



OFFICE OF THE PRESIDENT

Legal Services Corporation  
America's Partner For Equal Justice

July 10, 2012

Ms. Sheryl Taylor  
P.O. Box 897  
Memphis, TN 38101

**RE: Opinion Letter in Appeal of FOIA No. 2012-12**

**President**  
James J. Sandman

Dear Ms. Taylor:

**Board of Directors**  
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Cambridge, MA  
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Zanesville, OH

Julie A. Reiskin  
Denver, CO

Gloria Valencia-Weber  
Albuquerque, NM

I have received your Freedom of Information Act (FOIA) appeal, by which you challenge (1) the adequacy of the Legal Services Corporation's (LSC or the Corporation) search for records responsive to your FOIA request, (2) what you assert to be LSC's withholding of responsive records, and (3) LSC's "overly broad" application "of FOIA exemptions."

I have carefully reviewed LSC's initial response to your FOIA request, as you have subsequently revised it. I am granting your appeal in part and denying it in part for the reasons I explain below.

**Background Facts**

On March 16, 2012, you sent a letter to LSC requesting the following records pursuant to FOIA:

ALL agency records responding to the request of the name, address, docket number or administrative number for all civil actions or administrative actions which Legal Services Corporation and its grantees represented individuals in administrative hearings and civil actions for the **last six years including 2012**. ALL agency records including the name of the grantees, city and state of the grantees that represented individuals in civil actions and administrative actions for the **last six years including 2012**.

(Emphasis in original.) Because the envelope in which you sent your request was not addressed to the FOIA Officer or otherwise marked as a FOIA request, as required by LSC's regulations, there was an initial delay in routing your letter to LSC's FOIA Officer. Once properly identified, your request was forwarded to the FOIA Officer for processing.

LSC timely made an initial determination to grant your request and identified the Corporation's grantee case information reports as being responsive. (A list of LSC grantee names and addresses is already available to the public on LSC's website at <http://lsc/find-legal-aid> and [3333 K Street, NW 3<sup>rd</sup> Floor  
Washington, DC 20007-3522  
Phone 202.295.1500 Fax 202.337.6797  
\[www.lsc.gov\]\(http://www.lsc.gov\)](http://lsc/local-programs/program-</a></p></div><div data-bbox=)

[profiles](#)). LSC is statutorily required to collect and maintain certain information about its grantees' representation of eligible clients in cases filed in court. The Departments of Commerce, Justice, and State, and the Judiciary and Related Agencies Appropriations Act of 1998, Pub. L. 105-119, Title V, § 505, 111 Stat. 2440, 2512 (1997), incorporated by reference in subsequent LSC appropriations, *see, e.g.*, Commerce, Justice, Science, and Related Agencies Appropriations Act, 2012, Pub. L. 112-55, Div. B, Title IV, 125 Stat. 629 (2011) (hereinafter "section 505 of LSC's 1998 Appropriation Act"); 45 C.F.R. 1644. LSC receives these "case information reports" from grantees on February 1 and August 1 of each year. 45 C.F.R. § 1644.4(b). The reports contain case numbers, a short description of the nature of the case, court name and address, and the names and addresses of the parties. *Id.* § 1644.4(a). The six years of reports responsive to your original request were voluminous, comprising an estimated 100,000 to 200,000 pages of documents. In its initial response, LSC estimated that it would cost \$13,000 to \$26,000 to photocopy them,<sup>1</sup> not including labor costs,<sup>2</sup> or approximately 100 hours of staff time at \$26.66/hour to scan them for electronic disclosure. *Id.* Given the high costs involved, and as permitted by its regulations, LSC requested a deposit from you before producing responsive records. *Id.* § 1602.13(i)(2). LSC also gave you an opportunity to narrow the scope of your request to reduce the costs associated with producing responsive records.

