

FREEDOM OF INFORMATION ACT APPEAL

June 30, 2011

VIA FEDERAL EXPRESS

Department of Homeland Security
U.S. Citizenship and Immigration Services
National Records Center, FOIA/PA Office, Suite 500
150 Space Center Loop
Lee's Summit, MO 64064-2139

Re: Appeal of Denial of Freedom of Information Request No.: CNT2011-000019

Dear Sir or Madam:

This firm represents Bloomberg L.P. ("Bloomberg") and its reporter, Leah Nylen, in connection with their above-referenced Freedom of Information Act ("FOIA") request to the U.S. Citizenship and Immigration Services ("USCIS"). I am writing to appeal USCIS's denial of Ms. Nylen's request.

The Requests

On March 29, 2011, Bloomberg reporter, Leah Nylen, requested from the U.S. General Services Administration ("GSA") a copy of USCIS's January 20, 2011 solicitation for bids under the GSA's Networx Universal contract. The USCIS solicitation involves a computer contract and is the subject of GAO bid protest B-404845.1.

In an e-mail dated April 1, 2011, Karl Krumbholz, the director of network services at the GSA, informed Ms. Nylen that the solicitation documents belong to the agency that created them and not to the GSA. Specifically, Mr. Krumbholz said that "Networx SOWs belong to the government agency that created them . . . GSA refers all requests for information about specific agency SOWs to the SOW owner." In the same e-mail, Mr. Krumbholz directed Ms. Nylen to contact USCIS's Public Affairs Officer, Chris Rahtigan, about the request. Ms. Nylen's e-mail exchange with Mr. Krumbholz is attached hereto as Exhibit A.

In various telephone conversations between April 1 and April 4, 2011, Ms. Rahtigan informed Ms. Nylen that USCIS had the relevant documents and that USCIS would provide them to her. However, in a telephone conversation on April 5, 2011, Ms. Rahtigan informed Ms. Nylen that in order to receive the documents, she would have to submit another FOIA request.

On April 5, 2011, Ms. Nylen submitted a FOIA request to USCIS, requesting copies of (or access to) “[t]he solicitation, including the statement of work and any attachments, for the task order under the GSA’s Networx Universal contract issued by U.S. Citizenship and Immigration Services to vendors on Jan. 20 and that was the subject of GAO protest B-404845.1.”

On May 3, 2011, USCIS denied Ms. Nylen’s FOIA request, stating that the “responsive records are not under the purview of USCIS” and recommended that Ms. Nylen redirect her request to the GSA (the “Denial”). That same day, Ms. Nylen submitted yet another FOIA request to the GSA for the same records. On May 20, 2011, the GSA responded to the request and failed to provide the records, stating that the records “are held by the U.S. Citizenship and Immigration Services” and that the request should be sent to the “FOIA Officer for the Citizenship and Immigration Services.”

Argument

I. USCIS Has Admitted That It Has The Requested Documents And Has Identified No Exemption That Could Justify Withholding Them.

Notwithstanding the fact that the GSA has repeatedly indicated that USCIS possesses the requested solicitation documents, and that USCIS itself has admitted to possessing the documents, USCIS has failed to disclose the solicitation documents, instead referring Ms. Nylen back to the GSA. Moreover, USCIS has failed to identify any statutory exemption that could justify withholding the documents. USCIS’s statement that the document is “not under the purview of USCIS” makes no sense under the circumstances and, in any event, is not a valid exemption under FOIA, and therefore is not a valid basis for denying the request.

In responding to a FOIA request, a government agency is required to accurately state the reason for denying the request. *See* 5 U.S.C. § 552(a)(6)(A)(i). An agency may not make false statements to avoid its duty to open certain records and promote transparency within the government. The FOIA places the burden on the government agency to disclose records properly requested under FOIA, unless the agency can demonstrate that one of nine statutory exemptions justifies withholding the documents. *See* 5 U.S.C. §§ 552(a)(6)(A)(i), (b)(1)-(9). The USCIS has not done so here.

USCIS has failed to explain how the “responsive records are not under the purview of USCIS” or why it would refer Ms. Nylen back to the GSA. On April 1, 2011, Mr. Krumbholz, the director of network services at GSA, specifically stated that the GSA “refers *all* requests” to the agency that owns the solicitation and then repeatedly referred Ms. Nylen’s requests relating to the solicitation documents to USCIS. Indeed, USCIS, through its Public Affairs Officer, Chris Rahtigan, confirmed that it possesses the solicitation documents and promised to produce them. And, on May 20, 2011, the GSA informed Ms. Nylen that the records “are held by the U.S. Citizenship and Immigration Services” Thus, USCIS’s statement in the Denial that these same records are “not under the purview of USCIS” appears to be inaccurate.

USCIS has provided no basis – and we are not aware of any – to claim that the requested documents are not in the possession, custody, or control of USCIS or that they are exempt from disclosure under FOIA.

