Associated Press, FOIA request to DHS, January 5, 2010 (3 pages)

Sandweg, John

From:

Callahan, Mary Ellen Tuesday, January 05, 2010 6:22 PM

Sent:

To: Cc: Sandweg, John; Anderson, Audrey; Palmer, David

Callahan, Mary Ellen

Subject:

FW: Amended AP FOIA request of Dec. 21, 2009

Attachments:

FW: AP FOIA request of Dec. 21, 2009



FW: AP FOIA

request of Dec. 21...
ATTORNEY CLIENT COMMUNICATION

John, Audrey, and David:



Thanks, Mary Ellen

Mary Ellen Callahan, CIPP

Chief Privacy Officer

U.S. Department of Homeland Security

245 Murray Lane SW, Mail Stop 0655

Washington, DC 20528-0655







Website: www.dhs.gov/privacy

----Original Message----From: Holzerland, William

Sent: Tuesday, January 05, 2010 4:10 PM

To: Callahan, Mary Ellen

Subject: FW: Amended AP FOIA request of Dec. 21, 2009

MEC, below is the amended request from the AP received this afternoon. The original Thanks,

Bill

----Original Message----

From: prvs=614761b59=TBridis@ap.org [mailto:prvs=614761b59=TBridis@ap.org] On Behalf Of Bridis, Ted

Sent: Tuesday, January 05, 2010 2:04 PM

To: FOIA

Cc: Kaiser, Karen; Bridis, Ted

Subject: Amended AP FOIA request of Dec. 21, 2009

Jan. 5, 2010

FOIA The Privacy Office U.S. Department of Homeland Security 245 Murray Drive SW STOP-0550 Washington, DC 20528-0550 Telephone: 703-235-0790 Facsimile: 703-235-0443 Email: foia@dhs.gov

Dear Ms. or Sir,

Please consider this an amended request under provisions of the Freedom of Information Act and the Electronic Freedom of Information Act, 5 U.S.C § 552, and Department of Homeland Security regulation 6 C.F.R. § 5. This request supercedes the one that I made on Dec. 21,

I am seeking copies of all communication, including but not limited to e-mails and memos sent and received pertaining to Front Office oversight of FOIA operations at DHS from Jan. 1, 2009, to the present. Specifically, I am seeking copies of all communications directing DHS FOIA staff to amend the protocol of processing requests and involvement of the Front Office and staff members in the review, approval and formulation of FOIA responses. The records we are seeking include all such communications with Bill Hozerland, Vania Lockett, FOIA Chief Mary Ellen Callahan, Deputy Chief Katherine Papoi, counsel John Sandweg, Deputy Chief of Staff Amy Shlossman, Chief of Staff for Policy Noah Kroloff, Chief of Staff for Operations Jan Lesher, Chief of Staff for Management Directorate Chris Cummiskey, senior counsel Brian de Vallance and their staffs.

We are particularly interested in communications directing the FOIA office not to be responsive to particular requests.

We understand that exemption (b)(5) allows agencies to withhold inter-agency or intraagency memoranda or letters "which would not be available by law to a party other than an agency in litigation with the agency." However, discretionary disclosure is warranted in this case in light of the president's Jan. 21 memo on the Freedom of Information Act, which said, "The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears." It also is warranted in this case by the attorney general's FOIA guidelines of March 19; the president's memorandum on transparency and open government of Dec. 8; and FOIA guidance for executive agencies from the director of the Justice Department's Office of Information Policy, which state: "There is no doubt that records protected by Exemption 5 hold the greatest promise for increased discretionary releases under the Attorney General's guidelines" and that while discretionary releases are possible with a number of FOIA exemptions, discretionary releases "will be most applicable under Exemption 5." The OIP guidance said discretionary releases "will be fully consistent with the purpose of the FOIA to make available to the public records which reflect the operations and activities of the government. Records covered by the deliberative process privilege in particular have significant release potential... Documents protected by other Exemption 5 privileges can also be subject to discretionary disclosures." Additionally, the OIP guidance said that "in response to requests for records, agencies should view each request with a presumption of openness. They should strive to maximize the amount of records released and aim to release portions of records when full release is not possible. Agencies should not withhold records merely because an exemption legally applies."

