



November 13, 2001

Ms. Barbara Schwarz
335 East Broadway
Apt. 401
Salt Lake City, UT 84111

President

John N. Erlenborn

Board of Directors

Douglas S. Eakeley
Roseland, NJ
Chairman

LaVeeda M. Battle
Birmingham, AL
Vice Chair

Hulett H. Askew
Atlanta, GA

John T. Broderick, Jr.
Manchester, NH

John N. Erlenborn
Issue, MD

Edna C. Banks-Williams
Ferrisburgh, VT

F. Wm. McCalpin
St. Louis, MO

Maria Luisa Mercado
Galveston, TX

Nancy H. Rogers
Columbus, OH

Thomas F. Smegal, Jr.
San Francisco, CA

Ernestine P. Watington
Harrisburg, PA

Re: Appeal – FOIA Request 2001-54

Dear Ms. Schwarz:

This responds to your letter of October 24 2001, appealing LSC's response to your FOIA requests of June 24, 2001 and September 24, 2001 (reference number 2001-54). Upon review of the record, I must deny your appeal.

Background

On September 18, 2001, the LSC Office of Legal Affairs received a letter dated June 24, 2001, but with a handwritten note stating that the letter was mailed on September 10, 2001, in which you filed with LSC a FOIA request for LSC records, "as to my FOIA/PA request with your number 2001-010 and 2001-023, and your records as to the appeal of those requests." You also requested that you be provided with a "search declaration" describing how and by whom the search(es) for the documents requested was conducted, along with the search records and correspondence generated to retrieve such information/records.

In a separate letter (but included in the same envelope) dated September 10, 2001, you filed with LSC a FOIA request for: (1) "any records" that pertained to you "since the last time" LSC mailed you records pertaining to you; (2) "any records pertaining to scientology"; and (3) "search records" that LSC generated during processing of the request. You also requested that you be provided with a "search declaration" describing how and by whom the search(es) for the documents requested was conducted, along with the search records and correspondence generated to retrieve such information/records.

Also included in the envelope with these requests was a request for a fee waiver relating to the September 10, 2001 request.

In a letter dated October 4, 2001, the LSC FOIA Officer, Lisa Zurmuhlen acknowledged your FOIA requests and informed you that they would be consolidated for the purposes of response and were assigned Reference Number 2001-54. Ms.

Zurmuhlen also noted that LSC had no record of receipt of the request dated June 24, 2001, prior to the version provided on September 10, 2001 and received on September 18, 2001. Ms. Zurmuhlen informed you that you would be provided with a timely response. Ms. Zurmuhlen also notified you that your request for a fee waiver had been denied.

Ms. Zurmuhlen followed this original response up with an October 17, 2001, responding to your requests. This response informed you that LSC had identified 36 documents consisting of 89 pages that were responsive to your requests relating to your requests for documents relating to you or your previous FOIA requests. You were further informed that 29 of these documents (consisting of 72 pages) were being released to you in their entirety and that the remaining 7 documents (consisting of 17 pages) were being released with excisions made pursuant to 5 U.S.C. §§ 552(b)(5) and (6). Ms. Zurmuhlen's response noted that, in regard to your prior FOIA request 2001-10, you were not being provided with copies of documents previously released to you. In addition, Ms. Zurmuhlen noted that, with regard to your prior FOIA request 2001-23, LSC was unable to provide records pertaining to that portion of your request which referred to "general correspondence logs" because it remained unclear, despite a request from LSC to you for clarification, which records you wished to receive. You were also informed that there were no records pertaining to your appeal of the decision on your request 2001-23 (other than the appeal letter) due to the fact that the appeal had only just been received by LSC. Finally, Ms. Zurmuhlen's response noted that with respect to your request for records relating to scientology, LSC had no responsive records.

You filed an appeal of the LSC October 17, 2001, response in a letter dated October 24, 2001 claiming that LSC is unlawfully withholding records responsive to your request. Your appeal refers both to the records relating to your FOIA requests and to the "search declaration" you requested.

