaining to themselves and the interests of parties seeking records for use in litigation. See, e.g., *Dorta v. Federal Bureau of Investigation*, 3 GDS ¶82,349 (D.D.C. 1982). It is necessary to assess the magnitude of any such personal interest, and then to compare it with that of any discernible public benefit, because a fee waiver or reduction is appropriate under the statute only where the benefit to the general public is primary. See *Eudey v. Central Intelligence Agency*, 478 F. Supp. 1175, 1177 (D.D.C. 1979); *Rizzo v.*

Tyler, 438 F. Supp. at 900.

In conclusion, we again urge agencies to conduct thorough reviews of all fee waiver requests, on a case-by-case basis, and to grant waivers or reductions only in those cases in which the requester establishes that the disclosure of the information will primarily benefit the general public. Only then can the public be assured that government agencies are honoring the Congressional mandate to disclose records at reduced or no charge where their release primarily benefits the general public, while in other cases preventing "a drain upon agency appropriations that Congress never intended." *Blakey v. Department of Justice*, 549 F. Supp. at 365.

FOIA Counselor

Fee Waiver Procedural Considerations

The above fee waiver policy statement by Assistant Attorney General Rose sets forth the substantive criteria according to which agencies should make fee waiver decisions under the Freedom of Information Act. The development and application of a comprehensive fee waiver policy requires that attention be given to a number of related procedural considerations as well.

Fee Reductions—First and foremost, agencies must remember that the statutory fee waiver language speaks of the "waiver or reduction" of fees. 5 U.S.C. §552(a)(4)(A). Accordingly, an agency may in some instances determine that a complete fee waiver is not appropriate and may grant a reduction of fees instead. For example, a requested file may contain information which is only partly of interest and value to the general public. In such a case, rather than deny a fee waiver, the agency may grant a fee reduction in an amount commensurate to the valuable portion of the file. Agencies have broad discretion to grant percentage fee reductions where there is substantial, but not total, satisfaction of the first four substantive criteria. It should be remembered, however, that the fifth criterion is absolute: neither a waiver nor a reduction is appropriate unless the primary benefit from disclosure is to the general public (*i.e.* the public benefit must outweigh any personal benefit).

Multiple Requests—Because of the broad discretionary authority vested in agencies in this area, as well as the differences among records and requesters, a decision to waive or reduce fees for records pertaining to a particular subject area should not necessarily establish a precedent for future fee waiver requests. For example, an agency may grant a fee waiver for certain records, but if this waiver is followed by a request for other documents which the requester claims will be used for the same research, the initial determination that the research subject was of legitimate public interest does not mandate an automatic fee waiver for the follow-up request. Rather, the documents sought in subsequent requests must be subjected to the same scrutiny as the records for which a waiver was granted. A similar approach is appropriate when a requester seeks related records from several different agencies; although one agency may grant a fee waiver, the records of another agency may not necessarily be of sufficient character to warrant a waiver.

On occasion, requesters seek fee waivers for records which were disclosed in response to a prior request. However, the public benefit to be gained through release to a second requester may be significantly diminished by the fact that the records are already in the public domain as a result

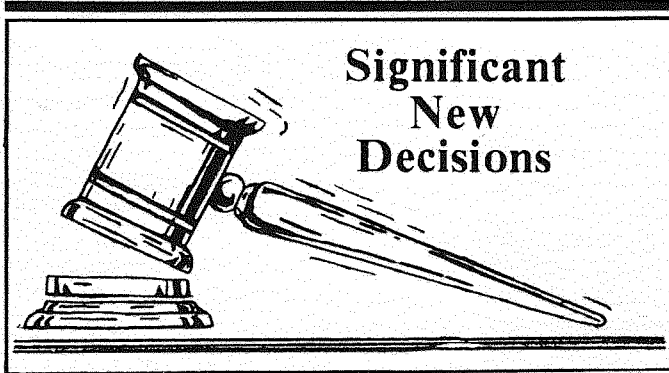
of the previous disclosure. Should the records pertain to a subject of significant and continuing interest, an agency may elect to make such records available in its public reading room. Similarly, where there are simultaneous requests for records of public interest, agencies have the option of making the records available to all requesters for inspection and copying rather than giving any one requester his own copy of the records at no cost.