On April 30, you revised your FOIA request as follows:

ALL agency records for the grantees in Seattle, Washington (main office) and grantees in the state of TN for the last six years including 2012 which the grantees represented individuals in administrative actions and civil actions. Provide a list of docket numbers, administrative action numbers, nature of the administrative action, nature of the document number or civil action number, name of the individual, address of the individual and the lawyer assigned by Legal Service Corporation and its grantees to represent the plaintiff. Also, I am seeking records of grantees in Seattle, Washington (main office) and grantees in the state of Tennessee that denied individuals representation and a list of title referrals made to the individuals by Legal Services Corporation and its grantees in Seattle, Washington and grantees in the state of Tennessee for the last six years including 2012.

This request, received by LSC on May 4, is the subject of this appeal.

On May 31, 2012, LSC timely sent you a revised cost estimate for responding to your request, which was expected to generate 4,500 to 5,000 responsive pages. LSC estimated that it would cost \$585 to \$650 to photocopy those records, not including labor costs, or five to seven hours of staff time at \$26.66/hour to scan for electronic disclosure. 45 C.F.R. § 1613.13(e)(1). LSC requested a deposit of \$585 (for copies) or \$133 (for electronic scans) before processing your revised request. Because LSC's FOIA regulations provide that the first 100 pages of records responsive to a request shall be produced free of charge, 45 C.F.R. § 1602.13(d), LSC sent you

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<sup>1</sup> Copy costs are \$.13 per page. 45 C.F.R. § 1602.13(e)(3).

<sup>2</sup> Staff services for the production or disclosure of the Corporation's records are charged according to the individual staff member's pay band as follows: Band 1, \$16.15/hr.; Band 2, \$26.66/hr.; Band 3, \$39.15/hr.; Band 4, \$51.41/hr.; and Band 5, \$54.59/hr. 45 C.F.R. § 1613.13(e)(1).

the first 100 pages of the Tennessee grantee case information reports with the clients' names and home addresses redacted. LSC invoked 5 U.S.C. § 552(b)(6) and 45 C.F.R. § 1602.9(a)(5) as authority for the redactions, stamping each redacted page of the responsive documents with these citations. LSC deferred compilation and production of the remaining responsive documentation until receiving your decision with respect to the fees and deposit.

On June 1, the day after LSC mailed you its revised cost estimate and sent you the first hundred pages of responsive documents, you wrote to LSC stating that you had not received responsive documentation for LSC's grantee in Seattle, Washington—*i.e.* the Northwest Justice Project—and lodged an appeal asserting that LSC had “improperly withheld records, did not perform an adequate search and [was] overly broad in applying FOIA exemptions.” Because of the short amount of time (one day) between LSC's letter regarding the revised cost estimate and your appeal, LSC's FOIA Officer wrote to you to confirm your intent to appeal. (Because you have provided no telephone number or e-mail address, LSC has had to communicate with you by mail.) In a letter received by LSC on June 11, you renewed your appeal.

### Analysis

#### **I. Improperly Withheld Records**

The records responsive to your revised request are voluminous, comprising approximately 4,500 to 5,000 pages. Under LSC's FOIA regulations, requesters are entitled to receive the first 100 pages of responsive documents and two hours of staff time in producing the response free of charge. 45 C.F.R. § 1602.13(d). After that, “reasonable standard charges” apply. *See id.* § 1602.13(e) (schedule of fees). LSC assumes that requesters agree to pay all charges up to \$25 for services associated with their requests. *Id.* § 1602.13(h). When the fees are estimated to exceed \$25, LSC is required by law to consult with the requester before processing the request. *Id.* If the fee is expected to exceed \$250, LSC may require advance payment. *Id.* § 1602.13(i)(2). When LSC has to consult with a requester, the request will not be deemed to have been received by LSC for purposes of the initial response until the requester agrees, in writing, to pay all fees charged and makes a deposit on the fee in an amount determined by LSC. *Id.* § 1602.13(h), (i)(2). The initial response period is thus tolled until the requester's decision is received. *Id.* § 1602.8(i)(2)(ii).

