

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

OPERATIONS AND REGULATIONS COMMITTEE

Friday, January 31, 2003

1:00 p.m.

The Washington Court Hotel
525 New Jersey Avenue, N.W.
Washington, D.C.

COMMITTEE MEMBERS PRESENT:

John T. Broderick, Jr., Chair
Douglas S. Eakeley
Hulett H. Askew
LaVeeda Morgan Battle

BOARD MEMBERS PRESENT:

John N. Erlenborn
Edna Fairbanks-Williams
Thomas F. Smegal, Jr.
F. William McCalpin
Maria Luisa Mercado
Ernestine P. Watlington

STAFF AND PUBLIC PRESENT:

Victor M. Fortuno, Vice President for Legal Affairs,
General Counsel & Corporate Secretary

STAFF AND PUBLIC PRESENT (con'd):

Randy Youells, Vice President for Programs
Mauricio Vivero, Vice President for Governmental
Relations and Public Affairs
John Eidleman, Acting Vice President for Compliance and
Administration
Leonard Koczur, Acting Inspector General
Laurie Tarantowicz, Assistant Inspector General and
Legal Counsel
David L. Richardson, Treasurer and Comptroller
Mattie C. Condray, Senior Assistant General Counsel
Michael Genz, Director, Office of Program Performance
Linda Perle, Senior Attorney, Legal Services, Center for
Law and Social Policy
Frank Strickland, Attorney, Strickland Brockington Lewis,
L.L.P. (Nominee)
Robert Dieter, University of Colorado (Nominee)
Michael McKay, McKay Chadwell (Nominee)
Florentino Subia (Nominee)
Lillian B. BeVier, University of Virginia School of Law
(Nominee)
L. John Ross, Chairman, Special Committee of Legal Aid
Indigent Defendants
Patricia Hanrahan, Special Counsel to the Vice President
for Programs
Gordon Buck, President, Statewide Legal Services of
Connecticut

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P R O C E E D I N G S

CHAIR BRODERICK: We'll call the meeting, Ops and
Regs Committee, to order.

CHAIR BRODERICK: And I would entertain a motion to
approve the agenda for today's meeting.

M O T I O N

MR. ASKEW: So moved.

MS. BATTLE: Seconded.

CHAIR BRODERICK: All those in favor?

(Chorus of ayes.)

CHAIR BRODERICK: Agenda is approved.

CHAIR BRODERICK: I would also entertain a motion
to approve the minutes of the prior meeting of the Ops and
Regs Committee.

M O T I O N

MR. ASKEW: So moved.

MS. BATTLE: Seconded.

CHAIR BRODERICK: All those in favor?

(Chorus of ayes.)

CHAIR BRODERICK: And the minutes have been
approved.

■ We have on our agenda today several rules which are
■ at the point of virtual finality. After extended
■ discussions, comment, and working group activity, and there
■ was an enormous amount of work over a considerable period of
■ time in consideration of all of those rules, as you would
■ expect.

■ And I want to commend the staff for the work they
■ did in providing us with a summary and actual comments that
■ have been received relative to those rules. And I think it's
■ fair to say that following the public comment period there
■ have been very few comments, and most of them are highly
■ favorable to the changes that were proposed.

■ And the regulations that are on our agenda this
■ morning have previously been the subject of public hearings
■ in this committee; have been the subjects of discussion with
■ counsel for the corporation; and have been subject to comment
■ by others.

■ And so, as the corporation has historically done
■ and will historically do, I assume, and as it must do, it
■ keeps its proceedings on its regulations open and accessible
■ and lawful.

■ Yesterday, I'm told, that Chairman Sensenbrenner
■ sent to the corporation, to our president, Mr. Erlenborn, a
■ letter relative to at least two of the regulations, 1604 and
■ 1611, that are on our agenda this afternoon, and expressed
■ reservations about the status of the regulations and either
■ their appropriateness, or their lawfulness.

■ And I understand the letter was received by the
■ corporation by fax at 4 o'clock yesterday afternoon. And the
■ public record can reflect, I had an opportunity to see the
■ letter this morning when I arrived here around 9:30.

■ And so, I have had a chance for a brief time to
■ review it. I have not had an opportunity to speak to any
■ member of the Chairman's staff, if there is such a person
■ here, nor with anyone on the committee.

■ I have had an opportunity to speak to my colleagues
■ on this committee. And because we recognize the nature of
■ the inquiry, and the Congressional Office of the Inquirer,
■ and because we would extend the professional courtesy without
■ a second thought to the Congressman, we have decided with
■ respect to those two regulations, although we feel that the
■ process has been fair, and full, and sound, to delay for a

■ short time any vote on 1611 and 1604 until we can respond to
■ the Congressman's concerns.

■ I will say, just as an aside, that I saw an article
■ in one of the publications in Washington today relative to
■ this inquiry and I just, speaking only for myself, as the
■ chairman of this committee, dealing with ops & regs for the
■ corporation, that I would not know about it before a
■ publication would know about it.

■ But, in any event, I do know about it. I have
■ talked to my colleagues about it. And I think out of respect
■ and courtesy, which the Congressman is certainly entitled to,
■ and because his concerns seem genuine and forthright, he's
■ entitled I think and will receive from us a response to his
■ concerns on 1604 and 1611.

■ And I hope that within a very brief period of time
■ a response will be issued, which, hopefully, will satisfy the
■ Congressman with respect to his concerns. I can say that, at
■ least with respect to one of the concerns, with respect to
■ one of the regulations, the information that the Congressman
■ was referencing is outdated, and it's not the status of the
■ current regulation that we would be dealing with today.

I don't say that in any critical way because I have not had an opportunity obviously to discuss this with any member of the Congressman's staff, nor have had the privilege to talk to the Congressman directly about it.

But I think when we are able to respond, he will understand the good faith of the people on this board and our concern, our concern, our obligation to make sure we get it right, and that we get it done in accordance with the law.

And, as a judge, I have great respect for the law and great respect for the inquiry. So what we will do today on those two regulations is not deal with them. And we will work through this process, inform the Congressman. Hopefully, we can resolve these issues.

And if the Congressman has ongoing issues that he would feel free to either speak to me directly, or to have a staff member do that. But we respect the inquiry and we're going to respond to it.

MR. ASKEW: Mr. Chairman?

CHAIR BRODERICK: Yes, Mr. Askew.

M O T I O N

MR. ASKEW: If that's in the form of a motion for

the committee, I would second it. But if you would allow me a friendly amendment to that: (1) I would like to suggest that at the board meeting tomorrow we set a date for a board meeting to be held telephonically within a reasonable amount of time.

After it has been time to respond to the concerns, and perhaps get a response back, where the board through its committee, could consider these regulations, and perhaps go move forward on them when we don't know when the next full board meeting will be in person, but we can do it telephonically.

Secondly -- well, is that acceptable, that part of it, to use a friendly amendment?

CHAIR BRODERICK: Yes, I certainly accept that, and I agree with the thought.

Before we vote on it, Bucky, I just want to say that we, all of us, have an ongoing obligation, as directors of this corporation, to do the corporation's lawful work. And, as long as I am a director of this corporation, I intend to do that.

