



September 17, 2007

Mr. Y. Friedman
1331 48th Street
Brooklyn, NY 11219

***Re: Freedom of Information Act Appeal,
FOIA Reference #2006-25***

Dear Mr. Friedman:

This is in response to your letter of August 14, 2007, appealing the denial of the fee waiver request you made in connection with your Freedom of Information Act (FOIA) request, FOIA Reference #2006-25 to the Legal Services Corporation (LSC). I regret to inform you that your appeal is denied. The reason for this decision is that you have not presented a basis upon which to conclude that disclosure of the remaining documents is in the public interest. In particular, you have not demonstrated that disclosure of the documents to you will result in a contribution to an understanding of the public at large, rather than serving your personal interest.

Background

You submitted a FOIA request to LSC on June 29, 2006, in the course of a telephone conversation with LSC's FOIA Officer, Patricia Batie. (While your oral request was accepted and acted upon, please be sure to keep in mind the requirements in LSC's FOIA regulations that FOIA requests be submitted in writing.) The June 29, 2006 oral request assigned LSC FOIA reference number 2006-25 asked for:

A list of cases submitted by Legal Services for New York City in accordance with 45 CFR Part 1636 that reflects the names, telephone numbers and addresses of the plaintiff and defendants in each case, and that identifies the presiding court in each case.

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On July 31, 2006, during a telephone conversation with LSC Law Clerk Pavy Ram, you orally agreed to narrow the scope of your request to cover only records spanning the years 1997 to date.

Responding to your request, LSC conducted a records search that consumed 8.5 hours of LSC employee time and resulted in the identification of fifteen records consisting of 422 pages as responsive to your request. In accordance with LSC regulations at 45 CFR §1602.13(h), because the fee associated with your request was in excess of \$25, Ms. Batie contacted you by telephone on August 8, 2006, requesting your commitment to pay the required fee in order for LSC to finish processing your request and send you the responsive documents. During that telephone conversation with Ms. Batie, you declined to commit to paying the fee and, instead, orally requested a fee waiver. You did not, however, address any of the criteria in LSC's FOIA regulations justifying a fee waiver.

Your initial oral request was followed up on August 19, 2006 with written correspondence submitted by fax but without a postal address. In your fax, you provided the following in support of your fee waiver request:

[T]he information requested is in the public interest to know, and your [LSC's] request for fees is inappropriate. . . . The information would definitely contribute to public understanding of the operations or activities of the LSC Corporation [sic]; in fact the law and LSC regulations consider this information to be public records.

LSC provided an initial response to your FOIA request on May 11, 2007¹ and responded to your fee waiver request on May 15, 2007.

¹ Please understand that, pursuant to regulations, unless and until a requester agrees to pay for all charges associated with their requests, LSC will not consider the request to have been received. Therefore, even though LSC would have been within its legal rights to stop processing your request on August 8, 2006, LSC continued to process your request and provided the first 100 pages of responsive documents to you without charge (including waiving the charge associated with the first two hours of search fees).

You were sent the records on May 11, but the response regarding your fee waiver would have been provided to you sooner had LSC been provided with a postal address to which documents could be sent to you. As you may recall, none of your faxes listed a return postal address and in the course of many telephone conversations with several different LSC staff members over many months, you generally refused to provide a valid postal address. On those occasions on which you did provide an address, it was only good for a short time. On at least one occasion, documents were sent to you at an address you provided, but were returned to LSC as undeliverable to you at that address.

In the May 15, 2007 letter, Ms. Batie informed you that LSC had denied your fee waiver request. That response informed you that, if you wished to appeal the disposition of your fee waiver request, you were required to file such appeal within ninety days of the date of the letter and that the appeal had to be addressed to the LSC President. On August 14, 2007, you submitted a fax directed to the LSC Office of Legal Affairs in which you stated that you were submitting an “appeal.”

