

January 31, 2014

**By Email Only**

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**RE: Motion for Reconsideration  
FOIA Reference Number 2013-38**

Dear Dr. Risenhoover:

This letter is in response to your Motion for Reconsideration of the Legal Services Corporation's (LSC) denial of your Freedom of Information Act (FOIA) appeal.

Neither the FOIA nor LSC regulations provide for reconsideration of an agency's decision on appeal. Although LSC has no obligation to perform additional searches as requested in your motion, in the spirit of openness and transparency, LSC has conducted an additional search.

On January 16, 2014, LSC's Office of Information Technology searched LSC's entire document management system – that is, the electronic files and documents maintained by every office and employee of the corporation – using the following search terms and phrases:

- |   |                                   |
|---|-----------------------------------|
| 1. "Mixed Jury"                               | 10. Fenian                        |
| 2. "Jury de medietate linguae"                | 11. "Alien and Sedition Act"      |
| 3. "Medietate linguae" or "mediatate linguae" | 12. "Alien Enemies"               |
| 4. "Collateral consequences of guilty plea"   | 13. "Kentucky Resolution of 1798" |
| 5. "Immigration consequences of guilty plea"  | 14. "Virginia Resolution of 1798" |
| 6. "Respublica v. Mesca" and "Mesca"          | 15. "Elliot's Debates"            |
| 7. "United States v. Cartacho" and "Cartacho" | 16. "Commonwealth v. Macabalo"    |
| 8. "Hawaii v. Mankichi" and "Mankichi"        | and "Macabalo"                    |
| 9. "France-Hawaii Treaty"                     |                                   |

In addition, each department head, as well as select staff members who were identified as being most likely to possess responsive records, searched their respective business emails, hard drives, and physical files using the search terms and phrases identified above. LSC's librarian also searched LSC's list of publications. In total, LSC spent approximately 13 additional hours searching for records responsive to your request.

LSC's comprehensive search yielded a handful of documents containing one or more of the search terms and phrases identified above. These documents can be categorized into two groups: law review articles/reference materials and employment application materials.

It is well-established that reference materials are not "agency records" requiring disclosure under the FOIA. *See, e.g., SDC Development Corp. v. Mathews*, 542 F.2d 1116 (9th Cir. 1976); *Tax Analysts v. U.S. Dep't of Justice*, 913 F. Supp. 599, 607 (D.D.C. 1996), *judgment aff'd*, 107 F.3d 923 (D.C. Cir. 1997), *cert. denied*, 118 S. Ct. 336 (1997); *Baizer v. U.S. Dep't of Air Force*, 887 F. Supp. 225 (N.D. Cal. 1995). "[T]he type of documents Congress was seeking to include in the public disclosure provision of the Freedom of Information Act were primarily those which dealt with *the structure, operation, and decision-making procedure* of the various governmental agencies," *SDC Development*, 542 F.2d at 1119 (emphasis added), not copyrighted, third-party materials "maintained for reference purposes only." *Baizer*, 887 F. Supp. at 227. While reference material that is integrated into agency files and is relied on in decision making may become a "record" for FOIA purposes, *see Baizer*, 887 F. Supp. at 227-28, the documents at issue here were not of that nature; they were maintained solely for reference purposes.

The employment application materials, specifically writing samples submitted by attorney and law clerk applicants, are exempted from disclosure under FOIA Exemption 6 (protecting information about individuals in personnel and medical files and similar files when the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy), 5 U.S.C. § 552(b)(6), 45 C.F.R. 1602.9(5), and I decline to disclose them at this time.

I trust that this information satisfies your initial request and motion for reconsideration. If you believe that my decision is in error, you may seek judicial review in a district court of the United States as provided in 5 U.S.C. § 552(a)(4).

Sincerely yours,

A handwritten signature in blue ink, appearing to read "James J. Sandman", is written over a horizontal line.

James J. Sandman  
President