

Stephen Raher, *pro se*
P.O. Box 15189
Portland, OR 97293-5189
(503) 235-8446, phone
(719) 457-5916, fax

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

CV '09 - 0526 - ST

STEPHEN RAHER,
Plaintiff,

Case No. _____

v.

FEDERAL BUREAU OF PRISONS,
Defendant.

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF
Freedom of Information Act (5 U.S.C. § 552)**

Plaintiff, Stephen Raher alleges as follows:

INTRODUCTORY STATEMENT

1. Plaintiff alleges violations of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, by Defendant Federal Bureau of Prisons ("BOP"). Defendant has refused to disclose responsive records concerning certain phases of the BOP's series of "Criminal Alien Requirements" and has improperly denied Plaintiff's request for a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii).

2. Beginning in 1999, the BOP has issued periodic solicitations, known as "Criminal Alien Requirements" ("CARs"), seeking contractor-owned and -operated detention facilities to house criminal aliens.

3. To date the BOP has issued eleven solicitations in the CAR series. Upon information and belief, at least nine contracts have been awarded in connection with CAR

solicitations, accounting for detention capacity in excess of twenty-two thousand beds and total consideration in excess of \$1.1 billion.

4. BOP has not released to the public information concerning the terms of contracting for facilities under the CAR series.

5. In connection with scholarly research concerning government contracting for correctional facilities, and to obtain information concerning BOP's procurement activities related to the CAR series, Plaintiff submitted a request pursuant to the FOIA on November 3, 2008.

6. Defendant has failed to provide Plaintiff with an adequate response to his request.

JURISDICTION, VENUE, AND BASIS FOR RELIEF

7. This Court has jurisdiction over this matter pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331 because this action arises under the FOIA and the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*

8. Venue properly rests with this Court pursuant to 5 U.S.C. § 552(a)(4)(B) because Plaintiff resides within this district.

9. This Court may award Plaintiff declaratory relief pursuant to the FOIA and the Declaratory Judgment Act.

10. Injunctive relief is appropriate under 28 U.S.C. § 2202.

PARTIES

11. Plaintiff Stephen Rahe is a third-year law student at Northwestern School of Law of Lewis & Clark College ("Lewis & Clark"). Plaintiff and Lewis & Clark are both domiciled in Portland, Oregon.

12. Plaintiff is an experienced criminal justice policy analyst with a track record of published research.

13. Defendant BOP is a constituent agency of the United States Department of Justice, within the executive branch of the United States government. 18 U.S.C. § 4041. Defendant is in possession and control of the records sought by Plaintiff. Accordingly, Defendant is subject to the FOIA pursuant to 5 U.S.C. § 552(f).

STATUORY FRAMEWORK

14. The FOIA requires executive branch agencies of the United States government to release information to the public, upon request, unless one of nine specific statutory exemptions applies. 5 U.S.C. §§ 552(a)(3)(A); 552(b).

15. Upon receiving a FOIA request, an agency has twenty working days to respond by determining whether responsive documents exist and whether the agency will release them. 5 U.S.C. § 552(a)(6)(A)(i).

16. The FOIA does not permit an agency to delay an initial response for longer than ten working days past the statutory deadline, and then only if the agency can demonstrate that it faces “unusual circumstances.” 5 U.S.C. § 552(a)(6)(B). “Unusual circumstances” include the need to search for and collect requested documents from other offices, the need to appropriately examine a voluminous amount of separate and distinct records, and the need to consult with another agency. 5 U.S.C. § 552(a)(6)(B)(iii)

17. A requester is entitled to a waiver of fees associated with responding to a FOIA request when the information sought “is likely to contribute significantly to public understanding

of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii).

18. The FOIA requires an agency to issue a final determination resolving an appeal within twenty business days from the date of its receipt. 5 U.S.C. § 552(a)(6)(A)(ii).

STATEMENT OF FACTS

A. Plaintiff's FOIA Request

19. Upon information and belief, CAR Phases 1, 2, 5, and 6 (the subject of Plaintiff's FOIA Request) provide for government acquisition of approximately 17,200 prison beds, with total consideration exceeding \$263 million.

20. On November 3, 2008 Plaintiff submitted a FOIA request (“FOIA Request”) to the BOP, a constituent agency of the United States Department of Justice, requesting information relating to CAR Phases 1, 2, 5, and 6. A copy of the FOIA Request is incorporated herein as Exhibit A.

21. The FOIA Request also included a provision asking that BOP waive the fee that it would otherwise charge to search for and reproduce the responsive records. Plaintiff claimed entitlement to a fee waiver pursuant to the FOIA and 28 C.F.R. § 16.11 because the Request arose from Plaintiff's work as a scholarly researcher at an educational institution.

B. DOJ's Denial of Plaintiff's Fee Waiver Request

22. By letter dated December 2, 2008, BOP denied Plaintiff's fee waiver request. A copy of the BOP's denial is incorporated herein as Exhibit B.

23. Plaintiff filed a timely administrative appeal of the fee waiver denial on January 16, 2009. A copy of Plaintiff's fee waiver appeal is incorporated herein as Exhibit C. Plaintiff

included with the appeal additional material substantiating his entitlement to a fee waiver for this request. Pursuant to BOP's instructions, Plaintiff submitted his appeal to DOJ's Office of Information and Privacy ("OIP"). The return receipt (Postal Service Form 3811) accompanying Plaintiff's fee waiver appeal indicates that the OIP received the appeal on January 30, 2009. Exhibit C at 14.

24. By letter dated February 4, 2009, OIP acknowledged receipt of Plaintiff's appeal and stated it would "notify [Plaintiff] of the decision on your appeal as soon as we can." See Exhibit D.

25. On February 10, 2009, Plaintiff spoke with OIP Senior Counsel Brentin Evitt concerning the status of Plaintiff's appeal. Mr. Evitt promised to provide a status update.

26. On February 10, 2009, Mr. Evitt emailed Plaintiff informing him that OIP could not adjudicate the appeal until it received certain background information from BOP. Exhibit E at 1. The same day, Plaintiff replied to Mr. Evitt and indicated that all relevant documentation was included with his appeal. Exhibit E at 2. Mr. Evitt replied later that day, stating he would "see if [the appeal] may contain enough information for an adjudication." Exhibit E at 3.