Consistent with these regulations, LSC notified you that the cost of responding to your revised request would exceed \$250 and asked for a deposit and your written agreement to pay all fees before processing the request. *Id.* § 1602.13(i)(2). While LSC awaited your direction on how to proceed, you submitted this appeal, which made no mention of the deposit or written agreement. Without receiving these items, LSC was, and continues to be, under no obligation to process your request or disclose responsive documentation to you. *Id.* § 1602.13(h), (i)(2). LSC's production of the first 100 pages of responsive documents does not change this; the time for responding to your request does not begin until LSC receives the requested deposit and written agreement. *Id.* I therefore conclude that LSC properly deferred production of responsive documents in excess of 100 pages for the Northwest Justice Project and LSC's Tennessee grantees and am denying your appeal on this ground.

I emphasize that, as you have been advised previously, LSC possesses and is willing to produce thousands of additional pages of documents responsive to your revised request. If you are interested in receiving these responsive documents, please notify LSC's FOIA Officer in writing of your agreement to pay the associated fees. Please enclose with your correspondence a deposit of \$585 for hard copies or \$133 for electronic scans. You may make a check payable to "Legal Services Corporation." Please write "Deposit – FOIA 2012-12" on the memo line of the check. LSC will provide the remaining documentation to you once your check clears.

Alternatively, you may request that the fees associated with producing documents responsive to your request be waived. Fee waivers are granted when a requester demonstrates that the disclosure of the information is likely to contribute significantly to the public's understanding of LSC's operations and is not primarily in the commercial interest of the requester. 45 C.F.R. § 1602.13(f). If you would like to apply for a fee waiver, please write to or email the FOIA Officer and, in your letter, address the factors listed in section 1602.13(f) of LSC's FOIA regulation, a copy of which I enclose for your convenience.

## **II. Inadequate Search**

When processing a FOIA request, LSC must "make a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested." Oglesby v. U.S. Dep't of the Army, 920 F.2d 57, 68 (D.C. Cir. 1990). In processing your revised FOIA request, LSC used search methods that were not only reasonably calculated to identify, but did in fact identify case information and referral/denial of representation records for the Northwest Justice Project and Tennessee grantees. LSC's FOIA Officer initiated a search for responsive records by forwarding your revised request to LSC's Office of Information Management (OIM) and Office of Program Performance (OPP)—the offices within LSC that, given their extensive interaction with grantees, were likely to possess records relating to grantee operations and statistics. OIM promptly identified the grantee case information reports as being responsive and estimated the number of pages and hours of staff time it would take to produce them. In addition, OIM reported that LSC does not generally maintain statistics on grantee client referrals or denials of representation, but had collected information on denials for two-month periods in 2005 and 2009. I have determined that LSC's search was reasonable under the circumstances and identified the information responsive to your request. I therefore deny your appeal on the ground that LSC's search was inadequate.

To the extent that this ground of your appeal reflects your assumption that LSC's search yielded only 100 pages of responsive documentation, I reiterate that LSC's 100-page production was simply the first installment of responsive records. LSC will provide the remaining documentation to you once your written agreement to pay fees is received and your deposit check clears.

## **III. Overly Broad Invocation of the FOIA Exemption for Personal Information**

In producing documents responsive to your request, LSC redacted, pursuant to the FOIA exemption for "[p]ersonnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy," 5 U.S.C. 522(b)(6); 45 C.F.R. §

1602.9(a)(5), the client names and home addresses contained in the first 100 pages of the Tennessee grantee case information reports that were produced to you.

The public disclosure of case information reports is addressed explicitly by federal statute and by LSC's own regulations. The Departments of Commerce, Justice, and State, and the Judiciary and Related Agencies Appropriations Act of 1998, Pub. L. 105-119, Title V, § 505, 111 Stat. 2440, 2512 (1997), incorporated by reference in subsequent LSC appropriations, *see, e.g.,* Commerce, Justice, Science, and Related Agencies Appropriations Act, 2012, Pub. L. 112-55, Div. B, Title IV, 125 Stat. 629 (2011), provides, in pertinent part, as follows:

(b) Any basic field program which receives Federal funds from the Legal Services Corporation from funds appropriated in this Act must disclose to the public in written form, upon request, and to the Legal Services Corporation in semiannual reports, the following information about each case filed by its attorneys in any court:

(1) The name and full address of each party to the legal action unless such information is protected by an order or rule of a court or by State or Federal law or revealing such information would put the client of the recipient of such Federal funds at risk of physical harm.

