



July 10, 2014

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**RE: Your Appeal of FOIA No. 2014-12**

Dear Mr. Osterhage:

I have received your Freedom of Information Act (FOIA) appeal, in which you challenge the Legal Services Corporation's (LSC or the Corporation) response to your request.

In your notice of appeal, you stated that you wish to appeal LSC's decision to withhold all of the documents you had requested pursuant to Exemption 6 of FOIA, 5 U.S.C. § 552(b)(6). You also requested, "at minimum," the names and salary information of the individuals hired for the deputy director positions in the Office of Compliance and Enforcement and the Office of Program Performance, as well as the names, titles, and salaries of the individuals who made the hiring decisions. Finally, you stated that "if need be, I will reframe the request and ask for the name of the Supervisor of each of these new hires and their respective salary."

I have carefully reviewed LSC's initial response to your FOIA request. For the reasons I explain below, I am granting your appeal in part and denying it in part.

**Background Facts**

On May 5, 2014, you sent an "advance FOIA request" to LSC requesting the following records:

1. The name of each person selected for hire, their resume submitted in application, education and experience history and starting salary upon hire in these positions.
2. The name of each person involved in the in-person interview process, their salary history at LSC, their resume, education, experience, and job(s) held at LSC and for what periods of time.

Copies of any notes/interview score sheets for interviews conducted/the candidate selected.

3. The name of the person making the final hire decision, their title, LSC salary history, education/experience/resume. Copies of any notes/interview score sheets for interviews conducted/the candidate selected.

4. The number of applications received for each position.

5. The number of persons interviewed for each position.

6. The names, titles, and salaries of all persons who at the age of 60 years or older that have been hired by LSC in the last five years.

7. The names, titles and salaries of all LGBT persons that have been hired by LSC in the last five years.

You requested these documents for two job openings: the Deputy Director for Program Performance and the Deputy Director for General Compliance.

LSC made a timely determination to deny your request. On June 9, 2014, LSC's FOIA Officer sent you a letter informing you that "[t]he information you seek is being withheld in its entirety pursuant to Exemption 6 of the FOIA, 5 U.S.C. § 552(b)(6), which protects information 'in personnel and medical files and similar files' the disclosure of which 'would constitute a clearly unwarranted invasion of personal privacy'."

By email to the LSC FOIA Officer the same day, you filed this appeal. Upon direction of the LSC FOIA Officer, on June 11, 2014, you sent the appeal to me as required by LSC's FOIA regulations at 45 C.F.R. § 1602.12(a). Your appeal stated:

I wish to Appeal this letter.

At minimum, I request that the names of those persons . . . hired for these two positions be identified (sooner or later they will be on your public website) and their salary. Salary information for organizations funded all or in part by the Congress/Federal Government are NOT exempt from FOIA requests.

I also requested the names of those who made this decision and the title and salary. If need be I will reframe the request and ask for the name of the Supervisor of each of these new hires and their respective salary.

## Analysis

### **I. Records Improperly Withheld Under Exemption 6**

The FOIA Officer invoked Exemption 6 of FOIA as the basis for withholding all of the records you requested. An agency subject to FOIA may withhold records, in full or in part, under Exemption 6 if the information is contained in “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]” 5 U.S.C. § 552(b)(6); 45 C.F.R. § 1602.9(a)(5) (LSC regulation implementing § 552(b)(5)).

In determining whether to invoke Exemption 6, agencies subject to FOIA must balance “the individual’s right of privacy against the preservation of the basic purpose of the Freedom of Information Act to open agency action to the light of public scrutiny.” *Dep’t of the Air Force v. Rose*, 425 U.S. 352, 372 (1976) (internal quotation marks and citation omitted). “In making that balance, agencies and reviewing courts consider whether disclosure of the requested information would result in an invasion of privacy, and if so, the extent and seriousness of that invasion, as well as the extent to which disclosure would serve the public interest.” *Gov’t Accountability Project v. United States Dep’t of State*, 699 F. Supp. 2d 97, 106 (2010) (quoting *United States Dep’t of Def., Dep’t of Military Affairs v. Fed. Labor Relations Auth.*, 964 F.2d 26, 29 (D.C. Cir. 1992)).

