

CENTER for JUDICIAL ACCOUNTABILITY, INC.

P.O. Box 69, Gedney Station
White Plains, New York 10605-0069

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Elena Ruth Sassower, Coordinator

BY FAX: 202-616-6478 (14 pages)

BY MAIL

January 17, 2004

Marie A. O'Rourke, Assistant Director
Freedom of Information/Privacy Act Unit
Executive Office for the United States Attorneys
600 E Street, N.W., Room 7300
Washington, D.C. 20530

RE: Freedom of Information Act [F.O.I.A.]
Request # 00-1769

Dear Assistant Director O'Rourke:

This responds to your November 19, 2003 modified form letter, identified as relating to request #00-1769.

The first document assigned request #00-1769 was a June 15, 2000 modified form letter from your office. For your convenience, a copy is enclosed, as is our original May 1, 2000 F.O.I.A. letter to which it related.

Although your November 19, 2003 letter may be responsive to the first portion of the May 1, 2000 letter, it does not relate to the second portion for:

“records and/or information pertaining to the jurisdiction of the Public Integrity Section of the Justice Department’s Criminal Division, as well as of the U.S. Attorneys, to investigate and prosecute state governmental corruption which, because it involves high-ranking and powerful state officials and state agencies, is not investigated and prosecuted on the state level.”

Based on my review of CJA's 3-1/2 year old file relating to the May 1, 2000 F.O.I.A. request, it appears that the Justice Department's only response to this second portion was a single paragraph in an August 30, 2000 letter from the Chief of the Freedom of Information/Privacy Act Unit of the Criminal Division of the Office of Law Enforcement Operations, which stated:

"I am advised that there is no specific statutory authority for federal prosecutions of state officials. When such prosecutions are undertaken at the federal level they are based upon one or more federal criminal laws. Such statutes include the Hobbes Act, 18 U.S.C. §1951, which covers extortion by public officials, and the Travel Act, 18 U.S.C. §1952. Other general offenses, such as mail fraud, 18 U.S.C. §1341, may also be charged against state officials, when appropriate."

By letter dated September 8, 2000, CJA appealed such determination, stating in pertinent part:

"[The] August 30th letter does not deny the correctness of CJA's affirmative assertion that the Justice Department has jurisdiction where 'high-ranking and powerful state officials and state agencies' are able to thwart state investigation and prosecution by reason of their power and influence. Nor does [the] letter assert that there are no 'records and/or information' relative to such jurisdiction. This then is the basis for the appeal."

The Co-Director of the Justice Department's Office of Information and Privacy ignored this expressly-stated basis of the appeal in its February 9, 2001 letter, reiterating and affirming the Criminal Division's August 30, 2000 determination. His precise words were:

"...by letter dated August 30, 2000, the Criminal Division did inform you that there is no specific statutory authority for federal prosecutions of state officials. In this letter, the Criminal Division also explained that federal prosecutions of this kind are usually based upon one or more of the federal criminal laws that were cited for your reference. As a result of discussions between Criminal Division personnel and a member of my staff, I have learned that this response is correct. Furthermore, other than the

federal criminal laws cited in the August 30 letter, I am unaware of any specific statutory authority that enables the Public Integrity Section of the Criminal Division to prosecute state officials.”

For your convenience, copies of this correspondence are enclosed.

To avoid a repetitive F.O.I.A. request for publicly-available “records and/or information” pertaining to the Public Integrity Section of the Justice Department’s Criminal Division, please furnish us with copies of the “REPORT TO CONGRESS ON THE ACTIVITIES AND OPERATIONS OF THE PUBLIC INTEGRITY SECTION” for the years 1999-2003, “submitted pursuant to Section 603 of the Ethics in Government Act of 1978” [28 U.S.C. §529]¹. For your assistance, a copy of the cover of the 1998 Report – the most recent we have -- is enclosed.

If the Reports for 1999-2003 are available on the internet, kindly direct us to their locations.

Thank you.

Yours for a quality judiciary
and government integrity,



ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability, Inc. (CJA)

Enclosures

¹ 28 U.S.C. §529 is reflected by the attachment to CJA’s May 1, 2000 F.O.I.A. request.