Additionally, we note that the subject of this request - the department's responsiveness under the Freedom of Information Act - relates directly to what President Obama has described as "accountability through transparency." It would be curiously ironic for the department to deny a request under the Freedom of Information Act about how it is managing requests under the Freedom of Information Act.

Please consider this an expedited request under the FOIA and under DHS regulation 6 C.F.R. § 5.5 (d)(1)(ii) as this information is urgently required to inform the public about an actual or alleged federal government activity, namely its efforts to comply with the Freedom of Information Act, which President Obama has described as "the most prominent expression of a profound national commitment to ensuring an open government." The government's responsiveness to FOIA is being considered under the Open Government directive of Dec. 8, which set deadlines of as little as 45 days for compliance with certain provisions; by the imminent release of agency annual FOIA reports; and by the upcoming "Sunshine Week" on March 14-20, a national initiative to discuss the importance of open government and freedom of information. I certify that I am a full-time employee for The Associated Press, the world's largest news-gathering organization with more than 1 billion readers, listeners and viewers.

Please release any information pursuant to my requests as it is received and/or reviewed by your office, rather than waiting to send me all the material I have requested.

As I am making this request on behalf of the AP for use in reporting the news, no fees may be assessed for searching or reviewing documents sought by this request, and no duplication fees should be charged to the AP for the first 100 pages of material (see 5 U.S.C. S 552(a)(4)(A)(ii)(II); 6 C.F.R. S 5.11(c)(1)). AP hereby consents to pay duplication charges up to a total not to exceed \$250, noting that duplication fees are set at 10 cents per page after the first 100 pages under 6 C.F.R. § 5.11(c)(2) and (d)(3)(i). Please notify me in advance before incurring any duplication charges in excess of this

As you know, the Act permits you to reduce or waive the fees when the release of the information is considered as "primarily benefiting the public." I believe that this request fits that category and I therefore ask that you waive any fees.

To the extent that you affirm, in whole or in part, the denial of disclosure, we ask that the [Agency] provide us with a list describing with specificity the categories of documents that have been withheld and explaining the grounds for the withholding. See Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973).

If all or any part of this request is denied, please cite the specific exemption(s) that you think justifies your refusal to release the information and inform me of your agency's administrative appeal procedures available to me under the law.

I would appreciate your handling this request as quickly as possible, and I look forward

(Signed) Ted Bridis, news editor The Associated Press 1100 13th St. NW, Suite 700 Washington, DC 20005-4076

cc: Karen Kaiser, assistant general counsel The Associated Press 450 West 33rd St. New York, NY 10001

The information contained in this communication is intended for the use of the designated recipients named above. If the reader of this communication is not the intended recipient, you are hereby notified that you have received this communication in error, and that any review, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify The Associated Press immediately by telephone at +1-212-621-1898 and delete this e-mail. Thank you. [IP_US_DISC] msk dccc60c6d2c3a6438f0cf467d9a4938

DHS FOIA Directive February 9, 2005 (1 page)

To the DHS FOIA and Privacy Team:

At our last monthly meeting I mentioned that we would be asking you to assist the DHS Privacy Office in preparing a weekly report to the Secretary. We report weekly to the Secretary regarding the activities of the Privacy Office. As part of this report, the Privacy Office notifies the Secretary about recently completed and/or published systems of records notices (SORNs), Privacy Impact Assessments (PIAs), new FOIA requests received:during the preceding week and those requests closed out during the same time period. Additionally, this report advises the Secretary about PIAs and SORNs (or amendments thereto) that are in progress and pending FOIA media requests. The report is also the basis for developing the Department's weekly report to the White House.