Search Fees—When a waiver of search fees is sought, an agency should consider the request according to the five criteria outlined above. In many cases, however, an agency will be unable to determine the extent to which responsive records exist, or their substantive value, until a search is completed. Therefore, in evaluating applications for waivers of search fees, the likelihood that no disclosable records of value will be found—resulting in no benefit to the general public—should be factored into the determination.

Administrative Appeal—While the FOIA does not specifically provide for administrative appeals of denials of requests for fee waivers, many agencies, either by regulation or by practice, appropriately consider appeals of such actions. The standard of review on administrative appeal should be that of *de novo* review: the request should be re-examined in the light of criteria described above. When an agency at the initial level has denied a request for the waiver of fees, it usually does not commence the search for or processing of documents until it receives payment or a promise to pay. In such instances, however, a requester may make the required payment while still preserving his right to administratively appeal the fee waiver denial. If a requester ultimately prevails in his administrative appeal, fees previously paid will be reimbursed.

Administrative Record—When a fee waiver issue is brought to court, it is reviewed on the administrative record according to whether the agency's denial was "arbitrary and capricious." It is therefore imperative that agencies maintain complete administrative records of all full and partial fee waiver denials, which should include all relevant memoranda and correspondence. The primary focus of any judicial review will of course be the agency's final denial letter, which should state with specificity the reasons for the denial.

In sum, an agency which applies the substantive criteria of the Department of Justice's fee waiver policy statement, together with the procedural guidance highlighted here, can be confident that its overall fee waiver policy is in conformity both with the statute and with sound administrative practice.



Significant New Decisions

***Washington Post Co. v. Department of State*, 685 F.2d 698 (D.C. Cir. 1982).**

The Court of Appeals for the D.C. Circuit has held that Exemption 3 does not protect information pertaining to the Department of State's "Emergency Fund" expenditures for its diplomatic and consular services. It found that although specific statutes permit the Secretary of State to account to Congress for these disbursements in secret, they do not provide nondisclosure standards specific enough to satisfy Exemption 3's second proviso. To do so, the court of appeals held, "a statute must set forth more than a standard placing the entire burden of decisionmaking on an administrative officer, checked only by amorphous reference to the public interest." The decision also called into question the continuing vitality within the D.C. Circuit of the principle of *Zale Corp. v. IRS*, 481 F. Supp. 486 (D.D.C. 1979), which held that "Congressional action, and particularly post-FOIA legislation, may override FOIA, at least in limited circumstances." (Not long after *Washington Post* was decided, though, the Seventh Circuit expressly adopted the *Zale* rationale in *King v. IRS*, 688 F.2d 488 (7th Cir. 1982).)

Rather than ordering immediate disclosure, the D.C. Circuit remanded the case to permit the district court to consider other exemptions or to stay disclosure "in response to a strong showing of imminent and demonstrable danger to a compelling national interest" and to allow Congress an opportunity to bring the statutes within the reach of the exemption. Rehearing *en banc* was denied on Dec. 28 and the Solicitor General is considering seeking *certiorari*.

***Conoco Inc. v. Department of Justice*, 687 F.2d 724 (3d Cir. 1982).**

Adopting a "common sense" interpretation of the term "intra-agency," the Court of Appeals for the Third Circuit has held that unaddressed and uncirculated handwritten notes located in agency files qualify as "intra-agency" documents under Exemption 5. The Third Circuit followed the practical approach of *Ryan v. Department of Justice*, 617 F.2d 781 (D.C. Cir. 1980), in which the D.C. Circuit refused to construe "inter-agency" and "intra-agency" as "rigidly exclusive terms," but instead read them as including "any agency document that is part of the deliberative process." In this case, the Third Circuit reasoned that to require disclosure of handwritten notes merely because they lack the words "to file" would be to "rely more on form rather than substance." On an additional issue, the Third Circuit significantly held certain documents exempt under Exemption 7(D) on the basis of an agency affidavit that simply identified the documents and stated that the information contained in them was furnished by a confidential source. "To require more detail," it agreed with the lower court, "would greatly increase the possibility that the source and content of the confidential correspondence be revealed."