But because I respect the Congressman, and

obviously respect his inquiry, we need to address it and would do nothing else. But I also share your view that we need to have some plan of action moving forward.

MR. ASKEW: Let me have one additional issue. The comments that we received this morning are directed at 1604 and 1611. We have 1602 on the agenda today.

So I guess a point of inquiry, would you propose that we go ahead and deal with 1602 today, and hold the other two until a later date?

CHAIR BRODERICK: I would do that. As I have read the Congressman's letter -- not that you want to necessarily trust my vision instead.

But as I read the Congressman's letter, his concerns were about 1604 and 1611, and not about 1602. And I don't know whether there is anyone here from the Congressman's staff.

And so, if there is, and if I have misread or misrepresented unintentionally, I stand ready to be corrected. So if there is anyone here who would like to address that issue on behalf of the Congressman, and I see no one rising, so I assume there is nobody here.

MS. BATTLE: There was only one other concern mentioned. And I just wanted to speak to the transitional posture that we found ourselves in, and how this board has worked to include in the fold through conversations the board members that have been selected, but not yet fully confirmed; so that they are kept in the fold, informed; and so that the transition between this board and the new board can be a smooth one, we have really worked hard I think as a board to accomplish that. And that is a piece of how we are going to proceed.

CHAIR BRODERICK: Thank you. And I think, although I have not had the privilege because of my absence, to meet all of the new members. I did meet Mike McKay this morning which was wonderful to do.

And I am told that all of the -- I shouldn't that, that several of the board members who will be nominated, or have been nominated to replace members of the current board are here. And I look forward to the opportunity to meet them as well.

But with respect to 1604 and 1611, I guess my motion, as amended, is on the floor.

MR. ERLNBORN: Mr. Chairman?

CHAIR BRODERICK: Yes, Mr. Erlenborn.

MR. ERLNBORN: Might I just make an observation?

First of all, the letter, which you rightly described as having been sent to me, was certainly misdirected, because I can't tell the board what to do. Actually, that letter came to me late yesterday afternoon.

And luckily, I was able to get a hold of the chairman of the board, Doug Eakeley. And we discussed this and Doug decided to make a -- I think a suggestion to this committee that you take the action that is now being proposed.

Let me just say, I want you to know that I had nothing to do with it. I would also make the observation that at least one of these regulations in their consideration, I believe it was one of these two. I am not certain about that.

We did have a representative of the -- a certain young lady who was the staffer who was here earlier today. I don't see her now. But it was all together possible I believe for these concerns to have been raised earlier, and

in a timely fashion; and that if the staff of the Congressman wished to participate in the hearings, certainly they are entitled to do that in most cases.

So I just wanted to have that for the record. I think we are doing what should be done. The chairman of the Judiciary Committee, James Sensenbrenner, is the one who has jurisdiction over this committee. And when the chairman -- when the Congressman asked that we make this -- we delay, that I think we should respond to him.

I think though that a -- the part that Bucky suggested is a good thing, to give this board an opportunity, very likely, to act on this. And it's been worked on by this board for a long time. And we have some experts among the members here from the time that they have put into this.

So I agree with the amendment that Bucky has suggested, and the chairman of this committee has approved. And, with that, let me say thank you very much, Mr. Chairman.

CHAIR BRODERICK: Thank you, John. And I want to make it very clear for the public record that I mean no disrespect whatsoever to the Congressman. As the president pointed out, it's his oversight, his jurisdiction.

■ But I also have responsibilities here, and I intend
■ to execute those. But I think to accommodate both of those
■ competing interests, both of which are very real, Mr. Askew's
■ amended motion, of which I'd like to take vote, makes a great
■ deal of sense.

■ So all those in favor of the motion, I guess I made
■ and which you amended, signify by saying aye.

■ (Chorus of ayes.)

■ CHAIR BRODERICK: All those opposed?

■ (No response.)

■ CHAIR BRODERICK: The motion has carried. I would
■ like to turn our attention to 1602 and Mattie Condray, if she
■ is with us, as she certainly is.

■ If Mattie would come forward and brief the
■ committee and the other members of the board on the recent
■ pass on 1602, and where we sit at the moment now.

■ MS. CONDRAV: Absolutely. Good afternoon.

■ MR. McCALPIN: Go to the mike, Mattie.

■ MS. CONDRAV: Is that better?

■ You have in your packets in front of your a draft
■ final rule on the corporation's regulations for procedures

■ for disclosure of information under the Freedom of
■ Information Act, 45 CFR Part 1602.

■ There was a notice of proposed rulemaking, which
■ the committee considered at its November board meeting and
■ approved for publication. That notice of proposed rulemaking
■ was published on November 18th, 2002. There was a 45 day
■ public comment period.

■ LSC received seven comments on the NPRM, all of
■ which generally supported the proposed revisions making some
■ specific comments on some of the specific items.

■ CHAIR BRODERICK: Mattie, for the record, just
■ briefly, could you tell us the thrust of the amendments?

■ MS. CONDRAV: Yes.

■ CHAIR BRODERICK: Not in great detail, but
■ generally speaking, what the amendments will accomplish.

■ MS. CONDRAV: Generally speaking, what the
■ amendments accomplish are: adding provisions to detail a
■ submitter's rights process, which LSC already had an informal
■ submitter's rights process, which was based on an executive
■ order that it's government-wide throughout government
■ agencies under the FOIA was subject to the Freedom of

Information Act.

That executive order states if a request comes in for information submitted by a third party; and that information is potentially subject to the exemption for confidential information that the agency needs to let the submitter of the original information know that that request has come in; and that they have an opportunity to argue that the exemption covers their information; that it is confidential information for which release would cause harm, competitive harm to this original submitter.

We have had this process for awhile. But it hasn't been explicit in our regulations, and we wanted to make it explicitly so. We also are adding a provision to provide LSC with the express authority to defer action on pending and additional requests and appeals where a requestor has an outstanding fee balance.

Our regulations previously provided authority -- if we have an ongoing dispute about a fee that we have the authority to not continue working on that request while the argument about -- or, actually, if there is back fees owed, that requests do not continue to work say on an appeal.

What we don't have is the authority if somebody owes us money from a previous FOIA request to stop work on other pending requests.

Mostly, this is going to be a helpful tool for us, with regard to some nuisance requestors, where if they file four or five requests all at the same time, while still owing us money and requiring the corporation to expend time and energy and resources in dealing with their other requests when they haven't paid us for the requests we have already processed.

There were some comments on that particular aspect of the reg, which asked us to clarify that we would not be applying that in those cases where there was a genuine pending dispute, or a genuine pending request for a fee waiver.

And we were happy to clarify that the proposal was not intended and would not be applied that way; that if there is a fee waiver request that has come in, and say we have denied it, and it has been appealed, and it is the subject of a pending valid appeal, then another request that comes in from that requestor would not be subject to this particular

■ authority.

■ We are looking at validly ascribed fees that have
■ not been challenged, and that have just not been paid. In
■ addition, we're looking to clarify our fee waiver standards.

■ The regulation currently sets out some very barebones of
■ what the fee waiver standards require.