To ensure accuracy and completeness of the 2005 reports to the Secretary, we ask that you report (via e-mail) to the Privacy Office by COB every Friday the following information:

- Existing SORNs that are in the process of being amended or have been identified as needing amendment.
- 2. New SORNs that are in the process of being drafted.
- 3. SORNs that have been published.
- 4. Existing PIAs that are in the process of being amended or have been identified as needing amendment (even if that process has not yet begun).
- 5. New PIAs that are in the process of being drafted.
- 6. PIAs that have been published.
- FOIA requests received, including date received, name of requester, requester organization if applicable, and subject of the request.
- 8. FOIA requests completed, including date original request received, date closed, name of requester, requester organization if applicable, subject of the request and disposition.
- FOIA Media requests that are open, including date received, name of requester, requester organization, and subject of the request.

Please submit your reports by COB every Friday to

and

For questions or additional information, you may contact them as well by email or by calling our office at (202) 772-9848.

Thank you for helping in this team effort.

Nuala O'Connor Kelly, Chief Privacy Officer

DHS, FOIA Section of the DHS Cabinet Report to the White House, August 4, 2006 (2 pages)

FOIA Section of the DHS Cabinet Report to the White House

Submission Guidelines

(updated August 4, 2006)

The Chief Privacy Officer memo, February 9, 2005, is the reference for the submission requirement. Every Friday, components must report significant FOIA activities for the past working week to the Privacy Office (P.O.). The Privacy Office FOIA leadership integrates the information into its weekly report to the White House Liaison. Negative reports are required.

Guidelines for submissions:

- 1. Submit items by e-mail within the text of the e-mail, no attachments.
- 2. Submit, with one exception (see 3(1) below), ONLY INCOMING FOIA requests and appeal information.
- 3. Select FOIA requests for submission if one of the following criteria are met:
 - a. The FOIA request relates to a Presidential or agency priority;
 - b. The FOIA requester or requested documents will garner media attention or is receiving media attention;
 - c. The FOIA request is for documents associated with meetings with prominent elected, business, and/or community leaders;
 - d. The FOIA request is for congressional correspondence;
 - e. The FOIA request is from a member of Congress;
 - f. The FOIA request is from a member of the media;
 - g. The FOIA request is from a member of an activist group, watchdog organization, special interest group, etc.;
 - h. The FOIA request is for documents associated with a controversial or sensitive subject;
 - i. The FOIA request is for documents associated with a senior official of the component;
 - j. A FOIA appeal if it meets one of the "a" through "i" criteria;
 - k. It is a POIA request and not a Privacy Act request;
- 4. Items listed above in 3 are suggestive and not exclusive exercise prudent judgment and submit items that reflect the spirit and intent of this report. If in doubt, please submit.
- 5. The Director, Departmental Disclosure and FOIA, may not include submission that leaves the Privacy Office.

Unless the Item 3 criteria is met, do not report the following (not an exhaustive or exclusive list):

- 1. requests for contracts or grants
- 2. requests for "A" files
- 3. requests for FOIA logs
- 4. requests for incident reports (including boating incidents, etc.)
- 5. requests for budget documents
- 6. requests for genealogy documents
- 7. 3rd party requests for personnel training or employee records

Format for submitting FOIA items to the weekly report:

- 1. Identify the requester's name, city and state
- 2. Identify the requester by affiliation (private citizen, organization membership, etc.)
- 3. Identify your component as the receiving component (in the case of transfers within DHS, the initial component receiving the request will report the item)
- 4. Provide a brief description of any lesser-known organization's mission (a Google search usually provides sufficient info)
- 5. Spell out all acronyms and use the component's full name
- 6. Provide a brief summary of the requested records

Sample format:

On April 10, Jonathan Tamez, an attorney from Phoenix, Arizona, requested from US-VISIT biometric and admission records on behalf of his client.

On April 11, Elliot Spagat, with *The Associated Press*, Washington, D.C. bureau, requested from Customs and Border Protection (CBP) copies of the data dictionary (i.e., table of contents) for the Enforcement Case Tracking System database, which maintains a record of Border Patrol apprehensions.

