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April 17, 2012

**VIA REGULAR MAIL**

Alfred V. Almanza  
Administrator  
Department of Agriculture  
Food Safety and Inspection Service  
1400 Independence Ave., S.W.  
Room 1140, South Building  
Washington, D.C. 20250-3700

**Freedom of Information Act Appeal  
Fee Waiver Requested for FOIA-2012-00149**

Dear Mr. Almanza:

Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552(a)(4) (“FOIA”), and 7 C.F.R., Part 1, Subpart A, Appendix A, I am writing to provide further support for my original request for a full fee waiver. On March 27, 2012, I requested access to and copies of the following:

1. Perfected, pending FOIA request letters submitted to your office on the dates provided below, which were listed on the Department of Agriculture’s 2011 Annual FOIA report as being included in the “10 Oldest Pending Perfected FOIA Requests.”<sup>1</sup>

- 2/18/2009
- 3/13/2009
- 4/14/2009
- 7/1/2009

2. All correspondence related to the above requests.

On April 9, 2012, I received a letter from Leilani B. Hannie, supervisory FOIA research specialist at your agency, denying my request for expedited processing and a fee waiver. I have enclosed copies of my original request and the agency’s response.

Below are facts supporting the need for a fee waiver, explaining the six factors outlined in your agency’s letter. I have separately appealed the expedited processing denial.

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<sup>1</sup> U.S. Dep’t of Justice, Department of Agriculture’s Annual FOIA Report, <http://www.justice.gov/oip/fy11.html>.

**1. The subject matter of the requested records concerns the operations or activities of the Federal government.**

DOJ guidance on fee waivers provides that “in most cases records possessed by a federal agency will likely meet this threshold.”<sup>2</sup>

The subject matter of these records concerns actions federal agencies have taken to reduce FOIA request backlogs and what kinds of specific kinds of requests are taking the longest to fulfill. Federal agencies have been instructed to take steps to reduce FOIA request backlogs, recently submitting their 2011 Annual FOIA reports, which publicly identified the number of backlogged requests.<sup>3</sup> Attorney General Eric Holder said in a March 12 speech that the Department of Justice “reduce[d] the backlog of pending requests by more than a quarter” in 2011.<sup>4</sup> The release of the requests and related the correspondence between requesters and agencies, will provide insight to the communication process between agencies and requesters when responding to requests, particularly those that require more time to process.

**2. The requested records are meaningfully informative on those operations or activities so that their disclosure would likely contribute to increased public understanding of specific operations or activities of the government.**

The records requested are the 10 oldest pending FOIA requests on record with the Department of Agriculture at the time of its submission of its FY2011 Annual FOIA Report, as well as correspondence related to the requests. These records will explain the communication process between agencies and requesters when responding to FOIA requests. The public has an urgent and ongoing need for information about federal agencies’ activities and efforts to reduce backlogs and process FOIA requests in a timely fashion.

While federal agencies have released a report which lists the 10 oldest pending FOIA requests, the reports do not contain the information the request was seeking or any information about the correspondence between the requester and the agency. This information will help inform the public about possible causes of delays, what kinds of requests result in extraordinary delays and how agencies respond to and aid requesters when delays occur.

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<sup>2</sup> FOIA Update, Vol. VIII, No. 1 (1987), *available at* [http://www.justice.gov/oip/foia\\_updates/Vol\\_VIII\\_1/viii1page2.htm](http://www.justice.gov/oip/foia_updates/Vol_VIII_1/viii1page2.htm).

<sup>3</sup> U.S. Dep’t of Justice, Annual FOIA Reports, <http://www.justice.gov/oip/reports.html> (last visited April 8, 2012).

<sup>4</sup> *Attorney General Eric Holder Speaks at U.S. Department of Justice Sunshine Week Celebration* (March 12, 2012), *available at* <http://www.justice.gov/iso/opa/ag/speeches/2012/ag-speech-120312.html>.

**3. Disclosure will contribute to the understanding of the public at large, rather than the understanding of the requester or a narrow segment of interested persons.**

As an initial matter, DOJ guidance on this issue states in part that, “It reasonably may be presumed . . . that those ‘representatives of the news media’ . . . who have access to the means of public dissemination, readily will be able to satisfy this aspect of the statutory requirement.”<sup>5</sup> The FOIA defines “representative of the news media” as “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience . . . . Examples of news-media entities are . . . publishers of periodicals” who disseminate news.<sup>6</sup>

The information will be used in reporting on FOIA processing delays for our quarterly magazine, *The News Media & the Law*, which is available in hardcopy format and free online. As the publisher of a quarterly magazine that regularly reports on freedom of information-related issues, I possess the expertise necessary to interpret and disseminate the information contained in the records.

My request concerns a matter of importance to the public nationwide, as demonstrated by the ongoing political and public discussion about federal FOIA processing and backlogs.

- As stated above, Attorney General Eric Holder delivered a speech in which he highlighted a stated reduction of backlogged FOIA requests in commemoration of national Sunshine Week – a week-long celebration of government transparency that began on March 12.<sup>7</sup>
- Several government agencies are currently working to create a multi-agency FOIA portal which will aid agencies in processing and reporting FOIA requests as well as provide requesters with access to their requests online.<sup>8</sup>
- The accuracy of figures provided by federal agencies in their 2011 Annual FOIA reports, which publicly identified the number of backlogged requests, has been scrutinized by national media.<sup>9</sup>
- Additionally, an Associated Press analysis noted that the Obama administration had trouble keeping up with current FOIA requests.<sup>10</sup>
- At a March 13 Senate Judiciary Committee hearing, committee members expressed concerns over a possible disconnect between the administration’s

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<sup>5</sup> FOIA Update, *supra*.