■ This is essentially taken from the statute, what
■ are current rights are. And in the experience of processing
■ some requests for fee waivers, we thought it would be a good
■ idea to provide a little more clarification about what those
■ -- what standards we're applying when we are looking at those
■ fee waiver requests.

■ What is it that we are looking for to satisfy the
■ statute -- you know, trying to balance off the -- writing a
■ tomb on fee waivers, which you could write a whole book on,
■ which we did want to do, but to provide some additional
■ guidance in the regulation.

■ MS. BATTLE: I just have a question. And I'm
■ afraid that if you get too far, Mattie, as old as I am, I may
■ forget.

■ But if, for example, someone makes a request, and

■ they also apply for a fee waiver, and the fee waiver request
■ is denied, and they appeal it --

■ MS. CONDRAV: Correct.

■ MS. BATTLE: -- and then they make a second
■ request. Now in that second request under the scenario that
■ you have suggested, we have an obligation to go forward in
■ preparing that response to that request.

■ MS. CONDRAV: That's correct.

■ MS. BATTLE: However, should they request a fee
■ waiver on the second request and it be denied, then we have
■ no obligation to deliver the information until the issue
■ about the fee is resolved, is that correct? How does that
■ work?

■ MS. CONDRAV: Well, in your scenario, if the second
■ one is appealed while that appeal is still pending, we're
■ going to be continuing to work on the FOIA requests. So, if
■ we resolve the first fee waiver request and finish processing
■ their FOIA request, even while the appeal on the second one
■ was pending, we would continue to do that.

■ If, for example, the fee waiver request came in and
■ it was denied, an appeal was taken, and then the appeal was

denied, and then the person chose not to -- the requestor chose not to exercise their statutory right to sue, so the final -- the denial becomes final.

They have lost their opportunity to continue to appeal, and they choose to not pay the properly levied fee at that point, then we would not have an obligation to continue processing other requests that had come in. Really, it would kick in after the point at which, you know, they have exhausted their options.

MS. BATTLE: Okay. When you say processing, what I'm trying to understand is while that particular fee waiver request is pending, we, under this scenario, would have an obligation to process the second request.

When you say process, does that also include delivering the information to the requestor?

MS. CONDRAV: Yeah.

MS. BATTLE: Okay. So they would receive it even though they have not paid for it?

In the second instance, if they have got a fee application that --

MS. CONDRAV: The first FOIA request comes in, and

they ask for a fee waiver, we deny it, they appeal it. Okay.

MS. BATTLE: Have we delivered information? I mean when there is a fee waiver --

MS. CONDRAY: Whoa, whoa, whoa.

MS. BATTLE: -- pending what happens with the information?

Do we give it to the requestor, or do we hold it until we resolve the issue regarding the fee waiver?

MS. CONDRAY: I don't know that there is an answer to that question. I think it kind of is how the -- if it's a large fee and they -- you know, if it's a really large fee that we're looking at, and we might go back and say to the requestor, you know, "If we tell you that we're not going to give you the documents without the fee, you know, if that's the result, are you going to be willing to pay the documents, or would you rather just not have them?"

And if they said, "No, we'd rather just not have them," then we wouldn't send them out. If they said, "Well, if we get our appeal denied we want them either way, and if we have to pay for them we will," then we would, you know, presumably go ahead and --

MS. BATTLE: I guess what I'm trying to understand is this multiple nuisance effect really takes effect because we will deliver documents to people before they have paid for them. Is that --

MS. CONDRAY: Right.

MS. BATTLE: Okay.

MS. CONDRAY: And we will continue to deliver documents on other request -- we have in the past delivered documents relating to other requests while a fee -- while -- not while a fee waiver is pending, but when there has been outstanding fees, you know.

There are cases where people who filed FOIA requests, where they don't ask for a fee waiver. And so, we process the request; we send them the documents; we tell them -- because, generally, we tell them how much money it is when we send them the documents. We don't make them pay before we release the documents.

So if there is -- to change the scenario, the requestor sends in a request, does not ask for a fee waiver. We put the request together. We send it to them. We tell them, "Okay. You owe us, you know, 25 bucks for this

request." They never pay it. Then we get a separate request from them, or we already had another request from them. You know, there are multiple ways you can come up -- you can have a situation where they file the request, number one; we send them a response; they appeal the response.

While that appeal is pending, they file another request. That request is filled, sent out, not appealed; they never pay us for that. You know, so then -- so now we have a couple of outstanding requests, but they have never paid their bills.

MS. BATTLE: Okay.

MS. CONDRAY: It's not going to come up in the situation where we have an honest, active, pending request for fee waivers that's in the process. It really is going to come up.

And the Department of Justice sent out a memo to all of their FOIA offices about this particular authority reminding people that they had it. And if not, that they -- if your agency didn't have it, you should look into it.

I will tell you, quite honestly, I have a very specific requestor, who was filing multiple requests, all for

the same documents that, more or less, didn't exist. She was not entitled to a fee waiver. So she would have her fee waivers denied, not be continuing to contest them, just simply not paying them, and continuing to file request after request.

MS. BATTLE: I don't have any problem with the actual substance of what you are proposing. I wanted to just, in practical terms, understand how it might operate.

MS. CONDRAY: Yeah.

MS. BATTLE: That was the question.

MS. CONDRAY: And I think generally because we don't -- unless we have a particular reason to suspect that somebody is not going to pay, and we're saying to them, "Look, you didn't pay us last time, so you've got to pay up before you get your documents this time," we generally respond and worry about the money later.

MS. BATTLE: Okay.

MS. CONDRAY: Unless someone has specifically, you know, indicated to us that --

MS. BATTLE: Okay.

MS. CONDRAY: -- "If I don't get the fee waiver,

I'm not going to want the documents because I can't pay it."

MS. BATTLE: Okay.

CHAIR BRODERICK: Any other questions or comments on this regulation?

MR. ASKEW: I don't think Mattie was through.

CHAIR BRODERICK: Oh, I'm sorry. I thought Mattie was through.

MS. CONDRAY: Yeah, the only other changes are pretty technical in nature. We are raising some of the fees very slightly, fees from copying going up from 10 cents a page, to I believe we said 13 cents a page. Our actual costs are closer to 15, but we thought 13 would help us recoup a little more of our costs, yet still provide a fairly discounted rate.

We are also, as we have had pay raises, the search time costs are relative to the mid-point of the pay bands. So we're just increasing the fees to account for what those actual pay bands currently are.

And there are a couple of other very technical changes, references to the Office of General Counsel, which is now the Office of Legal Affairs; adding in the address for

■ LSC's new headquarters. Once the headquarters moves, we'll
■ have a new address for our public reading room, items like
■ that.

■ CHAIR BRODERICK: All right. Mattie, thank you.
■ Any questions or comments relative to this regulation?
■ Bucky.

■ MR. ASKEW: Mattie, I think the addition of 1602.14
■ is a very good addition to this regulation, clarifying for
■ people what the rights are under this regulation. And I want
■ to have a -- maybe a dialogue with you, just about a couple
■ of things there, and then suggest a slight addition to that
■ provision.