27. Neither Mr. Evitt, nor any other representative of OIP has contacted Plaintiff since February 10, 2009, despite Plaintiff's subsequent inquiries on February 19 and March 16, 2009. See Exhibit E at 4-5.

C. Plaintiff's Entitlement to a Fee Waiver

28. Plaintiff's FOIA request seeks information on procurement decisions which govern the conditions of confinement for approximately seventeen thousand immigrant detainees.

29. Conditions of confinement in contract detention facilities are determined in large part by standards developed during procurement negotiations. Accordingly, the disclosure of the requested documents is imperative to informing the public about the strengths and weaknesses of the U.S. government's procurement activities, stewardship of taxpayer funds, and efficacy of the United States' detention system for criminal aliens.

30. Plaintiff is an experienced criminal justice policy analyst with a track record of published research. *See* Exhibit C at 11. He submitted his FOIA request as part of a school-sponsored research project. Plaintiff intends to submit his research project for publication upon its completion.

31. As part of his fee waiver appeal, Plaintiff submitted a sworn affidavit disclaiming any commercial purpose underlying his FOIA request. Exhibit C at 13.

D. Defendant's Failure to Provide an Adequate Response to Plaintiff's FOIA Request

32. Defendant BOP's statement that "[t]here is no evidence that releasing the information to you will contribute to the understanding of the general public at large," *see* Exhibit B at 2, is incorrect because it does not accurately reflect the nature of Plaintiff's research. Plaintiff responded to this allegation in his fee waiver appeal.

33. Defendant BOP's statement that "the nature of the request itself and the ability to use these records for commercial use is greater than any public interest in disclosure," *see* Exhibit B at 2, is not supported by any reasonable factual basis and constitutes an arbitrary and capricious decision. Plaintiff responded to this allegation in a sworn affidavit submitted with his fee waiver appeal. Exhibit C at 13.

34. The FOIA requires an agency to issue a final determination within respect to any appeal within twenty days (excepting weekends and holidays) from the date of receipt. 5 U.S.C. § 552(a)(6)(A)(ii).

35. The deadline to issue a determination with respect to Plaintiff's fee waiver appeal lapsed on March 2, 2009.

36. Defendant did not issue a determination with respect to Plaintiff's fee waiver appeal by March 2, 2009.

37. Plaintiff is deemed to have fully exhausted all administrative remedies required by FOIA. 5 U.S.C. § 552(a)(6)(C)(i).

CAUSE OF ACTION

38. Plaintiff realleges and incorporates the allegations of all preceding paragraphs of this Complaint as if fully set forth herein.

39. By failing to provide all records responsive to Plaintiff's FOIA Request, Defendant has violated the FOIA's mandate to release agency records to the public. 5 U.S.C. § 552(a)(6).

40. Under the FOIA, Defendant is required to grant Plaintiff's request for a fee waiver with respect to his FOIA Request, because the information is sought for a non-commercial purpose and disclosure is likely to contribute significantly to public understanding of the operations and activities of the government. 5 U.S.C. § 552(a)(4)(A)(iii).

41. Plaintiff has a statutory right to have Defendant process the Request and fee waiver appeal in a manner which complies with FOIA. Plaintiff's rights in this regard were violated when Defendant unlawfully denied Plaintiff's fee waiver request.

42. Unless enjoined by this court, Defendant will continue to violate Plaintiff's statutory rights to receive records under the FOIA.

43. Plaintiff is entitled to obtain the requested records immediately at no cost.

44. Plaintiff is entitled to reasonable costs of litigation, including attorney fees, pursuant to the FOIA. 5 U.S.C. § 552(a)(4)(E).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court enter a judgment:

(1) declaring that Defendant has violated FOIA by failing to timely provide all records responsive to Plaintiff's FOIA Request;

(2) ordering that Defendant grant Plaintiff the fee waiver sought in this action;

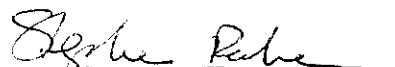
(3) ordering that Defendant make all records responsive to the Request available to Plaintiff at no cost within twenty days;

(4) awarding Plaintiff his litigation costs and reasonable attorneys' fees in this action;

and,

(5) ordering such other relief as the Court may deem just and proper.

Respectfully submitted, May 13, 2009,



Stephen Rahe, *pro se*
P.O. Box 15189
Portland, OR 97293-5189

FILE COPY

Stephen Raher
sraher@clark.edu
(503) 235-8446

Lewis & Clark Law School
Box 5500
10015 SW Terwilliger Blvd.
Portland, OR 97219

November 3, 2008

Wanda M. Hunt
Freedom of Information Act/Privacy Act Section
Office of General Counsel, Room 841
Federal Bureau of Prisons
320 First St., NW
Washington, DC 20534

Re: Freedom of Information Act Request

Dear Ms. Hunt:

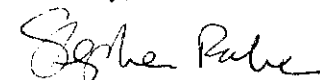
I am writing pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. §552, to request records maintained by the Bureau of Prisons (BOP):

- Any award announcement and contract awarded as a result of Solicitation RFP-PCC-0005 ("Criminal Alien Requirement, Phase 1," announced in *Commerce Business Daily* on August 10, 1999).
- Any award announcement and contract awarded as a result of Solicitation RFP-PCC-0006 ("Criminal Alien Requirement, Phase 2," announced in *Commerce Business Daily* on April 5, 2000).
- Any correspondence regarding the solicitation, evaluation, or issuance of Awards DJB1PC003 and DJB1PC007, to Reeves County (arising out of RFP-PCC-0009, and RFP-PCC-0010, respectively).
- Any contract awarded as a result of RFP-PCC-0009 ("Criminal Alien Requirement, Phase 5).
- Any contract awarded as a result of RFP-PCC-0010 ("Criminal Alien Requirement, Phase 6).

As a scholarly researcher at an educational institution, I also request a waiver of applicable fees pursuant to the Department of Justice's FOIA policy. 28 C.F.R. § 16.11(d)(1). You may provide the requested information either in paper form or as Adobe PDF formatted electronic files. If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material.

I look forward to your reply within 20 business days, as contemplated by statute. If I can be of any assistance, please do not hesitate to contact me.