<sup>6</sup> 5 U.S.C. § 552(a)(4)(A)(ii).

<sup>7</sup> Attorney General Eric Holder Speaks at U.S. Department of Justice Sunshine Week Celebration, *supra*.

<sup>8</sup> National Archives, *FOIA Portal Moving from Idea to Reality*, <http://blogs.archives.gov/foiablog/2012/01/09/foia-portal-moving-from-idea-to-reality/>.

<sup>9</sup> John Hudson, *FOIA Advocates Skeptical About Obama’s Claims of FOIA Progress*, ATLANTIC WIRE, March 9, 2012, <http://www.theatlanticwire.com/politics/2012/03/foia-advocates-skeptical-about-obamas-claims-foia-progress/49668/> (raising questions about the validity of the Justice Department’s claims of backlog reduction).

<sup>10</sup> *Government can’t keep up with information requests*, ASSOCIATED PRESS, March 12, 2012, [http://www.cbsnews.com/8301-501704\\_162-57395168/government-cant-keep-up-with-information-requests/](http://www.cbsnews.com/8301-501704_162-57395168/government-cant-keep-up-with-information-requests/).

continued affirmations of transparency in government and what has actually materialized. At that hearing, Sen. Patrick Leahy (D-Vt.) said the federal government has used the “secrecy” stamp too liberally in classifying information, and Sen. Chuck Grassley (R-Iowa) criticized politically motivated withholdings of information.<sup>11</sup>

- Finally, at a House of Representatives Committee on Oversight and Government Reform hearing on March 21, officials from the Office of Government Information Services, the Department of Justice and the Environmental Protection Agency were asked to comment on and at times defend FOIA request backlogs, as well as present ways to improve the use of technology in processing requests.<sup>12</sup>

Timely release of the request itself – as well as subsequent, related correspondence between the agency and the requester – may illuminate potential factors contributing to processing delays. This will ultimately help inform the public on the ongoing policy initiatives within government to improve and streamline FOIA processing and justifies a full fee waiver.

#### **4. Disclosure would contribute significantly to public understanding of the governmental operations or activities.**

As noted above, the public has an urgent and ongoing need for information about federal agencies’ activities and efforts to reduce backlogs and process FOIA requests in a timely fashion. These records will explain the communication process for FOIA requests. This will aid in the public understanding of how agencies process requests — how much time agencies expend working on requests, how many steps a request may go through before it is finally processed — and could help educate the public on how to make a FOIA request.

#### **5. Disclosure would not further any commercial interests of the requester.**

The circumstances surrounding my request are detailed above. The Reporters Committee for Freedom of the Press, which publishes *The News Media & the Law*, is a non-profit organization that provides free publications for public use both in the form of print copies and on the website. Records requests from news media entities – sought in furtherance of their newsgathering functions – are not for “commercial use.”<sup>13</sup> As my request is made in furtherance of news stories I am writing for *The News Media & the Law*, I do not have a commercial interest in the records.

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<sup>11</sup> Posting of Todd Ruger to The Blog of Legal Times, March 13, 2012, <http://legaltimes.typepad.com/blt/2012/03/senators-critical-of-obama-administration-over-government-transparency.html>.

<sup>12</sup> Josh Smith, *Federal Officials To Defend Responses To Records Requests*, NAT’L JOURNAL, March 21, 2012, [http://www.nationaljournal.com/tech/federal-officials-to-defend-responses-to-records-requests-20120321?mrefid=site\\_search/](http://www.nationaljournal.com/tech/federal-officials-to-defend-responses-to-records-requests-20120321?mrefid=site_search/).

<sup>13</sup> *Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1388 (D.C. Cir. 1989).

**6. The public interest in disclosure is greater than the requester's commercial interest.**

As explained in the above paragraph, I do not have a commercial interest in the records. Agencies may also presume that when a news media requester satisfies the first four factors, which establish the degree of "public interest" in release of the record, then that public interest will be the primary interest served.<sup>14</sup> Here, as the records will be used in a news story to be disseminated in *The News Media & the Law*, the public interest identified above will be the interest primarily served by disclosure.

Release of this information is in the public interest because it will contribute significantly to public understanding of government operations and activities. Agencies' actions in responding to the oldest perfected, pending FOIA requests will help shed light on how quickly and effectively agencies respond to such requests as well as enlighten the public as to the types of requests and/or processing issues that result in particularly delayed agency responses.

If my request for a fee waiver is denied, I agree to pay reasonable duplication fees for the processing of this request. If you anticipate the fee will exceed \$25.00, please contact me in advance of incurring the charges.

As I am making this request as a journalist and this information is of timely value, I would appreciate your communicating with me by email, rather than regular mail, if there are questions regarding this request.

I reserve the right to appeal your decision to deny a full fee waiver or any other determination made with respect to this request. Thank you for your assistance.

Very truly yours,

Lucy A. Dalglish  
Executive Director  
& Publisher,  
*The News Media & The Law*

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<sup>14</sup> DEP'T OF JUSTICE GUIDE TO THE FREEDOM OF INFORMATION ACT, FEES AND FEE WAIVERS 135 (2009).