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U.S. Department of Homeland Security
Privacy Office
Director, Disclosure & FOIA
245 Murray Drive SW, Building 410
STOP-655
Washington, D.C. 20528-0655

(by Express Mail and by e-mail to foia@hq.dhs.gov)

FOIA REQUEST
Fee benefit requested
Fee waiver requested

Dear FOIA Officer:

This is a request pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552.

On July 21, 2010, the Associated Press published an article by Ted Brindis entitled, "A Political Filter for Info requests", a copy of which is attached.

According to that article, "For at least a year, the Homeland Security Department detoured hundreds of requests for federal records to senior political advisers for highly unusual scrutiny, probing for information about the requesters and delaying disclosures deemed too politically sensitive, according to nearly 1,000 pages of internal e-mails obtained by The Associated Press.... AP obtained the 995 e-mails under FOIA after a seven-month disagreement resolved by the Office of Government Information Services, a new independent U.S. agency that mediates disputes over access to federal documents. The AP's request for the Homeland Security e-mails was itself submitted for review by the political advisers."

We request access to and copies of the 995 e-mail messages described in this article, and which were provided to the AP.

As a representative of the news media we are only required to pay for the direct cost of duplication after the first 100 pages. Through this request, we are gathering information on DHS transparency and compliance with FOIA that is already the subject of extensive news coverage. Although the documents provided by DHS to the AP have been the subject of reporting and public discussion, the documents themselves have not been made public, so it is impossible for other news

media organizations and FOIA requesters, such as ourselves, to know whether our requests(s) were among those subjected to review or delayed by referral to by DHS or other executive branch political commissars. This information is being sought on behalf of The Identity Project (“IDP”). IDP provides advice, assistance, publicity, and legal defense to those who find their rights infringed or their legitimate activities curtailed by demands for identification, and builds public awareness about the effects of ID requirements on fundamental rights. IDP is a program of the First Amendment Project, a nonprofit organization providing legal and educational resources dedicated to protecting and promoting First Amendment rights.

One of the principal activities of IDP is publication of the informational and educational Web site at <<http://www.papersPlease.org>>, where we have published documents obtained in response to our previous FOIA requests for dissemination to the general public.

Please waive any applicable fees. Release of the information is in the public interest because it will contribute significantly to public understanding of government operations and activities. The records we are requesting clearly relate to government operations and activities. It is in the public interest for the public to know exactly which FOIA requests have been subjected to political review or delay. The Identity Project is a nonprofit organization with no commercial interest in this information. Should our request for a total waiver of fees be denied, we agree to pay up to \$100 in duplication fees.

This information will be made available to the public. Pursuant to 44 U.S.C. 3506(d)(4)(b), neither the DHS nor any agency may, “except where specifically authorized by statute ... restrict or regulate the use, resale, or redissemination of public information by the public.” The FOIA statute does not authorize any such restriction on the use or redissemination of information released pursuant to FOIA, and we intend to exercise fully our rights to use and public redissemination, for public nonprofit benefit, through our Web site, of any records released in response to this request.

If our request is denied in whole or part, we ask that you justify all deletions by reference to specific exemptions of the act. We will also expect you to release all segregable portions of otherwise exempt material. We, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

Please respond as soon as possible (including by e-mail, since this request is being submitted by e-mail) to confirm your receipt of this request. We look forward to your complete reply within 20 business days, as the statute requires.

Sincerely,

Edward Hasbrouck
Consultant on travel-related issues
The Identity Project

AP IMPACT: A political filter for info requests

By TED BRIDIS (AP) – Jul 21, 2010

WASHINGTON — For at least a year, the Homeland Security Department detoured hundreds of requests for federal records to senior political advisers for highly unusual scrutiny, probing for information about the requesters and delaying disclosures deemed too politically sensitive, according to nearly 1,000 pages of internal e-mails obtained by The Associated Press.

The department abandoned the practice after AP investigated. Inspectors from the department's Office of Inspector General quietly conducted interviews last week to determine whether political advisers acted improperly.

The Freedom of Information Act, the main tool forcing the government to be more open, is designed to be insulated from political considerations. Anyone who seeks information through the law is supposed to get it unless disclosure would hurt national security, violate personal privacy or expose confidential decision-making in certain areas.

But in July 2009, Homeland Security introduced a directive requiring a wide range of information to be vetted by political appointees for "awareness purposes," no matter who requested it. The government on Wednesday estimated fewer than 500 requests underwent such political scrutiny; the Homeland Security Department received about 103,000 total requests for information last fiscal year.

Career employees were ordered to provide Secretary Janet Napolitano's political staff with information about the people who asked for records — such as where they lived, whether they were private citizens or reporters — and about the organizations where they worked.

If a member of Congress sought such documents, employees were told to specify Democrat or Republican.

This, despite President Barack Obama's statement that federal workers should "act promptly and in a spirit of cooperation" under FOIA, and Attorney General Eric Holder's assertion: "Unnecessary bureaucratic hurdles have no place in the new era of open government."

The special reviews at times delayed the release of information to Congress, watchdog groups and the news media for weeks beyond the usual wait, even though the directive specified the reviews should take no more than three days.

The foot-dragging reached a point that officials worried the department would get sued, one e-mail shows.

"We need to make sure that we flip these ASAP so we can eliminate any lag in getting the responses to the requesters," the agency's director of disclosure, Catherine Papoi, wrote to two of Napolitano's staffers. "Under the statute, the requester now has the right to allege constructive denial and take us to court. Please advise soonest."

