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**FREEDOM OF INFORMATION ACT REQUEST**

**APPEAL**

Tuesday, July 26, 2005

**VIA USPS EXPRESS MAIL ONLY**

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

**RE: FOIA REQUEST No. 2005-03244,  
ADMINISTRATIVE APPEAL OF FEE WAIVER DENIAL**

Dear FOIA Appeals Administrator:

I respectfully appeal denial of full fee waiver in Request No. 2005-03244, as rendered and postmarked by Federal Bureau of Prisons ("BOP") West Regional Counsel Harlan W. Penn on Saturday, May 28, 2005. *See* 28 C.F.R. § 16.11(k). In the event the Department of Justice ("DOJ") persists in denying full, public interest fee waiver, I further respectfully appeal denial of fee reduction as a news media representative, as defined by 28 C.F.R. § 16.11(b)(6).

In support of this appeal, I adopt and incorporate by reference (as if fully set forth herein) the original Request No. 2005-03244, dated Friday February 18, 2005, and the Revised Request dated Monday, May 9, 2005 (true copies included hereafter). I also adopt and incorporate by reference to this appeal, as if fully set forth herein, all documents, hyperlinks, rolling counters, Guestbooks, and other items published at <http://www.victorvillefoia.org/> in support of this request.

Regional Counsel Penn ultimately denied full fee waiver on two grounds. First, Mr. Penn alleges I did not show “the *expertise* and *ability* to disseminate the information to a *reasonably broad audience* of persons interested in the subject, such that disclosure is likely to contribute significantly to public understanding about government activities. 28 C.F.R. § 16.11(k) (2) (iii) [emphasis in original].” Mr. Penn further asserts the “request failed to meet your burden to establish that the primary interest is public and not commercial. 28 C.F.R. § 16.11(k) (3) (ii).”

The Requestor respectfully submits that BOP **never** provided any factual basis for denying full fee waiver or news media representative status, nor did BOP offer **any** legal support besides three bare regulatory citations that followed the (heavily-cited) Revised Request of May 9. Respectfully, such non-responsive ignorance of serious requests seems to violate both the letter and the spirit of Congress’ FOIA intent. See 5 U.S.C. § 552(a)(4)(A)(iii); 28 C.F.R. § 16.11(k).

Just the same, this Requestor has taken additional steps to demonstrate ability and expertise to broadly disseminate these requested records, and so meet one shortcoming announced by Regional Counsel Penn. See Penn Letter, 5/28/2005, at 1; 28 C.F.R. § 16.11(k) (2) (iii). This Request is, and will remain, published in full at a website, <http://www.victorvillefoia.org/>, created between June 3 and June 10. This Requestor devoted approximately 25 additional hours and another \$55, still *pro bono publico*, to create <http://www.victorvillefoia.org/>.

As of this writing, over 500 “hits” from unique internet addresses have accessed <http://www.victorvillefoia.org/>. Sixty-two persons – including California Federal defenders; a barrister in Manchester, England; a U.S. citizen in Montpellier, France; and an assortment of citizens spanning the entire United States – have registered their support for full fee waiver in <http://www.victorvillefoia.org/>’s Guestbook. Respectfully, <http://www.victorvillefoia.org/> leaves no doubt that these public records, when released, will be viewed by Americans across the country, and on both sides of the Atlantic.

The Requestor has now offered over 100 *pro bono* hours to this investigation of FCC Victorville, and absorbed all expenses. The Requestor submits the only possible commercial interest BOP can allege in this case is the very publicity that Regional Counsel Penn told me I must show to qualify for fee waiver.

Respectfully, however, the BOP opened the door to national (and international) publicity, and BOP in fact **required** such publicity to demonstrate the propriety of public interest fee waiver. The FOIA does not allow withholding of public records for a catch-22 scenario created by the target Federal agency itself. Without legal and factual demonstrations, then, BOP does not show the public’s interest being outweighed by commercial use, or rebut the Requestor’s demonstrations of public interest outweighing commercial gain.

The Requestor looks forward to a response within the statutorily required period, and thanks this Office for its time.

Respectfully submitted,

/S/ \_\_\_\_\_

EJ Hurst II, Esquire

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