



May 13, 2011

Jacqueline Young
General Counsel FOIA Officer
National Labor Relations Board
1099 14th Street, N.W.
Room 10600 Washington, D.C. 20570

[Submitted via Fax number: (202) 273-4275]

Re: FOIA Request related to The Boeing Co., Case No. 19-CA-32431

Dear FOIA Officer Young:

This request for disclosure of information is made on behalf of the National Right to Work Legal Defense Foundation, pursuant to the Freedom of Information Act, 5 U.S.C. § 552 et seq. The request specifically regards the NLRB's communications with outside parties concerning the complaint issued against the Boeing Company on April 20, 2011 in Case No. 19-CA-32431.

A. Request

Pursuant to the FOIA, I hereby request a copy of the following documents related to the NLRB complaint issued against the Boeing Company on April 20:

1. Excluding parties to the complaint or their legal representatives, all documentation (however formatted) of communications between NLRB officials and third parties, including the White House, the offices of the Governors of Washington and Oregon, or any other federal, state or local government agency personnel, where the communications had any relationship to the NLRB complaint issued against the Boeing Company on April 20, 2011 in Case No. 19-CA-32431, or Boeing's opening of an aircraft assembly facility in South Carolina.
2. Excluding the documents response to Request No. 1 (above) and communications to parties to the NLRB complaint issued against the Boeing Company on April 20, 2011 or their legal representatives, all documentation (however formatted) of communications between 1/20/2009 and 5/12/2011 between NLRB officials and any outside parties, including the White House, the offices of the Governors of Washington and Oregon, or any other federal, state or local government agency personnel, regarding the Boeing Company or the International Association of Machinists.

Note: The Foundation wishes to exclude from these two Requests all NLRB Press releases, unless any were removed from or not posted on the NLRB.gov website.

B. Request For Fee Waiver

For reasons explained in the following paragraphs, the Foundation requests a fee-waiver with regard to this request for information.

The production of these documents and the fee-waiver will help the Foundation in its unique work of public education on key issues related to the work of the NLRB and its effect on workers.

The Foundation is a primary source of information for the public on labor-related issues and the activities of government in that regard. The Foundation constantly receives requests from the media, the legal community, and individual employees who seek information or legal counsel concerning the actions of government, the appointment of agency officers, and its likely effect on regulation. Employees and the public in general have a right to be educated on these matters because of the significant impact changes in the law may bring to their lives.

1. Whether the subject of the requested records concerns “the operations or activities of the government.”

The information sought in the present request is directly and self-evidently related to the operations and activities of government. Specifically, the request seeks information regarding an atypical use of the agency’s power to benefit a significant presidential and Democrat campaign contributor.

Employees, the media, and the public have come to rely on the Foundation’s unique area of expertise in all matters related to the workings of the NLRB and the actions and personnel involved in such regulation.

2. Whether the disclosure is “likely to contribute” to an understanding of government operations or activities.

Disclosure of information regarding NLRB outside relationships and biases involving due process and enforcement targeting is “likely to contribute” to an understanding of the operations of the Board. An organization such as the Foundation needs to know what government actions and personnel might have influenced the NLRB’s unusual actions in question and the legal challenges thereto. A better understanding of the rationale behind the Agency’s decisions will certainly benefit the public at large. In the absence of this disclosure, the government’s actions will remain shrouded in mystery and largely impenetrable to the general public.

3. Whether disclosure of the requested information will contribute to “public understanding” on the subject.

The Foundation is a primary source of information for employees across the nation and the general public on issues related to the government's regulation of labor unions and protection of employees' rights. Each week, approximately 80 requests for legal help are received by the Foundation.

The Foundation is the only legal aid and education organization of its kind, offering free legal services and unparalleled expertise on issues in the area of employees who wish to vindicate their workplace rights. In fact, without the free legal information and representation provided by the Foundation, most of these employees would simply not be able to find answers or resolve their legal issues. In most cases the prospective complainants could not afford legal representation and many attorneys do not have interest or expertise in this area comparable to that of the Foundation and its staff attorneys.

Without even taking into account the litigation carried out on behalf of employees whose rights may have been violated, the Foundation also serves as a main source of information for representatives of the media, the legal community, and the public at large.

Disclosure of the information we are requesting would enable the Foundation to enhance this public service.

4. Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.