■ This is about what a submitter's rights are. And
■ what we would give in the way of an opportunity for a person
■ to object to the release of that information, if it's a
■ program or an individual employed by a program, and can they
■ object to the release of that information for certain
■ reasons.

■ One of the exemptions apparently is for trade
■ secrets. And I wanted to make sure that client information,
■ or client eligible information would that be considered to be

■ a trade secret under the way we would interpret this, the way
■ it's written today?

■ I think we could interpret it that way without
■ having to change the regulation. But if we don't interpret
■ it that way, then it might raise a concern for me.

■ MS. CONDRAY: I am not certain that -- I believe
■ trade secrets is a term of art, that I don't know that that
■ comes under client confidentiality information. It comes
■ under corporate trade secret.

■ MR. ASKEW: Okay. So would we release that
■ information to a submitter without giving notice to the
■ program, or to the individual that that's being released?

■ MS. CONDRAY: Well, currently, the only thing
■ that's covered by the submitter's rights process is if we are
■ asked for grant applications.

■ MR. ASKEW: Okay.

■ MS. CONDRAY: And that's -- what the current
■ process is is if we get a request for grant application
■ information, obviously, submitted by a grant applicant,
■ that's what triggers the submitter's rights process.

■ Because a submitter's rights process modeled on the

■ executive order is for information that would be subject to
■ the exemption four under the FOIA statute, privilege for
■ confidential information, the release of which would cause
■ competitive harm.

■ And as that's been interpreted and used in the
■ corporation, the grant application stuff was the only place
■ where we could really expect to cause competitive harm you
■ know. Release of a client data, for example, may have other
■ harms, but competitive harm to the recipient isn't going to
■ be one of them.

■ MR. ASKEW: Yeah.

■ MS. CONDRAY: You know, nobody is going to go
■ stealing their clients. So that's what has been -- how it
■ has been applied, and how we were proposing to enforce it.

■ We did get some comments asking us to broaden the
■ submitter's rights process, which we thought about, and we
■ talked about a good bit, the staff decision to not propose as
■ a final rule expanding the submitter's rights process came
■ from a feeling that a lot of the information that was
■ identified in the comments as stuff that people would like to
■ know about, that might be sub -- that's probably subject to

■ another FOIA exemption, and shouldn't be released.

■ I think the staff feeling was, yeah, a lot -- to
■ the extent that that sort of information would in fact be
■ subject to a FOIA exemption, we already know that, and we're
■ already not releasing that information; that it's easier for
■ us to be able to discern that those FOIA exemptions apply
■ directly to that information in a way that, with competitive
■ harm, it may be easier, or it may help the corporation to
■ figure out if the exemption applies by giving the recipient
■ the opportunity, the grant applicant, to make the competitive
■ harm argument.

■ Whereas, with the other exemptions and other types
■ of information, the corporation was comfortable that we are
■ already -- we know when those exemptions apply, and we don't
■ have a problem applying them.

■ MR. ASKEW: Okay. I want to make a distinction
■ between whether you release the information or not.

■ And that's clearly the authority of the
■ corporation, and appropriately in the corporation's bailiwick
■ versus when a person or a grantee is given notice a request
■ has been made, and the opportunity to give reasons why the

information shouldn't be released. And the thing I'm thinking about is where it could be described as an unwarranted invasion of personal privacy, for instance.

We should give, I think, and I think the regulation should be amended to say, "We will provide notice to the person or grantee effected when, in the staff's conclusion, this might call for the release of, the unwarranted release of personal or private information." And only give them the opportunity to state a reason why it should be exempted, or why it should not be released, and then the corporation makes the final determination.

MS. CONDRAY: Well, even under the current -- even under what's -- if we expanded it that way, under the process, if the corporation already figured out that this would be an unwarranted invasion of personal privacy, and that the corporation had no intention of releasing that information, the corporation would not have to use the submitter's rights process.

And that's true of how it applies now. If there is -- somebody asks for a grant application, and we believe there is information in that grant application that is

clearly subject to exemption from withholding and we have no intention of releasing it, we don't apply the submitter's rights process. It would be asking the recipient to preach to the choir at that point. The process is used in situations where we don't think the exemption applies.

And so, in your scenario, it would be saying if there was information that the corporation thought arguably could be subject -- or was arguably not subject to the exemption, but potentially subject to the exemption, and we were considering releasing it, that's when we would go back and request, you know, you know, "We don't think this quite meets the standards for the exemption, but if you can make us a good argument we'll listen to it and we'll give you that opportunity."

MR. ASKEW: That's assuming to the grant application, only to the grant application?

MS. CONDRAY: Currently, the submitter's rights process only applies to grant applications.

MR. ASKEW: So that it's information being sought outside the grant application?

MS. CONDRAY: We don't go through this process. We

■ just make our own determination as we make for all
■ corporation records, whether exemptions apply, or exemptions
■ don't apply.

■ MS. BATTLE: Are we going to say that in the
■ comments? Because when I read this, and I have listened to
■ the concern that Bucky has raised, it was not as clear to me
■ when it would be in and outside of submitter's rights.

■ And so, I think some guidance as to how, if what we
■ are trying to do here is to codify what the practical way
■ that the system works at present, with regard to submitter's
■ right, that we may make mention that its application at
■ present is only to grant applications.

■ Do we have any vision as to whether there might be
■ an opportunity in the future that might apply to some other
■ circumstance?

■ MS. CONDRAV: That's what we were asking for
■ comment on, and the cor -- we received some -- the notice of
■ proposed rulemaking I thought made it clear that it only
■ applied to a grant application.

■ We asked specifically for comment on whether it
■ should apply to documents other than the grant application,

and/or whether it should apply to exemptions other than the confidential information disclosure of which could cause competitive harm.

We kind of asked it both ways is, is there other information outside the grant applications for which this exemption four is likely to apply?

And we also asked are there other exemptions which are likely to apply to the information we received from grantees about which applying a submitter's rights process would be helpful, particularly, to the corporation in fulfilling its obligations under FOIA?

In the end, the staff felt that the grant application is really the only information submitted from the grantee where there is a likelihood that the disclosure of that information would cause competitive harm; that other records submitted by the grantee, if they were disclosed, whatever else would happen, it wouldn't cause a competitive harm.

So we answered it that way internally. And then, with respect to information that might be subject to the other exemptions, clearly, we recognize that there is

information submitted by recipients that is in fact covered by the other exemptions.

But, on the whole, balancing off administrative issues, the staff felt that when those other exemptions apply such as unwarranted invasion of personal privacy, that the corporation is comfortable having -- in dealing with FOIA all these years to know exactly when that's happening, and what meets those standards, and not releasing information at that point.

Because when you apply the submitter's rights process, one of the things that happens is it delays when the requestor gets there -- how long it takes to process their request. But the statute generally provides a fairly limited turnaround time for FOIA requests.

And so when you go through the submitter's rights process, one of the things you have to do is go back to the original requestor and say, "It's going to take you awhile."

MS. BATTLE: So help me with this. Are we giving out any information in grant applications to people, any information?

MS. CONDRAY: Yes.

■ MS. BATTLE: Out of a grant application we are?

■ MS. CONDRAY: Yes.

