



**LEGAL SERVICES CORPORATION**

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John McKay  
President

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June 27, 1997

Mr. C.J. Hyatt  
Hyatt Realty Co.  
126 South Spruce Street  
Winston-Salem, NC 27101

Re: Your Freedom of Information Act ("FOIA") Appeal

Dear Mr. Hyatt:

This is a response to your May 22, 1997 appeal of the Legal Services Corporation's "no records" response to portions of your Freedom of Information Act ("FOIA") request of February 28, 1996, pertaining to the Legal Aid Society of Northwest Carolina ("LASNC"), a grantee of the Corporation.

**Background:**

On April 8, 1996, and again on March 19, 1997, JoAnn Gretch, the Corporation's FOIA Administrator, mailed you the Corporation's response to your original request for documents pertaining to your complaint against LASNC, File No. 95C-1-106E.<sup>1</sup> In response to your request for documents, you were provided 35 pages from the complaint file. These documents included external correspondence releasable under FOIA and 3 pages of internal memoranda which would ordinarily be exempt from release under the FOIA because they are internal memoranda that are

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<sup>1</sup> According to your March 14, 1997 letter to Ms. Gretch, you never received the April 8, 1996 mailing, whereupon Ms. Gretch sent the documents to you again on March 19, 1997.

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deliberative and predecisional.<sup>2</sup> However, the Corporation's General Counsel determined that release was appropriate. Three other pages of memoranda dated February 22 and 26, 1996, that are also internal memoranda were withheld, however, on the grounds that they are deliberative and predecisional.<sup>3</sup>

In a letter dated April 8, 1997, you acknowledged receipt of the documents mailed to you by Ms. Gretch but stated that the Corporation failed to send you "any written signed and notarized documents" or "interrogatories" related to the complaint. You requested that the Corporation provide you with such documents under FOIA. Ms. Gretch responded to your request on April 15, 1997, informing you that the Corporation had no records responsive to your request for interrogatories and notarized statements related to the LASNC complaint. You appear to have appealed the "no records" response in your May 22, 1997 letter, in which you also expressed dissatisfaction regarding the Corporation's investigative process in the LASNC case.

**Response:**

FOIA does not apply to public complaints regarding the Corporation's investigative process. It deals solely with public access to government records. In this regard, since we interpret your May 22, 1997 letter as an appeal of the Corporation's "no records" response to your FOIA request, this letter responds to that appeal.

I have reviewed all of the records related to the LASNC complaint that you requested in your original FOIA request and affirm that all such records have been forwarded to you except the 3 pages withheld pursuant to 5 U.S.C. 552(b)(5) and 45 C.F.R. §1602.9(a)(4) pertaining to internal memoranda that are deliberative and predecisional. No records responsive to your request for interrogatories and notarized statements exist; therefore we are not required to nor are we able to send you records that do not exist. The Corporation is not required to provide records that do not exist and a failure to provide nonexistent records is not deemed an improper withholding under FOIA. See Sordean v. United States, 1995 WL 86548 (N.D. Cal.) (granting summary judgment when requested records did not exist).

In conclusion, since the documents you requested do not exist in our files, I must uphold the "no records" response to your FOIA request. I hope that this response clears up any misunderstanding and fully satisfies your request. If, however, you are not satisfied, you may file suit in Federal district court, see 5 U.S.C. §552(a)(4)(B).

However, our review of the file discloses that the investigation was reopened and that you were informed of the Corporation's findings in the second review of your complaint in a letter

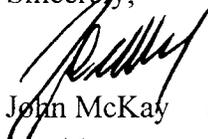
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<sup>2</sup> See 5 U.S.C. 552(b)(5) and 45 C.F.R. §1602.9(a)(4).

<sup>3</sup> See 5 U.S.C. 552(b)(5) and 45 C.F.R. §1602.9(a)(4).

from Anh Tu, Program Officer, Office of Program Operations, dated November 15, 1996. Although you have not requested documents related to that second review of your complaint, I have directed staff to review the file and provide you with all of the documents related to the second review that are releasable under FOIA. You should receive such documents in approximately two weeks.

Sincerely,



John McKay  
President



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July 16, 1997

Mr. C. J. Hyatt  
Hyatt Realty Co.  
126 South Spruce Street  
Winston-Salem, NC 27101

RE: Your Freedom of Information Act ("FOIA") Request 97-47

Dear Mr. Hyatt:

This letter is in reference to the Legal Services Corporation's second review of your complaint against the Legal Aid Society of Northwest North Carolina, a grantee of the Corporation.

As I explained in my letter of July 11, 1997, the Office of the General Counsel, which responds to all FOIA requests, opened a new file (97-47) for records related to the second review of your complaint. The second review began in June 1996 and was closed in November 1996.

We have completed our review of all responsive records, and the General Counsel has determined that the enclosed 52 pages are appropriate for release. Portions of one page have been deleted to avoid an unwarranted invasion of personal privacy, pursuant to 5 U.S.C. 552(b)(6) and 45 C.F.R. §1602.9(a)(5); and the page is so marked. Please note that the enclosed records include some documents we sent you in response to your earlier FOIA request (96-24) related to the Legal Aid Society of Northwest North Carolina.

We are withholding in their entirety five pages, pursuant to 5 U.S.C. 552(b)(5) and 45 C.F.R. §1602.9(a)(4), which exempt from disclosure internal memoranda which are deliberative and predecisional and attorney work-product.

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Mr. C. J. Hyatt  
July 16, 1997  
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If you are dissatisfied with our partial denial of responsive records, you may appeal to the president of the Legal Services Corporation within 90 days of this letter. Both your letter and envelope should be clearly marked "Freedom of Information Appeal." 45 C.F.R. §1602.12.

This release of records completes our response, so we are closing FOIA request file 97-47.

Yours truly,

A handwritten signature in cursive script that reads "JoAnn Gretch". The signature is written in black ink and is positioned above the typed name.

JoAnn Gretch  
FOIA Administrator  
Office of the General Counsel



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July 11, 1997

Mr. C. J. Hyatt  
Hyatt Realty Co.  
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Winston-Salem, NC 27101

RE: Your Freedom of Information Act ("FOIA") Request 97-47

Dear Mr. Hyatt:

This is in reference to your FOIA appeal of the Legal Services Corporation's "no records" response to portions of your FOIA request (96-24) of February 1996 pertaining to the Legal Aid Society of Northwest Carolina, a grantee of the Corporation.

As John McKay, President of the Legal Services Corporation informed you in his June 27, 1997, response to your appeal, he directed the Office of Program Operations to review the file and provide you with all releasable records related to the second review of your complaint. The Office of the General Counsel, which responds to all FOIA requests, has therefore opened a new FOIA file (97-47) for records related to the second review of your complaint. We are currently reviewing those records and expect to respond within a week.

Yours truly,

JoAnn Gretch  
FOIA Administrator  
Office of the General Counsel

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