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Elena Ruth Sassower, Coordinator

BY CERTIFIED MAIL/RRR
7099-3400-0001-2791-8677

May 1, 2000

Melanie Ann Pustay, Deputy Director
Office of Information and Privacy
Suite 570, Flag Building
Department of Justice
Washington, D.C. 20530-0001

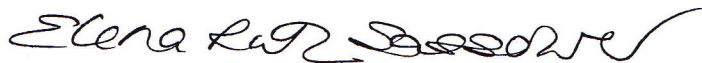
RE: Requests pursuant to F.O.I.A.

Dear Ms. Pustay:

Pursuant to F.O.I.A, request is made for a copy of the rules and regulations that the United States Attorney General was required to promulgate for "Disqualification of officers and employees of the Department of Justice", pursuant to 28 USC §528. This includes whether such rules and regulations "provide that a willful violation of any provision thereof shall result in removal from office". For your convenience, a copy of 28 USC §528 is annexed hereto.

Additionally, request is made for records and/or information pertaining to the jurisdiction of the Public Integrity Section of the Justice Department's Criminal Division, as well as of the U.S. Attorneys, to investigate and prosecute state governmental corruption which, because it involves high-ranking and powerful state officials and state agencies, is not investigated and prosecuted on the state level.

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and government integrity,



ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability, Inc. (CJA)

Enclosure

Change of Name of United States Magistrate. United States magistrate appointed under section 631 of this title to be known as United States magistrate judge after Dec. 1, 1990, with any reference to United States magistrate or magistrate in this title, or in any other Federal statute, etc., deemed a reference to United States magistrate judge appointed under section 631 of this title, see section 321 of Pub.L. 101-650, set out as a note under section 631 of this title.

§ 527. Establishment of working capital fund

There is hereby authorized to be established a working capital fund for the Department of Justice, which shall be available, without fiscal year limitation, for expenses and equipment necessary for maintenance and operations of such administrative services as the Attorney General, with the approval of the Office of Management and Budget, determines may be performed more advantageously as central services. The capital of the fund shall consist of the amount of the fair and reasonable value of such inventories, equipment, and other assets and inventories on order pertaining to the services to be carried on by the fund as the Attorney General may transfer to the fund less related liabilities and unpaid obligations together with any appropriations made for the purpose of providing capital. The fund shall be reimbursed or credited with advance payments from applicable appropriations and funds of the Department of Justice, other Federal agencies, and other sources authorized by law for supplies, materials, and services at rates which will recover the expenses of operations including accrual of annual leave and depreciation of plant and equipment of the fund. The fund shall also be credited with other receipts from sale or exchange of property or in payment for loss or damage to property held by the fund. There shall be transferred into the Treasury as miscellaneous receipts, as of the close of each fiscal year, any net income after making provisions for prior year losses, if any.

(Added Pub.L. 93-613, § 1(1), Jan. 2, 1975, 88 Stat. 1975.)

EDITORIAL NOTES

Capital Equipment Acquisition, Etc., by Income Retained from Working Capital Fund; Amounts and Limitations. Pub.L. 102-140, Title I, Oct. 28, 1991, 105 Stat. 784, provided in part, that: "Of the total income of the Working Capital Fund in fiscal year 1992 and each fiscal year thereafter, not to exceed 4 percent of the total income may be retained, to remain available until expended, for the acquisition of capital equipment and for the improvement and implementation of the Department's financial management and payroll/personnel systems: *Provided*, That in fiscal year 1992, not to exceed \$4,000,000 of the total income retained shall be used for improvements to the Department's data processing operation: *Provided further*, That any proposed use of the

retained income in fiscal year 1992 and thereafter, except for the \$4,000,000 specified above, shall only be made after notification to the Committees on Appropriations of the House of Representatives and the Senate in accordance with section 606 of this Act [not classified to the Code]."