Mary Ellen Callahan, Chief Privacy Officer, Guidelines for Reporting on Significant FOIA Activity for Inclusion in the Cabinet Report to the White House, July 7, 2009 (3 pages)



Privacy Office, Mail Stop 0655

July 7, 2009

MEMORANDUM FOR:

All DHS FOIA Officers

FROM:

Mary Ellen Callahan

Chief FOIA Officer and Chief Privacy Officer

SUBJECT:

Guidelines for Reporting on Significant FOIA Activity for

Inclusion in the Cabinet Report to the White House

Every Thursday, components must report significant FOIA activities, including significant FOIA releases, for the past working week to the Privacy Office. The Privacy Office FOIA leadership integrates the information into its weekly report to the White House Liaison. Negative reports

Guidelines for submissions:

- 1. Submit items by e-mail within the text of the e-mail, not attachments.
- 2. Submit incoming FOIA requests and appeals, significant FOIA releases, and FOIA litigation information.
- 3. Select FOIA requests for submission if one of the following criteria are met:
 - a. The FOIA request relates to a Presidential or agency priority;
 - b. The FOIA requester or requested documents will garner media attention or is receiving media attention;
 - c. The FOIA request is for documents associated with meetings with prominent elected, business, and/or community leaders;
 - d. The FOIA request is for congressional correspondence;
 - e. The FOIA request is from a member of Congress;
 - f. The FOIA request is from a member of the media;
 - g. The FOIA request is from a member of an activist group, watchdog organization, special interest group, etc.;
 - h. The FOIA request is for documents associated with a controversial or sensitive subject:
 - i. The FOIA request is for documents associated with a senior official of the component:
 - j. A FOIA appeal if it meets one of the "a" through "i" criteria;
- 4. Items listed above in 3 are suggestive and not exclusive exercise prudent judgment and submit items that reflect the spirit and intent of this report. If in doubt, please submit.
- 5. Submissions found not to meet the above criteria may not be included in the final Cabinet

Report to the White House.

Unless the Item 3 criteria is met, do not report the following (not an exhaustive or exclusive list):

- 1. Requests for contracts or grants
- 2. Requests for "A" files
- 3. Requests for FOIA logs
- 4. Requests for incident reports (including boating incidents, etc.)
- 5. Requests for budget documents
- 6. Requests for genealogy documents
- 7. 3rd party requests for personnel training or employee records
- 8. Privacy Act requests

Format for submitting FOIA items to the weekly report:

- 1. Identify the requester's name, city and state (spell out name of state).
- 2. Identify the requester by affiliation (private citizen, organization membership, etc.).
- 3. Identify your component as the receiving component (in the case of transfers within DHS, the initial component receiving the request will report the item).
- 4. Provide a brief description of any lesser-known organization's mission.
- 5. The first time an acronym is used it should follow its full title and be in parentheses
- 6. Provide a brief summary of the requested records.
- 7. Italicize large publications, but use quotes for smaller units within publications. Do not abbreviate media names.
- 8. Do not use any bullets in your formatting.
- 9. Any elected official needs to include party, state affiliation, and district if applicable: Senator John Smith (R-NY), Representative John Smith (R, IN-01).
- 10. If the FOIA request has been assigned to sub-component(s), identify the subcomponent(s) to whom it has been assigned
- 11. If submitting FOIA items related to FOIA releases, please indicate the scope of the submission (number of released pages) as well as identifying any exemptions that may

Editing Reminders:

- 1. Spell out the month.
- 2. Numbers 10 and above and periods of time, distance, percentage, money, age, and measurement should be expressed in numerals, not words, except when a number begins
- 3. Spell out "percent."
- 4. Use comma before "and" in a series i.e. "Federal, State, and local officials."
- 5. Capitalize "Federal", "State" (when referring to a unit of government), official titles, "Nation" (when referring to the United States), and "Members of Congress."
- 6. Begin paragraph with "On (month) (date)". Do not add "th" or "st" after date.
- 7. If there is a continuous event, please type out "through" instead of adding a dash.

Sample format:

- I. Efficiency and Transparency Steps taken to increase transparency and make forms and processes used by the general public more user-friendly, particularly web-based and FOIA related items:
 - The Coast Guard recently announced plans to post on its web site all times, dates, and agendas of the Commandant's meetings with representatives of private industry within 24 hours.