Sincerely,



Stephen Raher

December 2, 2008

Stephan Raher
Lewis & Clark School
Box 5500
10015 SW Terwilliger Blvd
Portland, OR 97219

For Further Inquiry Contact:
Federal Bureau of Prisons
320 First Street. N.W.
Room 738, HOLC Building
Washington, D.C. 20534
Attn: FOI/Privacy Office

Re: Information Request No. 2009-01387

Dear Mr. Raher:

This is in response to your above referenced Freedom of Information Act (FOIA) request. Specifically, you request copies of: 1) the contract awarded for Solicitation RFP-PCC-0005 (Criminal Alien Requirement Phase 1), announced in Commerce Business Daily on August 10, 1999; 2) the contract awarded for Solicitation RFP-PCC-0006 (Criminal Alien Requirement Phase 2), announced in Commerce Business Daily on April 5, 2000; 3) any correspondence regarding the solicitation, evaluation or issuance of awards DJB1PC003 and DJB1PC007, to Reeves County arising out of RFP-PCC-0009 and FRP-PCC-0010; 4) any contract awarded for RFP-PCC-0009, (Criminal Alien Requirement Phase 5) and 5) any contract awarded for RFP-PCC-0010, (Criminal Alien Requirement Phase 6).

Upon review of your request, the nature of the documents sought, and absent an authorization by an educational institution that the records are not sought for commercial use, we have determined that this request will be treated as commercial in nature. See 28 C.F.R. §16.11(b)(1) and §16.11(b)(4). Regarding requests for information by a commercial requestor, we are required to charge all search and review fees for processing your request. The search and review fee for this request is \$36.51 per hour, for each hour of search and review time by a member of our professional staff. Id., §16.11(b)(2). We estimate a total of 45 hours of search, duplication (to include scanning to electronic format), and review time at \$36.51 per hour, for a total estimated direct cost of \$1642.95.

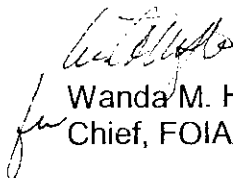
As to your request for a fee waiver, the statutory test for evaluating fee waiver requests is whether the release of the information "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester," in which event a fee waiver or reduction is required by law. 5 U.S.C. §552(a)(4)(A)(iii).

The six factors used in my determination as to whether a sufficient contribution to public understanding of government operations or activities would result from disclosure, so as to warrant the granting of a fee waiver are as follows: 1) whether the subject of the requested records concerns "the operations or activities of the government"; 2) whether the disclosure is "likely to contribute" to an understanding of government operations or activities; 3) whether disclosure of the requested information will contribute to the understanding of the general public at large; 4) whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities; 5) whether the requester has a commercial interest that would be furthered by the requested disclosure; and 6) whether any such commercial interest outweighs the public interest in disclosure.

On the basis of all of the information available to me, I have concluded that your request for a waiver of fees should be denied. In reaching my conclusion, I analyzed the above six factors as they applied to the circumstances of your request. There is no evidence that releasing the information to you will contribute to the understanding of the general public at large. The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. I am unaware of any significant public understanding of government operations or activities that would result from the release of the records sought. Additionally, the nature of the request itself and the ability to use these records for commercial use is greater than any public interest in disclosure. Therefore, your request for a fee waiver is denied.

In accordance with 28 C.F.R. § 16.11(e), until a payment is made, or you reformulate what you seek, this request will not be considered as received and no further action will be taken. However, you may appeal the decision to deny your fee waiver request to the Attorney General, Office of Information and Privacy, United States Department of Justice, FLAG Bldg., Washington, D.C. 20530. Please mark your envelope and letter "Fee Waiver Appeal." Your appeal must be made within 60 days of your receipt of this letter.

Sincerely,


Wanda M. Hunt
Chief, FOIA/PA Section

cc: File

FILE COPY

Stephen Raher
sraher@lclark.edu
(503) 235-8446

Lewis & Clark Law School
Box 5500
10015 SW Terwilliger Blvd.
Portland, OR 97219

January 16, 2009

Office of Information and Privacy
United States Department of Justice, Flag Building
Washington, DC 20530

CERTIFIED MAIL 7006 2760 0002 7725 0070
RETURN RECEIPT REQUESTED

Re: Fee Waiver Appeal
Information Request No. 2009-01387

To Whom it May Concern:

On November 3, 2008 I submitted a request under the Freedom of Information Act (FOIA) to the Bureau of Prisons (BOP) (Attachment A), which asked for a waiver of fees pursuant to 28 C.F.R. § 16.11(d)(1). The BOP replied in a letter dated December 2, denying my request for an academic fee waiver (Attachment B).

After misspelling my name and summarizing the components of my request, the BOP's reply states the need for "an authorization by an educational institution that the records are not sought for commercial use." The reply then lists six factors purportedly applied in reaching the determination. I address these two issues in sequence.

I. Institutional authorization

I submitted my FOIA request as part of a major research project required for graduation from Lewis & Clark Law School, where I am currently a third-year student. In addition to satisfying a general academic requirement, the paper is also a required component of the Paul H. Casey Scholarship for Business Law (*see* Scholarship Award Letter, Attachment C). An authorization letter from my faculty supervisor is included herein (Attachment D).

II. The six-factor test

The BOP's letter of December 2 lists "six factors used in [the] determination." Although it does not cite any authority for these factors, they appear to be copied from 28 C.F.R. § 16.11(k)(2), *et seq.* After reciting all six factors, the BOP's letter specifically addresses only four of them. This appears to be an implied acknowledgment that my request clearly concerns "the operations or activities of the government" and would be "likely to contribute to an understanding of government operations or activities" as articulated in §§ 16.11(k)(2)(i) and (ii). It seems quite apparent that my request satisfies

these two factors beyond dispute, therefore they are not discussed further in this letter. The remaining four factors are reviewed below.

A. Contribution to “public understanding”

The BOP’s response cites § 16.11(k)(2)(iii)’s requirement that a “disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject” and summarily concludes that “[t]here is no evidence that releasing the information to you will contribute to the understanding of the general public at large” (Attachment B, at 2). This conclusory statement by the BOP is not supported by the facts.

