



U.S. Department of Justice

Office of Information and Privacy

Telephone: (202) 514-3642

Washington, D.C. 20530

**JUL 31 2008**

E.J. Hurst, Esq.  
PMB 124  
Severna Park, MD 21146

Re: Appeal No. 06-1605  
Request No. 2006-02289  
JGM:SRO

Dear Mr. Hurst:

You appealed from the fee waiver determination of the South Central Regional Office of the Federal Bureau of Prisons (BOP) on your request for access to six enumerated items pertaining to Federal Correctional Institution-La Tuna. I regret the substantial delay in responding to your appeal.

The statutory standard for evaluating fee waiver requests provides that fees shall be waived or reduced "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). In determining whether you have satisfied this statutory standard, I considered the six factors set out in the Department of Justice regulation that effects this statutory standard. See 28 C.F.R. § 16.11(k) (2007). The first four of these factors concern the "public interest" requirement; the fifth and six factors concern whether your interest in the records is primarily commercial.

On the basis of all of the information available to me, I have concluded that your request for a waiver of fees was properly denied. Although the records pertain at least in part to the operations or activities of the government and the extent of your commercial interest in the records is unclear, you have failed to satisfy other relevant factors.

To qualify for a fee waiver, you must make an adequate showing that release of the information to you is in the public interest. See Oglesby v. U.S. Dep't of the Army, 920 F.2d 57, 66 n.11 (D.C. Cir. 1990). You have not done so. You contend that these records may shed light on various forms of negligence and misconduct that you allege may have taken place at FCI-La Tuna. Yet, your allegations regarding understaffing due to overseas military commitments, inadequate inmate medical care, an unsanitary Special Housing Unit, "alien inmate" control of La Tuna's operations, and inadequate staff responses to inmate violence are utterly unsupported by any evidence. In one instance, you even placed the burden on BOP to prove a negative: that it does not abuse its prisoners as certain Department of Defense personnel have done in certain widely publicized instances. You also stated that the requested records may show whether BOP's staff "are currently engaged in a criminal conspiracy regarding unlawful use of violence and intimidation, false swearing, and other civil rights felonies," without setting forth any evidence

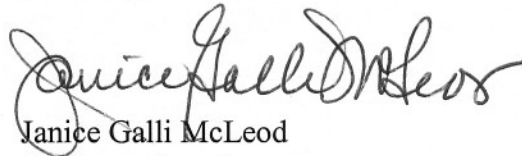
that such allegations have any basis in reality. Speculative or conclusory allegations of agency wrongdoing are not sufficient to demonstrate that records sought under the Freedom of Information Act are of sufficient public interest to qualify for a fee waiver. See AFGE v. U.S. Dep't of Commerce, 632 F. Supp. 1272, 1278 (D.D.C. 1986) (finding allegations of malfeasance to be too ephemeral to warrant waiver of fees without further evidence that informative material will be found), aff'd on other grounds, 907 F.2d 203 (D.C. Cir. 1990); cf. NARA v. Favish, 541 U.S. 157, 174 (holding, in the context of Exemption 7(C)'s closely related public interest balancing test, that where the "public interest" asserted is to show negligence or improper performance of the agency officials' duties, "the requester must establish more than a bare suspicion in order to obtain disclosure"), reh'g denied, 541 U.S. 1057 (2004). Even if there were any credible basis for your allegations, I note that all of the records you seek would either not be releasable to you or would be unlikely to significantly enlighten the public as to such misconduct.

Furthermore, the fee waiver regulations require that you have both the intent and ability to disseminate the requested information to the public. You have demonstrated neither the intent nor the ability to disseminate the requested information to the public. Regarding your intent to disseminate the information, while you stated your intention to do so, I note that you plan to use the requested records in furtherance of your representation of an inmate in a possible civil rights action. Inasmuch as a primary purpose of your records request is to assist you in litigation against the government, it appears that you and your client would be the primary beneficiaries of this information. The grant of a fee waiver on this basis would not contribute to "public understanding" as required by the fee waiver standard. Further, you have failed to demonstrate the ability to disseminate the requested information to the public. While your academic credentials demonstrate at least some ability to understand and process the requested records, your assertions that you regularly contribute to certain internet listserves and blogs such as FedCURE and BOP Watch, your statement that you make regular filings in federal court, and your stated intent to place the requested records on your website are not sufficient to demonstrate your actual ability to disseminate the records to the public. This alone is a sufficient basis for denying a fee waiver request. See Larson v. CIA, 843 F.2d 1481, 1483 (D.C. Cir. 1988). Accordingly, I am denying your appeal.

You should contact BOP within sixty days of the date of this letter to further discuss the processing of your request. If you no longer wish to receive any of the responsive records, because you have not committed to pay any of the estimated fees, you do not owe any of the estimated \$791.50 in fees. If you wish to receive all releasable records in BOP's possession, you must pay the full amount of this fee estimate before BOP will be obligated to further process the responsive records. If you wish to receive only a portion of the responsive records, please contact BOP to discuss a reformulation of your request to reduce the estimated fees.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Janice Galli McLeod". The signature is written in a cursive style with a large initial "J".

Janice Galli McLeod  
Associate Director