Transfer of Funds into Capital Account of Working Capital Fund for Availability of Acquisition of Capital Equipment, Etc.; Limitations. Pub.L. 102-140, Title I, Oct. 28, 1991, 105 Stat. 784, provided in part, that: "In addition, for fiscal year 1992 and thereafter, at no later than the end of the fifth fiscal year after the fiscal year for which funds are appropriated or otherwise made available, unobligated balances of appropriations available to the Department of Justice during such fiscal year may be transferred into the capital account of the Working Capital Fund to be available for the departmentwide acquisition of capital equipment, development and implementation of law enforcement or litigation related automated data processing systems, and for the improvement and implementation of the Department's financial management and payroll/personnel systems: *Provided*, That any proposed use of these transferred funds in fiscal year 1992 and thereafter shall only be made after notification to the Committees on Appropriations of the House of Representatives and the Senate in accordance with section 606 of this Act [not classified to the Code]."

§ 528. Disqualification of officers and employees of the Department of Justice

The Attorney General shall promulgate rules and regulations which require the disqualification of any officer or employee of the Department of Justice, including a United States attorney or a member of such attorney's staff, from participation in a particular investigation or prosecution if such participation may result in a personal, financial, or political conflict of interest, or the appearance thereof. Such rules and regulations may provide that a willful violation of any provision thereof shall result in removal from office.

(Added Pub.L. 95-521, Title VI, § 603(a), Oct. 26, 1978, 92 Stat. 1874.)

§ 529. Annual report of Attorney General

Beginning on June 1, 1979, and at the beginning of each regular session of Congress thereafter, the Attorney General shall report to Congress on the activities and operations of the Public Integrity Section or any other unit of the Department of Justice designated to supervise the investigation and prosecution of—

(1) any violation of Federal criminal law by any individual who holds or who at the time of such violation held a position, whether or not elective, as a Federal Government officer, employee, or special employee, if such violation relates directly or indirectly to such individual's



U.S. Department of Justice

rec'd 6/23/00

Executive Office for United States Attorneys
Freedom of Information/Privacy Act Unit
600 E Street, N.W., Room 7300
Washington, D.C. 20530
202-616-6757 Fax 202-616-6478

JUN 15 2000

Request Number: 00-1769 Date of Receipt: May 31, 2000

Requester: Elena R. Sassower Subject: "disqualification of officers & employees of DOJ"

Dear Requester:

In response to your Freedom of Information Act and/or Privacy Act request, the paragraph(s) checked below apply:

1. [X] Your request has been forwarded to Criminal Division for a direct response to you.
2. [] The records responsive to your request have been destroyed pursuant to Department of Justice guidelines.
3. [] Your request seeks public records which may be obtained from the clerk of the court.
4. [] Your request pertains to state or local matters, the records for which are maintained by state or local agencies and, therefore, are outside the scope of the Act. You should contact the pertinent state or local agency for a response to your request.
5. [] The Freedom of Information Act only applies to records already in existence and does not require an agency to conduct research, create new records, or answer questions presented as FOIA requests.
6. [] Your request concerns material which is publicly available through the Government Printing Office. You can obtain/purchase a copy of the requested material by writing to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.
7. [X] This office is continuing its work on the other subject/districts mentioned in your request.
8. [] This is the final action my office will take on your request.

Sincerely,

Suzanne Little
Assistant Director
FOIA/PA Unit



U.S. Department of Justice

Criminal Division
Office of Enforcement Operations

rec'd 9/6/00

(202) 616-0307

Washington, D.C. 20530

AUG 30 2000

CRM-20000926F

Ms. Elena Ruth Sassower
Center for Judicial Accountability
P.O. Box 69, Gedney Station
White Plains, New York 10605-0069

Dear Ms. Sassower:

This is in response to your Freedom of Information Act request dated May 1, 2000, to the Office of Information and Privacy. Your request was forwarded to this Office for a response to your inquiry regarding the jurisdiction for the Department of Justice to investigate and prosecute state governmental corruption. I regret the delay in this response. Your request has been assigned file number 200000926F. Please refer to this number in any future correspondence with this Unit.

I am advised that there is no specific statutory authority for federal prosecutions of state officials. When such prosecutions are undertaken at the federal level they are based upon one or more federal criminal laws. Such statutes include the Hobbes Act, 18 U.S.C. § 1951, which covers extortion by public officials, and the Travel Act, 18 U.S.C. § 1952. Other general offenses, such as mail fraud, 18 U.S.C. § 1341, may also be charged against state officials, when appropriate.

