



INTERNATIONAL BOUNDARY AND WATER COMMISSION  
UNITED STATES AND MEXICO

OFFICE OF THE COMMISSIONER  
UNITED STATES SECTION

November 5, 2009

Christine Erickson  
Public Employees for Environmental Responsibility (PEER)  
2000 P Street, NW Suite 240  
Washington, DC 20036  
*Also sent via U.S. Postal Mail*

Subject: FOIA Request 0930, sent to USIBWC

Dear Ms. Erickson:

This letter is in response to your Freedom of Information Act (FOIA) request sent to the United States Section, International Boundary and Water Commission, United States and Mexico (USIBWC). Your letter requested "A copy of the retainer agreement between IBWC and the law firm of Jackson Lewis in the matter concerning McCarthy v. IBWC..." and "All documents that evidence the source of the funds used to pay for representation by Jackson Lewis..."

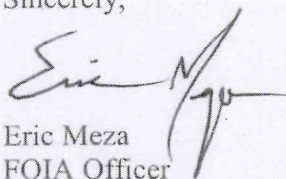
Regarding the agency's source of funds, please refer to the 2009 Appropriations, which can be viewed at <http://thomas.loc.gov/home/approp/app09.html>. Regarding the retainer agreement, the agency search located 1 document responsive to this request. Such information is withheld subject to 5 USC § 552(b)(4), "trade secrets and commercial or financial information obtained from a person and privileged or confidential." The information withheld under exemption 4 falls within the category of commercial/financial information. A commercial or financial matter is confidential for purposes of the exemption "if disclosure of the information is likely to have either of the following effects: (1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained." *National Parks & Conservation Association v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). In this case, the disclosure of such information could cause harm to the competitive position of the commercial entity from whom the agency has obtained services. Further, such information is not the type of information that would customarily be disclosed to the public. *Critical Mass Energy Project v. Nuclear Regulatory Commission*, 975 F.2d 871, 879 (C.A.D.C.1992).

No fees were assessed for the search, review or materials devoted to your request.

This determination may be appealed to the head of the agency. 5 USC § 552(6)(A)(i). Appeals should be addressed to the USIBWC Commissioner's Office, 4171 N. Mesa, Ste. C-310, El Paso, TX 79902-1422, and should be clearly identified as such on the envelope.

and letter of appeal by including the words "Freedom of Information Act Appeal." Appeals must be in writing and filed within 30 days from receipt of this letter. Failure to properly address an appeal may defer the date of receipt by the Section to take into account the time reasonably required to forward to the Commissioner's Office. Thank you for your time and attention.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Meza", with a stylized flourish extending from the end of the name.

Eric Meza  
FOIA Officer  
USIBWC



INTERNATIONAL BOUNDARY AND WATER COMMISSION  
UNITED STATES AND MEXICO

December 22, 2009

OFFICE OF THE COMMISSIONER  
UNITED STATES SECTION

Public Employees for Environmental Responsibility  
2000 P Street, NW Ste. 240  
Washington, DC 20036

Dear Ms. Erickson:

This decision is in response to Public Employees for Environmental Responsibility's ("PEER") administrative appeal of Freedom of Information Act (FOIA) Request No. 0930. Initially, PEER requested a copy of the retainer agreement between the United States Section of the International Boundary and Water Commission ("USIBWC") and the law firm of Jackson Lewis in the matter concerning *McCarthy v. USIBWC*, and all documents evidencing the source of funds used to pay for said representation by Jackson Lewis. That request was denied on November 9, 2009.

On December 1, 2009, the USIBWC received a faxed copy of PEER's FOIA Appeal ("Appeal"). The Appeal stated that the USIBWC failed to meet the statutory deadline in response to PEER's FOIA request. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), agencies have twenty (20) working days to respond to a FOIA request. The USIBWC received PEER's request on October 13, 2009, and provided its response on November 9, 2009. The USIBWC's response was timely.

PEER states that in response to its request for information on source of funds used to pay for outside legal representation, the USIBWC's provision of a hyperlink to the Department of State appropriations website was insufficient. Public Law 111-8 (123 Stat. 524), also known as the Omnibus Appropriations Act, 2009, comprises the responsive funding source for the International Boundary and Water Commission, United States Section. Because agencies are encouraged to provide responses to requests electronically when possible, the agency's provision of the funding link in response to this request is upheld.

Pursuant to 5 U.S.C. § 552(b)(5), the engagement letter between the Jackson Lewis Law Firm and the USIBWC is properly protected by attorney-client privileged communications. The engagement letter is withheld for the reasons previously set forth, including attorney-client privilege. This request is denied.

PEER's appeal is DENIED. PEER is advised of its right to seek judicial review of the agency's determination pursuant to 5 U.S.C. § 552(a)(4)(B) in the United States District Court in the district which it resides, in which it has its principal place of business, in which the Agency's records are situated, or in the District of Columbia.

Sincerely,

*For:* C. W. Ruth  
Commissioner