



NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, INC.
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September 28, 2009

Via Facsimile (202) 693-5278
and U.S. Mail

FOIA Appeal

Carol A. De Deo
U.S. Department of Labor
Deputy Solicitor for National Operations
Room S-2002
200 Constitution Avenue, NW
Washington, DC 20210

Dear Ms De Deo:

This letter constitutes an administrative appeal under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(a)(6). The appeal is timely since it is not based on any formal denial but rather on unwarranted delay in responding to the request.

This appeal regards the failure of the Department of Labor ("DOL" or "Agency") to timely respond to Request No. 553871. That request seeks records related to the activities and correspondence of DOL Secretary Hilda Solis and DOL appointee Deborah Greenfield during specified time periods.

The requester is the National Right To Work Legal Defense and Education Foundation ("NRTW"). The original request (attached Ex. A) was filed on April 6, 2009.

On April 24, 2009, the Agency acknowledged receipt of the request (attached Ex. B). There has been no subsequent written response. NRTW has contacted the Agency on multiple occasions to obtain information regarding the status of the request. On each occasion, the Agency merely informed NRTW that the request was being processed or would be processed.

In support of this appeal, NRTW states the following:

NRTW has attempted, through numerous telephone inquiries made by the undersigned attorney for NRTW, to obtain information about the status of the request. All inquiries have been met with assurances that the request is being worked on, but that no date for completion could be provided.

On July 28, NRTW accessed the Agency's "FOIA Public Portal." A "screenshot" from the website is attached as Ex. C and shows information posted by the Agency:

- Under the heading "Estimated Date to Completion of Action" the Agency listed May 22, 2009;
- Under the heading "Status" the Agency stated "Decision Made";
- Under the heading "Date of Completion" the Agency listed July 7, 2009;

Subsequent visits to the Agency's "FOIA Public Portal" website provided conflicting information regarding the status of the Agency's response. In follow-up telephone calls the Agency suggested that various subdivisions of the DOL may have completed searches of their specific sections and then misleadingly indicated on the website that the overall search was complete. The Agency also suggested that the request was at that time before the Agency's Office of the Solicitor and that office's processing had not yet been completed. As of September 28, the Agency's website indicated that status of the request was "In Progress."

NRTW last contacted the Agency on or about September 15, 2009. In a telephone call NRTW was informed that the Agency hoped to complete the request as soon as demands on department staff permitted.

This appeal should be granted since the information sought would be of great benefit to the public to understand the formation of public policy. The request regards the day-to-day meetings, correspondence, and other communications between the Department Secretary and/or appointee Greenfield and identified labor organizations. Nothing confidential or sensitive is sought.

FOIA § (a)(6)(i) requires the Agency to respond to a request within 20 days. This request was made over five months ago. During that time, it is very likely that the Agency has generated much more responsive information than was encompassed by the original request's specific time parameters. If the Agency ultimately responds with documents pertaining only to the specified time periods, the long delay will have rendered some of that information out-of-date and possibly irrelevant. Further, the Agency might not consider as responsive information generated after the date of the original request even though the information corresponds to the specifics of the request in all other respects. The long delay in responding will therefore have served to frustrate the purpose of the Act which is to provide the public with all available information in a timely manner.

The request is not unduly burdensome and therefore cannot be rejected without a response from the Agency. *See, e.g., Nation Magazine, Washington Bureau v. United States Customs Serv.*, 71 F.3d 885, 891-92 (D.C. Cir. 1995). The records sought are described with specificity regarding their nature and the time frame during which they would likely have been created. At no time has the Agency suggested that the search would be unduly burdensome. *See id.* at 892.

Finally, the information requested does not fall into any of the FOIA § 552(b) exemptions. The Agency has not cited any of the available exemptions as motive for the delay in

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responding.

In light of the preceding, NRTW requests that the Agency produce all responsive information immediately.

Sincerely,

Matthew C. Muggeridge
Staff Attorney

encl.