***Washington Post Co. v. Department of Health & Human Services*, 690 F.2d 252 (D.C. Cir. 1982).**

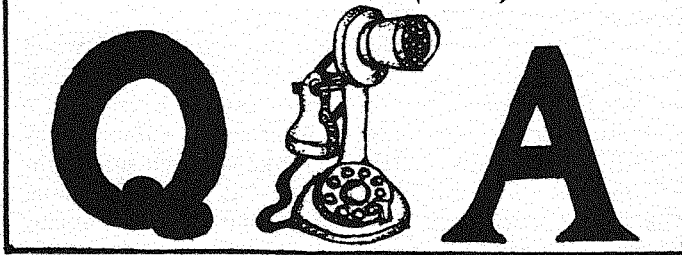
In a ruling contrary to the result and reasoning of two of its own precedents, a divided panel of the Court of Appeals for the D.C. Circuit has refused to extend Exemption 6 protection to personal financial information submitted by scientific consultants to HHS, finding that disclosure of the information would not result in a serious privacy invasion. The D.C. Circuit flatly declined to employ the balancing analysis used by it in *Association for Women in Science v. Califano*, 566 F.2d 339 (D.C. Cir. 1977), in which discovery of virtually identical information in a non-FOIA case was refused on privacy grounds. It did so by relying on the general disclosure philosophy of the Ethics in Government Act, which it considered sufficiently applicable to the information to preclude a finding that disclosure would constitute a "clearly unwarranted" invasion of personal privacy under Exemption 6. Moreover, it accorded only slight weight to the fact that the data was provided under a pledge of confidentiality which was ultimately found to have been limited in nature. Over a vigorous dissent, the court also declined to consider the potential public harm of disclosure, contrary to its pronouncement in *Fund for Constitutional Government v. National Archives & Records Service*, 656 F.2d 856, 865 n.22 (D.C. Cir. 1981). The case was remanded for a determination of the applicability of Exemption 4.

***Weber Aircraft Co. v. United States*, 688 F.2d 638 (9th Cir. 1982).**

By a two-to-one vote, a panel of the Court of Appeals for the Ninth Circuit has refused to hold that Exemption 5 incorporates the special civil discovery privilege for sensitive information generated during Air Force aircraft accident investigations. In so doing, the Ninth Circuit chose not to follow precedents established on the identical issue in both the Fifth and Eighth Circuits in the mid-1970's. Instead, it adopted a more narrow construction of Exemption 5 based upon its reading of the Supreme Court's subsequent decision in *Federal Open Market Committee v. Merrill*, 443 U.S. 340 (1979). Over a strong dissent, the Ninth Circuit held that Exemption 5 incorporates only those privileges "explicitly recognized" in its legislative history and that Exemption 5 therefore could not protect the data in question. Rehearing *en banc* was denied on Dec. 3 and the Solicitor General is considering seeking *certiorari*.

***Salisbury v. United States*, 690 F.2d 966 (D.C. Cir. 1982).**

In a unanimous decision, the Court of Appeals for the D.C. Circuit has upheld the National Security Agency's withholding under Exemption 1 of the contents of certain intercepted foreign messages regarding newspaperman Harrison E. Salisbury. Based upon a review of Exemption 1's legislative history, the D.C. Circuit emphasized that courts should defer to the "unique insights" of intelligence agencies in the national security area. Also expressly recognizing "the mosaic-like nature of intelligence gathering," the court of appeals held that NSA's prior release of similar information in a different case "does not mean that the agency must make [such a] disclosure in every case." It further held that no "meaningful portion" of the intercepted foreign messages could be segregated and released without revealing the monitoring of specific communications channels, which would thereby harm the national security. The court of appeals also endorsed the submission of *in camera* affidavits where particularly sensitive matters are involved and ruled that the exclusion of a plaintiff's counsel from such *in camera* proceedings is entirely appropriate.



What showing is necessary to satisfy the threshold requirement of Exemption 7?

In determining whether a document qualifies as an "investigatory record compiled for law enforcement purposes" under Exemption 7, the courts have generally distinguished between agencies with both law enforcement and administrative functions and those whose principal function is criminal law enforcement. An agency whose functions are "mixed" usually must show that its investigation involved the enforcement of a statute or regulation within its authority. *Church of Scientology v. Department of the Army*, 611 F.2d 738, 748 (9th Cir. 1980), and that the records were compiled for specific "adjudicative or enforcement purposes." *Rural Housing Alliance v. Department of Agriculture*, 498 F.2d 73, 80 (D.C. Cir. 1974).