■ MS. BATTLE: And so the purpose of this reg is to
■ get at which specific pieces do we need to notify the
■ submitter, and make them aware of it, and in which instances
■ we all disclose information out of a grant application upon
■ request?

■ MS. CONDRAY: Well, we have ended up proposing to
■ keep the process limited to what the process already has
■ been, which is just going to grant applications.

■ MS. BATTLE: I understand.

■ MS. CONDRAY: Yes.

■ MS. BATTLE: That part I understand. But I guess I
■ was trying to understand just practically how this operated.
■ For purposes of grant application, you're talking about the
■ fact that we are in a competition process.

■ And so, therefore, you don't want to give away
■ information that can place the applicant at a disadvantage
■ because they have applied for a grant. And so, some of the
■ information in that application would be held confidential --

■ MS. CONDRAY: Correct.

MS. BATTLE: -- based on the way that you have viewed it in the past, and there may be some gray areas in that application.

And so, that's when this 1602.14 begins to operate to show what the submitter has a right to in the process of evaluating whether that information ought to go out. Is that --

MS. CONDRAY: That's correct.

MS. BATTLE: Okay. Now I understand.

MS. CONDRAY: That's exactly correct.

MS. BATTLE: Okay.

MS. CONDRAY: What will usually happen is we get a request for a grant application. And, generally, the request will ask for like the entire grant application.

We will create a submitter's rights letter which goes to the applicant saying, "We have received a FOIA request for your grant application for X in such year. We believe these sections are not subject to an exempt -- these parts of your grant application are not subject to an exemption, and we anticipate releasing them unless you can convince us otherwise. We believe these sections of your

■ grant application are subject to an exemption and we do not
■ anticipate releasing them."

■ You have, however many days it says in here, to
■ respond to us, and generally they do. And sometimes we get
■ -- you know, sometimes the response will be, "Please don't
■ let any of the information out."

■ Sometimes the response is, "The stuff that you have
■ identified as we think would cause competitive harm, that's
■ the stuff we agree with. The other stuff that you have
■ identified is probably releasable. We agree with."

■ Sometimes they ask us not to release any of it. So
■ the process is exactly how you described it.

■ MS. BATTLE: Okay. All right.

■ MR. ASKEW: Let me -- I apologize, Mr. Chairman.

■ CHAIR BRODERICK: Mr. Askew, I just want to say,
■ having heard this discussion for the last 20 minutes, I
■ almost wish that Congressman Sensenbrenner -- objection, but
■ apparently not.

■ MR. ASKEW: Well, I was going to say I am beginning
■ to feel like Bill McCalpin, but he would object because he
■ understands this and I am still confused.

MR. McCALPIN: No, I am going to ask a question.

MR. ASKEW: All right. I have got one -- let me see if this will help me. 1602.14(b) says, "As a submitter who has received -- records." It used the word "records."

Okay. From what you have been saying, records is defined as grant application, or is it broader than grant application in that case?

MS. CONDRAY: No, it only goes to the grant applications because of the construction of --

MS. BATTLE: It looked like to me there was a bifurcation --

MR. ASKEW: Right.

MS. BATTLE: -- between the grant application and general records when I read it. And that's why I asked the question. And that might be getting --

MR. ASKEW: Right.

MS. CONDRAY: Okay. I see what you mean.

MR. ASKEW: Because I am sitting here thinking, if you're going to request, an FOIA request, for all of Wilhelm Joseph's medical records, one response is, "We don't have any of his medical records." So that's an easy response.

■ And then they say, "Okay. Well, I would like
■ Mattie Condray's medical records, which you do have."

■ MS. CONDRAY: Right.

■ MR. ASKEW: All right. You are clearly going to
■ say no to that.

■ But are you going to tell Mattie Condray this
■ request has been made for her medical records by somebody,
■ and give her the opportunity to express to you why her
■ medical records should not be released?

■ If your answer is, "Don't worry. We never released
■ those," that's great. But I would like to give some
■ assurance to someone who has had a very -- request made for a
■ very personal set of records made, to at least have the
■ opportunity to be noticed of that, and say, "You should not
■ do that."

■ That's the example. I am trying find unwarranted
■ personal information. If it's a grant application, Mattie
■ Condray's medical records are not going to be in the grant
■ application. But they can still do an FOIA request, somebody
■ can, for your medical records having nothing to do with a
■ grant application. Am I clear?

MS. CONDRAV: Yes, you're clear. Let me respond to the first point by saying we can certainly correct the regulatory text to -- in each place where it should say grant application to do that.

To respond to the specific question, under both the current regulation, and as we propose it, the request for my medical records would be denied, as you know we have identified records, but you don't get to have them because they're exempt from disclosure.

MR. ASKEW: And we trust you.

MS. CONDRAV: But we would not alert the subject of the request that the request had come in. I would say that's -- that has always been the case. And I don't believe there is any factual basis for saying that we have been releasing things that --

MR. ASKEW: No.

MS. CONDRAV: -- we shouldn't have. And, in a balance of adding extra administrative burden to the system, we -- the staff was comfortable saying, you know, "These other requests are things that we have been dealing with."

And, in light of the fact that the executive order

■ upon which the submitter's rights process is based only in
■ fact goes to confidential information, there is no parallel
■ process required under FOIA law anywhere else for notifying
■ submitters of information that requests have been made about
■ their information.

■ And, again, you balance out both, the fact that if
■ a request comes in, and any request that comes in that's
■ subjected to a submitter's rights process, it adds time to
■ the processing of the request. And, particularly, I mean, if
■ you're going to ultimately deny the records, there is less
■ practical effect.

■ But if you're ultimately going to release the
■ records, then the requestor who has requested records to
■ which he or she has a statutory right is delayed in getting
■ the materials that they have rightfully requested. And it
■ also adds a significant administrative burden to the small
■ FOIA staff processing FOIA requests.

■ But, that said, obviously we are permitted under
■ FOIA to extend that process. And if that is the will of the
■ committee and the board, obviously, we'll do it. But, in
■ explaining why we have not -- although we got comments asking

■ us to consider that, and we did consider it, why we had in
■ our proposed final rule had chosen not to do that.

■ CHAIR BRODERICK: I almost hesitate, but I won't.
■ No, let LaVeeda, because she's --

■ MR. McCALPIN: A board member.

■ CHAIR BRODERICK: Yes.

■ MR. McCALPIN: Committee members first.

■ CHAIR BRODERICK: Yeah, committee go first.

■ MS. BATTLE: All right. Just to follow what --
■ thank you very much, Bill. I appreciate that.

■ Just to follow what Bucky raised, is there
■ somewhere that a corporation employee could go to find out
■ what the policy is, as to what is confidential and what is
■ not?

■ And the reason I ask that question, we're saying
■ that submitters are not going to gain access to how you make
■ a judgement about what will be disclosed and what will not be
■ disclosed.

■ However, if I work at the corporation and I have
■ medical records at the corporation, how do I know that your
■ judgement is going to be in favor of those records being

■ confidential?

■ That's the question. Is there -- I mean these
■ policies about --

■ MS. CONDRAY: Well --

■ MS. BATTLE: -- not allowing certain information to
■ go out, where do you go to find out what those policies are?

