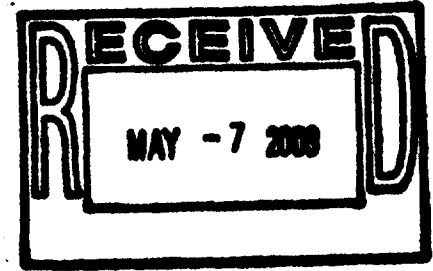


FREEDOM OF INFORMATION ACT REQUEST

May 5, 2003

By Facsimile/ Hard Copy to follow via first class mail

Sue Ellen Sloca
MS-1540, MIB
1849 C Street, NW
Washington, DC 20240
Fax - 202/219-2374



Dear Ms. Sloca:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and implementing regulations of the U.S. Department of Interior, 43 C.F.R. §2, Subparts A & B, Friends of the Earth ("FoE") hereby requests copies of the following records and information:

1. Any and all information and records, whether printed or digital, regarding the daily agendas, including information about official schedule of meetings, agenda for meetings, participants at meetings, official minutes of meetings, and topics discussed at meetings for the following agency officials: Holly Hopkins, Bennett Raley, Jason Peltier, Matthew J. McKeown, H. Spofford Canfield, Lynn Scarlett, Rejane "Johnnie" Burton, Robert Comer, Fred Ferguson, David Smith, Harold Craig Manson, Paul Hoffman, Theresa Davies, Matthew Eames, Lawrence J. Jensen, Mark A. Limbaugh, Roderick E. Walston, Julie Macdonald, and Chad Calvert. Please provide the requested information from the date the agency official started duty with the Department in their respective capacity to the present. In the event that the agency official was employed by the Department prior to January 2001, please provide the requested information from January 2001 to the present.
2. A list of all political appointees, consultants, schedule c and non career senior executive service employees currently employed by the Department of the Interior.

There is no basis for claiming that the records requested herein are exempt from immediate disclosure under the FOIA. Each of these records is described by 5 U.S.C. § 552(a)(2) as information an agency is required to make available to the public. "Daily agendas are 'agency records' within the meaning of FOIA." The Bureau of National Affairs, Inc. v. U.S. Dept. of Justice, 742 F.2d 1484, 1495 (D.C. Cir. 1984).

If, however, it is your position that any portion of the requested records is exempt from disclosure, FoE requests that you provide it with an index of those documents as required under Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974). As you are aware, a Vaughn index must describe each document claimed as exempt with sufficient specificity "to permit a reasoned judgment as to whether the material is actually exempt under FOIA." Founding Church of Scientology v. Bell, 603 F.2d 945, 949 (D.C. Cir. 1979). Moreover, the Vaughn index must "describe each document or portion thereof withheld, and for each withholding it must discuss the consequences of supplying the sought-after information." King v. U.S. Dep't of Justice, 830 F.2d 210, 223-24 (D.C. Cir. 1987) (emphasis added). Further, "the withholding agency must supply 'a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.'" ¹ Id. at 224 (citing Mead Data Central v. U.S. Dept. of the Air Force, 566 F.2d 242, 251 (D.C. Cir. 1977)).

In the event that some portions of the requested documents are properly exempt from disclosure, please disclose any reasonably segregable nonexempt portions of the requested documents. See 5 U.S.C. § 552(b) ("Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt . . ."); see also Schiller v. National Labor Relations Board, 964 F.2d 1205, 1209 (D.C. Cir. 1992); 32 C.F.R. §518.22. If it is your position that a document contains non-exempt segments but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt and how the material is dispersed throughout the document. Mead Data Central, 566 F.2d at 261. Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a Vaughn index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

In his October 12, 2001, MEMORANDUM FOR HEADS OF DEPARTMENTS AND AGENCIES ON THE FREEDOM OF INFORMATION ACT, the U.S. Attorney General indicated that the Justice Department will only defend decision not to disclose documents where a "sound legal basis" for non-disclosure exists.

The Friends of the Earth further requests that DOI waive all charges for search and review associated with this request, as provided by 5 U.S.C. § 552(a)(4)(A)(iii) and Department of Interior regulations. FoE is a national environmental organization, with an office in dedicated to preserving the health and diversity of the planet and empowering citizens to have an influential voice in decisions affecting their environment. The subject matter of the requested records concerns the operations or

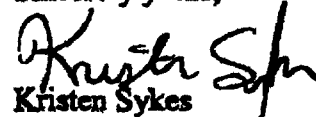
¹ Vaughn indices are appropriate in administrative actions such as this FOIA request. As the Court of Appeals for this Circuit has noted, "the objective of the Vaughn requirements, to permit the requesting party to present its case effectively, is equally applicable to proceedings within the agency." Mead Data Central, Inc. v. U.S. Dept. of the Air Force, 566 F.2d 242 (D.C. Cir. 1977), aff'd 575 F.2d 932 (D.C. Cir. 1978).

activities of the federal government and is likely to contribute to a greater public understanding of federal government operations or activities. Specifically, these records are likely to contribute to the public's understanding of the DOI's actions. FoE is a registered §501(C)(3) Corporation, and the release of the requested information is not in FoE's commercial interest. FoE will analyze the information responsive to this request, and will likely share its analysis with its members and the public either through memorandums or reports, often made available on its Internet site: www.foe.org.

Please respond to this request in writing within twenty (20) days as required under 5 U.S.C. § 552(a)(6)(A)(i). If all of the requested documents are not available within that time period, FoE requests that you provide it with all requested documents or portions of documents which are available within that time period. If you have any questions about this request or foresee problems in fully releasing the requested records within the twenty day period, please call me within that time period.

Thank you for your prompt attention to this matter.