Far less scrutiny is applied to the records of criminal law enforcement agencies. Indeed, some courts have upheld Exemption 7 claims asserted by the FBI even absent the showing of a connection between the organization or activities being investigated and specific violations of federal law, on the rationale that "investigatory records of law enforcement agencies are inherently compiled for law enforcement purposes." *Irons v. Bell*, 596 F.2d 468, 475 (1st Cir. 1979). See also *Kuehnert v. FBI*, 620 F.2d 662, 667 (8th Cir. 1980). The D.C. Circuit requires also that a "nexus" between the investigation and one of the agency's law enforcement duties be shown based on information sufficient to support at least "a colorable claim" of its rationality. *Pratt v. Webster*, 673 F.2d 408, 421 (D.C. Cir. 1982).

For a further discussion of these and related points, see the 1982 *Freedom of Information Case List* ("Short Guide to the Freedom of Information Act") at 206-07.

Are drafts absolutely protected under Exemption 5?

No, but they have been identified as a class of documents very likely to be found exempt. See, e.g., *Coastal States Gas Corp. v. Department of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980) (Exemption 5 "covers recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency"). To withhold draft documents under Exemption 5, an agency must be able to describe both the particular deliberative process involved and the "role played by the documents in that process." *Id.* at 868. See also *King v. IRS*, 684 F.2d 517, 519-20 (7th Cir. 1982). A careful description of these elements is essential because a court may not be able to discern them on its own. See *Arthur Andersen & Co. v. IRS*, 679 F.2d 254, 258 (D.C. Cir. 1982). It must also be shown that the draft is both predecisional (written before the adoption of a policy) and deliberative (reflective of the "give-and-take" of the consultative process). *Coastal States Gas Corp. v. Department of Energy*, 617 F.2d at 866.

In the recent case of *Russell v. Department of the Air Force*, 682 F.2d 1045 (D.C. Cir. 1982), it was argued that

Exemption 5 could not protect a particular draft report because it did not precede an actual decision. The D.C. Circuit decisively held, however, that the very finalization of the report was in and of itself an agency decision, to which the draft was surely "predecisional." *Id.* at 1049 n.1. Significantly, the D.C. Circuit distinguished its ruling in *Playboy Enterprises, Inc. v. Department of Justice*, 677 F.2d 931 (D.C. Cir. 1982), by noting that *Russell* involved a document preceding a final report, whereas *Playboy* involved a report in its final form. See 684 F.2d at 1047.

Predecisional status is lost, however, if the draft is utilized for policy guidance so that it becomes the "working law" of the agency. See *Arthur Andersen & Co. v. IRS*, 679 F.2d at 259; *Taxation With Representation Fund v. IRS*, 646 F.2d 666, 682 (D.C. Cir. 1981) (documents were indexed and consulted by IRS agents as sources of law); *Coastal States Gas Corp. v. Department of Energy*, 617 F.2d at 860 (draft document actually cited as precedent to the public). Merely retaining a draft in an agency file, however, will not render the deliberative process protection of Exemption 5 inapplicable. See, e.g., *King v. IRS*, 684 F.2d at 521.

Can a FOIA requester go to court before the completion of the administrative process?

Yes, under some circumstances. Although the general rule of administrative law is that all administrative remedies must be fully exhausted before one can sue, the FOIA provides an exception. Under 5 U.S.C. §552(a)(6)(C), a FOIA requester is "deemed to have exhausted his administrative remedies" when an agency fails to meet the statutory time limits. Thus, when an agency does not respond to a FOIA request within 10 working days, the requester can seek immediate judicial review. See, e.g., *Jenks v. United States Marshals Service*, 514 F. Supp. 1383, 1384-87 (S.D. Ohio 1981); *Information Acquisition Corp. v. Department of Justice*, 444 F. Supp. 458, 462 (D.D.C. 1978). This is so even where the agency responds before the filing of a suit. See *Martinez v. FBI*, 3 GDS ¶83,005 (D.D.C. 1982).

To what standards are agencies generally held on "adequacy of search" issues?