■ MS. CONDRAY: The standards, I don't -- since this
■ is just -- what's in here only talks to the changes that are
■ being made.

■ But the sections of the regulation that aren't
■ being changed lay out what the -- what is exemption, what the
■ exemptions are, lay out in the regulation of what the basis
■ is for withholding information, what information is entitled
■ to exemption is both in the statute and in our regulations.

■ CHAIR BRODERICK: But when information, Mattie, is
■ withheld under the current system and a hypothetical has been
■ given to you, I, the employee, am not told, and someone here
■ on the staff looking at what's exempt would make the ruling?

■ MS. CONDRAY: Correct, the FOIA officer.

■ CHAIR BRODERICK: Right.

■ MS. CONDRAY: You know, if need be also with a

■ concurrence, obviously, and general counsel.

■ CHAIR BRODERICK: Okay. Are you aware of any other
■ agency or entity that would expand the FOIA process as
■ suggested here, so that in the hypothetical Bucky alluded to
■ that the FOIA officer would have to notify the person either
■ of the request, or of the result of the request, or is that
■ not done?

■ MS. CONDRAY: If the submitter's rights process was
■ expanded to include requests for records, any records that
■ would include personal information, for example, what would
■ then happen is if we got a request for somebody's medical
■ records, which would count as personal information, the FOIA
■ administrator and FOIA officer would send a letter to the
■ person whose records had been requested saying, "Your records
■ have been requested" -- well, I'll back up. If it's
■ something that we clearly looked at my medical records, there
■ is no way we are giving those out, and we would just not give
■ those out.

■ If it's something where I thought, "Hmm, is this
■ really a personal record? Does this really meet the
■ exception, hmm," then we would end up sending -- you know, if

■ it's my records, she would end up notifying me that, "We got
■ a request for your records. We think they -- you know, we
■ think they may be subject to this exemption. We are -- we
■ propose to give out your name and title because that piece of
■ the record is not subject to an exemption. That is not
■ privacy information. But your medical records with the
■ corporation, those are subject. And so, we would propose to
■ withhold those. If you wish to dispute that you can write to
■ us."

■ At the same time, the requestor would then be
■ notified that, "You asked for this information. We have the
■ submitter's rights process. We have notified the submitter
■ of the information, and when we hear back from them we will
■ finish processing your request."

■ MS. BATTLE: But we have just wrote the submitter's
■ rights reg, 1602.14, to only apply to grant applications. So
■ your explanation --

■ MS. CONDRAY: Oh, I'm sorry. I thought I was
■ asking Bucky's question of, if you expanded it to cover other
■ documents that would happen.

■ MS. BATTLE: Yes, okay.

MS. CONDRAY: In the grant application pro -- if it was still limited to just grant applications, yeah, I guess -- I mean if you limit it to just grant applications, but grant applications for which there was information that was either competitive harm, or personal privacy information; and then we got a request for somebody's medical records.

Since that's not part of the grant application, yes, the response would just be we would just process it like we would process any other FOIA request, and only go through the --

MS. BATTLE: Okay.

MS. CONDRAY: You know I thought he was looking to expand it to other records. So if I misunderstood your question, I apologize.

MS. BATTLE: Well, okay.

MR. McCALPIN: Mr. Chairman?

CHAIR BRODERICK: I mean, I can both see you and hear you.

MR. McCALPIN: If I were to represent that I am no more than 60 years of age, will I be permitted to raise a question related to Mr. Askew's?

CHAIR BRODERICK: I know you're older than before we started this system.

MS. BATTLE: All of us are.

MR. McCALPIN: I am not clear in my own mind whether the Freedom of Information Act applies only to the corporation, or does it pass through to our grantees as well?

And I ask that in the context of a situation which has arisen in the past where we have had requests, and I think in at least one instance through a member of Congress, to disclose the eligibility of a client in a specific piece of litigation.

How do we respond to that?

MS. CONDRAY: Well, I believe I can -- I will try to answer your question.

The Freedom of Information Act applies to the corporation. It does not apply to our individual recipients.

In that way, no one has a right to ask our recipients directly to disclose anything under the Freedom of Information Act.

There may be -- if there is state or local -- but the federal Freedom of Information Act, you can't file a FOIA

request with one of our recipients. That said, the FOIA applies to all of the corporation's records.

MR. McCALPIN: I understand.

MS. CONDRAY: Whether or not we generate them ourselves, or whether they are records that are in our possession through the course of our business that we come -- records that we come into possession of.

So, for example, in an eligibility record, while nobody could file a FOIA request directly with the recipient to receive that record, if the corporation was in possession of the record it would be a record of the corporation that would be subject to a FOIA request. That record may, and the information in it, might be subject to exemption from disclosure.

So if we got a request for such a record, we could -- you know, the realm of responses would be, "We have identified a record responsive to your request and here it is. We have identified a record responsive to your request.

Some portion of it is subject to withholding from disclosure. We have redacted that material out and here is the rest of it."

Or we could say, "We have identified a record. All of it is exempt from withholding. And so, therefore, we are denying it to you."

If we did not have the record at all, we would say, you know, "We have no responsive records."

MR. McCALPIN: Would you redact the financial information of the client?

MS. CONDRAY: Yes.

MS. TARANTOWICZ: If I might interrupt for a moment.

MS. CONDRAY: Laurie talked with the Office of Inspector General.

MS. TARANTOWICZ: I just, in addition to all that Mattie said, I just wanted to add a couple of points, if I may.

As to medical records, I believe those are specifically protected from disclosure by law. And a FOIA exemption is if it is specifically protected from disclosure by law, we are prohibited from disclosing it.

As to financial information, eligibility information, client names, we are also prohibited from

disclosing that information by law. It's in the '96 Appropriations Act.

So it's not just the fact that there is a FOIA exemption. It's the fact that the corporation is specifically not allowed to release that information.

So, you know, of course, I agree with Mattie that it's -- in balancing the administrative burden and the risks, we are -- I think the corporation is well aware that it is not allowed to release that information. That's all. Thank you.

CHAIR BRODERICK: Thank you, Ms. Tarantowicz. We are not required to go out and generate a record in order to respond?

MS. CONDRAY: That's correct, we are not.

CHAIR BRODERICK: If we don't have it, we don't have it.

MS. CONDRAY: If we don't have it, we don't have it. And that's true if there is a record that, you know, you would think we would have, but we don't anymore. If we don't have it, we don't have it.

CHAIR BRODERICK: Mattie, I just want to go back.

■ And I personally have found the discussion fascinating.

■ What I want to do is just go back and ask you
■ whether or not what we're doing today, if we vote on this --
■ and I hear Bucky's concerns, which are -- I don't mean to
■ make fund of them. I think they're very legitimate concerns.

■ But what we're doing today, as I understand it, if
■ we pass this regulation, is codify specifically that which we
■ have done somewhat informally?

■ MS. CONDRAV: Correct.

■ CHAIR BRODERICK: We're not broadening. We're not
■ contracting.

■ MS. CONDRAV: That's correct.

■ CHAIR BRODERICK: We are making specific that which
■ we have done as a matter of practice?

