



Transactional Records Access Clearinghouse  
Syracuse University

May 3, 2010

Freedom of Information Act Appeal  
Disclosure Services  
Department of the Treasury  
Washington, D.C. 20220

RE: FOIA appeal of April 8, 2010 partial denial of our June 10, 2008 FOIA request for FOIA database records (2008-06-086)

Dear Appeals Officer:

This is an appeal of the April 8, 2010 response by the Treasury Department's Office of Disclosure Services to the FOIA request we submitted nearly two years ago for basic facts concerning the discharge of the agency's responsibilities under the Freedom of Information Act (FOIA). As you know, the FOIA law lies at the heart of ensuring government transparency. Yet the office charged with acting on the Treasury Secretary's behalf to ensure openness has ignored these same legal requirements when it comes to providing records sought about its own practices.

Disclosure Director Hugh Gilmore openly acknowledged in discussing the office's handling of this request with us that they had no intention of complying with even the most basic legal requirements that govern handling of any FOIA request under the law. This core requirement is that you must provide the requested information or explain why it is being withheld; you are not allowed to secretly withhold government records.

Here are the specific facts underlying this appeal:

In a letter dated June 10, 2008 we requested copies of (A1-6) documentation describing the Treasury Department's FOIA database tracking system, (B1) copies of all records tracking the receipt, processing, and outcome of FOIA requests, and (B2) raw statistical data regarding the processing of FOIA receipts. A copy of this letter is attached.

In a letter dated April 8, 2010 but not delivered to us until April 15, 2010, signed by Hugh Gilmore, Director of Disclosure Services, the agency provided a final response to this request, releasing some limited but also heavily redacted records. A copy of this response is also attached, along with a representative sample of pages from the records we received.

We appeal the unlawful withholding of the information we requested and ask for your prompt review and release of all data and documents. In considering our appeal, we wish to highlight the following deficiencies:

**(1) Failure to address our request for Category (A1-6) documentation records.** Our request itemized six specific classes of documentation we were requesting describing the FOIA database and tracking system. We also spoke by phone to Hugh Gilmore, Director of Disclosure Services, offering

our assistance should he have any questions regarding the nature of these records. However, Director Gilmore expressed little interest in addressing this portion of our request. No records were provided in response to Category A of our request, and no explanation was provided for the failure to provide this information. Yet these are basic categories of records that generally exist for any database system, and as public records are required to be provided under the FOIA law.

**(2) Failure to address our request for Category (B2) raw statistical records.** There was also no response to our specific request for "All raw statistical data used, *or to be used*, in preparing agency FOIA performance reports as provided for under Section 8(c) of the 2007 OPEN Government Act." No records were provided, nor was any explanation provided for their absence. It is normal for an agency's disclosure office to prepare statistics on its workload on a periodic basis -- for example, monthly or quarterly -- to monitor progress in meeting performance goals and assessing how its performance shapes up against the indicators needed for its annual FOIA report. Such factual information are public records and by law are required to be provided.

**(3) Gross omissions in the Category (B1) database records provided.** Paper printouts were provided of 14,414 database records. However, only the following ten fields were included in the printouts:

1. "FName" -- first name
2. "MI" -- middle initial
3. "LName" -- last name
4. "Subtitle" -- for example, Esq
5. "Org" -- organization
6. "StreetAddr1" -- first line of street address
7. "Str" -- presumably second line of street address
8. "City" -- city
9. "State" -- state
10. "PostalCode" -- for example, zip code, or zip code+ 4

No other information was provided, and no explanation was provided as to why the information was limited to these fields when our request had sought all fields in the database. Further, no information was provided to indicate that these 14,414 records constituted all records contained in the database. If information is withheld, the requestor must be told just what is being withheld and where physically feasible redaction markings must be placed in the record where such withheld materials appeared. In addition, the exemption being claimed for each distinctive portion of the record being redacted must be provided.

Further, as the attached sample pages show, entries in cells were arbitrarily cut off because inadequate space was allowed for the length of individual entries. See, for example, records 6, 24, ("Org"), 4, 14, ("Str"). The method used for redactions also sometimes covered portions of the information in entries that were *not* supposed to be redacted making entries illegible. See, for example, entries for city, state and zip on record 24. This resulted in the withholding of nonexempt information. (See later related discussion of failure to provide records in electronic formats.)