An agency is required to make reasonable efforts to locate documents responsive to a FOIA request, but it is not required to "reorganize its filing system in response to a request," nor to search every document in its possession. *Goland v. CIA*, 607 F.2d 367, 369-70 (D.C. Cir. 1979) (supplemental opinion), *cert. denied*, 445 U.S. 927 (1980). The test is one of overall reasonableness; nonconclusory affidavits explaining in reasonable detail the scope and method of the search conducted by the agency and submitted in good faith should suffice to demonstrate adequacy of search. See, e.g., *Perry v. Block*, 684 F.2d 121, 127 (D.C. Cir. 1982); *Founding Church of Scientology v. National Security Agency*, 610 F.2d 824, 836 (D.C. Cir. 1979). In cases in which it is clear that requested documents did at one time exist, courts usually require not only a detailed explanation of the search conducted but also a convincing explanation of why further searches would be unreasonably burdensome. See, e.g., *Weisberg v. Department of Justice*, 627 F.2d 365, 370-71 (D.C. Cir. 1980). However, where an agency's affidavit is sufficiently detailed, a requester's general assertions that more documents "must exist" should be no obstacle to dismissal. See, e.g., *Goland v. CIA*, 607 F.2d 339, 353-55 (D.C. Cir. 1978) (original opinion); *Ground Saucer Watch, Inc. v. CIA*, 1 GDS ¶80,128 (D.D.C. 1980), *aff'd*, 692 F.2d 770, 771-72 (D.C. Cir. 1981) (per curiam).

FOIA Focus: Rebecca H. Lima

When Congress enacted the 1974 amendments to the Freedom of Information Act, federal agencies saw a new era in public disclosure dawning and in many instances made conscious decisions to place the responsibility for burgeoning FOIA work within offices of public affairs. An example is the Department of Transportation, which in 1974 was still a relatively new federal agency, and where department-level FOIA work was made the responsibility of the Office of Public Affairs, a highly visible arm of the Office of the Secretary.

Rebecca H. Lima, now the Freedom of Information Officer for the Department of Transportation, was the administrative officer for DOT's Office of Public Affairs in the mid-1970's and it was on her desk that the FOIA responsibility landed.

"It worked out as a collateral duty for awhile," she says. "Then, well, it just took off. Publicity about the Act played a large part in the take-off. What happened here was that first I hired an assistant. Then I hired a second one It just seems to keep on. No matter what happens with the agency's programs, our work remains."

Rebecca Lima had come to the department in its early days in the late 1960's. Fresh from college, she held a series of jobs that led, in time, to her administrative position.

Today, Ms. Lima heads an office with an attorney, a FOIA staff officer, and a secretary. The office handles access requests directed to the Office of the Secretary or to DOT's Inspector General, handles all issue-related requests which cut across DOT component lines, and also develops FOIA policy positions and statements for the department as a whole.

Among Components

Among DOT's various components, responsibility for FOIA work is delegated to different offices. Public Affairs officers handle FOIA for the Urban Mass Transportation Administration and the Research and Special Programs Administration; management analysts do the FOIA work at the Federal Highway Administration, the Coast Guard, the St. Lawrence Seaway Development Corporation, and the Maritime Administration; legal



officers handle FOIA matters at the Federal Railroad Administration and at the National Highway Traffic Safety Administration; and at the FAA, FOIA work is decentralized and is handled by regional offices and by records officers at headquarters.

Ms. Lima says that DOT's decision to place FOIA responsibility within the Office of Public Affairs was made in part because there was recognition that "public affairs personnel have a greater sensitivity to the needs of the public and can better balance competing interests. Then, too, we wanted to give FOIA greater visibility. . . . I work for the director of public affairs and she works directly for the Secretary."

In an attempt to personalize her FOIA work, Ms. Lima refuses to assign numbers to requesters. "These are people, not numbers," she says. "And we don't use form letters. Sure, there is some standard language, but each requester receives an originally-composed letter written at terminals near or at our desks."

The Office of the Secretary has an automated office system that is used for communication and management purposes. It includes word processors in place of typewriters. "And these terminals are outfitted with several other special systems," Ms. Lima explains. "If I need to check someone's appointment calendar, I can do it right from

here. I don't have to call to find out if someone's free to see me. I can 'copy' my staff with material, send material around the building by electronic mail, send messages to others on the system. . . . This makes a lot of difference in our work."

Ms. Lima foresees that the system could be expanded to cover FOIA correspondence tracking, which could be valuable to an office such as hers which handles between 300 and 400 requests a year. Of these, few are routine. Many involve hot transportation issues, deregulation, law enforcement, audits, or safety questions. "And highway issues. We seem to always get highway issues at this level," she says.

Much of the office's work is in the FOIA Exemption 4 area. Ms. Lima says the first move that she or her staff makes in an Exemption 4 case is to get the records and the contract from the contracting office. "Then I pick up the phone and find out who can speak for the submitter. We inform submitters that there has been a FOIA request for their material and give them a period of time in which to respond to us in writing giving their reasons for not wanting material released.