The regulations expressly provide that “[a] requester’s expertise in the subject area and ability and intention to effectively convey information to the public shall be considered.”¹ As my resume (Attachment E) shows, I have established expertise in the area of correctional policy analysis and have a track record of published research. I worked for nearly five years as a criminal justice policy analyst with a focus on correctional privatization. During that period I published thirteen research reports and gave numerous presentations to legislative committees, academic gatherings, and interested citizens. My work as a journalist further honed my ability to effectively and concisely convey information to the public. Since starting law school I have published one work² and am presenting another research project³ at the 2009 spring conference of the Midwest Political Science Association (*see* Attachment F).

I fully intend to publish the paper in connection with which I have submitted my FOIA request. As you are no doubt aware, peer-reviewed journals do not agree to publish research on a speculative basis. Instead, a finished product must be submitted to the journal’s editorial staff. Accordingly, I cannot produce conclusive evidence at this point in time that my final research will be published. For the BOP to deny my fee waiver in this context constitutes an arbitrary and capricious decision clearly at odds with the Department of Justice’s own regulations.

B. Significance of the contribution to public understanding

The next factor under the relevant regulations asks “whether the disclosure is likely to contribute ‘significantly’ to public understanding of government operations or activities.”⁴ My request asks for documents related to four rounds of BOP procurement activity (Criminal Alien Requirements (“CARs”) 1, 2, 5, and 6). Based on summary information available through Commerce Business Daily and Federal Business Opportunities, these four CAR phases involve approximately 17,200 prison beds, with contract prices exceeding \$263 million. Since the BOP has not publicly released any substantive information on the law governing this substantial government undertaking, the disclosure of the

¹ 28 C.F.R. § 16.11(k)(2)(iii).

² Stephen Rahe, “Initiative and Referendum,” chapter in *Interpreting Oregon Law* (Steve Johansen & Anne Villella, eds.), forthcoming 2009.

³ Stephen Rahe, *Judicial Review of Legislative Procedure: Determining Who Determines the Rules of Proceedings* (2008), available at http://works.bepress.com/stephen_rahe/1/.

⁴ 28 C.F.R. § 16.11(k)(2)(iv).

requested documents is imperative to informing the public about the actions of the United States government in the context of the CAR procurement phases.

As noted in the prior paragraph, the records that are the subject of my FOIA request relate to detention of criminal aliens. Illegal immigration is a matter of great concern to policy makers and the public.⁵ Public opinion and history indicate that detention of some number of illegal aliens (particularly those convicted of criminal acts) will always be a component of our nation's immigration policy—thus, the incarceration of aliens is a significant issue.⁶ In turn, the BOP's decision to obtain alien detention services through contractual arrangements raises public policy questions concerning the contractual terms, negotiating process, provisions for non-performance, and compensation structure. These are all questions that can only be "significantly" addressed through disclosure of the requested documents.

Notably, the purpose of my research is to enhance public understanding of how the federal government conducts correctional outsourcing, how contract facilities are overseen, and how public money is spent. Accordingly, the purpose of my FOIA request is closely analogous to the request at issue in *Prison Legal News v. Lappin*.⁷ The *PLN* court held the plaintiff was entitled to a FOIA fee waiver because its request sought "information regarding specific events that occurred within BOP facilities that will provide insight to the public about how its federal prisons are being managed and operated, and how its tax dollars are being expended."⁸ Aside from the fact that my request concerns procurement decisions instead of facility-based incidents, my request is remarkably similar to the plaintiff's request in *PLN*.

C. Factors five and six: commercial use

The last two factors in the six-factor test cited in the BOP's response relate to the potential for commercial use of the requested information.⁹ The BOP's response does not differentiate between the two separate factors articulated in the Department of Justice regulations—rather it simply states "the nature of the request itself and the ability to use these records for commercial use is greater than any public interest in disclosure" (Attachment B, at 2). The BOP's assertions of commercial use are not only factually unsupported, but are contrary to the controlling regulations. "Commercial use" is defined in the Department of Justice's regulations as "a request from or on behalf of a person who

⁵ E.g., H.R. Rep. 109-345 (2005) (Judiciary Committee report on the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, H.R. 4437).

⁶ See e.g., Dana Priest & Amy Goldstein, *System of Neglect; As Tighter Immigration Policies Strain Federal Agencies, the Detainees in Their Care Often Pay a Heavy Cost*, Washington Post, May 11, 2008, at A-01; Dana Priest & Amy Goldstein, *In Custody, In Pain; Her Health Problems Worsening as She Faces Deportation, A U.S. Resident Struggles to Get the Medical Care She Needs*, Washington Post, May 12, 2008, at A-01; Dana Priest & Amy Goldstein, *Suicides Point to Gaps in Treatment; Errors in Psychiatric Diagnoses and Drugs Plague Strained Immigration System*, Washington Post, May 13, 2008, at A-01 (while this series of investigative reporting addressed problems in the immigrant detention system run by the Bureau of Immigration and Customs Enforcement, similar scrutiny has not yet been extended to the BOP's program for incarcerating aliens, thus increasing the significance of the public understanding which would result from disclosure of the requested records).

⁷ 436 F.Supp.2d 17 (D.D.C. 2006).

⁸ *Id.* at 26; see also *Ettlinger v. Fed. Bureau of Investigation*, 596 F.Supp. 867, 875 (D.Mass. 1984) ("The courts have consistently overturned agency denials of fee waivers when requesters have made a legitimate, objectively supportable showing of using the requested information for scholarly research into political and historical events.").

⁹ 28 C.F.R. §§ 16.11(k)(3)(i) and (ii).

seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests.”¹⁰ Notably, the *ability* to use requested records for commercial purposes (one justification given by the BOP) is not mentioned in the regulations as grounds for denying a fee waiver.

More importantly, however, BOP has not produced a scintilla of evidence suggesting that my request is made for commercial purposes. This is likely because such evidence does not exist. To clarify this issue for the record, I have included an affidavit (Attachment G) explicitly stating the non-commercial purposes underlying my request.