To make sure that the shipment we received was complete, Long phoned and spoke with Director Gilmore. In this April 20, 2010 conversation he confirmed that the small box of paper records contained all the information that would be provided, that there were no electronic records included, and that as far as he was concerned the shipment was complete. He did confirm that their database did have date fields such as the date the request was received, but when Long told him this was not



included in the records we received he still told her that the letter we received constituted their final response on our request. Director Gilmore's actions are a clear violation of law. *The law mandates that no secret withholding is permitted. Yet this is exactly what the agency admitted doing in withholding the dates from these records.*

**(4) Overly broad redactions under asserted (b)(6) claim.** A large number of the records were redacted in their entirety. The response provided little details why these particular redactions were made, and why the entire record was always redacted. Director Gilmore's letter simply stated that "Exemption 6 has been applied to individual's names and addresses ... because the information would constitute a clearly unwarranted invasion of personal privacy, if disclosed." No explanation was provided as to why release of these particular names constituted a clearly unwarranted invasion of personal privacy while other names did not. FOIA places the burden of justifying its withholding on the agency. The letter was deficient in meeting this standard.

Further, FOIA requires that all reasonably segregable portions of nonexempt material must be provided. The agency did not follow this clear disclosure requirement. This is because the explanation did not specify why each different class of information – for example, state, city and the postal code – met the legal standard. No violation of privacy occurs when the city, state, or first five digits of the zip code are released to tell from which parts of the country FOIA requests come from. Once the name is redacted, exemption (b)(6) cannot be used to withhold information which does not directly or indirectly allow identification of a particular individual. Factual data that is anonymous in nature must be released.

**(5) Electronic copies.** Our request specified:

"To the extent that any of these requested records exist in electronic form, we request that they be provided in digital form. We further ask to be consulted in advance on the specific format used in making these electronic copies, and also ask under FOIA for copies of all programs and scripts used in making all such copies."

No electronic copies were provided; nor were any written explanations provided for their absence. Further, no copies of any programs and scripts used in making copies of the fields and records extracted from the database from which the paper printout was derived were provided.

The failure to provide records in the format requested by the requestor is a violation of the law unless the agency can affirmatively establish that it was not reasonably possible to comply. This the agency has not done. We therefore again ask that the requested electronic copies be provided, that we be consulted on their format, and that all programs and scripts used in making these copies also be provided us.

In addition, the official Treasury Department Disclosure Services instructions to staff on preparing redacted electronic copies violate the clear requirements of EFOIA. The Freedom of Information Handbook, Department of the Treasury Disclosure Services dated December 2005, at 30 (URL current as of May 1, 2010 at: <http://treasury.gov/foia/reading-room/handbook.pdf>), contains the following required procedure: "First, print a copy then scan the records," before making redacted electronic records public.

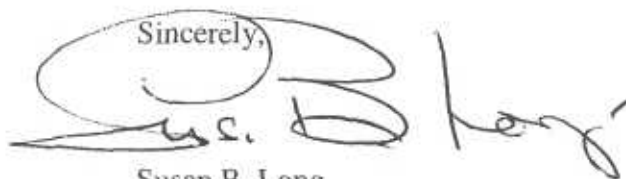
Printing a copy and then scanning it back into electronic form replaces characters and the structure of data fields with a mere picture. Much of the value of electronic records is due to the fact that text and

numbers may be reliably machine-searched, and that tabular entries can be machine addressed by specified row and column. Requiring disclosure staff to print out a copy and scan it back in destroys these vital aspects of the recorded information. In this day and age, such a procedure to redact electronic records is neither necessary nor legal.

We accordingly ask that in addition to providing the specific requested records in electronic form to us, that the above referenced section of the Freedom of Information Handbook be updated to instruct staff on the proper procedures for preparing redacted electronic copies consistent with EFOIA requirements to ensure that the essential information encoded within their original digital nature is preserved during the redaction process.

In closing we ask for your prompt review and release of all originally requested records. Please don't hesitate to contact us if we can assist your inquiries in any way.

Sincerely,



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Enclosures:

1. TRAC June 10, 2008 request letter
2. Treasury response letter dated April 8, 2010
3. Sample Pages Provided with response letter