...

(c) The case information disclosed in semi-annual reports to the Legal Services Corporation shall be subject to disclosure under section 552 of title 5, United States Code [the federal FOIA statute].

Pub. L. No. 105-119, § 505(b), (c). Implementing section 505 of LSC's 1998 Appropriation Act, LSC's regulations at Part 1644 state

(a) For each case filed in court by its attorneys on behalf of a client of [an LSC grant] recipient after January 1, 1998, a recipient shall disclose . . . the following information:

(1) The name and full address of each party to a case, unless:

(i) the information is protected by an order or rule of court or by State or Federal law; or

(ii) the recipient's attorney reasonably believes that revealing such information would put the client of the recipient at risk of physical harm . . . .

45 C.F.R. § 1644.4(a). The statute and LSC's regulations further mandate that LSC grant recipients "shall provide" the required case information to LSC in semiannual reports, and that "[r]eports filed with the Corporation *will be made available by the Corporation to the public upon request pursuant to the Freedom of Information Act.*" *Id.* § 1644.4(b); *see* Pub. L. No. 105-119, § 505(c) (emphasis added). Finally, the statute and the regulations specify that, "[u]pon request, a grant recipient *shall make the information required . . . available in written form to any person,*" without any reference to the Freedom of Information Act. *Id.* § 1644.4(c); *see* Pub. L. No. 105-119, § 505(b) (emphasis added).



Disclosure of client names and addresses under these laws is, therefore, mandatory, as evidenced by the use of the words “must” and “shall,” and it is *the grantee*, not LSC, that has the responsibility for determining whether its client names and addresses are “protected by an order or rule of court or by State or Federal law.”

LSC FOIA staff determined that the names and addresses of parties to cases could be redacted from LSC’s production of case disclosure reports pursuant to the FOIA exemption for personal records. I conclude that that determination was erroneous, for two reasons.


First, the statute governing disclosure of case reports makes it clear that Congress did not deem the information in those reports – information also contained in public court filings – to be deserving of privacy protection. The statutory language is unequivocal in requiring that LSC grant recipients “must disclose to the public in written form, upon request” all of the information in the case information reports, Pub. L. No. 105-119, § 505(b), and LSC’s regulations incorporate that requirement. 45 C.F.R § 1644.4(c). LSC grant recipients have no basis for invoking any FOIA exemptions when they receive a request for case reports; FOIA does not apply to them. When the very same case report information is requested from LSC, as is the case here, the information does not become subject to FOIA’s exemption for “files . . . the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Once a grant recipient has reported parties’ names and addresses to LSC, Congress decreed that information to be public. I read the reference to the Freedom of Information Act in the statute and LSC’s regulations to relate simply to the mechanism by which the public may obtain the reports from LSC, and not to permit LSC to invoke FOIA’s exemptions to disclose less than all of the information in the reports.

Second, LSC has previously produced grant recipients’ case reports in response to FOIA requests without redacting the names and addresses of parties. LSC’s own prior conduct is therefore consistent with my interpretation of its obligations here, and I believe it would violate the public policy favoring disclosure of agency records for me to deviate from the past practice of production without redaction. See Freedom of Information Act: Memorandum for the Heads of Executive Departments and Agencies, 74 Fed. Reg. 4683 (Jan. 21, 2009) (“... the FOIA is to be administered with a presumption favoring disclosure.”).

I am therefore granting your appeal with respect to LSC’s application of FOIA exemptions and enclose the first 100 pages of the responsive records without redaction.

If you believe that my decision is in error, you may seek judicial review in a district court of the United States as provided in 5 U.S.C. § 552(a)(4).

Sincerely yours,

  
James J. Sandman  
President

Enclosures