The Department of Justice’s regulations provide that if “it appears that the requester will put the records to a commercial use . . . the component [agency] shall provide the requester a reasonable opportunity to submit further clarification.”¹¹ Because the BOP has failed to provide any specific grounds upon which it bases its commercial-use determination, it is difficult for me to provide any clarification other than the blanket statements contained in the accompanying affidavit. Given the nature of my request, the only parties which could conceivably make commercial use of the records are private prison operators. I have never worked (formally or informally, directly or indirectly) for a prison operator or any other entity which could profit from the requested records. My only current involvement with the private prison industry (other than the academic paper which is the subject of my FOIA request) is unpaid service on the board of directors of the Private Corrections Institute (PCI). PCI is a tax-exempt entity (recognized under § 501(c)(3) of the Internal Revenue Code), whose mission is *at odds with* the entities which could profit from the requested records.¹² I must emphasize that my request is not made on behalf of or in coordination with PCI; however, even if the BOP believed it was a coordinated action, this would still not justify a finding of commercial purpose.¹³

III. Conclusion

For the reasons stated herein, the BOP’s denial of my fee waiver request is based on inaccurate assumptions and misapplication of relevant regulations. I respectfully appeal the BOP’s initial determination and reiterate my request for a fee waiver.

Sincerely,


Stephen Rahe

Enclosures

¹⁰ 28 C.F.R. § 16.11(b)(1).

¹¹ *Id.*

¹² PrivateCI.org, Who We Are, <http://www.privateci.org/who.html> (last visited Jan. 10, 2009) (“The mission of the Private Corrections Institute (PCI) is to provide information and assistance to citizens, policy makers, and journalists concerning the dangers and pitfalls of privatization of correctional institutions and services in order to reverse and stop this social injustice.”).

¹³ See *Consumers’ Checkbook, Ctr. for the Study of Servs. v. U.S. Dept. of Health and Human Servs.*, 502 F.Supp.2d 79, 89 (D.D.C. 2007) (financial profits accruing to public interest group as a result of public records obtained through FOIA did not justify denial of fee waiver (citing *Campbell v. U.S. Dept. of Justice*, 164 F.3d 20, 35-36 (D.C. Cir. 1998))).

FILE COPY

Stephen Raher
sraher@lclark.edu
(503) 235-8446

Attachment A
Lewis & Clark Law School
Box 5500
10015 SW Terwilliger Blvd.
Portland, OR 97219

November 3, 2008

Wanda M. Hunt
Freedom of Information Act/Privacy Act Section
Office of General Counsel, Room 841
Federal Bureau of Prisons
320 First St., NW
Washington, DC 20534

Re: Freedom of Information Act Request

Dear Ms. Hunt:

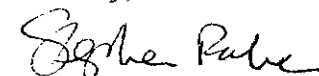
I am writing pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. §552, to request records maintained by the Bureau of Prisons (BOP):

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- Any award announcement and contract awarded as a result of Solicitation RFP-PCC-0006 ("Criminal Alien Requirement, Phase 2," announced in *Commerce Business Daily* on April 5, 2000).
- Any correspondence regarding the solicitation, evaluation, or issuance of Awards DJB1PC003 and DJB1PC007, to Reeves County (arising out of RFP-PCC-0009, and RFP-PCC-0010, respectively).
- Any contract awarded as a result of RFP-PCC-0009 ("Criminal Alien Requirement, Phase 5).
- Any contract awarded as a result of RFP-PCC-0010 ("Criminal Alien Requirement, Phase 6).

As a scholarly researcher at an educational institution, I also request a waiver of applicable fees pursuant to the Department of Justice's FOIA policy. 28 C.F.R. § 16.11(d)(1). You may provide the requested information either in paper form or as Adobe PDF formatted electronic files. If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material.

I look forward to your reply within 20 business days, as contemplated by statute. If I can be of any assistance, please do not hesitate to contact me.

Sincerely,



Stephen Raher

December 2, 2008

Stephan Raher
Lewis & Clark School
Box 5500
10015 SW Terwilliger Blvd
Portland, OR 97219

For Further Inquiry Contact:
Federal Bureau of Prisons
320 First Street, N.W.
Room 738, HOLC Building
Washington, D.C. 20534
Attn: FOI/Privacy Office

Re: Information Request No. 2009-01387

Dear Mr. Raher:

This is in response to your above referenced Freedom of Information Act (FOIA) request. Specifically, you request copies of: 1) the contract awarded for Solicitation RFP-PCC-0005 (Criminal Alien Requirement Phase 1), announced in Commerce Business Daily on August 10, 1999; 2) the contract awarded for Solicitation RFP-PCC-0006 (Criminal Alien Requirement Phase 2), announced in Commerce Business Daily on April 5, 2000; 3) any correspondence regarding the solicitation, evaluation or issuance of awards DJB1PC003 and DJB1PC007, to Reeves County arising out of RFP-PCC-0009 and FRP-PCC-0010; 4) any contract awarded for RFP-PCC-0009, (Criminal Alien Requirement Phase 5) and 5) any contract awarded for RFP-PCC-0010, (Criminal Alien Requirement Phase 6).

Upon review of your request, the nature of the documents sought, and absent an authorization by an educational institution that the records are not sought for commercial use, we have determined that this request will be treated as commercial in nature. See 28 C.F.R. §16.11(b)(1) and §16.11(b)(4). Regarding requests for information by a commercial requestor, we are required to charge all search and review fees for processing your request. The search and review fee for this request is \$36.51 per hour, for each hour of search and review time by a member of our professional staff. *Id.*, §16.11(b)(2). We estimate a total of 45 hours of search, duplication (to include scanning to electronic format), and review time at \$36.51 per hour, for a total estimated direct cost of \$1642.95.

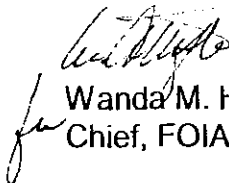
As to your request for a fee waiver, the statutory test for evaluating fee waiver requests is whether the release of the information "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester," in which event a fee waiver or reduction is required by law. 5 U.S.C. §552(a)(4)(A)(iii).

The six factors used in my determination as to whether a sufficient contribution to public understanding of government operations or activities would result from disclosure, so as to warrant the granting of a fee waiver are as follows: 1) whether the subject of the requested records concerns "the operations or activities of the government"; 2) whether the disclosure is "likely to contribute" to an understanding of government operations or activities; 3) whether disclosure of the requested information will contribute to the understanding of the general public at large; 4) whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities; 5) whether the requester has a commercial interest that would be furthered by the requested disclosure; and 6) whether any such commercial interest outweighs the public interest in disclosure.