After a careful review of your request, the records responsive to your request, and the applicable law, I have determined that the invocation of Exemption 6 to withhold all of the responsive records was erroneous. In some instances, a responsive record was not subject to Exemption 6 and should have been released. For other records, responsive information could have been segregated from personal information subject to Exemption 6 and provided to you in redacted form. LSC does not have some of the records you requested. An explanation of my decision with respect to each category of records you requested follows.

*A. The name, resume, education and experience history, and starting salary upon hire for each successful applicant*

In your request, you first asked for “the name of each person selected for hire, their resume submitted in application, education, and experience history and starting salary upon hire in these positions.” When denied this information, you requested “at minimum” that LSC provide you with the names of the individuals hired for the two positions and their starting salaries, asserting that this information is not exempt from FOIA requests.

I have determined that some of the information you requested was improperly withheld under Exemption 6. Generally, information about successful job applicants that is relevant to their ability to perform the jobs for which they were hired is not protected by Exemption 6. This would include information on a resume that describes an individual’s employment history and educational background. Information on a resume that is purely personal, such as a home address, telephone number, Social Security number, personal email address, or names of references, may properly be withheld under Exemption 6.

Consistent with my determination, LSC will release the names, resumes, education and experience history, and starting salary for the two successful applicants. LSC will continue to withhold under Exemption 6 the home address, personal email, personal telephone number, and personal activities and interests of the individuals that are unrelated to their positions at LSC. LSC will also withhold the employee ID number under Exemption 2 to FOIA as a record that is related solely to the internal personnel rules and practices of LSC. LSC estimates that it will withhold approximately one-quarter page of information responsive to this request.

*B. The name, resume, education, experience, positions held, salary history, and length of service at LSC for each individual involved in the in-person interview process*

You next sought the names of each individual employed by LSC who participated in the in-person interviews for the two positions, plus education and experience, resume, and salary history, length of service, and positions held while at LSC.

For reasons similar to those stated in Section I.A., I have determined that records reflecting the name, education, experience, and resume for the managers who conducted in-person were improperly withheld under Exemption 6. LSC also should have released records reflecting the interviewers' salary history, positions held at LSC, and length of service at LSC, as this information generally is not protected by Exemption 6. I have also determined, however, that the privacy interest of the non-management staff members who participated in the in-person interviews outweighs the limited public interest in the disclosure of their names, resumes, education, and experience. *See N.H. Right to Life v. Dep't of Health and Human Servs.*, 976 F. Supp. 2d 43, 63-64 (D.N.H. 2013). Consequently, LSC will continue to withhold this information under Exemption 6.

Consistent with my determination, LSC will release records of the names, education, experience, LSC salary history, positions held at LSC, and length of service at LSC for each of the managers who conducted in-person interviews for both deputy director positions. LSC will continue to withhold under Exemption 6 the home addresses, personal telephone numbers, personal email addresses, grade point averages, and personal activities that are unrelated to the individuals' employment at LSC, the disclosure of which would constitute an unwarranted invasion of the interviewers' personal privacy. LSC will also continue to withhold under Exemption 6 the names, home addresses, home telephone numbers, resumes, education, and experience for the non-manager staff members who participated in the in-person interviews. Finally, LSC will withhold under Exemption 2 each individual's employee identification number. LSC estimates that it is withholding fifty-three pages of information responsive to this request.

*C. The name, title, LSC salary history, education, experience, and resume of the individual making the final hire decision*

The next category of information you sought pertained to the individual making the final hiring decision. As with the interviewers, you requested the person's name, title, LSC salary history, and education and experience. In your appeal of LSC's decision to withhold this

information, you asked for the names, titles, and salaries of the individuals who made the final hiring decision.

Consistent with my explanation in Section I.B., LSC will release records reflecting the information you requested with regard to the person making the final hiring decision. LSC will continue to withhold the individual's home address, personal telephone number, and personal email address under Exemption 6, and the individual's employee ID number under Exemption 2. LSC will withhold less than one-quarter page of records responsive to this request.

