



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 14, 2011

The Honorable Lamar Smith
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This responds to your letter to the Attorney General, dated March 2, 2011, inquiring into the Department's efforts to ensure compliance with the Freedom of Information Act (FOIA) and allegations that the Department has politicized the manner in which it responds to FOIA requests. Your letter refers to allegations by a blogger claiming that the Department's Civil Rights Division (Division) provides information in a timely manner to some, while delaying its replies to others, based on political favoritism. As discussed below, it appears that the allegations rest on comparisons of dissimilar requests.

As your letter notes, President Obama and the Attorney General have emphasized the benefits of open government and the importance of responding to FOIA requests effectively and with a presumption of disclosure. While more remains to be done, we have made significant strides over the past two years. In responding to over 37,000 requests in which the Department analyzed responsive records for potential release during FY 2010, our disclosures increased for the second consecutive year, releasing information in 94.5% of such requests—the highest release percentage since FY 2002.

The Attorney General's FOIA Guidelines, dated March 19, 2009, require that each agency's Chief FOIA Officer submit a report each year "on the steps that have been taken to improve FOIA operations and facilitate information disclosure at their agency." The Department's Office of Information Policy (OIP) issued guidelines advising agencies that these reports should focus on steps taken in five specific areas: (1) to apply the presumption of openness; (2) to ensure that there is an efficient and effective system in place for responding to requests; (3) to increase proactive disclosures; (4) to improve use of technology; and (5) to reduce any backlogs of pending FOIA requests.¹ OIP also provided training for Chief FOIA

¹ See <http://www.justice.gov/oip/foiapost/2009foiapost18.htm>.

Officers to discuss the requirements of the reports.² After receiving the reports, OIP compiled the enclosed summary, which includes OIP's findings and guidance regarding each area.

In addition to the agency Chief FOIA Officer reports, OIP has been actively engaged in a variety of initiatives to inform and educate agency personnel on the new commitment to open government and to encourage compliance with the key directives from the President and the Attorney General. After President Obama's FOIA Memorandum on the presumption of openness in FOIA decision-making and the Attorney General's FOIA guidelines, OIP held a government-wide training conference, attended by more than five hundred agency personnel, and provided guidance on how to implement the presumption of openness.³ In addition, OIP has conducted numerous training sessions specifically focused on the President's and Attorney General's transparency initiatives. Enclosed please find the relevant section of the Department's 2011 Chief FOIA Officer Report detailing OIP's efforts to provide training concerning the President's FOIA Memorandum and the Attorney General's Guidelines. The Department's Reports are available online.⁴

With respect to the questions about the Civil Rights Division's FOIA compliance raised in your March 2 letter, the Department's policy is to process records requests without taking into account any ideological or political affiliations of the requester. We are conducting an in-depth review of the Civil Rights Division's files regarding FOIA requests and requests for submissions under Section 5 of the Voting Rights Act of 1965. Our review to date has not found evidence to support the claims discussed in your letter.

The blog post referenced in your letter did not note the significant differences between, on the one hand, the Department's practices in responding to FOIA requests, and, on the other hand, its longstanding procedures for implementing Section 5 of the Voting Rights Act of 1965. In fact, the vast majority of the allegations cited in the blog post involved pending Section 5 submissions, which are not comparable to FOIA requests for the following reasons.

Section 5 provides, *inter alia*, that a jurisdiction covered by Section 5 can obtain preclearance of a change to its voting procedures if it submits the proposed change to the Department, and the Department does not interpose an objection within 60 days of the receipt of a completed submission. The Department's procedures for administration of Section 5 allow for public comment on proposed changes for which preclearance is sought. *See* 28 C.F.R. §§ 51.29-30. To facilitate public input, the Department's procedures provide for public access to Section 5 submission files to the extent they are not exempt from inspection under the FOIA. *See* 28 C.F.R. § 51.50(d). Due to changes in the Department's technology systems and security policies, it became no longer feasible for the Voting Section to provide for physical inspection and copying of Section 5 submission files. Thus, since 2001, the Voting Section's practice has been

² See <http://www.justice.gov/oip/foiapost/2009foiapost29.htm>.

³ See <http://www.justice.gov/oip/foiapost/2009foiapost6.htm> and <http://www.justice.gov/oip/foiapost/2009foiapost8.htm>.

⁴ See <http://www.justice.gov/oip/reports.html>.

to mail or email a copy of the file to each requester. Where redactions are needed, the Division's FOIA Office further processes the records.