On the basis of all of the information available to me, I have concluded that your request for a waiver of fees should be denied. In reaching my conclusion, I analyzed the above six factors as they applied to the circumstances of your request. There is no evidence that releasing the information to you will contribute to the understanding of the general public at large. The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. I am unaware of any significant public understanding of government operations or activities that would result from the release of the records sought. Additionally, the nature of the request itself and the ability to use these records for commercial use is greater than any public interest in disclosure. Therefore, your request for a fee waiver is denied.

In accordance with 28 C.F.R. § 16.11(e), until a payment is made, or you reformulate what you seek, this request will not be considered as received and no further action will be taken. However, you may appeal the decision to deny your fee waiver request to the Attorney General, Office of Information and Privacy, United States Department of Justice, FLAG Bldg., Washington, D.C. 20530. Please mark your envelope and letter "Fee Waiver Appeal." Your appeal must be made within 60 days of your receipt of this letter.

Sincerely,


Wanda M. Hunt
Chief, FOIA/PA Section

cc: File

Northwestern School of Law
of Lewis & Clark College

Attachment C

Office of Development

10015 S.W. Terwilliger Boulevard

Portland, Oregon 97219-7799

Phone 503-768-6646

Fax 503-768-6671

E-mail lawgive@lclark.edu

law.lclark.edu



April 18, 2007

Mr. Stephen Rahe
PO Box 15189
Portland, OR 97293

Dear Stephen:

On behalf of the Paul H. Casey Business Law Scholarship Selection Committee, I would like to congratulate you on being chosen as the recipient of the Paul H. Casey Business Law Scholarship. The amount of the award is \$10,000 for the academic year 2007-2008 and \$10,000 for the academic year 2008-2009 for a total of \$20,000. The scholarship will be split evenly between the four semesters. I have notified the Financial Aid Office so that the scholarship can be included in your financial aid award and credited to your 2007-2008 and 2008-2009 tuition expenses.

Please consult with Martha Spence to discuss the scholarship paper requirement. She can review with you the options to satisfy this requirement. Also, I know Paul Casey would appreciate a personal letter from you, thanking him for the scholarship and describing the impact this scholarship will have on your life. Please send the letter to the attention of Barbara Zappas, Development Office, Lewis & Clark Law School, in the next two weeks, and she will forward it to Mr. Casey for you.

Once again, congratulations. The Law School is very fortunate to count you as one of our outstanding students.

Sincerely,

A handwritten signature in black ink, appearing to read "Lydia P. Loren".

Lydia P. Loren
Interim Dean



January 15, 2009

Office of Information and Privacy
United States Department of Justice
Flag Building
Washington, DC 20530

To Whom It May Concern:

I submit this letter to the Bureau of Prisons (BOP) in support of Stephen Raher's request of November 3, 2008 under the Freedom of Information Act (FOIA).

One of my duties as a faculty member of Lewis & Clark Law School is to supervise academic research projects. In order to graduate, all students are required to complete a significant research or analytical paper which must go through a draft and revision process. This paper is the law school equivalent of a doctoral dissertation. Mr. Raher has chosen a unique and legally significant topic for his paper—contractual and financial issues surrounding privately-operated correctional facilities. I am supervising Mr. Raher's paper and have been impressed with his work on the project thus far.

I note that Mr. Raher received the Paul H. Casey Scholarship for Business Law in 2007. This honor is awarded to students who show unusual academic promise in business law areas, and its purpose is to encourage integrity, citizenship and intellectually stimulating scholarship among students studying business law. Recipients of the honor write their major papers on business law topics of their choice. Mr. Raher plans to use the paper on privately-operated correctional facilities to satisfy this requirement.

In its letter denying Mr. Raher's initial request for a fee waiver, the BOP relied upon the lack of "an authorization by an education institution," citing 28 C.F.R. §16.11(b)(4). To be eligible for an academic fee waiver, §16.11(b)(4) requires a showing that "the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research."

Mr. Raher's FOIA request complies with the requirements of §16.11(b)(4). Mr. Raher is completing his research to satisfy the academic requirements of Lewis & Clark Law School. I am a fully tenured professor of law at Lewis & Clark Law School, and Mr. Raher is conducting his research under my supervision. His research is of scholarly interest, as government outsourcing raises a host of legal, fiscal and public policy concerns. To fully analyze the issues Mr. Raher seeks to explore, a thorough examination of primary source documents is essential. In this case, the relevant primary source documents include the contracts and procurement records which are the subject of Mr. Raher's FOIA request. I have no reason to believe that Mr. Raher has any

Office of Information and Privacy

January 15, 2009

Page 2

commercial purpose in submitting his request, and in fact I find it difficult to imagine what such a commercial purpose might be.

If I can be of any further assistance to the BOP in this matter, please do not hesitate to contact me at (503) 768-6640.

Very truly yours,



Amy C. Bushaw
Professor of Law,
Lewis & Clark Law School

STEPHEN A. RAHER

P.O. Box 15189, Portland, OR 97293
 (719) 648-5632 • sraher@lclark.edu

EDUCATION

Lewis & Clark Law School, Portland, OR – Juris Doctor expected May 2009

- Class Rank: 6/273 (Top 3%)
- Outstanding Appellate Brief, Legal Analysis and Writing, Spring 2007
- Paul H. Casey Business Law Scholarship, Academic Years 2008-09; Dean's Scholarship for Excellence, all years
- Pro Bono Honors Certificate, 2007; Community Service Honors Certificate, 2008
- Elected student representative on Admissions Committee, Academic Year 2009
- Scholar List, all semesters

University of Colorado - Graduate School of Public Affairs, Colorado Springs, CO – Master of Public Administration, 2002

Colorado College, Colorado Springs, CO – Bachelor of Arts in Music, 1998

EXPERIENCE

Greene & Markley, PC, Portland, OR

January 2008 - present

Law Clerk: Perform legal research with a focus on tax controversies, bankruptcy, and commercial litigation. Prepare motions, pleadings, correspondence, and research memoranda.

Sixteenth Amendment Tax Services, Portland, OR

July 2005 - present

Proprietor: Provide tax return preparation, bookkeeping, and forensic accounting services to small businesses, tax exempt organizations, and individuals. Advise clients on business and investment planning strategies. Licensed to practice in Oregon (Licensed Tax Consultant #30844-C) and before the Internal Revenue Service (Enrolled Agent #83069).