"We get into some real fights with submitters and we have to overrule them sometimes. But we haven't been sued yet."

Ms. Lima observes that on this type of request, she can rarely meet the statutory 10-day time period. "This type of request is just too complex to get through in 10 days. I can't believe that Congress had these types of requests in mind when the 10-day deadline was established."

Revising Regulations

DOT currently is engaged in reviewing its FOIA regulations, which are the responsibility of Ms. Lima's office. Revisions will include establishment of Exemption 4 processing practices and, after some study of agency-wide and government-wide costs, Ms. Lima has proposed raising the duplication fee to 20 cents per page and establishing a tiered fee schedule for professional and clerical search time.

"These are nuts and bolts changes... the kind of things you need after seven years of operation," she says. "But overall it's important that our regulations—and particularly our fees—be more realistic."



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FOIA Training Opportunities

DEPARTMENT OF JUSTICE

Legal Education Institute: Information Law for Attorneys and Access Professionals, **Jan. 17-18, April 11-12, July 14-15, and Oct. 20-21**, 1875 Connecticut Ave., NW, Washington, D.C. Open to federal attorneys and access professionals. Contact: Susan Moss, (FTS) 673-6372. No charge.

TRAINING IN RECORDS MANAGEMENT

National Archives and Records Service: Files Improvements, **Jan. 24-25 and June 6-7**. Price: \$100. Records Disposition, **Jan. 26-27 and June 8-9**. Price: \$100. Introduction to Maintenance and Disposition of Federal Records, **April 4-8**. Price: \$175. Contact: Rita Wolfinger, (FTS) 724-1069.

OIP Publishes '82 Case List

The 1982 *Freedom of Information Case List*, published by the Office of Information and Privacy, is available through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. (Stock number: 027-000-011-72-1.)

Through new cost-saving measures, the price of the 236-page 1982 edition has been held to \$6.00.

The *Case List* this year contains more than 1,500 FOIA and Privacy Act access cases, including more than 500 newly-listed decisions, and also contains a completely new 40-page "Short Guide to the Freedom of Information Act."

OPM

Northeast Regional Training Center: Freedom of Information and Privacy Acts, **Jan. 27-28 and June 29-30**, Boston, MA. Contact: Daniel J. Buckley, (FTS) 223-5786. Price: \$175.

Mid-Atlantic Regional Training Center: Freedom of Information and Privacy Acts, **Jan. 20-21**, 600 Arch St., Philadelphia, PA, and **Feb. 23-24**, Federal Building, Granby Mall, Norfolk, VA. Contact: Andrew Jardin, (FTS) 597-4442. Price: \$120.

Southwest Regional Training Center: Freedom of Information and Privacy Acts, **Feb. 1-2**, Albuquerque, NM, **July 26-27**, Dallas, TX. Contact: Yvonne Lindholm, (FTS) 729-8241. Price: \$155.

Great Lakes Regional Training Center: Implementation of the Freedom of Information Act and the Privacy Act, **June 2-3**, 230 S. Dearborn St., Chicago, IL. Contact: Charles Stout, (FTS) 353-2927. Price: \$125.

Northwest Regional Training Center: Implementation of the Freedom of Information Act and the Privacy Act, **Feb. 3-4**, Portland, OR, **May 19-20**, Seattle, WA, **June 22-23**, Boise, ID, **July 11-12**, Anchorage, AK, **Aug. 29-30**, Portland, OR. Contact: John Malloy, (FTS) 399-7904. Price: \$140.

Supervisory and Communications Training Center: FOIA and PA Workshop for Administrative and Secretarial Personnel, **Feb. 9-10, May 18-19, and July 28-29**, Thomas Circle Training Center, 1121 Vermont Ave., NW. Contact: Gilbert Bobinchak, (FTS) 254-3211. Price: \$225.

Supervisory and Communications Training Center: Successful Implementation of FOIA/PA, **March 9-10, and June 21-22**, Thomas Circle Training Center, 1121 Vermont Ave., NW. Contact: Gilbert Bobinchak, (FTS) 254-3211. Price: \$225.

USDA GRADUATE SCHOOL

Implementation of FOIA and Privacy Act for FOI/PA Administrative Personnel, **Feb. 24-25, April 26-27, and June 7-8**, USDA Graduate School, Rm. 108, 600 Maryland Ave., SW, Washington, D.C. Contact: Debbie Mitchell Seldon, (FTS) 447-3247. Price: \$175.

