



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE GENERAL COUNSEL

September 5, 2008

William C. Holmes, Esquire
Citizens for Responsibility & Ethics in Washington
1400 Eye Street, N.W., Suite 450
Washington, D.C. 20005

Re: FOIA Request No. 07-00517-F

Dear Mr. Holmes:

This letter serves as a follow-up to the U.S. Department of Education's (Department) letters of June 13, 2008 and June 23, 2008 producing approximately 2,416 pages of documents responsive to Item 1 of your request for information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as amended.

Enclosed are approximately seven hundred and ninety (790) pages of additional responsive documents. Please note that the Department has withheld non-responsive materials contained within these responsive documents. Non-responsive materials include the names of Department personnel that appear as headers to certain e-mail communications because documents were printed from their computers, and not because they were involved in the substance of the communications. The Department has also withheld statements and comments contained within these responsive documents that are outside of the scope of the subject matter reasonably related to item 1 of your request. Non-responsive materials in this category include statements and comments about: lunch plans, opening day baseball games, personal feelings regarding former colleagues, public events, personal plans to visit points of interest within Washington, D.C., and local and national current events. The Department concluded that this information is outside the scope of the subject matter reasonably related to item 1 of your FOIA request.

We have also withheld information from these responsive materials pursuant to the FOIA exemption(s) identified below:

- ▶ Exemption (2): FOIA exemption 2 permits the Department to withhold information that is "related solely to the internal personnel rules and practices of an agency." 5 U.S.C. § 552(b)(2). Coverage under exemption 2 includes information of a relatively trivial nature for which the task of processing and releasing this type of information would place an administrative burden upon the agency that is not justified by any genuine public benefit. The information withheld under exemption 2 includes internal legislative updates and tracking, handwritten math calculations, Secretary Spellings' secondary e-mail account used for administrative purposes, proposed times and locations for meetings,

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e-mail bounce back codes for the White House and conference call dial-in numbers and participant codes.

- ▶ Exemption 5: FOIA Exemption 5 permits the Department to withhold “inter-agency or intra-agency memorand[a] or letters which would not be available by law to a party other than an agency in litigation with the agency.” 5 U.S.C. § 552(b)(5). This exemption allows government agencies to withhold information that is part of the decision-making process of government agencies. The exemption allows government employees, including employees of the Executive branch, to engage in frank and open discussions of matters of policy, to express their views, opinions and recommendations without fear of outside pressure, and to protect against the premature disclosure of proposed policies prior to final adoption. Information in this category includes, but is not limited to, e-mail communications and/or attachments that:
 - ▶ reflect draft versions, comments and recommendations about program procedures and proposed procedures for Executive branch clearance processes;
 - ▶ comments and/or questions about proposed legislation and draft legislation;
 - ▶ Executive branch vetting processes about the Reading First program;
 - ▶ draft invitee lists for Reading First events and/or No Child Left Behind events;
 - ▶ draft agenda items for upcoming meetings and discussions of additions to or subtractions from those items;
 - ▶ draft talking points;
 - ▶ recommendations on whether and where the Secretary, and/or other Executive branch officials should travel;
 - ▶ discussion of education issues raised in news articles or educational trade publications and whether the Executive branch should comment on or respond to those issues raised;
 - ▶ discussions and drafts outlining the Department’s plans to respond to the devastation left in the wake of Hurricane Katrina;

- ▶ discussion of pros and cons for detailing employees between Executive branch agencies;
- ▶ discussions of proposed ideas other than assistance from the Federal government for incentives for State programs in math and science; and
- ▶ discussions of, changes and/or edits to draft press statements.

Nevertheless, certain materials exempt under Exemption 5 are being released as a matter of administrative discretion to the extent the release of such information would not have a foreseeable chilling effect on the government's ability to obtain frank commentary and cooperation from advisors to government decision-makers.


- ▶ Exemption (6): FOIA exemption 6 permits the Department to withhold information about individuals in "personnel and medical files and similar files" when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). The information withheld here represents personal e-mail accounts through commercial internet service providers, personal cell phone numbers, personal opinions about unsuccessful candidate for Department position, discussion of house preparations for dinner party in honor of Secretary Spellings, discussion of personal dinner plans among colleagues, discussion of third party's health status, and personal comments about employee's rumored unsuitable comment during a meeting. The Department has concluded that this information would constitute clearly unwarranted invasion of personal privacy to these individuals, and would not shed light on the operations of government.

The Department now considers this request file closed. In view of the pendency of your May 23, 2007 complaint filed in Federal district court for the District of Columbia, *Citizens for Responsibility & Ethics in Washington v. U.S. Dept. of Education*, Civil Action No. 1:07-cv-00963 (RMU), there are no further administrative appeals available regarding your request.

William C. Holmes, Esquire
September 5, 2008
Page 4

If there are any questions or concerns regarding this letter, please contact Jacqueline Coleman Snead as counsel for the Department.

Sincerely,



Marcella Goodridge
Attorney & Agency Counsel

cc: Jacqueline Coleman-Snead, Esq. (w/ encl.)