If you treat this response as a denial you have a right to an administrative appeal of this determination. Department regulations provide that such appeals must be filed within sixty days of your receipt of this letter. 28 C.F.R. 16.9. Your appeal should be addressed to: Co-Director, Office of Information and Privacy, Flag Building, Suite 570, United States Department of Justice, Washington, D.C. 20530. Both the envelope and the letter should be clearly marked with the legend "FOIA Appeal." If you exercise this right and your appeal is denied, you also have the right to seek judicial review of this action in the federal judicial district (1) in which you reside, (2) in

which you have your principal place of business, (3) in which the records denied are located, or (4) for the District of Columbia.

Sincerely,

A handwritten signature in cursive script, appearing to read "Thomas J. McIntyre".

Thomas J. McIntyre, Chief
Freedom of Information/Privacy Act Unit

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Elena Ruth Sassower, Coordinator

CERTIFIED MAIL/RRR:
7099-3400-0001-2733-3623

September 8, 2000

Co-Director
Office of Information and Privacy
Flag Building, Suite 570
Department of Justice
Washington, D.C. 20530-0001

RE: Freedom of Information Act Appeals

- (1) OIP/00-R0558
MAP:CLM:BB
- (2) CRM-20000926F

Dear Co-Director:

CJA has received no response from you to our July 13, 2000 letter appealing from the partial denial of a Freedom of Information Act request. For your convenience, a copy of that July 13th letter of appeal is annexed, as are the relevant documents it appended: CJA's May 1, 2000 F.O.I.A letter and the May 26, 2000 letter of Melanie Ann Pustay, Deputy Director of the Office of Information and Privacy [OIP/00-R0558 MAP:CLM:BB], denying CJA's request for "a copy of the rules and regulations that the United States Attorney General was required to promulgate... pursuant to 28 USC §528".

According to the Freedom of Information Act Reference Guide, posted on the Justice Department's website:

"Under the FOIA, the Office of Information and Privacy is required to make a determination on your administrative appeal *within twenty business days.*" (emphasis added)

As reflected by the enclosed copy of the certified mail/return receipt, the Justice Department received CJA's July 13th letter of appeal on July 17th. This would mean that your determination was "required" by August 14th. We would, therefore, appreciate your clarifying whether a determination was ever sent to us – as we have received none.

Additionally, by this letter CJA appeals from the August 30, 2000 letter of Thomas McIntyre, Chief of Freedom of Information/Privacy Act Unit [CRM-20000926F], belatedly responding to the balance of CJA's May 1st F.O.I.A request, which Ms. Pustay had forwarded to the Criminal Division and the Executive Office for the United States Attorneys¹.

Mr. McIntyre's August 30th letter misstates CJA's request. It is not an "inquiry regarding the jurisdiction for the Department of Justice to investigate and prosecute state governmental corruption" – as if CJA was making a general inquiry into jurisdiction about which we had no knowledge. Rather, CJA's May 1st letter makes an affirmative statement as to the specific jurisdiction of the Public Integrity Section of the Justice Department's Criminal Division and of the U.S. Attorneys "to investigate and prosecute state governmental corruption which, because it involves high-ranking and powerful state officials and state agencies, is not investigated and prosecuted on the state level." It was as to this that CJA requested "records and/or information".

Mr. McIntyre's August 30th letter does not deny the correctness of CJA's affirmative assertion that the Justice Department has jurisdiction where "high-ranking and powerful state officials and state agencies" are able to thwart state investigation and prosecution by reason of their power and influence. Nor does his letter assert that there are no "records and/or information" relative to such jurisdiction. This then is the basis for the appeal.

Much as Mr. McIntyre relied on advice from an unidentified source for the information he provides in the second paragraph of his August 30th letter, he surely could have obtained properly responsive information – and records – from, *inter alia*, the Public Integrity Section itself.