Certiorari Granted In Grolier v. FTC

On November 8, the Supreme Court granted *certiorari* in *Grolier, Inc. v. Federal Trade Commission*, 671 F.2d 53 (D.C. Cir. 1982), in which the U.S. Court of Appeals for the D.C. Circuit limited the attorney work-product privilege under Exemption 5 to situations in which litigation related to that for which the record was prepared is pending or could potentially exist. (See *FOIA Update*, June 1982.)

The D.C. Circuit denied rehearing *en banc* by a five to four margin, with two judges not participating.

The Supreme Court is expected to hear oral argument in *Grolier* by late April and to decide the case before the end of its current Term.

THE WHITE HOUSE

WASHINGTON

February 2, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: FOIA Request

Herman A. Stuhl, Executive Director of the New York Institute of Legal Research, has addressed an FOIA request to the "Executive Office of the President," seeking documents concerning discussions between representatives of the United States and Ireland on any U.S. citizen later indicted during 1982. I recommend responding that some elements of the Executive Office of the President are subject to the Act and some are not, and that the Institute should contact directly those offices within the EOP which are subject to the Act. I have prepared a draft reply.

Attachment

THE WHITE HOUSE

WASHINGTON

February 2, 1983

Dear Mr. Stuhl:

I have received your letter of January 18, directed to the "Executive Office of the President" and seeking certain documents pursuant to the Freedom of Information Act.

The "Executive Office of the President" is a designation used to describe a group of separate offices or units which, in a number of respects, function independently of each other. Some of the offices or units within the Executive Office of the President are "agencies" within the meaning of the Freedom of Information Act, but others, particularly the White House Office, "whose sole function is to advise and assist the President," are not. Kissinger v. Reporters Committee for Freedom of the Press, 445 U.S. 136, 156 (1980).

Accordingly, I recommend that you contact directly those offices within the Executive Office of the President which are subject to the Act.

Sincerely,

Orig. signed by FFF

Fred F. Fielding
Counsel to the President

Mr. Herman A. Stuhl
New York Institute of Legal Research
14 East 60th Street
New York, New York 10022

FFF:JGR:aw 2/2/83

cc: FFFielding
✓JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

February 2, 1983

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Accordingly, I recommend that you contact directly those offices within the Executive Office of the President which are subject to the Act.

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. Herman A. Stuhl
New York Institute of Legal Research
14 East 60th Street
New York, New York 10022

FFF:JGR:aw 2/2/83

cc: FFFielding
JGRoberts
Subj.
Chron

NEW YORK INSTITUTE OF LEGAL RESEARCH

14 EAST 60TH STREET
NEW YORK, NEW YORK 10022
(212) 421-1800

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EXECUTIVE DIRECTOR
AND
CHAIRMAN OF THE BOARD

January 18th, 1983

121070

CW

Executive Office of the President
Freedom of Information Act Officer
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Gentlemen:

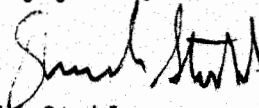
Pursuant to the Freedom of Information Act, 5 U.S.C. 522, we are hereby requesting access to any and all documentary material (of any description) concerning discussions had between representatives of the United States Government and of Ireland concerning any citizen of the United States who was thereafter indicted during 1982.

If there are any fees for searching for or copying of the records we have requested, please supply the records without informing us of the cost if the fees do not exceed \$100.00. If the fees exceed \$100.00, please inform us of the amount thereof before you fill this request.

If all or any part of this request is denied, please cite the specific exemption(s) upon which you rely in your refusal to release the information and further advise us of the appeal procedures available to us under the law.

We would appreciate your handling this request as quickly as possible and we look forward to hearing from you within ten (10) days, as provided by statute.

Very truly yours,



Herman A. Stuhl
For the Institute

HAS:srw

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

February 24, 1983

FOR: FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: FOIA Survey Conducted by
Texas Tech University Researchers

Dr. Dan Siminoski of Texas Tech has written asking that you fill out a questionnaire on your experience as an FOIA administrator. The 76-question survey asks for your views on the FOIA and problems that arise in administering it. I recommend a brief note to Siminoski explaining that, since the White House Office is not subject to the FOIA, we cannot properly be considered "FOIA administrators," and are not in a position to respond to his survey questions. I do not recommend simply filling out the "confidential" survey and returning it because the respondents are identified by number, and some of the questions are politically sensitive. I have drafted a proposed letter.