As noted above, the Foundation is a unique organization, dedicated to the dissemination of information and free legal counsel concerning employee rights and labor regulations related to unions and employees. In most instances, merely by consulting the Foundation's educational resources, members of the public are provided with sufficient information to decide whether their rights have been violated and whether further legal action is likely to be worthwhile. In other words, the educational aspect of the Foundation's work serves to focus and possibly prevent unnecessary litigation while, at the same time helping to ensure bona fide violations of federal law are remedied.

In recent months, there has been heightened public speculation regarding perceived extraordinary relationship between the NLRB in favor of labor organizations and against individual employee rights. The Foundation is an information resource for the public interested in this issue. The Foundation provides an invaluable public service as an expert and information conduit in this field of government activity.

Since 1986, when Congress amended the FOIA, there is no longer any distinction made between the public 'at large' and a 'segment' of the public. Consequently, the present request for information and fee waiver should not be denied as being of interest only to a narrow section of the public. "Congress amended the [FOIA] in 1986 . . . to delete the language of the fee waiver provision requiring that disclosure primarily benefit the 'general' public" *Linn v. United*

States Dep't of Justice, Civ. A. No. 92-1406, 1995 WL 631847, at *14 n.4 (D.D.C. Aug. 22, 1995) (citation omitted). As amended, "nothing in the statute supports a distinction between the public 'at large' and a 'segment' of the public" *Id.* at *14. "Information need not actually reach a broad cross-section of the public in order to benefit the public at large. . . . The relevant inquiry . . . is whether the requester will disseminate the disclosed records to a reasonably broad audience of persons interested in the subject." *Carney v. United States Dep't of Justice*, 19 F.3d 807, 814-15 (2d Cir. 1994); see *Linn*, 1995 WL 631847, at *14.

Although, as explained above, "benefit to the public" need not be interpreted as a broad section of the public, nevertheless, the subject matter of the present request for information is, in fact, a matter of general current public interest. The role of labor unions in public life has rarely been a more common subject in public debate. There is consensus among labor organizations, employees, the legal community, and legislators, that the role of labor unions is an important issue in American public and political life. The question concerns the very integrity of the political process, in which labor unions are important players with financial support of political campaigns and candidates.

With regard to the present request for information, there clearly is "a reasonably broad audience of persons interested in the subject" of the partiality and bias by the Obama Administration's agencies, including the NLRB.

Moreover, there is no question that the NRTWLDF can and will disseminate information obtained through this request to the broad segment of the public that is interested in the controversial subject of who is forming government policy.

The Foundation also has a communications staff that has made major efforts to use information already made available to it through the NLRB website and other sources to raise public awareness regarding the workings of governmental agencies, particularly the NLRB and Department of Labor generally. It has done so through articles on this subject in its bi-monthly newsletter, *Foundation Action*, which is mailed to an average of 22,000 recipients every other month. An email update reaches 300,000 every other month. The organization's website (www.NRTW.org) receives approximately 46,000 unique visitors each month. There are even visits to our website from inside the government: in the past six months, the website has received 108 unique visits from users at the "nrlb.gov" domain, constituting approximately 400 page-views.

The Foundation will use these methods and others, such as communications with members of Congress, to publicize the information it obtains from this request. This detail regarding the Foundation's ability to publicize disclosed information is sufficient to satisfy the FOIA. See *Judicial Watch, Inc. v. Commissioner*, 326 F.3d at 1314; *VoteHemp, Inc. v. Drug Enforcement Admin.*, 237 F. Supp. 2d 55, 62-63 (D.D.C. 2002).

As noted above, this request concerns one of the fundamental principles of our democracy: impartial government.

5. Whether the request involves any commercial interest of the requester which would be furthered by the disclosure.

The question of the non-commercial nature of the Foundation's requests for disclosure is indisputable. The Foundation is a 501(c)(3) charitable organization, not a commercial enterprise. The Foundation has no conceivable commercial interest in the lawsuits which are the subject of this request. The information gathered from the documents requested would provide vital information that would be of significant benefit to the public.

6. A balance of the requester's commercial interest against the identified public interest in disclosure to determine which interest is "primary."

In the present instance, the Foundation has no conceivable commercial interest to be balanced, as was explained in the preceding section. Under no current interpretation of the law regarding the commercial nature of a request would the Foundation qualify as a commercial requester, even if the information disclosed were to be used in litigation, since no specific piece of information is being sought for use in a particular case -- commercial or otherwise.

Thank you for your consideration of this request.

Please do not hesitate to contact me regarding the request. Please direct your inquiries to Glenn Taubman or Matthew Muggeridge, Foundation staff attorneys.

Respectfully submitted,



Mark Mix
President