



OFFICE OF THE PRESIDENT

Legal Services Corporation
America's Partner For Equal Justice

October 9, 2012

Ms. Raquel Del Valle
HC-01 8270
Loiza, Puerto Rico 00772

RE: Appeal of FOIA No. 2012-14

President
James J. Sandman

Dear Ms. Del Valle:

Board of Directors
John G. Levi
Chicago, IL
Chairman

I have received your Freedom of Information Act (FOIA) appeal, by which you challenge the Legal Services Corporation's (LSC) determination that it possessed no documents responsive to your request for information.

Martha Minow
Cambridge, MA
Vice Chair

I have reviewed LSC's response to your request and deny your appeal for the reasons explained below. However, in the spirit of open government and transparency, I will answer your questions to the extent that I can.

Sharon L. Browne
Sacramento, CA

Robert J. Grey, Jr.
Richmond, VA

Background Facts

Charles N. W. Keckler
Arlington, VA

On May 11, 2012, you sent a letter to LSC "requesting information related to the funding of the Servicios Legales de Puerto Rico Appeal's Unit beyond the year 2009." Specifically, you asked the following:

Harry J. F. Korrell
Seattle, WA

Victor B. Maddox
Louisville, KY

[I]f in the grant proposal applications for 2009, 2010 and 2011, the Appeal's Unit expenses were included as part of the proposal for those years?

Laurie Mikva
Evanston, IL

Fr. Pius Pietrzyk, OP
Zanesville, OH

If the expenses of the Appeal's Unit were not part of the proposal, ... whether any Restrictive LSC Funds were used to carry out the functions of said Appeal's Unit until it finally ceased to exist on January 26, 2012? And if so, what would the consequences be?

Julie A. Reiskin
Denver, CO

Gloria Valencia-Weber
Albuquerque, NM

Neither your letter nor its envelope was addressed to LSC's FOIA Officer or marked as a FOIA request. Nevertheless, LSC processed your letter as a FOIA request.

On June 8, LSC's FOIA Officer responded to your letter, informing you that LSC possessed no responsive documents and considered the matter closed.

On September 10, LSC received your appeal challenging LSC's determination that "the information [] requested [was] not in the possession of the Legal Services Corporation (LSC) because it is knowned that all government agencies that deal with grants (monies) have to keep records of all the proposals they get and finally approved, so they can monitor the compliance of these entities

with the law and the approved grant. This include among others, if these restrictive funds are use for other purposes not included in the grant.” Although we received your appeal four days after the 90-day period for appeals had expired, 45 C.F.R. § 1602.12(a), I have decided to consider your appeal nevertheless.

Analysis

The Freedom of Information Act, 5 U.S.C. § 552, made applicable to LSC by the LSC Act, 42 U.S.C. 2996d(g), and implemented by LSC regulations, 45 C.F.R. § 1602 *et seq.*, is a records-production statute. It requires LSC to make records concerning its operations, activities, and business available to the public upon request. *Id.* § 1602.3. It does not, however, require LSC to create a record, perform research, or answer questions to satisfy a request. *Id.* § 1602.8(e); *Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985) (“FOIA neither requires an agency to answer questions disguised as a FOIA request or to create documents or opinions in response to an individual’s request for information.”)

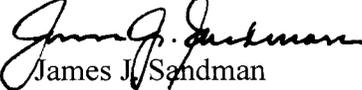
Your request concerning Servicios Legales de Puerto Rico’s (SLPR) Appeals Unit was phrased as a request *for information*, not records. You asked whether SLPR’s grant applications for 2009, 2010, and 2011 contained specific funding requests, not for copies of the grant applications themselves. You also asked whether LSC funds were used to support SLPR’s Appeals Unit and, if so, what the consequence of that use was. As a records-production statute, FOIA does not require LSC to answer such questions, only to search for and disclose responsive documents. Accordingly, upon receiving your request, LSC conducted a search for records relating to the funding of SLPR’s Appeals Unit. No LSC records contained specific funding requests for SLPR’s Appeals Unit or information on whether SLRS used LSC funds to support that unit. LSC therefore correctly determined that it possessed no documents responsive to your request.

In the spirit of open government and transparency, however, I would like to answer your two questions to the extent that I can. First, SLPR did not specifically request funds for its Appeals Unit in its 2009, 2010, or 2011 grant applications. As a general proposition, however, no law or regulation prohibits a grantee from using its LSC “basic field” grant to support such a unit. Appellate services are just one of the many types of legal services for which LSC grant funds are provided, *see* 42 U.S.C. § 2996f(a)(7) and 45 C.F.R. § 1605 (relating to the provision of appellate services), assuming those services are provided to eligible clients, are within the grantee’s priorities, and do not involve restricted activities.

Second, LSC does not have any information on whether LSC funds were used to support SLPR’s Appeals Unit. LSC receives only generalized expenditure information from its grantees in annually filed “Grant Activity Reports” (GARs). In the “actual expenses” section of the GARs, grantees disclose how much LSC and non-LSC funds they have spent on general categories of expenses such as personnel, rent and mortgage, office supplies and equipment, travel, training, litigation, etc. Grantees do not provide an itemized accounting of their LSC fund expenditures. But, again, even if LSC funds were used, that use would not be inconsistent with the LSC Act and regulations.

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,


James J. Sandman
President

Enclosures