

FOIA Resource

From: Herschaft, Randy [RHerschaft@ap.org]
Sent: Monday, November 14, 2011 2:52 PM
To: FOIA Resource
Subject: FOIA and Expedited Treatment (NRC)

FOIA/PA REQUEST

Case No.: 2012-0057
Date Rec'd: 11-14-11
Specialist: Wood
Related Case: _____

November 14, 2011

Donna L. Sealing

Nuclear Regulatory Commission

FOIA/Privacy Officer

Mail Stop T5-F09

Washington, DC 20555-0001

Re: FOIA and Expedited Treatment Request

Dear Ms. Sealing:

Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request on behalf of The Associated Press from the Office of the Secretary, all correspondence to and from Texas Governor Rick Perry or the Office of Texas Governor Rick Perry from December 21, 2000 to present.

I would like to receive the information in electronic format. Please release any information pursuant to this request as it is received and reviewed by your office, rather than waiting to send all the requested material at one time.

I am making this request as a reporter with The Associated Press and this request is made as part of newsgathering and not for commercial use. As a representative of the news media I am only required to pay for the direct cost of duplication after the first 100 pages.

I ask that you waive any and all applicable fees associated with this request. Through this request, I am gathering information on communications that a prospective presidential candidate has had with the agency and, therefore, pertains to the 2012 presidential race, a developing story that affects the public and is a matter of significant, compelling and timely public interest. Release of this information is in the public interest because it will contribute significantly to public understanding of government operations and activities. Specifically, the public has a right to know now, before the 2012 election, not months or years in the future, to what extent the subject of this request has sought agency action and the result of that contact. If you deny this request for a fee waiver, please advise me in advance of the estimated charges if they are to exceed \$100.

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

I ask that you expedite this request. The information AP seeks is public information and is certainly available to AP as a representative of the media. A review of the regulations demonstrates that AP's request for expedited handling is justified.

Under the Freedom of Information Act, the term "compelling need" means, among other things, "with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity." 5 U.S.C. § 552 (a) (6) (E) (v) (II).

Clearly, the AP is a news organization "primarily engaged in disseminating information," meeting the first requirement for expedited processing. An "urgency to inform" exists, according to court rulings, when (1) the information relates to a currently unfolding story, (2) delaying release of the information harms the public interest, and (3) the request concerns federal government activity. *Al-Fayed v. CIA*, 245 F.3d 300 (D.C. Cir. 2001). In addition, "the credibility of a requestor" also is a relevant consideration." *Id.* These factors underscore that an "urgency to inform" undeniably exists for the information sought in AP's request, information that is not currently available to the public.

First, the information relates to a currently unfolding story; specifically, a prospective presidential candidate and communications with a federal agency. Delaying or refusing release of the information harms the public interest to know what, if any, interactions the subject of this request had with the agency.

Second, the request obviously concerns federal government activity. And finally, as the world's oldest and largest news organization, the AP certainly is a credible requestor.

Therefore, the criteria for expedited processing are met in this case. I certify that my statements concerning the need for expedited review are true and correct to the best of my knowledge and belief.

If you deny expedited processing, I expect to receive a response to the request within 20 business days, as the statute requires. Should the agency invoke the "unusual circumstances" provision to escape its obligation to provide a full response within that time frame, the statute allows only an additional ten working days.

As the information in this request is of timely value, I would appreciate your communicating with me by telephone (212-621-5411) or e-mail (rherschaft@ap.org), rather than by standard mail, if you have questions regarding this request.

Finally, I note that President Obama's January 21, 2009 "Presidential Memorandum for the Heads of Executive Departments and Agencies on the Freedom of Information Act" specifically stated that "[i]n responding to requests under the FOIA, executive branch agencies should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public." Moreover, it held that "[a]ll agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA."

In the spirit of such cooperation and the presumption of disclosure, I look forward to your prompt response.

Thank you for your assistance.

Sincerely,

Randy

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c.c. Karen Kaiser Associated Press Assistant General Counsel

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