*D. The number of applications received for each position*

You asked for, and LSC withheld under Exemption 6, the number of applications LSC received for each of the two positions. I have determined that LSC's decision to withhold this information under Exemption 6 was erroneous. Although LSC does not compile information about the number of applications received into a single record, other records allow us to calculate the number of applications we received. LSC received 26 applications for the position of Deputy Director for Program Performance and 13 applications for the position of Deputy Director for General Compliance.

*E. The number of persons interviewed for each position*

You asked for, and LSC withheld under Exemption 6, the number of individuals LSC interviewed for each position. As discussed at length above, Exemption 6 applies only to information contained in personnel, medical, or similar files that would constitute an unwarranted invasion of personal privacy if revealed. Consequently, LSC's decision to withhold records reflecting the number of interviewees for each of the two deputy director positions under Exemption 6 was erroneous.

I have reviewed the records showing the number of individuals interviewed. Those records contain both personal information that is subject to Exemption 6, such as the names of unsuccessful candidates, and information that is not protected by Exemption 6. The non-exempt information can be segregated from the exempt information. Therefore, LSC will release records reflecting the number of persons interviewed for each position in redacted form. LSC will withhold approximately one page of documents responsive to this request.

*F. The names, titles, and salaries of all individuals over the age of 60 hired by LSC in the last five years*

In addition to information about the candidates for the two deputy director positions and the LSC employees involved in interviewing and hiring them, you asked for information about all individuals over 60 whom LSC has hired over the past five years. LSC withheld that information in its entirety under Exemption 6.

I have reviewed the records showing the information you requested. Those records contain personal information subject to Exemption 6, including the names and ages of the individuals, and information that is not responsive to the request. The information you requested

can be provided substantially in a redacted form, so as to balance the public interest in disclosure with the individuals' interest in their privacy. I have therefore determined to release documents reflecting the titles, ages, and salaries of all individuals over the age of 60 at the time of hire within the past five years. LSC will continue to withhold the names and dates of birth for those individuals under Exemption 6 because releasing that information, in combination with the individuals' titles, ages, and salaries, would constitute an unwarranted invasion of their privacy. LSC will withhold less than one-quarter page of information responsive to this request.

*G. The names, titles, and salaries of all LGBT persons that LSC has hired in the last five years*

Finally, you requested information about all LGBT persons that LSC has hired in the last five years. LSC withheld that information in its entirety under Exemption 6. LSC does not maintain records on the LGBT status of its staff. Consequently, the determination to withhold this information under Exemption 6 was erroneous. Instead, LSC cannot provide the records you requested because LSC does not have such records.

## **II. Records Properly Withheld Under Exemption 6**

*A. Notes and interview scoring sheets for interviews conducted, including the successful applicant*

In your request, you sought the notes and evaluation sheets created by LSC staff who interviewed candidates for both deputy director positions, as well as any notes and interview scoring sheets created by the individual who made the final hiring decision. LSC withheld that information under Exemption 6. I have determined that those documents were properly withheld because the applicants' privacy interest in evaluations of their qualifications and aptitude outweighs the public interest in disclosure. This principle applies to both the successful and the unsuccessful candidates. Consequently, LSC will continue to withhold all notes and interview scoring sheets pertinent to the hiring of both deputy directors. LSC is withholding approximately thirty pages of documents responsive to this request.

*B. Personal information contained in resumes*

You also sought resumes of the successful applicants, the LSC staff who conducted in-person interviews of the candidates for both positions, and the individual who made the final hiring decisions. As discussed in Sections I.A., I.B., and I.C. above, LSC will release the resumes of these individuals in redacted form. LSC will continue to withhold purely personal information, the disclosure of which would constitute an unwarranted invasion of personal privacy.

*C. Names, resumes, education, and experience of the staff who participated in the in-person interviews*

Finally, you sought records regarding the LSC employees who participated in the in-person interviews of the candidates. LSC withheld all of the information requested under Exemption 6. I have determined that the initial decision to withhold personal information under Exemption 6 was correct with respect to the names, resumes, education, and non-LSC professional experience of the staff who participated in those interviews. As discussed in Section I.B. above, I have determined that the public interest in the disclosure of that information does not outweigh the individuals' interest in that information remaining private.

LSC will send you the records I have determined to be responsive and not subject to withholding in electronic form by July 18, 2014.

If you believe 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,



James J. Sandman  
President