



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 31 2012

Mr. Jeff Ruch
Executive Director
Public Employees for Environmental Responsibility
2000 P Street, N.W., Suite 240
Washington, D.C. 20036

OFFICE OF
GENERAL COUNSEL

Re: Freedom of Information Act Appeal HQ-RIN-00107-12-A

Dear Mr. Ruch:

This letter is in further response to your November 21, 2011 Freedom of Information Act ("FOIA") appeal regarding your request for documents pertaining to "[t]he results of the Bottom-Up Survey of CID agents" and "[a]ny management analysis of [those] results" as well as "records of exit interviews with departing CID agents during calendar year 2011." The decision stated that your request was denied because the withheld documents were exempt from disclosure under Exemptions 5 and 6 of the FOIA, 5 U.S.C. §§ 552(b)(5) and (6).

I understand that you mentioned in a phone conversation with a member of my staff that you were advised that a contractor had performed the survey where CID agents evaluated their managers. I have learned from recent consultation with personnel in the Office of Criminal Enforcement Forensic & Training, that no contractor participated in the survey; however, names of individual agents who provided evaluations and comments were filtered out by the survey instrument which also compiled the results for each manager who was evaluated in this fashion. It is my understanding, also, that you indicated in the conversation with my staff that you would narrow your initial request to seek only the evaluations of the senior three or four personnel who were evaluated by their staff in the Bottoms Up survey.

I am confirming that all material responsive to your initial request (and the narrower request you have articulated) has been properly protected from public disclosure because releasing it would result in identifying individuals, together with their evaluations, whose personal privacy interest outweighs any public interest in the particular specific information you have sought.

To reiterate my letter of December 15, 2011, Exemption 6 of the FOIA, 5 U.S.C. § 552(b)(6), protects "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The withheld documents and portions of documents are within the scope of the phrase "personnel and medical files and similar files" because they contain evaluative information that applies to several particular individuals and could be tied to specific individuals.

In balancing the public's right to disclosure against the individual's right to privacy, a comparison must be made between the extent to which the documents shed light on EPA's performance of its statutory duties, and the need to avoid disclosure of personal matters. As I explained in my previous letter, in this case the harm to the individuals as a result of disclosure would clearly outweigh any public interest in such disclosure. Disclosure of the withheld material would thus constitute a clearly unwarranted invasion of personal privacy. Therefore, I have determined that the withheld material is exempt from disclosure under Exemption 6 of the FOIA.

Should you have any questions concerning this matter, please call Cindy Anderson, attorney adviser, at (202) 564-2690.

Sincerely,

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

Kevin Miller
Assistant General Counsel for Information Law

Enclosure: Updated List of Withheld Documents

cc: HQ FOI Office
Laurice Redhead, OECA, EPA

Updated List of Withheld Documents
FOIA Appeal HQ-RIN-00107-12-A

All documents have been withheld by application of FOIA Exemption 6, personal privacy.

1. 31 reports compiled from survey results for 14 different supervisory positions in OCEFT, covering 31 individuals in OCEFT management.
2. One document related to an individual personnel action concerning a specific staff member.