



Transactional Records Access Clearinghouse
Syracuse University

August 19, 2015

Director, Office of Information Policy (OIP)
U.S. Department of Justice
Suite 11050
1425 New York Avenue, N.W.
Washington, D.C. 20530-0001

RE: FOIA appeal of Criminal Division's response dated August 11, 2015 (received August 18, 2015) to our January 22, 2015, April 16, 2015, and July 21, 2015 FOIA requests [CRM-300473766, CRM-300485431, CRM-300493484] for specific information concerning the processing of FOIA requests covering the period October 1, 2012- June 30, 2015.

Dear Director:

This is a FOIA appeal of the agency's response to the above referenced request. Our request asked for a listing of six items from your FOIA database for each request received during the two-year period. The six items requested were: (a) Request number, (b) Office, (c) Date of request, (d) Date request was received, (e) Track assigned, and (f) Date closed (where applicable). We asked that the information be provided "as a CSV or other equivalent machine-readable text format that retains the structure of the text in its original tabular form."

We are appealing: (A) the gross inadequacy of the search and (B) the furnishing of records as an image rather than in a machine-readable structured format.

(A) Gross Inadequacy of Search.

The search was deficient in many respects. First, while the FBI maintains computerized FOIA tracking systems that contain request-by-request information on the receipt and processing of its FOIA requests, it does not appear that any search was conducted of these systems. Because this is the primary location in which the requested information is kept, the failure to search this logical place was clearly improper.

Second, the request asked for six basic pieces of information about each request. Only two of these: (a) Request number and (f) Dated closed – were provided. The remaining four items – items (b) through (e) -- were not included on the listing. Yet each of these pieces of information are contained in the agency's FOIA database systems, as evidenced by the fact that these fields are needed to comply with the FOIA laws reporting requirements and agency processing practices, including the numbers received during a FY, the backlog, and processing times by track assigned. None of these requested items concerned information that could be legally withheld, and hence no redactions were required.

For example, no information about track assigned was contained in the records we received. Further, while we asked for three dates, only a single date was provided – the closed date -- on any request number. Neither the date of the request nor the date the request was received was included. Since a primary purpose of our request was to examine backlog and processing times, without *both* a request

received and (where applicable) a date closed it is not possible to determine either the request backlogs or the agency's processing times.

Third, it appears that inappropriate search terms were used. The search was apparently limited to cases closed between October 2014 and June 2015 since every request listed showed a closed date between these two dates. Because only requests that had been closed were found on the listing, requests received that had *not* been responded to were apparently excluded from the search. Not even the requests we had submitted to the agency during this period were included on the listing we received! Yet our FOIA requests clearly sought the *current status* on "all FOIA requests *received* by the FOIA office from October 1, 2012 – June 30, 2015" (emphasis supplied).

The agency's response letter contends that it previously provided some information for the period October 1, 2012 through September 30, 2014 (CRM-300440261 and CRM-300466002) and hence this 24-month period was apparently excluded from its current search. However our request was for the *current status* of these requests. The agency's response was deficient in that it did not include any information on cases pending at the end of September 30, 2014 which still had not been responded to at the end of June 2015.

In addition, we note that the current requests asked for the *date of each request* – in addition to the date each request was received during the October 1, 2012 through September 30, 2014. The date of each request had not been requested in our prior requests or furnished in the agency's prior responses.

Finally, the agency's previous response did *not* in fact provide the information we had requested earlier. Indeed, we have recently appealed the deficiencies in the agency's July 30, 2015 responses. We incorporate by reference therefore these earlier appeals (CRM-300440261 and CRM-300466002) in this appeal since to the extent the current and previous requests overlap, the requested information was not and still has not yet been provided.

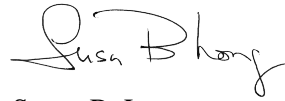
(B) Furnishing records as an image. The FOIA requires that records be furnished "in any form or format requested by the person if the record is readily reproducible by the agency in that form or format." The law also requires that: "Each agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section." The Criminal Division maintains its records tracking the receipt and processing of FOIA requests in a structured digital format that is readily reproducible as machine readable structured output. It is our understanding that the agency has to furnish extracts of these files in machine readable structured form containing each of the requested pieces of information to OIP for reporting purposes. Hence it is clear that the agency has the capacity to furnish the requested information in something other than a PDF picture taken of paper printout.

