



February 2, 2001

Mr. Michael Ravnitzky
Editor
American Lawyer Media
105 Madison Avenue
New York, NY 10016

President

John McKay

Board of Directors

Douglas S. Eakeley
Roseland, NJ
Chairman

John N. Erlenborn
Issue, MD
Vice Chairman

Hulett H. Askew
Atlanta, GA

LaVeeda M. Battle
Birmingham, AL

John T. Broderick, Jr.
Manchester, NH

Frank Fairbanks-Williams
Windsor, VT

F. Wm. McCalpin
St. Louis, MO

Maria Luisa Mercado
Galveston, TX

Nancy H. Rogers
Columbus, OH

Thomas F. Smegal, Jr.
San Francisco, CA

Ernestine P. Watlington
Harrisburg, PA

Re: Appeal – FOIA Request 2000-34

Dear Mr. Ravnitzky:

This responds to your letter appealing the Legal Services Corporation's ("LSC") response to your FOIA request of December 28, 2000. Upon review of the record, I must deny your appeal.

Background

In a letter dated November 29, 2000, American Lawyer Media filed a FOIA request with LSC requesting "the releasable portions of each Internal Opinion (or Internal Opinion Letter) issued by the Legal Services Corporation Office of Legal Affairs" from January 1, 1999, to the present. On December 28, 2000, LSC sent you a response indicating that LSC was denying your request on the basis that the opinions you request are covered by the attorney-client privilege and, therefore, are exempt from disclosure under 5 U.S.C. §552(b)(5) and 45 CFR §1602.9(a)(4). The December 28, 2000, response further noted that any non-exempt portions of the documents are not reasonably segregable and would leave only meaningless words and phrases and, therefore, need not be provided.

You appealed the decision by letter of January 2, 2001.¹ You base your appeal on: (1) the fact that LSC has chosen to release at least one other Internal Opinion in the past; and (2) a conclusory statement that an agency "must release exempt material unless there is foreseeable harm." You further appeal the decision not to release non-exempt information by segregating out the exempt information, stating that the titles of the opinions would provide meaningful information.

Analysis

Under Exemption 5 of the FOIA, and LSC's own implementing regulations, documents which are subject to the attorney-client privilege are exempt from

¹ Your letter is dated November 29, 2000, but since this pre-dates the decision you are appealing, and the letter was received by fax on January 2, 2001, we are deeming your letter to be dated as of the date of receipt by LSC.

Mr. Michael Ravnitzky – FOIA Appeal

February 2, 2001

Page 2

disclosure. As you acknowledge, LSC's Office of Legal Affairs Internal Opinions are covered by that privilege. Thus, they are exempt from disclosure. The fact that LSC has, on one occasion in the past, elected to waive the privilege and release a particular Internal Opinion, is immaterial to whether other Internal Opinions must or should be released. Moreover, while the Attorney General's guidance to agencies suggests that otherwise exempt material be released on a discretionary basis if there is no foreseeable harm from the release, it does not compel release and leaves any such decision within the discretion of the agency.

The attorney-client privilege is designed to protect confidential communications between an attorney and the attorney's client relating to a legal matter for which the client has sought professional advice. Without such protection from disclosure, frank and open attorney-client communications would be chilled and this would impede the ability of clients to seek and attorneys to provide adequate legal advice. This rationale is as true in the agency setting as in the "traditional" private attorney-client setting. Thus, while the Department of Justice has encouraged agencies to consider discretionary waivers, it also acknowledges that the attorney-client privilege serves an important public policy function and should be treated with care by agencies. In the end, it is properly within the agency's sound discretion to waive.

As for segregation of the opinions, the privilege attaches not only to the attorney's opinions, but to the underlying facts disclosed by the client and to the nature of the question upon which advice is sought. Thus, to take your example, the titles of opinions are as privileged as the other material parts of the opinions. As to any non-material wording in the opinions, non-exempt portions of documents need not be released if the remaining document would be meaningless words and phrases. Once the underlying facts provided by the client and the attorney's opinions have been redacted from the Internal Opinions, the remaining document would not yield meaningful information.

Accordingly, I uphold the December 28, 2000, decision to deny the original request of American Lawyer Media and, hereby, deny your appeal.

If you believe that this determination is in error, you may seek judicial review of this decision in an appropriate district court of the United States as provided in 5 U.S.C. §552(a)(4).

Sincerely,



John McKay
President