Analysis

You cite several bases for your appeal. First, you complain that Ms. Zurmuhlen mailed to you duplicate records. While one of your requests contained a time restriction, the requests relating to your prior FOIA requests did not. The records Ms. Zurmuhlen provided were responsive and were sent in an attempt to fulfill your contradictory requests as best as possible and you were not charged for the copies. In any event, there is no basis to appeal a request that send more documents to you than you believe you requested.

You appeal the determination that LSC has no records relating to scientology, ostensibly on the basis of your assumption that no search or an insufficient search for such records was conducted. You similarly claim that the searches related to your request for search records was insufficient. Under the FOIA, LSC is required to undertake searches that are "reasonably calculated to uncover all relevant documents." *Weisberg v. Department of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Such a search was conducted, as evidenced by the records which you requested and received. Accordingly, we have no basis to believe that a further search of agency records would be reasonably calculated to uncover any relevant documents or that the

search conducted was insufficient. Simply because you choose to believe that an insufficient search was conducted does not make it so.

You also base your appeal on the provision of LSC's FOIA regulations that provide that the first 100 pages sent in response to each request are to be sent free of charge to the requester. While this may be true, it is immaterial, as only 89 pages of documents were identified as responsive to your request.¹

You further base your appeal on the fact that you did not receive all of the 89 identified as responsive. However, Ms. Zurmuhlen's response clearly noted that not all of the 89 pages were appropriate for release. A careful examination of the response you were sent show that 9 pages were withheld in their entirety, so that 80 of 89 pages were sent. You acknowledge that you received 80 pages, so I have no basis upon which to believe that there were any additional pages which were not sent.

You also claim that the documents withheld, in whole or part, under §552(b)(5) or 552(b)(6), were inappropriately withheld. First, a document may be withheld in its entirety if the redactions are of such a nature that the remaining segments would "leave only essentially meaningless words and phrases." *Neufeld v. IRS*, 646 F.2d 661, 663 (D.C. Cir. 1981). Of greater import, however, is that you provide, no support whatsoever for your claims that the exemptions do not apply. As with many of your other claims, simply because you believe something that does not make it so.

Regarding your request for a what you term "search declarations," and your complaint that you received no index to the documents provided, I must reiterate the information provided to you in previous letters from LSC² in response to your FOIA requests and appeals: An index of documents sent and what you consider to be a "search declaration" would require LSC to create new records documenting and describing its search efforts. However, as you acknowledge in previous correspondence³, there is no requirement under FOIA that an agency create for a requester any agency records which do not already exist. As the U.S. District Court for the District of Columbia noted in one of your own cases, "Plaintiff is advised that there is no requirement that an agency provide a "search certificate" or a "Vaughn" index on an initial request for documents. The requirement for detailed declarations and Vaughn indices is imposed in connection with a motion for summary judgment filed by a defendant in a civil action pending in court." *Schwarz v. U.S. Department of Treasury, et al.*, 2000 WL 1922277, *2 (D.D.C.).

In light of the above, I have no basis upon which to determine that you were unlawfully denied any records responsive to your requests or any document which you characterize as an index of documents provided or a "search declaration." If you believe that this determination is in error you may seek judicial review of this decision in the district court of the United States as provided in 5 U.S.C. §552(a)(4).

¹ I note that you have complained about both receiving too many and too few documents in this appeal, referring in each case to the very same documents, items from your previous FOIA request and appeal files.

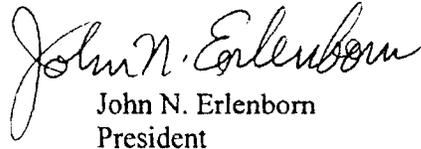
² See letters of March 7, 2000, July 25, 2000, February 2, 2001, and June 7, 2001.

³ See your letter dated May 31, 2001, appealing the response to your FOIA Request 2001-10.

Ms. B. Schwarz – FOIA Appeal 2001-54
November 13, 2001
Page 4

Finally, to the extent that your letter addresses my decision on your appeal related to your FOIA Request 2001-23, I remind you that you were informed in my October 17, 2001 letter that that decision was administratively final and that your recourse, if you believe the decision is in error, is to seek judicial review in an appropriate court.

Sincerely,


John N. Erlenborn
President