THE WHITE HOUSE

WASHINGTON

February 24, 1983

Dear Dr. Siminoski:

Thank you for your letter of February 8, 1983 and the accompanying "Survey of Freedom of Information Act Administrators." Please be advised that the White House Office, "whose sole function is to advise and assist the President," is not subject to the Freedom of Information Act. Kissinger v. Reporters Committee for Freedom of the Press, 445 U.S. 136, 156 (1980). Accordingly, we are not in a position to respond to your survey which concerns experience in administering the FOIA.

Thank you for writing, and best of luck with your important project. I am sorry that I could not be more responsive.

Sincerely,

Orig. signed by FFF

Fred F. Fielding
Counsel to the President

Dr. Dan Siminoski
Project Co-Director
Center for Public Service
Texas Tech University
Box 4290
Lubbock, Texas 79409

FFF:JGR:aw 2/24/83

cc: FFFielding
✓GRoberts
Subj.
Chron

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WASHINGTON

February 24, 1983

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Sincerely,

Fred F. Fielding
Counsel to the President

Dr. Dan Siminoski
Project Co-Director
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Texas Tech University
Box 4290
Lubbock, Texas 79409

FFF:JGR:aw 2/24/83

cc: FFFielding
JGRoberts
Subj.
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- O - OUTGOING
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Name of Correspondent: Dr. Dan Siminoski

MI Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: Survey of key FOIA officials througout the federal government
re: several amendments to the Freedom of Information Act
which may be reintroduced in Congress

ROUTE TO: Office/Agency (Staff Name)	ACTION Action Code	Tracking Date YY/MM/DD	DISPOSITION	
			Type of Response Code	Completion Date YY/MM/DD
<u>CW Holland</u>	ORIGINATOR	<u>83,02,16</u>		<u> / / </u>
<u>CWAT18</u>	Referral Note: <u>D</u>	<u>83,02,16</u>		<u>5 83,02,26</u>
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	Referral Note: _____	<u> / / </u>		<u> / / </u>

ACTION CODES:
 A - Appropriate Action
 C - Comment/Recommendation
 D - Draft Response
 F - Furnish Fact Sheet
 to be used as Enclosure

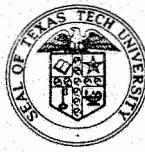
I - Info Copy Only/No Action Necessary
 R - Direct Reply w/Copy
 S - For Signature
 X - Interim Reply

DISPOSITION CODES:
 A - Answered C - Completed
 B - Non-Special Referral S - Suspended

FOR OUTGOING CORRESPONDENCE:
 Type of Response = Initials of Signer
 Code = "A"
 Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
 Send all routing updates to Central Reference (Room 75, OEOB).
 Always return completed correspondence record to Central Files.
 Refer questions about the correspondence tracking system to Central Reference, ext. 2590.



Texas Tech University

Center for Public Service
Research, Training and Service for Public Agencies in the Southwest

124554

February 8, 1983

Dear Sir:

Several amendments to the Freedom of Information Act (FOIA) considered by the Ninety-Seventh Congress may be re-introduced in Congress in the near future. These amendments may have a very significant impact on your agency's ability to implement the Act and the public's ability to access public documents. In order to insure that appropriate changes are made in the FOIA it is essential that the opinions of important FOIA actors be heard. The Center for Public Service at Texas Tech University is therefore conducting a survey of a small number of key FOIA officials throughout the federal government. You are one of these officials whose perceptions of the FOIA we are interested in surveying.

In requesting your assistance, we guarantee that your survey responses will be **STRICTLY CONFIDENTIAL**. No one in your agency or any other agency will ever see your individual survey responses.

We cannot overemphasize the importance of your returning a completed survey for the success of this project. The results of this research will ultimately be shared with relevant members of Congress and the Reagan administration in order to help them make decisions which will improve the implementation of the FOIA. Please complete the enclosed survey and drop it in the mail (the back cover of the survey is addressed and stamped). If you have any questions please feel free to contact me at the phone number below.

Thank you for your assistance.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dan Siminoski".

Dr. Dan Siminoski
Project Co-director

DS/es

Survey of

**Freedom of
Information Act
Administrators**

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Center for Public Service, Boston College University