



June 7, 2001

Ms. Barbara Schwarz
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Re: Appeal – FOIA Request 2001-10

Dear Ms. Schwarz:

This responds to your letter of May 31, 2001, appealing LSC's response to your FOIA request of March 1, 2001 (reference number 2001-10). Upon review of the record, I must deny your appeal.

Background

In a letter dated March 1, 2001, you filed with LSC a FOIA request for LSC records, "generated and received by LSC all offices, in regards to my FOIA/PA request of November 19 and November 28, 2000, reference 2000-31 and to the appeal of both FOIA/PA requests, as well of my FOIA request of January 4, 2001, reference 2001-05 and my appeal of this request."

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.

In a letter dated March 7, 2001, the LSC FOIA Officer, Lisa Zurmuhlen acknowledged your FOIA request and informed you that you would be provided with a timely response. Ms. Zurmuhlen followed this original response up with a March 30, 2001, letter in which she informed you that there were 279 pages of materials responsive to your request. This letter also inquired as to whether you would wish to narrow the scope of your request in light of the likelihood that you are already in possession of many of the documents responsive to the request (i.e., copies of filings in court cases mentioned in your previous FOIA requests) and the fact that providing all the responsive pages would result in your incurring a fee for copying of the documents.

You responded to the March 30, 2001, letter, by letter dated April 9, 2001. In that letter you agreed to narrow your search to exclude "a copy of my complaints and court motions, as originated by me" and indicated that you were unable to pay any copying fees. After receiving this letter, Ms. Zurmuhlen once again wrote to you, this time on April 27, 2001. In this letter, Ms. Zurmuhlen noted that LSC has identified

three additional pages of responsive documents and asking if you would care to further narrow your request, as even with the removal of pages which were court documents originated by you, the number of responsive documents would be large enough as to incur a copying fee. With this letter, Ms. Zurmuhlen included an index of responsive documents so that you could identify which documents you wanted and which ones you did not want.

By letter of May 11, 2001, you agreed to further narrow the scope of your request, asking Ms. Zurmuhlen to exclude docket sheets and motions filed by defendants' attorneys in your various court cases. You also identified several items from the index that you specifically wanted. Your response, however, failed to address several items on the index, such that it was unclear whether you wanted these items sent to you or not.

In a letter dated May 24, 2001, LSC provided a response to your request. This response provided you with the documents as noted in the index which you indicated you wanted and with the documents which you did not specifically ask to have excluded, since the addition of these items did not trigger application of a copying fee. It appears that some pages from the docket sheets for two of your courts cases were inadvertently included in the response. However, since you had not requested these items and they were not intended to be sent, they were not counted towards the total pages you requested and did not figure into the determination as to whether the pages sent were within the limit of free copying applicable to FOIA requests to LSC.

You filed an appeal of the LSC May 24, 2001, response in a letter dated May 31, 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 claim that you were unlawfully denied documents responsive to your request because of alleged discrepancies between the number of pages and documents you think you were supposed to receive and the number of pages and documents you actually received. The May 24 letter from LSC did not state any specific number of documents, nor even any specific number of pages which were being sent to you. The number of pages may be deduced from the index, and is consistent with the number of pages sent to you (not including the docket sheet pages, which, as noted above were sent in error). You requested that Ms. Zurmuhlen send to you the following items from the index:

1. Background materials, FOIA Request Reference No. 2000-31 (15 pages);
2. Correspondence, FOIA Request Reference No. 2000-31 (22 pages);
3. Correspondence, FOIA Request Reference No. 2001-01 (11 pages);
4. Background Materials, FOIA Request No. 2001-05 (6 pages);
5. Internal records request forms, FOIA Request No. 2001-10 (5 pages);

Ms. Zurmuhlen, in fact, mailed these 59 pages to you, which you acknowledge receiving in your appeal letter. The documents comprising the 59 pages included items from the file such as the

seven-page Westlaw Document 2000WL1922277 (D.D.C.) and the five-page copy of *Steinberg v. DOD*, 23 F2d. 548. These documents were in the materials identified as Background Materials, FOIA Request No. 2000-31 and Background Materials, FOIA Request No. 2001-15 (items 1 and 4, above). Since you specifically asked for these items and they were provided, there is no basis for your claims that you were sent documents you did not request or that there were pages withheld from the 59 identified pages being sent to you.

With respect to the following items as listed in the index:

1. Order, dated January, 27, 2000, *Schwarz v. U.S. Department of Energy*, et al., U.S.D.C. No. 1:99cv03234 (2 pages);
2. Order, dated July 7, 2000, *Schwarz v. U.S. Department of Health and Human Services*, et al., U.S.D.C. No. 00-CV-1610 (2 pages);
3. Praecipe, dated March 1, 2000, *Schwarz v. U.S. Department of Energy*, et al., U.S.D.C. No. 1:99cv03234 (3 pages);

your letter did not address these items, neither specifically requesting them, nor specifically requesting that they not be sent. Since these documents are responsive to your original request, Ms. Zurmuhlen included these in her May 24, mailing in an effort to be maximally responsive to your request, particularly since inclusion of these 7 pages did not have an impact on your ability to have the materials provided for you free of charge. Thus, there is no basis for a claim that you were mailed documents that you did not request or that LSC is “misusing” the free page limit to deny you responsive documents.

You also appeal on the basis that the documents provided are not responsive because it is “not clear” that the documents relate to your requests. First, the Log of Search time document clearly states that it is related to FOIA Request Reference No, 2001-10 in the heading of the document. Second, while other documents may not specifically so state, they were the documents in the files relating to your FOIA requests as identified by you in your request Reference No. 2001-01. You requested the contents of the file and the contents were provided.

You further claim that documents are being unlawfully withheld because you the records sent are “100% not all that you have on me.” You requested the contents of the file relating two specific FOIA requests you had previously filed (2000-31 and 2001-05) and the documents related to the search for the current request (2001-10) and the contents of those files (except for material you specifically requested that LSC not send) were provided. Any other documents relating to you would be outside the scope of and not responsive to your request. Furthermore, simply because you choose to believe that there are additional documents that are being withheld does not make it so.

You also base your appeal on the substantive claim that LSC “unlawfully” conducted an insufficient 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). Such a search was conducted, as evidenced by the records which you requested and acknowledge that you received. Accordingly, we have no basis

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to believe that a further search of agency records would be reasonably calculated to uncover any relevant documents or that the search conducted was insufficient. Simply because you choose to believe that an insufficient search was conducted does not make it so.

Regarding your request for a what you term a “search declaration,” I must reiterate the information provided to you in previous letters from LSC¹ 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).

Sincerely,



John McKay
President

¹ See letters of March 7, 2000, July 25, 2000, and February 2, 2001.