We asked that the requested records be provided as a CSV or any other equivalent machine-readable text format that retains the structure of the text in its original tabular form. Equivalent formats, for example, include Excel, tab-delimited text, XML, fixed-column-width text. PDF files do not meet this requirement since the tabular structure of the text is stripped off from the original source when a PDF format is created even when it is created from a digital file. In this case, the pdf was not created from a digital file but from a paper printout. Not only was the tabular structure of the text stripped off from the original source, but the text itself was reduced to a photographic image further reducing its information content.

Because the agency has database systems containing all of the data we requested, and the technical capacity to readily search these computerized systems and furnish the requested information in the format we requested, it was improper under the law for the agency to fail to do so.

If you find more information is needed to clarify any point we asked to be contacted and given an opportunity to provide such supplemental materials. Thank you.

Sincerely yours,



Susan B. Long
Co-Director, TRAC and
Associate Professor
Martin J. Whitman School of Management
Syracuse University



David Burnham
Co-Director, TRAC and
Associate Research Professor
S.I. Newhouse School of Public Communications
Syracuse University

Attachments:

Copies of three requests and agency consolidated response letter

Dear FOIA Officer:

Under the provisions of the Freedom of Information Act, we request a case-by-case listing of all FOIA requests received by the FOIA office from October 1, 2012 – December 31, 2014 with the following data fields:

- (a) Assigned request tracking number
- (b) Office (where multiple components)
- (c) Date of request
- (d) Date request was received
- (e) Track assigned (where used)
- (f) Date closed (where closure has occurred)

Please note you will be regularly receiving requests for updated information on your FOIA workload. To the extent you have previously provided us complete information in the requested format on a particular closed case, it is not necessary to provide information on that case again. However, if you find it simpler to provide information on the status of every request received during this time period, this is certainly acceptable as well.

This listing should be provided as a CSV or other equivalent machine-readable text format that retains the structure of the text in its original tabular form. [Equivalent formats, for example, include Excel, tab-delimited text, XML, fixed-column-width text. PDF files do not meet this requirement since the tabular structure of the text is stripped off from the original source when a PDF format is created.]

We request that we be classified as a representative of the news media under the provisions of the Freedom of Information Act, and as representatives of an educational institution, whose purpose includes scholarly, scientific research. TRAC is a center jointly sponsored by the Newhouse School of Public Communications and the Whitman Management School at Syracuse University. TRAC's faculty and staff carry out an active program of scholarly research, publication and distribution under the direction of its co-directors, Dr. Long and Professor Burnham. Our work focuses on the federal government and its day-to-day activities, including how federal agencies implement their obligations under the Freedom of Information Act. For more than two decades, we have gathered information of interest to the public, transformed this information utilizing our editorial and research expertise into various works -- including computerized knowledge bases and reports -- and actively distributed these works through a variety of channels, including through our two public websites: <http://FOIAproject.org> and <http://trac.syr.edu>. Our publications are widely used by other researchers, the news media, government, and the public. For a sample of recent citations to our research and reports, see: <http://trac.syr.edu/tracatwork/>.

We also request a full waiver of fees. As you are aware, FOIA sets strict time limits for responding to requests because timely receipt of the information that must be made public is a cornerstone of having an informed citizenry. Thus, there is substantial public interest in monitoring the success of an agency in meeting these timeliness goals. Indeed, because of their public importance, Congress requires each federal agency to compile and publish statistics on FOIA response times and pending caseloads each year. However, by the time these FOIA reports are available to the public, they are no longer timely. It is the purpose of this request to gather and analyze the requisite data to provide regularly updated FOIA monitoring reports on your agency.

We look forward to receiving this information. Should you have any questions, or if we can be of any assistance, please feel free to contact us. Thank you very much.

Professors Greg Munno, David Burnham and Susan B. Long
Transactional Records Access Clearinghouse
Suite 360
Newhouse II
Syracuse University
Syracuse, New York 13244
315-443-3563
<http://trac.syr.edu>
<http://FOIAproject.org>

Dear FOIA Officer,

Under the provisions of the Freedom of Information Act, we request a case-by-case listing of all FOIA requests received by the FOIA office from October 1, 2012 – March 31, 2015, with the following data fields:

- (a) Assigned request tracking number
- (b) Office (where multiple components)
- (c) Date of request
- (d) Date request was received
- (e) Track assigned
- (f) Date closed (where closure has occurred at the time you process this request)

Please note you will be regularly receiving requests for updated information on your FOIA workload. To the extent you have previously provided us complete information in the requested format on a particular closed case, it is not necessary to provide information on that case again. However, if you find it simpler to provide information on the status of every request received during this time period, this is certainly acceptable as well.

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