Professor Ed Brunet (Lewis & Clark Law School), Portland, OR

October 2007 - February 2008

Research Assistant: Researched Anglo Saxon legal history and U.S Supreme Court jurisprudence regarding summary disposition of litigation. Work used in *Summary Judgment is Constitutional*, 93 Iowa L. Rev. 1625 (2008).

KRCC-FM, Colorado Springs, CO

December 2004 - February 2006

Associate News Producer: Wrote and produced news stories with strict deadlines and edited submissions from freelance reporters. Produced twice-weekly public radio news program focused on public affairs and regional news. Produced several stories for national outlets including National Public Radio and WBUR's *Here and Now*. Winner of 2005 Colorado Broadcasters Association Award of Excellence for Best Single Event News Coverage.

Colorado Criminal Justice Reform Coalition, Colorado Springs, CO

November 1999 - June 2004

Co-Director/Senior Policy Analyst: Published research on criminal justice policy and state budgeting, including two in-depth reports, eleven detailed research memoranda, five comment letters in administrative proceedings, and numerous presentations and articles. Developed and executed legislative campaigns, including writing model legislation, lobbying for passage of legislation, testifying before state legislative committees, and monitoring implementation of enacted bills. Coordinated activities surrounding strategic litigation and assisted legal counsel with research.

PUBLICATIONS & WORKS IN PROGRESS

- "Initiative and Referendum," chapter in *Interpreting Oregon Law* (Oregon State Bar, forthcoming 2009)
- "Judicial Review of Legislative Procedure: Determining Who Determines the Rules of Proceedings," scheduled for presentation at the Midwest Political Science Association Spring Conference (Chicago, 2009)
- "Why Are There So Many Drug Addicts in Prison? A History of Illegal Drugs in the United States," *Prison Policy News* (December 2000), reprinted as appendix to Bill Masters, *Drug War Addiction* (2002)

PUBLIC AND COMMUNITY SERVICE

Treasurer and Board Member, Private Corrections Institute

Volunteer, Lewis & Clark Law School Small Business Legal Clinic

Board Member, Community Shares of Colorado

Treasurer and Board Member, Community Council for Adolescent Development

Member, Secretary of State's Advisory Committee on Lobbyist Reporting Requirements

January 2004 - present

September 2006 - May 2007

January 2003 - December 2003

June 2000 - August 2002

Page 11 of 14

Thu, Nov 6, 2008 10:23 PM

Subject: MPSA Proposal Decision Notification. Please read & follow instructions

Date: Thursday, November 6, 2008 8:28 AM
From: MPSA Conference <mpsa1@mpsnet.org>
Reply-To: conf@mpsnet.org
To: sraher@lclark.edu
Priority: Highest

Session Information:

Section 40 Legislative Politics: Institutions

Panel Title: Interbranch Politics

Proposal Information:

Type of Presentation: Paper. Submittal ID: 100349

Judicial Review of Legislative Procedure: Determining Who Determines the Rules of Proceeding

Stephen Raher, Lewis Clark Law School

Your Login: sraher@lclark.edu

Dear Colleague,

We are pleased to inform you that your paper, Judicial Review of Legislative Procedure: Determining Who Determines the Rules of Proceeding (Submission ID 100349) has been **accepted** for the 2009 MPSA National Conference. The research will be presented as a Paper, on a Panel. As soon as possible, you as the submitter should login to your Proposal Submission Account on the MPSA website. Your Login is sraher@lclark.edu. If someone else entered the proposal for you, then they will need to confirm or decline participation. (you can tell because the login listed above is not your email address). Go to the following link to confirm or decline: <http://www.mpsnet.org/~mpsa/Conference/submit.html>

You will receive an individual email for each offer to participate in the conference – even if you have more than one role during the same session. Be aware that these emails may go out on different days. Each offer to participate in a session must be accepted or declined individually once

AFFIDAVIT OF STEPHEN RAHER

I, Stephen Raher, being first duly sworn, state the following under oath:

1. I am a third-year law student at Lewis & Clark Law School, in Portland, Oregon.
2. On or about November 3, 2008, I submitted a request ("FOIA Request") to the Federal Bureau of Prisons pursuant to the Freedom of Information Act.
3. The FOIA Request is made for the sole purpose of obtaining information to be used in a research project ("Research Paper") I am writing under the supervision of Professor Amy Bushaw. I am not acting on behalf of any other person or entity in seeking disclosure of the requested records.
4. I am writing the Research Paper for academic credit. This paper fulfills both the law school's major writing requirement (sometimes referred to as the "A Paper" requirement) and the writing requirement for the Paul H. Casey Scholarship for Business Law.
5. There is no reasonably foreseeable possibility that I will obtain direct commercial, trade, or profit enrichment from the Research Paper in general, or the fulfillment of the FOIA Request in particular.
6. I have never been, nor am I currently, employed or compensated by an individual or entity in the business of operating correctional facilities or providing correctional management services. I do not expect to be so employed or compensated in the future.

Further affiant saith not.

Stephen Raher

Stephen Raher

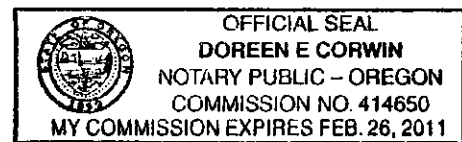
State of Oregon)
) ss.
County of Multnomah)

Signed and sworn before me on January 12, 2009 by Stephen Raher.

Doreen E Corwin

Signature

My commission expires: Feb. 26, 2011



Seal:

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Office of Info and Privacy
US Dept of Justice, Flag Bldg
Washington, DC 20530

2. Article Number
(Transfer from service label)

7006 2760 0002 7725 0070

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- Agent
 Addressee

B. Received by (Print Name)

Samuel Park

C. Date of Delivery

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type

- Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes



U.S. Department of Justice

Office of Information and Privacy

Telephone: (202) 514-3642

Washington, D.C. 20530

FEB 05 2009

Mr. Stephen Raher
P.O. Box 15189
Portland, OR 97293-5189

Re: Request No. 2009-01387

Dear Mr. Raher:

This is to advise you that your administrative appeal from the action of the Federal Bureau of Prisons was received by this Office on February 4, 2009.

The Office of Information and Privacy, which has the responsibility of adjudicating such appeals, has a substantial backlog of pending appeals received prior to yours. In an attempt to afford each appellant equal and impartial treatment, we have adopted a general practice of assigning appeals in the approximate order of receipt. Your appeal has been assigned number **09-0945**. Please mention this number in any future correspondence to this Office regarding this matter.