Please understand that, as noted above, there is no legal basis upon which to determine that you have been improperly denied a fee waiver. Ms. Batie’s letter to you set forth the criteria under which LSC will grant a waiver (in whole or part) of fees associated with FOIA requests. Because you had not demonstrated that disclosure of the requested information was in the public interest as defined in those criteria, your fee waiver request was denied. In pertinent part (with some relevant language underscored), Section 1602.13(f) provides that:

A fee waiver or reduction request will be granted where LSC has determined that the requester has demonstrated that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations of the Corporation or Federal government and is not primarily in the commercial interest of the requester.

(1) In order to determine whether disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Corporation or Federal government, the Corporation shall consider the following four factors:

(i) The subject of the request: Whether the subject of the requested records concerns “the operations or activities of the Corporation or Federal government.” The subject of the requested records must concern identifiable operations or activities of the Corporation or Federal government, with a connection that is direct and clear, not remote or attenuated.

(ii) The informative value of the information to be disclosed: Whether the disclosure is “likely to contribute” to an understanding of Corporation or Federal government operations or activities. The requested records must be meaningfully informative about government operations or activities in order to be likely to contribute to an increased public understanding of those operations or activities. The disclosure of information that is already in the public domain, in either a duplicative or a substantially identical form, would not be likely to contribute to such understanding where nothing new would be added to the public’s understanding.

(iii) The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested records will contribute to “public understanding.” The disclosure must contribute to a reasonably broad audience of persons interested in the subject, as opposed to the personal interest of the requester. A requester’s expertise in the subject area and ability and intention to effectively convey information to the public shall be considered. It

shall be presumed that a representative of the news media will satisfy this consideration.

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute “significantly” to public understanding of Corporation or Federal government operations or activities. The public’s understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent.

The May 15, 2007 letter to you noted that you had not demonstrated that disclosure of the documents requested met any of the above-stated criteria.

Your appeal similarly does not satisfy the public interest criteria for a fee waiver. Your appeal consisted of a fax cover sheet stating that it was an appeal and attaching a fax letter sent in July 2007 to Ms. Batie. This letter addresses the fee waiver justification by providing conclusory statements that the disclosure of the information will contribute to an understanding of LSC, but fails to discuss in what ways that would be the case. Most significantly, you have failed to sustain your burden to demonstrate that disclosure of these records to you will “contribute to [the understanding of] a reasonably broad audience of persons interested in the subject, as opposed to the personal interest of the requester.” 45 CFR §1602.13(f)(1)(iii).

As required by the regulation, LSC must assess your “expertise in the subject area” and your “ability and intention to effectively convey information to the public.” *Id.* You have provided no information indicating your ability to effectively convey this information to the public at large. In fact, you acknowledged in your July 10, 2007 fax to Ms. Batie that you have not provided this information to LSC; “[LSC does not] know what public I have already brought this information to the attention of.” Neither that fax nor your appeal says to whose attention you have brought the information you already received, nor how you possess the ability to bring the information to the public at large. Accordingly, I have no basis upon which to conclude that

disclosure of the remaining documents to you will result in a contribution to an understanding of the public at large, rather than respond to your personal interest. Absent such information, I have no basis for overturning the fee waiver denial.

If you wish to obtain the remaining documents that have been identified as responsive to your request, please submit a letter confirming your agreement to pay to LSC the identified fee of \$146.83, as set forth in LSC's May 11, 2007 letter to you.²

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,

A handwritten signature in black ink, appearing to read "Helaine Barnett", written in a cursive style.

Helaine M. Barnett
President

² In your July 10, 2007 fax to Ms. Batie, you appear to claim that documents which you characterize as "active" are not subject to search fees and that certain fees were improper because of what you contend is a lack of necessity to review documents or search for documents not held directly in LSC's offices. There is no basis in the law for that claim. Moreover, regardless of the status or location of any particular LSC record, staff time must be expended in identifying, retrieving and processing records in response to FOIA requests.