■ MS. CONDRAV: Absolutely.

■ CHAIR BRODERICK: Yeah, okay. And I don't know
■ whether -- Bucky, if you want to propose any amendments or
■ modifications or?

■ MR. ASKEW: We're adopting this as the final rule?

■ MS. CONDRAV: Yes.

■ MR. ASKEW: Right. So what would happen from here

is we would just then publish it?

MS. CONDRAY: It would be published as a final rule, would become effective 30 days after the date of publication.

M O T I O N

MR. ASKEW: Okay. I move its adoption as a final reg.

CHAIR BRODERICK: You can't ask that many questions and not be here for the vote. That's not right. And I'll second the motion, and I'll move it. And I assume it's unanimous, one absentia.

MR. ASKEW: I can't vote against my own motion.

CHAIR BRODERICK: No, but we'll pass it. Mattie, can you tell us -- and we're a little out of order, but I want to let LaVeeda come back on the latter issue.

With respect to limited English proficiency, which is on our agenda, the issue there, as I understood it, related to whether or not we should consider providing guidance to grantees.

And there is an issue in play as to whether or not,

■ even though that the DOJ does it, whether we're required to
■ do it at all. And we should do it by regulation, by adopting
■ Department of Justice. We could do it a variety of ways.
■ We're not doing anything.

■ And in early January, you published a notice of
■ that in the Federal Register. Comments are due back in early
■ March. And, beyond that, I take it there is nothing at the
■ moment that we need or can do?

■ MS. CONDRAY: That's correct. We just had a staff
■ report item to let you know that we had followed up from the
■ January meeting and developed the notice requesting guidance;
■ and that it's out for public comment; and that in developing
■ the notice, to let you guys know, I did meet with the LSC
■ Diversity Counsel.

■ They were very helpful to me in helping me frame
■ the issues for the notice. So, in addition to it being
■ published in the Federal Register, it being on our website,
■ we have also sent out an e-mail to all of the executive
■ directors letting them know that there is this request for
■ comments out there.

■ It's been distributed to the LSC Diversity Counsel.

■ And it has also been posted to the National Limited English
■ Proficiency Task Force list serve. So we are looking forward
■ to getting some really good information from the field.

■ MS. MERCADO: I think we can always look at the Los
■ Angeles legal aid program, as far as being able to comply
■ with Limited English Proficiency.

■ MS. CONDRAY: Yeah, they are a great example out
■ there.

■ CHAIR BRODERICK: So, by March, either this board,
■ or its successor will have some pretty good input you believe
■ on that issue?

■ MS. CONDRAY: Correct. What we're hoping will
■ happen is we'll get some really good input. We'll be able to
■ take that, and on the basis of that input develop a
■ recommendation for the committee and for the board on what
■ the best approach to this issue will be, what's going to be
■ best way for us to address this issue, if at all, with our
■ grantees to help them do what they need to do.

■ CHAIR BRODERICK: The jury is still out on whether
■ or not there is any legal obligation for us to do a thing.

■ MS. CONDRAY: Well, there is no legal obligation.

■ The question isn't that there is not a legal obligation on
■ us. There is no legal obligation for the corporation to
■ issue any guidance. The executive order does not apply to us
■ because we are not the federal agency.

■ The question is, regardless of whether we issue any
■ guidance, whether our grantees are independently subject to
■ Title VII because of their receipt of our grants which come
■ from Congress.

■ CHAIR BRODERICK: Okay. All right. Any other
■ questions?

■ A PARTICIPANT: Yeah, Edna has a question.

■ CHAIR BRODERICK: Oh, Edna. I'm sorry.

■ MS. FAIRBANKS-WILLIAMS: I didn't have a question.
■ I wanted to say that, although we don't have any Bosnian
■ lawyers at this time, we do hire interpreters all the time
■ for the Bosnian/Asian community.

■ So maybe it might be a smart idea in the next time
■ that you check on your grantees to have a question in there,
■ "Do you hire interpreters, or how do you do this?"

■ MS. CONDRAY: Yeah, that may be one approach for
■ whether it's part of a compliance review, informal guidance,

■ best -- sharing of best practices, you know, how we can use
■ corporation resources to share best practices, let people
■ know.

■ I have had suggestions, talked about, you know, in
■ areas where there is not a significant population of limited
■ English proficiency persons, whether there are ways to
■ encourage a number of providers to get together to perhaps
■ share the costs of interpreters, so that you know --

■ MS. FAIRBANKS-WILLIAMS: Well, we're getting quite
■ a few Bosnians around Burlington now. So that's how come we
■ started with interpreters.

■ MS. CONDRAY: Yeah, there are a lot of different
■ approaches. And I am hoping to get some of that information
■ to figure out the best way to get everybody on the same page.

■ MS. YOUELLS: We do ask that on each grant
■ application, so if something can be factored in to grant
■ applications, and then the question is general, how do you
■ represent people who have language abilities that are
■ different than English?

■ We also make a requirement of the state planning
■ process. So one of the things that our grantees must do, as

■ they work with one another in the state justice community, is
■ give us their plans to address the linguistic, cultural, and
■ other needs of a diverse client community. So it is part of
■ the current process.

■ CHAIR BRODERICK: Okay. Any other questions or
■ comments for Mattie on this issue?

■ (No response.)

■ CHAIR BRODERICK: The last issue that I have down
■ -- and I don't know, Mattie, whether it requires a great deal
■ of discussion because of its stage here. But maybe you could
■ tell us a little bit about 1626, and where that sits, and a
■ little about your memo.

■ MS. CONDRAY: Okay. The working group finished all
■ of its meetings, and has been working on a draft of -- a
■ draft notice of proposed rulemaking for the committee's
■ comment.

■ Under the previous rulemaking protocol, kind of
■ what, you know, the process was, that we worked amongst
■ ourselves until we have a draft of something to be able to
■ present to the committee, and then get input at that point.

■ With the revision to the rulemaking protocol, we

■ made some changes to basically provide more detailed status
■ updates instead of me just sitting here saying, "Well, we're
■ still working on it."

■ To kind of tell you what some of the issues are
■ that we have been grappling with, in case there is guidance
■ that the committee wants to provide to us at this point that
■ will then help staff finish working on a draft final rule
■ that would take into account all of the areas where we
■ haven't been grappling, or that with which we successfully
■ grappled I'll say for the committee's future review.

■ CHAIR BRODERICK: What is the time status do you
■ think, Mattie, of 1626 before it's back here?

■ MS. CONDRAY: Well, depending on what sort of
■ guidance we got from the committee, it's possible that we
■ could actually finish the draft notice of proposed rulemaking
■ for the committee's review at its next meeting you know.

■ You know, if the committee said, "Oh, here are the
■ competing issues. This is what we'd like you to propose at
■ least." Without having -- one of the nice things about,
■ since we're at the pre-rule stage, even the committee doesn't
■ have to commit to anything as a final decision.

It would just be what we would be proposing for comment. If we got sufficient guidance, we could then finish working on the draft notice of proposed rulemaking.

If the committee said, "We want to consider this some more. We want this and this information from you, and then we'll give you other guidance, you know, it could take longer."