The Voting Section prioritizes requests for Section 5 submission files when the jurisdiction's submission is pending before the Attorney General—*i.e.*, where the statutorily allotted 60-day review period has yet to expire, or where the Attorney General has requested more information or interposed an objection. This helps ensure that interested parties have a meaningful opportunity to receive and review a pending submission, and prepare and present a comment on that submission, as Congress provided in the Voting Rights Act of 1965, in time to be considered during the statutorily mandated 60-day review period. If the request letter cites the FOIA but seeks pending Section 5 files, it is treated as a pending Section 5 request and processed accordingly. Because of these procedures, it is not meaningful to compare the handling of requests for pending Section 5 records with the handling of requests for closed Section 5 files or FOIA requests for other types of records.⁵

For example, the blog post cited in your letter alleges that Eugene Lee received responses to his FOIA requests only three days after submitting them. The log that we provided with our letter to you of August 12, 2010 included three requests to the Division by Mr. Lee. Two of these three requests, however, were requests for copies of pending Section 5 submission files that were handled under the procedure described above. On the other hand, Mr. Lee's third request was for a *closed* Section 5 submission file (which was processed by the FOIA office due to the need for redactions). It did not receive the same priority as pending Section 5 requests, and took 172 days to fill. Another example is the request of Raul Arroyo-Mendoza, who is also alleged to have received "same day service." Mr. Arroyo-Mendoza has made many requests over the last two years. While he received quick turnaround for requests relating to pending Section 5 submissions, he waited 18 months for the Division to complete processing on his request for a closed Section 5 submission file, which included voluminous records and required numerous redactions.

The blog post referenced in your letter alleges that Chris Ashby received completed responses more slowly than Susan Somach because of political favoritism. However, our files indicate that Mr. Ashby's request was for closed Section 5 submission files, and thus was treated in the same manner as other requests for Section 5 submission files not pending at the time of the request. Ms. Somach, by contrast, often requested records relating to pending Section 5 submissions. In some instances, she asked for both pending and closed submission records in the same request. In all those instances but one, she received a prompt response under the longstanding practice relating to pending Section 5 submissions, while her requests for records

⁵ The Voting Section also aims to reply promptly where practicable to requests for closed Section 5 submission files—*i.e.*, submissions with regard to which the 60-day review period has already expired—where the requester demonstrates a need due to factors such as a litigation deadline, or other Section 5 issues such as potential unprecleared voting changes or a related pending file, as well as other requests that are simple or do not involve voluminous records.

relating to closed submissions took longer to process.⁶ To take a specific example, in a request she made on May 19, 2009, Ms. Somach received responsive records on May 27, 2009 for the four requested pending Section 5 submissions. However, the processing of the records from the closed submissions requested on that same date was not completed until two months later, on July 29, 2009. One of Ms. Somach's requests for a pending submission file took over a month: she did not receive a response to her request dated December 7, 2009 until January 29, 2010.

In certain cases, to be sure, FOIA requests may be completed in a matter of days. But this typically occurs when the requested records are easily identifiable, are not voluminous, and are releasable without requiring many redactions. Our initial review indicates that this was not the case in the instances in which the Department was criticized for delay in the blog post referenced in your letter.

For example, it is alleged that two FOIA requests for resumes—one submitted in February 2006 by a *Boston Globe* reporter and one submitted in 2010—received different treatment despite requesting “the exact same information,” and, specifically, that a response to the 2010 request was unduly delayed. These two requests, however, were quite different in scope. The 2006 request was for copies of resumes and application-related documents for career attorneys hired into three of the Civil Rights Division's Sections from January 2001 to approximately January 2006. By contrast, the 2010 request sought nearly a decade's worth of resumes for the entire Division, including all 12 Sections as well as the Office of the Assistant Attorney General—in sum, nearly seven times as many new hires as the 2006 request. In accordance with the Division's usual protocol, the FOIA Office began processing that request immediately, sending an interim response the day after it was received.⁷ That process requires a time-consuming line-by-line review of the resumes before public release, consistent with our obligation to protect the privacy of attorney hires.

In short, based on our initial review of the allegations that are referenced in your letter, we are not aware of evidence that the Civil Rights Division allows politics or any improper factors to play a role in the handling of records requests.

As you have requested in your letter, an updated log of FOIA requests is enclosed. We would like to call your attention to a difference between the enclosed log and the log that we provided to you on August 12, 2010, in response to your July 29, 2010 letter. In response to that letter, we provided the log maintained in the normal course of business by the Voting Section, which contained both FOIA requests (designated there with a number in the column titled “FOIA No.”), and also requests processed under Section 5 (designated there with “NA”). The log that we are providing you today should include all FOIA requests to the Voting Section, as well as

⁶ The exception we have identified was a request for five pending submission files and one closed file. In that instance, the closed file consisted of a total of only nine pages requiring no redactions, and was included along with the pending files.

⁷ Although the blog post referenced in your letter states that this request was originally submitted in the spring of 2010, our records indicate that it was first submitted on October 6, 2010, and received in the Division on October 13, 2010.

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Section 5 requests that the Voting Section received and, for record-keeping purposes, transmitted to the Division's FOIA/PA Branch for assignment of a tracking number.

We hope that this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'R Weich', with a stylized flourish at the end.

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable John Conyers, Jr.
Ranking Minority Member