Sincerely yours,


Kristen Sykes
Friends of the Earth
202-783-7400 x100

RESEARCH

United States Court of Appeals,
District of Columbia Circuit.
The BUREAU OF NATIONAL AFFAIRS, INC., Appellant
v.
UNITED STATES DEPARTMENT OF JUSTICE, et al.
ENVIRONMENTAL DEFENSE FUND
v.
OFFICE OF MANAGEMENT AND BUDGET, Appellant.
Nos. 83-1138, 83-1685.
Argued Nov. 22, 1983.
Decided Aug. 31, 1984.
As Amended Sept. 25, 1984.
742 F.2d 1484

----- Excerpt from page 742 F.2d 1484, 239 U.S.App.D.C. 331

Daily agendas indicating government official's schedule, created by official's secretary and circulated to certain members of official's staff, were "agency records" within the meaning of the Freedom of Information Act, since purpose of agendas was to inform official's staff of his availability and facilitated the day-to-day operations of the agency, and agency could segregate out any notations that referred to purely personal matters. §5 U.S.C.A. 552(a)(4)(B).

Appointment calendars for government official, which gave some indication of the topic of a particular meeting as well as the location and identity of the participants and to which official's immediate staff had access to determine his availability, nevertheless were not "agency records" within the meaning of the Freedom of Information Act, since the calendars were created for the personal convenience of the official to organize both personal and business appointments, government agency did not require official to maintain such calendars, and there was no showing that agency itself exercised control over or possession of the calendars. §5 U.S.C.A. 552(a)(4)(B).

Inclusion of personal information does not, by itself, take material outside the ambit of the Freedom of Information Act, for personal information can be redacted from copies of documents disclosed to an Act requester; but the presence of such information may be relevant in determining the author's intended use of the documents at the time he or she created them. §5 U.S.C.A. 552(a)(4)(B).

b. Daily agendas

Mr. Baxter's secretary at DOJ created daily agendas indicating Mr. Baxter's schedule. She circulated these agendas to certain members of Mr. Baxter's staff. Although the staff threw out the agendas regularly, Mr. Baxter's secretary maintained copies in her desk, apparently in the absence of any instructions to the contrary. The purpose of the agendas

was to inform the staff of Mr. Baxter's availability; they facilitated the day-to-day operations of the Antitrust Division.

[11] Unlike the telephone slips, the daily agendas are "agency records" within the meaning of FOIA. They were created for the express purpose of facilitating the daily activities of the Antitrust Division. Even though the agendas reflected personal appointments, they were circulated to the staff for a business purpose. The agency can segregate out any notations that refer to purely personal matters. The daily agendas, unlike the appointment calendars, were not created for Mr. Baxter's personal convenience, but for the convenience of his staff in their conduct of official business.

c. Appointment calendars

The appointment calendars are the most difficult to categorize. The purpose of the calendars was to facilitate the individuals' performance of their official duties and to organize both their business and personal activities. Unlike the telephone slips, the calendars often gave some indication of the topic of a particular meeting, as well as the location and identity of the participants. Furthermore, it would be much easier to segregate the personal appointments from the business appointments than it would be with the case of a telephone message. In the case of Mr. Baxter and at least one OMB official, immediate staff had access to *1496 **343 the calendars to determine the officials' availability. In that sense, the calendars were similar to the daily agendas.

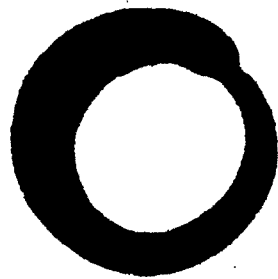
[12] We conclude, however, that these particular appointment calendars are not "agency records." They are distinguishable from the daily agendas in two important respects. First, they were not distributed to other employees, but were retained solely for the convenience of the individual officials. Second, the daily agendas were created by Mr. Baxter's secretary for the express purpose of informing other staff of Mr. Baxter's whereabouts during the course of a business day so that they could determine Mr. Baxter's availability for meetings. Thus the daily agendas were created for the purpose of conducting agency business. In contrast, the appointment calendars were created for the personal convenience of individual officials so that they could organize both their personal and business appointments.

[13] The inclusion of personal items in the appointment calendars buttresses the conclusion that the calendars were created for the personal convenience of the individual employees, not for an official agency purpose. The inclusion of personal information does not, by itself, take material outside the ambit of FOIA, for personal information can be redacted from the copies of documents disclosed to a FOIA requester. But the presence of such information may be relevant in determining the author's intended use of the documents at the time he or she created them. Here, the appointment calendars were created for the personal convenience of individual officials in organizing both their personal and business appointments. Neither OMB nor DOJ required its employees to maintain such calendars. FOIA's reach does not extend to such personalized documents absent some showing that the agency itself exercised control over or possession of the documents. In contrast, the daily agendas were created and distributed to staff solely for their use in determining Mr. Baxter's availability for meetings. The personal information contained in the agendas is identical to that found in Mr. Baxter's appointment calendars and may be redacted from the copies made available to BNA.

We hold that, with the exception of the daily agendas that were distributed within the Antitrust Division, the appointment materials requested by EDF and BNA are not

"agency records" within the meaning of FOIA. Our conclusion might be different if the agencies had exercised any control over the materials or if the documents had been created solely for the purpose of conducting official agency business. On the facts presented here, however, these documents are not "agency records."
742 F.2d 1484

----- Excerpt from pages 742 F.2d 1484, *1495, 239 U.S.App.D.C. 331, **342-742
F.2d 1484, *1496, 239 U.S.App.D.C. 331, **343



Friends of the Earth

Fax Cover Sheet

Date: 5/5/03 Pages (Including Cover Sheet) 8

To: Sue Ellen Sloca

Fax: 202-219-2374

From: Kristen Sykes

Comments: Please find a FOIA request to follow.

Thank You.

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