We will notify you of the decision on your appeal as soon as we can. We regret the necessity of this delay and appreciate your continued patience.

Sincerely,

A handwritten signature in black ink, appearing to read "Priscilla Jones", written in a cursive style.

Priscilla Jones
Supervisory Administrative Specialist

Subject: RE: FOIA Appeal No. 09-0945
Date: Tuesday, February 10, 2009 11:21 AM
From: Evitt, Brent <Brent.Evitt@usdoj.gov>
To: sraher@lclark.edu

Stephen:

Thanks for the call earlier. I've now been able to check on the status of your appeal. It was received in this office on February 4, 2009. It has not yet been assigned to one of our attorneys, because we have not received the background information from the Bureau of Prisons. It usually takes a few days for the background information to reach us, as BOP would have heard about the appeal on the same day you received your acknowledgment letter from this office. It will be assigned to an attorney for review as soon as the background information arrives.

Thanks,

Brent Evitt

Brentin V. Evitt, Senior Counsel
Chief, Administrative Appeal Staff
United States Department of Justice
Office of Information and Privacy
1425 New York Avenue
Suite 11050
Washington, DC 20530-0001

Telephone: 202-514-5419
FOIA Hotline: 202-514-3642
Fax: 202-514-1009



Lewis & Clark WebMail

Date: Tue, 10 Feb 2009 11:28:06 -0800
From: Stephen Raher <sraher@lclark.edu>
To: Brent.Evitt@usdoj.gov
Subject: Re: FOIA Appeal No. 09-0945

Brent:

Thanks for your prompt follow-up. Anticipating this issue, I included my original request and the BOP's response as exhibits to my appeal. I'm not sure what other background information the BOP would have in their records.

Stephen

On Tue, 10 Feb 2009 14:21:07 -0500
 "Evitt, Brent" <Brent.Evitt@usdoj.gov> wrote:
 > Stephen:
 >
 > Thanks for the call earlier. I've now been able to check
 > on the status
 > of your appeal. It was received in this office on
 > February 4, 2009. It
 > has not yet been assigned to one of our attorneys,
 > because we have not
 > received the background information from the Bureau of
 > Prisons. It
 > usually takes a few days for the background information
 > to reach us, as
 > BOP would have heard about the appeal on the same day
 > you received your
 > acknowledgment letter from this office. It will be
 > assigned to an
 > attorney for review as soon as the background
 > information arrives.
 >
 > Thanks,
 >
 > Brent Evitt
 >
 > *****
 > Brentin V. Evitt, Senior Counsel
 > Chief, Administrative Appeal Staff
 > United States Department of Justice
 > Office of Information and Privacy
 > 1425 New York Avenue
 > Suite 11050
 > Washington, DC 20530-0001
 >
 > Telephone: 202-514-5419
 > FOIA Hotline: 202-514-3642
 > Fax: 202-514-1009
 >

Subject: RE: FOIA Appeal No. 09-0945
Date: Tuesday, February 10, 2009 11:40 AM
From: Evitt, Brent <Brent.Evitt@usdoj.gov>
To: Stephen Raher sraher@lclark.edu

Stephen:

I'll pull the appeal and see if it may contain enough information for an adjudication.

Brent

Brentin V. Evitt, Senior Counsel
Chief, Administrative Appeal Staff
United States Department of Justice
Office of Information and Privacy
1425 New York Avenue
Suite 11050
Washington, DC 20530-0001

Telephone: 202-514-5419
FOIA Hotline: 202-514-3642
Fax: 202-514-1009



Lewis & Clark WebMail

Date: Thu, 19 Feb 2009 10:36:46 -0800

From: Stephen Raher <sraher@lclark.edu>

To: Brent.Evitt@usdoj.gov

Subject: Re: FOIA Appeal No. 09-0945

Brent:

Thanks again for agreeing to look at my fee waiver appeal. I just wanted to check and see if you've had a chance to review it yet.

Stephen

Stephen Raher
sraher@lclark.edu
(503) 235-8446

Lewis & Clark Law School
Box 5500
10015 SW Terwilliger Blvd.
Portland, OR 97219

March 16, 2009

Brentin Evitt, Senior Counsel
Office of Information and Privacy
United States Department of Justice, Flag Building
Washington, DC 20530

VIA EMAIL AND FIRST CLASS MAIL

Re: Fee Waiver Appeal No. 09-0945
Information Request No. 2009-01387

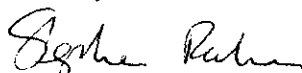
Dear Mr. Evitt:

I spoke with you on February 10 concerning the status of the above-referenced fee waiver appeal. As I explained to you during that conversation, my FOIA request is time-sensitive and the Bureau of Prisons' denial of my fee waiver request is wholly unsupported by the facts and relevant law. In an effort to expedite the review process and reduce the workload of your office, my appeal included all evidence necessary for the Department to make an informed determination.

I have not received any communication from your office since your email of February 10. I emailed you on February 19 to inquire as to the status of the appeals process, but have not received any response. While I appreciate the substantial caseload borne by you and your office, I would remind you that based on the facts of my case, a waiver or reduction of fees is a statutory imperative. 5 U.S.C. § 552(a)(4)(A)(iii). If the Bureau of Prisons had requested additional information instead of arbitrarily rejecting my fee waiver request, this matter could have been resolved much more efficiently. I would emphasize that the Bureau of Prisons has identified the responsive records. The *only* issue hindering fulfillment of my request is resolution of my fee waiver appeal. Meanwhile, the only justification your office has given for the delay is "a substantial backlog of pending appeals." This excuse is unpersuasive given that "predictable agency workload" is explicitly *not* an exceptional circumstance supporting a statutory extension of time. 5 U.S.C. § 552(a)(6)(C)(ii); *accord, Allen v. Federal Bureau of Investigation*, 551 F.Supp. 694, 696 (D.D.C. 1982).

Regardless of your office's workload, I feel that any further delay in resolving my appeal is unwarranted. I have made every reasonable effort to provide the Department with all information necessary to adjudicate this matter. If your office does not grant my appeal by April 17, I will interpret this inaction as a constructive denial of my appeal and consider further options for resolution of this matter.

Sincerely,



Stephen Raher