



March 12, 2001

Ms. Barbara Schwarz  
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Salt Lake City, UT 84111

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John McKay

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Re: Appeal – FOIA Request 2001-05

Dear Ms. Schwarz:

This responds to your letter of March 2, 2001, appealing LSC's response to your FOIA request of January 4, 2001 (reference number 2001-05). Upon review of the record, I must deny your appeal.

*Background*

In a letter dated January 4, 2001, you filed with LSC a FOIA request for LSC records, as follows:

1. "Anything as to that Legal Services Corporation employees work secretly for German Nazi Secret Service by hearing through microchip middle ear implants translated but German originated orders that violate United States laws, the U.S. Constitution and endanger national security;" and
2. "Any information/records as to what your agency is conducting to investigate, to prevent and to remove such illegal infiltration of an United States agency."

You also requested that you be provided with a "search declaration" describing how and by whom the search(es) for the documents requested was conducted, along with the search records and correspondence generated to retrieve such information/records.

Your request was stapled to your January 4, 2001 letter requesting appeal of the determination in a previous FOIA request you filed (reference number 2000-31). Accordingly, your request was not recognized as a new request immediately. On the day your request was determined to be a new request, and not part of the FOIA Appeal package, Ms. Browning sent you a letter (February 1, 2001) explaining the situation and informing you that a response to your request would be forthcoming shortly.

In a letter dated February 21, 2001, LSC provided a response to your request. This response informed you that there are no agency records responsive to your requests related to either of the items described above.

You filed an appeal of the LSC February 21, 2001, response in a letter dated March 2, 2001 claiming that LSC is unlawfully withholding records responsive to your request. Your appeal refers both to the records relating to your FOIA requests and to the “search declaration” you requested.

*Analysis*

You cite several bases for your appeal. First, you appeal on the basis that the response to your request was “deliberately delayed” and issued past the 20-working day time limit specified in the FOIA and LSC regulations. While it is unfortunate that there was a delay in determining that you had submitted a new FOIA request, the delay was attributable to your actions in submitting the request. LSC regulations clearly specify that all FOIA requests shall be submitted with “Freedom of Information Request” clearly marked on the envelope. 45 C.F.R. §1602.8(b). As Ms. Browning noted in her response, your request was not only included in an envelope labeled “FOIA Appeal” (not FOIA Request), but it was stapled to the appeal letter. I have no reason to believe that there is any reason for the delay other than your mislabeling of the request, particularly not deliberate action to avoid responding to your request.

As to your claim that the 20-working day time limit for response was violated, this is incorrect. LSC regulations provide that improperly marked requests “will not be deemed to have been received for the purposes of the time period” for responding to requests until they are identified as FOIA requests. Thus, as your request was properly identified as a FOIA request on February 1, 2001 and the LSC response was provided on February 21, 2001, LSC acted within the 20-day period.

You also base your appeal on the substantive claim that LSC “unlawfully” conducted no search in response to your request. Under the FOIA, LSC is required to undertake searches that are “reasonably calculated to uncover all relevant documents.” *Weisberg v. Department of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). As Ms. Browning advised you, LSC has no information relating to nor basis for suspecting that LSC employees are under secret orders from any foreign power, nor would their work bring them into contact with intelligence technology or microchip middle ear implants. Accordingly, we have no basis to believe that a search of agency records would be reasonably calculated to uncover any relevant documents.

You further claim that LSC must have “security policies” that are responsive to paragraph 2 of your request and which are being “illegally withheld.” Paragraph 2 of your request seeks records “as to what your agency is conducting to investigate, to prevent and to remove such illegal infiltration of an United States agency.” As noted above, we are unaware of any such supposed “illegal infiltration” of LSC. Accordingly, we have no specific records discussing “security policies,” nor any other records, related to the prevention, investigation or removal of “illegal infiltration” of LSC by the German Nazi Secret Service or any person working or acting on behalf or under the instruction of the German Nazi Secret Service. Any employment related policies LSC may have regarding the required qualifications of potential and actual LSC employees do not address security issues related to the prevention, investigation or removal of “illegal infiltration” of LSC by the German Nazi Secret Service or any person

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working or acting on behalf or under the instruction of the German Nazi Secret Service. As such, they would be outside the scope of and not responsive to your request.

Regarding your request for a what you term a “search declaration,” I must reiterate the information provided to you in previous letters from LSC<sup>1</sup> in response to your FOIA requests and appeals: What you consider to be a “search declaration” would require LSC to create new records documenting and describing its search efforts. However, as you acknowledge in your appeal letter, there is no requirement under FOIA that an agency create for a requester any agency records which do not already exist. As the U.S. District Court for the District of Columbia noted in one of your own cases, “Plaintiff is advised that there is no requirement that an agency provide a “search certificate” or a “Vaughn” index on an initial request for documents. The requirement for detailed declarations and Vaughn indices is imposed in connection with a motion for summary judgment filed by a defendant in a civil action pending in court.” *Schwarz v. U.S. Department of Treasury, et al.*, 2000 WL 1922277, \*2 (D.D.C.).

In light of the above, I have no basis upon which to determine that you were unlawfully denied any records responsive to your requests or any document which you characterize as a “search declaration.” If you believe that this determination is in error you may seek judicial review of this decision in the district court of the United States as provided in 5 U.S.C. §552(a)(4).

Finally, in your letter of appeal, you provide a “brief response” to my February 2, 2001, letter denying your appeal of the LSC response relative to one of your previous FOIA requests (2000-31). That response was final and I will not engage in further dialog about it. As I noted in that letter, if you believe that determination was in error you may seek judicial review of that decision in the district court of the United States as provided in 5 U.S.C. §552(a)(4).

Sincerely,



John McKay  
President

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<sup>1</sup> See letters of March 7, 2000, July 25, 2000, and February 2, 2001.