The committee said, "Well, those really are hard issues. I don't know what to tell you. We're kind of back where we started."

CHAIR BRODERICK: Well, you know, one of the problems, and it's my fault, so I'll take responsibility for it. We had had discussion relative to this, and unless I misremember, which is entirely possible. And I had asked Mattie to prepare a memo for members of the committee.

And it's not as if Mattie doesn't have a thousand things she is doing. And so, she pretty quickly, I think, in response to that request, prepared this memo. But none of us have had -- and I have reviewed it.

And I had some preliminary thoughts on it, but I don't know that I would want to spend my time today going

through it because I am not sure that would be beneficial or profitable. But, Bucky, I don't know where you are.

MR. ASKEW: I do have some preliminary thoughts on it.

CHAIR BRODERICK: Yeah, I agree. And I'm glad LaVeeda is back because I know LaVeeda had expressed a concern about when the committee had its opportunity. The problem is I feel rather unprepared today to submit comments, or to go through this in any great detail. In a way, I hate to put it over to a March or April's committee meeting to begin that process.

Perhaps, what we could do in the interim is give Mattie our own comments as individuals between now and the next committee meeting, based on what we have got here, so it won't delay it too long, and then bring it back before the committee at the next meeting to move forward.

MS. CONDRAY: That would be fine. One other thing you could consider is if the committee is going to meet by telephone to pick up, you know, after there has been an opportunity to respond to Congress.

And presuming those, you know, issues work

themselves out, and if there is then -- I think you mentioned perhaps schedule something for approximately a month from now.

At that committee certainly that would provide another opportunity for the committee to provide guidance if you'd like to do it during that -- in that vain. That would be a good place to do it, I think.

CHAIR BRODERICK: I think we could. I just want to say that I think all of this compliments LaVeeda because the last time we met with the committee we talked about engaging this committee more in the activities of the working group.

So if we have a concern, we didn't wait until the end of the day to voice it so -- and, fortunately, this arises from that. But I think, at least Bucky and I -- although I have reviewed it, I do have some comments left.

I don't know that they'd be appropriately and best spent today. I don't know, LaVeeda, where you are.

MS. BATTLE: Okay. I agree with what you are saying, what you're discussing.

CHAIR BRODERICK: Okay.

MR. ASKEW: I am concerned about the telephonic

■ conference call and adding this to that agenda because I
■ think it might be a very long agenda anyway without this on
■ it.

■ And that's, I guess, the way we set it up. It's
■ going to have to be sort of combination committee
■ meeting/board meeting because we'd have to -- the committee
■ would have to decide on 11 and 4, and then refer it to the
■ board, and then the board would have to agree.

■ MS. CONDRAV: Oh, that's correct.

■ MR. ASKEW: So maybe the better way to do this is
■ now that we have got this before us, there are a lot of
■ issues here compared to some of the other regs.

■ Perhaps, we should be asked to look at it between
■ now and the next committee meeting, submit comments to
■ Mattie, either orally or in writing, and then when we meet
■ back again you could synthesize what you have heard from
■ committee members as well as others. And that would give us
■ more time to do it more thoughtfully maybe.

■ MS. CONDRAV: That would be fine.

■ CHAIR BRODERICK: I agree.

■ MS. MERCADO: So there wouldn't -- non-committee

members to submit comments?

CHAIR BRODERICK: Sure.

MR. ASKEW: Any board -- did this go to every board member, or just the committee?

MS. CONDRAY: Yeah, it was addressed to the Ops & Regs Committee as a process matter but it was distributed to all of the board members.

CHAIR BRODERICK: And I appreciate, Mattie, you doing it. I know when I asked you it wasn't like you had a lot of free time on your hands. So I appreciate you doing it.

MS. CONDRAY: No problem.

CHAIR BRODERICK: And I think Bucky has got the right idea. We'll get back to you individually. And, hopefully, there will be some consensus to you in that process.

MS. CONDRAY: Excellent.

CHAIR BRODERICK: I do not think there is any other business on our agenda. But if there is any public comment, I'm happy to hear it.

MR. ASKEW: I think we made a mistake adopting 1602

without any comment, public comment. And there may have been some and I apologize for that, that we sort of moved that quickly.

MS. MERCADO: We should have somebody from class, but I don't know if she wants to put anything in the record.

CHAIR BRODERICK: Is there any other public comment?

MS. PERLE: Well, I wanted to -- I would have said it before you got to Section 1602, that our view was that it would have been a good idea to have -- consistent with the comments that Bucky made -- to have broadened the submitter's rights, understanding that his corporation made the decision not to disclose the information that wouldn't have applied.

We would not certainly expect that every time there was a FOIA request that you are denying it, that you would be -- that you would have to go through that process. And that would have been our preference to do that.

And we did have some concerns also about the fee waivers; that we felt that there should be a broader recognition; that the fee waiver should be applicable to requests for information from legal services programs, and

■ from other -- from clients, and clients groups, and other
■ members of the public interest community that were -- you
■ know, that represented the legal services community.

■ So those were our concerns that we would have liked
■ to have had an opportunity to raise before you voted on the
■ rule.

■ CHAIR BRODERICK: Well, I apologize to you, and it
■ certainly wasn't intentional. If, based on those comments
■ that were made, if any member of the committee wants to
■ reopen or revisit I suppose there is nothing that would
■ prevent us from doing that.

■ But, speaking for myself, I am okay where I was. I
■ don't know if anyone else wants to revisit. I apologize to
■ you that I didn't have you up earlier.

■ MR. ASKEW: LaVeeda wasn't here to vote, so she
■ can't make a motion to reopen.

■ MS. BATTLE: I'm kind of left out of it. How did
■ we finally --

■ MR. ASKEW: We adopted it as drafted.

■ MS. BATTLE: Okay, okay.

■ MR. ASKEW: I understand those comments, although

the only thing I'd add, and I think Linda agrees with this, this regulation is a good step forward and it clarifies a lot of things that need to be clarified; that even with those couple of exceptions it's still something that we should have done, and it's a good thing that we have done so.

MS. PERLE: No, I agree with that.

MR. ASKEW: Okay.

MS. PERLE: And I think that there is nothing to preclude making the additional changes at some time in the future.

MR. ASKEW: Okay, thank you.

CHAIR BRODERICK: Thank you. And, with that, I would entertain a motion to adjourn.

MS. BATTLE: Before we adjourn, Mr. Chairman, I'd just like to say, as a member of this committee, how delighted I am to have you here in person. You have certainly been with us, and you have chaired this committee in absentia, by telephone several times.

But, you know, when I used to chair this committee by midway the room would clear out, just as it has today. I at least know now that it's not personal. And we're

delighted to have you in person.

CHAIR BRODERICK: Well, I thank you. But I think really, and there is nothing like a late afternoon really fascinating discussion about FOIA to fill a room. That's how I have always felt.

But thank you. And is this a motion to adjourn?

M O T I O N

MS. BATTLE: It certainly is.

MR. ASKEW: So moved.

CHAIR BRODERICK: We are in the status of adjournment. Thank you very much.

(Whereupon, at 2:27 p.m., the meeting was concluded.)

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