¹ By form notice dated June 15, 2000, the Executive Office for the United States Attorneys advised that it had forwarded CJA's FOIA request "to Criminal Division for a direct response". [copy enclosed]

Finally, notwithstanding the inadequacy of Mr. McIntyre's August 30th letter, it underscores the bad-faith nature of Ms. Pustay's excuse for denying CJA's May 1st FOIA request, *to wit*, "FOIA does not require federal agencies to compile information or conduct research... This information may be available at a public library." Obviously, much as Mr. McIntyre identified that he had been "advised that there is no specific statutory authority for prosecutions of state officials", Ms. Pustay could have identified whether the "rules and regulations" sought by CJA's May 1st letter exist. Moreover, if she was not going to come forth with a copy of those "rules and regulations", as CJA's May 1st letter requested, she could, at least, have provided the pertinent citation reference to facilitate CJA's locating them "at a public library" – as may be seen from Mr. McIntyre's citation to illustrative statutes for federal prosecutions.

Yours for a quality judiciary
and government integrity,



ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability, Inc. (CJA)

Enclosures



U.S. Department of Justice

Office of Information and Privacy

Telephone: (202) 514-3642

Washington, D.C. 20530

FEB - 9 2001

Ms. Elena R. Sassower
Center for Judicial
Accountability, Inc.
Post Office Box 69
Gedney Station
White Plains, NY 10605-0069

Re: Appeal No. 00-4338
CRM200000926F
RLH:RK:KMF

Dear Ms. Sassower:

You appealed from the action of the Criminal Division on your request for access to records pertaining to "the specific jurisdiction of the Public Integrity Section of the Justice Department's Criminal Division and of the U.S. Attorneys to investigate and prosecute state governmental corruption which, because it involves high-ranking and powerful state officials and state agencies, is not investigated and prosecuted on the state level."

After carefully considering your appeal, I have decided to affirm the Criminal Division's action on your request. The Freedom of Information Act does not require federal agencies to answer inquiries or create records in response to a FOIA request, but rather is limited to requiring agencies to provide access to reasonably described, nonexempt records, NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 162 (1975); Zemansky v. EPA, 767 F.2d 569, 574 (9th Cir. 1985). Nevertheless, by letter dated August 30, 2000, the Criminal Division did inform you that there is no specific statutory authority for federal prosecutions of state officials. In this letter, the Criminal Division also explained that federal prosecutions of this kind are usually based upon one or more of the federal criminal laws that were cited for your reference. As a result of discussions between Criminal Division personnel and a member of my staff, I have learned that this response is correct. Furthermore, other than the federal criminal laws cited in the August 30 letter, I am unaware of any specific statutory authority that enables the Public Integrity Section of the Criminal Division to prosecute state officials.

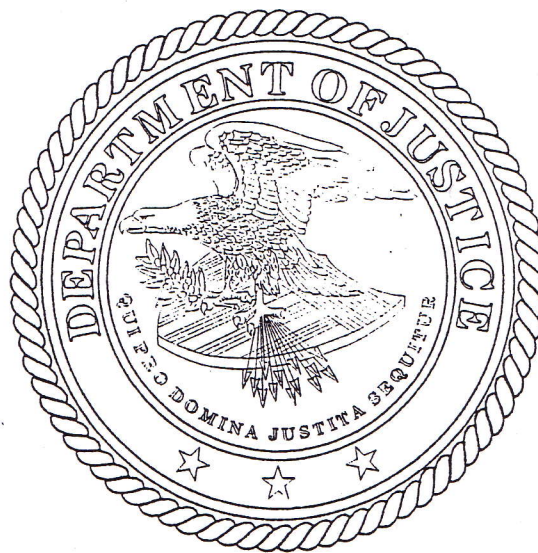
If you are dissatisfied with my action on your appeal, you may seek judicial review in accordance with 5 U.S.C. § 552(a)(4)(B).

Sincerely,

A handwritten signature in black ink, appearing to read "Richard L. Huff". The signature is stylized and somewhat cursive, with a prominent "R" and "H".

Richard L. Huff
Co-Director

REPORT TO CONGRESS
ON THE ACTIVITIES AND OPERATIONS
OF THE
PUBLIC INTEGRITY SECTION
FOR 1998



Public Integrity Section
Criminal Division
United States Department of Justice

Submitted Pursuant to
Section 603 of the Ethics in Government Act of 1978