II. FOIA requests

- On June 25, 2009, Emily Ramshaw of The Dallas Morning News in Austin, Texas, requested from Immigration and Customs Enforcement (ICE) the following, as they pertain to a provided list of Texas detention facilities: 1) All inspection/conditions reports since January 1, 2007; 2) The number of abuse, neglect or exploitation allegations at each of these facilities in each of the last two years and the percentage that were confirmed; and 3) The number of psychiatrists or psychologists currently employed at each of these facilities.
- On June 26, 2009, Kate Brumback, a reporter for the Associated Press, in Washington, D.C, requested from U.S. Immigration and Customs Enforcement (ICE) information related to a former detainee at the Stewart Detention Facility in Lumkin, Georgia, who passed away during a stay at a hospital in Columbus, Georgia, while in custody on March 11, 2009.
- On June 30, 2009, Timothy Kehrer, a representative from the Democratic Senatorial Campaign Committee in Washington, D.C., requested from United States Citizenship and Immigration Services (USCIS) all correspondence between USCIS and the following Senators: Michael Bennet (D-CO), Robert Bennett (R-UT), Barbara Boxer (D-CA), Jim Bunning (R-KY), Richard Burr (R-NC), Christopher Dodd (D-CT), Kirsten Gillibrand (D-NY), Blanche Lincoln (D-AK), Harry Reid (D-NV), Arlen Specter (D-PA), and David Vitter (R-LA).

III. FOIA releases

 On May 12, 2009, the Department of Homeland Security (DHS) Privacy Office released to *The Washington Times* a 97-page log of Congressional correspondence. Certain information withheld pursuant to FOIA Exemption 6.

IV. FOIA litigation

• DHS was named as a defendant in Smith v. U.S. in which Smith is challenging his arrest at a border crossing in El Paso as unconstitutional.

Please direct any questions regarding this requirement to Vania T. Lockett, Associate Director of Disclosure and FOIA, at 703-235-0790.

Mary Ellen Callahan, email to Jordan Grossman, Catherine Papoi, Julia Fox, December 15, 2009 (4 pages)

Kroloff, Noah

From:

Sandweg, John

Sent:

Tuesday, December 15, 2009 12:21 PM

To:

Shlossman, Amy; Kroloff, Noah

Subject: Re: ***FRONT OFFICE REVIEW REQUESTED***

Did we get the meeting scheduled with MEC? I have some concerns that contractors are frequently doing substantive reviews to determine what is to be realesed.

John R. Sandweg

Sent from my Blackberry Wireless Device.

From: Shlossman, Arny

To: Sandweg, John; Kroloff, Noah Sent: Tue Dec 15 11:58:35 2009

Subject: FW: ***FRONT OFFICE REVIEW REQUESTED***

From: Shlossman, Arny

Sent: Tuesday, December 15, 2009 11:57 AM

To: Callahan, Mary Ellen

Subject: RE: ***FRONT OFFICE REVIEW REQUESTED***

We should talk about this further when we meet, but part of the timing issue in this review process is my staff ends up making edits to address basic typos in these response letters. Look at the recipient address in the attached- the name of the organization is wrong and the city is misspelled.

From: Grossman, Jordan

Sent: Tuesday, December 15, 2009 11:47 AM

To: Shlossman, Amy

Subject: FW: ***FRONT OFFICE REVIEW REQUESTED***

From: Callahan, Mary Ellen [mailto]

Sent: Tuesday, December 15, 2009 11:27 AM To: Grossman, Jordan; Papoi, Catherine; Fox, Julia

Cc: Cailahan, Mary Ellen

Subject: Re: ***FRONT OFFICE REVIEW REQUESTED***

Please expedite. And to be clear, this is a review, not an approval. Let's make sure we use the proper term.

Mary Ellen Callahan
Chief Privacy Officer
Department of Homeland Security
World

Cell

From: Grossman, Jordan

To: Papoi, Catherine 🐗

Cc: Callahan, Mary Ellen

Sent: Tue Dec 15 11:12:13 2009

Subject: Re: ***FRONT OFFICE REVIEW REQUESTED***

No - we are reviewing today.

