



**LEGAL SERVICES CORPORATION**

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Terrance J. Wear  
President

Writer's Direct Telephone  
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863-1823

October 3, 1989

Edwin L. Laing, Esq.  
211 E. Victoria St., Suite A  
Santa Barbara, CA 93101

Re: Freedom of Information Act (FOIA) Appeal  
dated September 1, 1989.

Dear Mr. Laing:

This is in response to your Freedom of Information Act ("FOIA") appeal dated September 1, 1989 and received by the Legal Services Corporation ("LSC") on September 5, 1989. Upon review of your original FOIA request, the denial issued by the LSC FOIA officer and your subsequent request for appeal, it is my considered opinion the documents requested were properly exempt from disclosure under 5 U.S.C. § 552(b)(5), (b)(7)(A), and (b)(7)(D); 45 C.F.R. § 1602.9(a)(4), (a)(6)(i), and (a)(6)(iv). I, therefore, affirm the July 31, 1989 denial of your July 18, 1989 FOIA request.

On July 18, 1989 you submitted a FOIA request to LSC relating to documents obtained by LSC during the course of an investigation of Channel Counties Legal Services Association's ("CCLSA") financial officer. Specifically your original request included: 1) all records of conversations, documents and other things that were involved in the field work (investigations) by Bertrand Thomas, William Lafollette and Thomas Sullivan; 2) conferences, inquiries, correspondence and other documents that particularly related to the Bank of A. Levy, Ron Gill, Esq., and Kevin Rose, Esq., of Nordman, Cormany, Hair & Compton, and Ms. Terry Guerrero; 3) information and records pertaining to inquiries and conversations with personnel of Ostrow, Bauch, Firestone & Carmody, auditors of CCLSA; and 4) 1988 fiscal audit work papers for the time span from August 16, 1988 through August 26, 1988.

You were advised by letter dated July 30, 1989, that the items requested were exempt from release pursuant to 5 U.S.C. §

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552(b)(7)(A) and 45 C.F.R. § 1602.9(a)(6)(i), as they constitute records compiled for law enforcement purposes, the release of which could reasonably be expected to interfere with enforcement proceedings, and pursuant to 5 U.S.C. 552(b)(7)(D) and 45 C.F.R. § 1602.9(a)(6)(iv), since they could reasonably be expected to disclose the identity of a confidential source which furnished information on a confidential basis. Moreover, you were therein also advised that some of the responsive agency records, consisting of draft reports, memoranda, and other work material, were exempt from release pursuant to 5 U.S.C. § 552(b)(5) and 45 C.F.R. § 1602.12.

You assert in your appeal that Exemption (7)(A) is inapplicable to exempt the documents from disclosure as the documents were collected in the routine, daily actions of an agency to carry out its ordinary oversight purposes. On the contrary, the documents were collected in an investigation instituted by LSC upon being apprised by CCLSA of an apparent theft of funds accomplished by the financial officer of CCLSA. Therefore, the investigation was not initiated pursuant to LSC's routine oversight responsibility. Moreover, a premature release of the certain information could reasonably interfere with enforcement proceedings. See Alyeska Pipeline Serv. Co. v. EPA, 856 F.2d 309, 313 (D.C. Cir. 1988) (law enforcement agencies have legitimate interest in protecting information which may hinder investigation.) Thus, the withholding of certain information pursuant to this exemption is proper.<sup>1</sup>

You also contend that LSC cannot properly withhold documents pursuant to Exemption (7)(D) which protects the identity of confidential sources. It is your position that a confidential source cannot exist in the present circumstance because you are generally aware of any source from which LSC may have obtained information. Such general knowledge is insufficient to negate the exemption. While it may be true that CCLSA is generally aware, it does not follow that outside third parties also possess the same knowledge. The FOIA exemptions must be equally applicable to any party which requests information. The special knowledge you possess is, therefore, irrelevant to the

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<sup>1</sup> Section (c)(1) does not, contrary to your assertion, apply to the invocation by LSC of Exemption (7)(A). The purpose of Section (c)(1) is to create an exclusion to the disclosure requirement. When properly invoked, "[t]he (c)(1) exclusion . . . now authorizes federal law enforcement agencies, under specified circumstances, to shield the very existence of records of ongoing investigations or proceedings by excluding them entirely from the FOIA's reach." Attorney General's Memorandum on the 1986 Amendments to the Freedom of Information Act, at 18-22 (Dec. 1987). LSC is not trying to utilize the protection of the exclusion in the denial of your request, since the existence of possible information is not denied. Consequently, your arguments regarding (c)(1) are inapplicable.

disclosure requirement under FOIA. For example, information collected from CCLSA would be withheld from an outside third party which solicited the same type of information as that contained in your request on the basis that CCLSA is also, in fact, a confidential source.

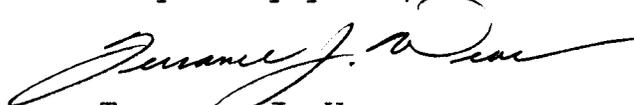
Moreover, Exemption (7)(D) has been interpreted broadly. The protection has been extended to cover not only material which clearly identifies the source but also information which by its nature or content would reveal the source's identity. See Pollard v. FBI, 705 F. 2d 1151, 1155 (9th Cir. 1983) (exemption applies where records would disclose identity of confidential source); L&C Marine Transp., Ltd. v. United States, 740 F.2d 919, 923-25 (11th Cir. 1984) (protects information which would link source to source provided material). Any documents which are responsive to your request that would indicate or tend to identify the source from which LSC obtained information are covered by this exemption.

It is notable that copies of documents furnished to LSC by CCLSA would normally have been available for release to CCLSA if the request had not been pursuant to FOIA. As explained, the documents provided by CCLSA in the course of this investigation would ordinarily be protected from release under FOIA in order to protect the confidential status of CCLSA. A release of such documents to CCLSA pursuant to FOIA could render the documents available to a third party. If, however, you wish to request these documents by separate letter please feel free to do so.

Exemption 7(b)(5) does apply to that part of your request which sought to obtain documents which are pre-decisional or deliberative. Interview notes, internal memoranda relating to interviews and observations, strategy workplans, and other pre-decisional internal memoranda are properly withheld under this exemption even if collected in the course of routine oversight.

For the foregoing reasons, therefore, I am affirming the July 31, 1989 denial of access of your July 18, 1989 FOIA request as the documents are properly exempt under 5 U.S.C. § 552(b)(5), (b)(7)(A), and (b)(7)(D); 1602.9(a)(4), (a)(6)(i) and (a)(6)(iv). You have the right to seek judicial review of this decision by filing a complaint in the Federal court in the district where you reside, in the district where you have your principal place of business, or in the District of Columbia. See 5 U.S.C. § 552(a)(4).

Very truly yours,



Terrance J. Wear  
President