A department spokesman, Sean Smith, says the mandatory reviews by political appointees never blocked disclosure of records that otherwise would have been released. "No information deemed releasable by the FOIA office or general counsel was withheld, and responsive documents were neither abridged nor edited," said Smith, who was among the political staffers who could review and approve records for release.

The government said Wednesday it has made progress releasing information in response to more requests and done so more quickly than in previous years.

E-mails obtained by AP do not show political appointees at Homeland Security stopping records from coming out. Instead they point to acute political sensitivities that slowed the process, a probing curiosity about the people and organizations making the request for records, and considerable confusion.

Political staffers reviewed information requests submitted by reporters and other citizens as a way to anticipate troublesome scrutiny. Days after the nearly catastrophic Christmas Day



Photo 1 of 1



Secretary of Homeland Security Janet Napolitano stands in an elevator on Wednesday, July 21, 2010, in Washington, D.C. (AP Photo/Brandon Johnson)



Map



bombing attempt aboard a Detroit-bound airliner, they asked whether news media or other organizations had filed records requests about the attack.

On another matter, one request sought data on expensive international travel by Homeland Security employees during the Bush administration. "Let's make sure we don't have a similar problem," Napolitano's chief of staff, Noah Kroloff, wrote in an e-mail in October to colleagues.

When the department released immigration records in September about Obama's father, Kroloff wrote: "We haven't released this yet have we? ... I'm hoping this was done in coordination with Sean (Smith), the WH and other relevant and interested parties."

The answer came from the general counsel's chief of staff, John Sandweg: "WH was made aware early and said treat it as normal."

The new review rule was so unclear to career Homeland Security employees that they sometimes weren't sure exactly which information requests the political staff was demanding to see: "I don't think they know what they want until they see it," Papoi confided to a colleague in an e-mail.

Months later, in January, Papoi sent another e-mail that revealed the frustration the rule was causing between political advisers and career employees in the office responsible for enforcing FOIA.

"These people are going to be the death of me," Papoi wrote to Sandra Hawkins, the administration director in the privacy office. "I know, I know," Hawkins wrote back.

Political staffers were frustrated, too. "They really hate us," Jordan Grossman, special assistant to the chief of staff, wrote to his boss, another political appointee.

In one case under the new directive, Papoi reprimanded a Coast Guard employee in November for explaining over the phone to a reporter — without approval by political staffers — that the information requested under FOIA was already available on the Coast Guard's website. Political staff at the Homeland Security Department were not aware of the incident until the AP wrote about it, spokeswoman Amy Kudwa said Wednesday.

"Senior leadership never directed or requested that this employee — or any other — be reprimanded for releasing or highlighting publicly available information," Kudwa said. "This runs completely counter to the purposes of additional visibility into FOIA releases: responsiveness and transparency."

The White House said it had no role formulating the rule at Homeland Security and requests for records generally were not forwarded there for approval. "They only need to go thru front office awareness review, not wh (White House)," wrote Mary Ellen Callahan, the department's top chief privacy officer and FOIA official.

Two exceptions required White House review: requests to see documents about spending under the \$862 billion stimulus law and the calendars for Cabinet members.

Calendars became politically sensitive after AP obtained them for Treasury Secretary Timothy Geithner. They described calls several times each day with Wall Street executives.

Internally, Homeland Security was adamant that Napolitano's political advisers were merely reviewing materials before they were distributed, not making the call on whether they should come out. "To be clear, this is a review not an approval," Callahan wrote.

Yet many e-mails directed Homeland Security employees never to release information under FOIA without approval by political appointees.

"It is imperative that these requests are not released prior to the front office reviewing both the letter and the records," Papoi wrote in an e-mail to the agency's officers responsible for administering the law.

Another e-mail described a request from USA Today that was "tagged by the front office and requires approval."

Under the law, people can request copies of U.S. government records without specifying why they want them and are not obligated to provide personal information about themselves other than their name and an address where the records should be sent.

Yet several times, at least, junior political staffers asked superiors about the motives or affiliations of the requesters.

The directive laid out an expansive view of the sort of documents that required political vetting.

Anything that related to an Obama policy priority was pegged for this review. So was anything that touched on a "controversial or sensitive subject" that could attract media attention or that dealt with meetings involving prominent business and elected leaders.

Anything requested by lawmakers, journalists, activist groups or watchdog organizations had to go to the political appointees. This included all of AP's information requests, even a routine one for records that had already been sought by other news organizations.

The Justice Department office that oversees FOIA across the federal government is unaware of any other agencies with similar mandatory review policies, spokeswoman Gina Talamona said.

According to the e-mails, the senior review staffers in Napolitano's inner circle included: Kroloff; Sandweg; Smith; Amy Shlossman, deputy chief of staff; Leezie Kim, a senior department lawyer; Brian DeVallance, senior counsel; Jan Leshner, chief of staff for operations, and Mary Ellen Brown, Napolitano's deputy director for scheduling.

Each could approve release of government records under FOIA — when they answered their e-mails.

Callahan, the department's FOIA official, wrote in September 2009 that Kim might have to clear the information requests because Shlossman, DeVallance and chief-of-staff Kroloff were not addressing them. Those three "are not an option given non-responsiveness," Callahan wrote.

Homeland Security rescinded the rule requiring prior political approval earlier this month, just as it delivered the e-mails to AP. The department's spokeswoman, Kudwa, said Wednesday that was a coincidence.

Under a new policy, records are submitted to Napolitano's political advisers three days before they are made public but can be released without their approval.

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Online:

Homeland Security Department: <http://www.dhs.gov>

President Obama's order on the Freedom of Information Act: http://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment

Office of Government Information Services: <http://www.archives.gov/ogis/>

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