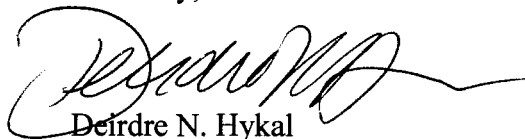
II. USCIS's Blanket Denial Violates The Text And Spirit Of The FOIA.

For the reasons discussed above, USCIS's blanket denial of Ms. Nylen's FOIA request was improper and has unnecessarily delayed Ms. Nylen's receipt of the responsive records.

As President Obama instructed in his January 21 FOIA Memorandum, "[t]he Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails." See Presidential Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act, 74 Fed. Reg. 4683 (Jan. 21, 2009). Bloomberg respectfully urges the USCIS to heed President Obama's instruction and the Attorney General's admonition that "[o]pen government requires agencies to work proactively and respond to requests promptly . . . When information not previously disclosed is requested, agencies should make it a priority to respond in a timely manner. Timely disclosure of information is an essential component of transparency. Long delays should not be viewed as an inevitable and insurmountable consequence of high demand." See United States Attorney General Eric Holder's Memorandum For Heads of Executive Departments and Agencies, dated March 19, 2009, *available at*, www.justice.gov/ag/foia-memo-march2009.pdf.

Bloomberg respectfully requests that USCIS produce the responsive records to Ms. Nylen forthwith and respond to this appeal within 20 days. See 5 U.S.C. § 552(a)(6)(A)(ii). If the material is not forthcoming without further delay or obfuscation, Bloomberg may very likely be forced to have its Freedom of Information Act rights vindicated by the United States District Court. If you have any questions or require any additional information, please contact me directly at (212) 728-8530.

Sincerely,



Deirdre N. Hykal

cc: Charles Glasser (via e-mail)
Global Media Counsel, Bloomberg News

Leah Nylen (via e-mail)
Reporter, Bloomberg News

Hi Leah.... see below.

Cara

Cara Battaglini
Office of the Commissioner
GSA Federal Acquisition Service
Office: 703.605.9375
Cell: 703.472.3802
cara.battaglini@gsa.gov

----- Forwarded by Cara L. Battaglini/Q/CO/GSA/GOV on 04/01/2011 05:16 PM -----

Karl O. Krumbholz/QTC/CO/GSA/GOV

04/01/2011 02:59 PM

To: Cara L. Battaglini/Q/CO/GSA/GOV@GSA
cc: Frank D. Tiller/QTC/CO/GSA/GOV@GSA
Subject: Re: Fw: Order under Network [Link](#)

Cara,

Networkx SOWs belong to the government agency that created them and we treat them as acquisition sensitive. GSA refers all requests for information about specific agency SOWs to the SOW owner. We can provide no information to Bloomberg directly but they can contact DHS USCIS's Public Affairs Officer, Chris Rahtigan with this request. Here is Chris's contact information:

Chris Rahtigan
Public Affairs Officer
Media Relations Division
U.S. Citizenship and Immigration Services
Department of Homeland Security
202.272.1297 | cell: 202.412.5012
email: chris.rhatigan@dhs.gov

Karl

Karl Krumbholz
Director, Network Services Programs
Integrated Technology Services
General Services Administration
10304 Eaton Place, Fairfax, VA 22030
703-306-6079
karl.krumbholz@gsa.gov

Cara L. Battaglini/Q/CO/GSA/GOV

03/30/2011 02:13 PM

To: Frank D. Tiller/QTC/CO/GSA/GOV@GSA, Karl O. Krumbholz/QTC/CO/GSA/GOV@GSA
cc:
Subject: Fw: Order under Networkx

Hello Karl and Frank,

Is it possible to get a copy of a network RFP issued through eBuy for the US Customs and Border patrol?
Should I be asking someone else for this?

Thanks
Cara

Cara Battaglini
Office of the Commissioner
GSA Federal Acquisition Service
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Cell: 703.472.3802
cara.battaglini@gsa.gov

----- Forwarded by Cara L. Battaglini/Q/CO/GSA/GOV on 03/30/2011 11:40 AM -----

To CARA.BATTAGLINI@GSA.GOV

cc

Subject Order under Network

"LEAH NYLEN, BLOOMBERG/ NEWSROOM:"
<lnylen@bloomberg.net>

03/29/2011 04:17 PM

Hello --

I just left you a message. It's my understanding that orders under GSA GWACs, like Network, the solicitations for those aren't posted on FBO but go out on EBuy or directly to the vendors. Is that right? Is it possible to get a copy of a solicitation for a particular order? I wanted to see the one issued by the U.S. Customs and Immigration Service that was sent out on Jan. 20 to Network Universal vendors.

Leah Nylén
Reporter, Government Contracts
Bloomberg Government
Phone: (202) 654-4391
Fax: (202) 585-5104