From: Papoi, Catherine

To: Grossman, Jordan (Catherine); Papoi, Catherine

>; Fox, Julia

Cc: Callahan, Mary Elien

Sent: Tue Dec 15 11:08:08 2009

Subject: RE: ***FRONT OFFICE REVIEW REQUESTED***

is the release approved by the front office?

Catherine Papoi, J.D., CIPP/G
Deputy Chief FOIA Officer
Director, Departmental Disclosure & FOIA
U.S. Department of Homeland Security

Washington, D.C. 20528

Phone Fax: 703.235.0443

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P: Fax

From: Grossman, Jordan [mailto

Sent: Tuesday, December 15, 2009 11:06 AM To: Papoi, Catherine; Grossman, Jordan; Fox, Julia

Cc: Callahan, Mary Ellen

Subject: Re: ***FRONT OFFICE REVIEW REQUESTED***

This is my fault - I was out of the office until this morning.

From: Papoi, Catherine

To: Grossman, Jordan

>; Fox, Julia Callahan, Mary Ellen

Cc: Papoi, Catherine

Sent: Tue Dec 15 11:02:14 2009

Subject: RE: ***FRONT OFFICE REVIEW REQUESTED***

Julia and Jordan,

Anything on the below response? You review determination was due yesterday. We need to make sure that we flip these ASAP so we can eliminate any lag in getting the responses to the requesters. Under the Statute we have 20 business days to get the response to the requester and in this case, yesterday was the 20th day. Under the Statute, the requester now has the right to allege constructive denial and take us to court. Please advise

soonest. Thank you.

Thanks,

Catherine Papoi, J.D., CiPP/G Deputy Chief FOIA Officer Director, Departmental Disclosure & FOIA U.S. Department of Homeland Security Washington, D.C. 20528

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From: Papoi, Catherine [maile

Sent: Wednesday, December 09, 2009 2:04 PM

To: Grossman, Jordan; Fox, Julia

Cc: Papoi, Catherine

Subject: ***FRONT OFFICE REVIEW REQUESTED***

Jordan and Julia.

OIG forwarded the attached proposed response for your review. Pursuant to your September 30, 2009 email, your office will review the release and provide a response to my office within three days of receipt. Please let me know as soon as you have finalized your review. Thank you!

C

Catherine Papoi, J.D., CIPP/G

Deputy Chief FOIA Officer

Director, Departmental Disclosure & FOIA

U.S. Department of Homeland Security

Washington, D.C. 20528

Phone: Fax: 703.235.0443

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have received this in error, please reply immediately to the sender and delete this message. Thank you.

From: Gramian, Nikki [mailto

Sent: Wednesday, December 09, 2009 1:37 PM

To: Papoi, Catherine Cc: Gallo, Katherine

Subject: (OIG FOIA filed

Good Afternoon Ms. Papoi:

Attached is OIG's response in the above-captioned FOIA request. Please let us know when we can mail the attached response. Thanks so much!

Response.pdf>>

Nikki Gramian

DHS/Office of Inspector General

Office of Counsel

Catherine Papoi, email to Jordan Grossman and Julia Fox, December 15, 2009 (1 page)

This is my fault - I was out of the office until this morning.

From: Papoi, Catherine

To: Grossman, Jordan

Fox, Julia (Callahan, Mary Eller

Cc: Papoi, Catherine

Sent: Tue Dec 15 11:02:14 2009

Subject: RE: ***FRONT OFFICE REVIEW REQUESTED***

Julia and Jordan.

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Thanks.

C

Catherine Papoi, J.D., CIPP/G
Deputy Chief FOIA Officer
Director, Departmental Disclosure & FOIA
U.S. Department of Homeland Security
Washington, D.C. 20528

Phone: 703.235.0790/Fax: 703.235.0443

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From: Papoi, Catherine [mailto

Sent: Wednesday, December 09, 2009 2:04 PM

To: Grossman, Jordan; Fox, Julia

Cc: Papoi, Catherine

Subject: ***FRONT OFFICE REVIEW REQUESTED***

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C

Catherine Papoi, J.D., CIPP/G

Deputy Chief FOIA Officer

Director, Departmental Disclosure & FOIA