

FOIA/PA REQUEST

Case No.: 2012-0147
Date Rec'd: 2-21-12
Specialist: Kilgore
Related Case: _____

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February 17, 2012

Nuclear Regulatory Commission
FOIA/Privacy Officer

Re: Freedom of Information Act ("FOIA") Request

To Whom It May Concern:

On behalf of the National Federation of the Blind ("NFB"), I submit this formal request under the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"). For the purpose of this request, the term "records" as used herein includes all records or communications preserved in electronic or written form, including but not limited to correspondence, documents, data, videotapes, audio tapes, e-mails, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, technical specifications, training manuals, or studies.

I request records obtained or created from January 1, 2003 to the present regarding **whether any website developed, procured, maintained or used by the above federal agency or its subdivisions to provide information or services to members of the public complies with Section 508 of the Rehabilitation Act, 29 U.S.C. § 794d and 36 C.F.R. § 1194.** The term "agency" includes the federal agency specifically named above as well as any departments, divisions, administrations, agencies, bureaus, boards, commissions, offices, independent establishments, interagency committees, working groups, councils, consortiums, government corporations, foundations, institutes or any other program or activity in which the Agency has oversight, control or membership.

This formal request includes but is not limited to any records that fall within the following six categories:

1. Any records of testing, evaluation results, reports, survey responses, assessments or other similar records produced or intended to be produced to the United States Attorney General that relate to whether the above websites are compliant with Section 508 of the Rehabilitation Act;
2. Any further records of testing, evaluation results, reports, survey responses, assessments or other similar records **not** produced to the United States Attorney

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General that relate to whether the above websites are compliant with Section 508 of the Rehabilitation Act;

3. Any records regarding the plan, process, methods or manuals used to ensure that the above websites remain compliant with Section 508 as design and content changes are made.
4. Any records referencing whether testing for Section 508 compliance was done when any portion of the above websites were procured, developed, maintained or used;
5. Any records that specifically state which personnel position within the above agency is responsible for ensuring the above websites are compliant with Section 508;
6. Any records describing who the above websites were procured from or who developed or maintained those websites.

I request that all records be produced in an electronic format. Production using "tagged" files in the Adobe Portable Document Format (PDF) is preferable. Whenever possible, records responsive to paragraph 1 should be kept in a separate file even if those records are responsive to other paragraphs. In order of preference, delivery can be achieved by the following: emailing a compressed data file (ZIP), shipping a CD-ROM or other data disc medium containing the files, faxing documents or mailing physical copies. As this information is of timely value, I would appreciate your communicating with me by email or fax, rather than by mail, if you have questions regarding this request. The contact information to be used for questions and delivery is as follows:

FOIA Response

Atten: Timothy Elder

E-mail: telder@trelegal.com

Mailing Address: LaBarre Law Offices P.C., 1660 South Albion Street, Ste. 918, Denver, Colorado 80222

Fax: (888) 718-0617

Phone: (410) 415-3493

I request a waiver or appropriate reduction of any fees because disclosure of this information is in the public interest. Disclosure 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.

The requester, NFB, is a national advocacy organization and a non-profit corporation duly organized under the laws of the District of Columbia with its principal place of business in Baltimore, Maryland. The purpose of the NFB is to promote the

general welfare of the blind by (1) assisting the blind in their efforts to integrate themselves into society on terms of equality and (2) removing barriers and changing social attitudes, stereotypes and mistaken beliefs that sighted and blind persons hold concerning the limitations created by blindness resulting in the denial of opportunity to blind persons in virtually every sphere of life.

Disclosure of these records will provide valuable information about the current effectiveness of Section 508 and the level of access that blind members of the public have to the increasingly dominant mediums that agencies use to communicate with members of the public. NFB and others will be able to use these records to support advocacy efforts throughout the government and raise awareness about the operation of government websites.

TO assist in your analysis of the fee waiver, the following is a detailed discussion of the six factors that are typically considered by most federal agencies when granting such a request.

(1) **The subject of the requested records concerns “the operations or activities of the government.”** The request seeks records that clearly and directly relate to the operation of federal websites. Further, it directly relates to the operation and activities that government agencies use to ensure federal websites comply with Section 508 of the Rehabilitation Act as that standard is implemented on a daily basis. Communicating with members of the public is an essential operation and activity of every government agency. This essential operation is increasingly facilitated through public government websites. The request is focused on these exact communicative operations and activities of government.

(2) **The disclosure is “likely to contribute” to an understanding of government operations or activities.** There is no common understanding among the public or even between federal agencies about the operations and activities that federal agencies use to ensure their respective websites are compliant with Section 508 and thus accessible to disabled persons. Though many agencies publish their accessibility policies, none disclose the methods used to ensure accessibility and compliance with Section 508. There is no source, other than the requested records, that reveals how Section 508 compliance is achieved by a specific individual agency. There is a patchwork of approaches used by agencies to develop a website and ensure it is accessible to disabled persons. Disclosing the requested records will greatly contribute to the understanding of how compliant agencies operate their websites as well as why noncompliant agencies fail to meet the standard. Moreover, Congress saw fit to require the Attorney General to biannually survey agencies on this point to aid in the understanding of such government operations. However, the Attorney General has failed to even produce one of the biannual reports. Thus, there is a vacuum of understanding on the operation of federal agency websites. Disclosing these records will help fill that vacuum.

(3) **Disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons.** There are millions of disabled persons with sensory or manual impairments who rely on assistive technology to access information on websites and interact with those websites. Disclosure of these records will contribute to their understanding of their government's commitment to ensure they are not excluded from e-government. Further, many members of the public are dedicated to ensuring that disabled persons can retain independence and remain self-sufficient. When a disabled person cannot independently access essential information from their government, such goals cannot be achieved. Disclosure of the requested records will advance an understanding of how to better ensure that federal websites are universally accessible to all members of the public, including persons with disabilities. The NFB has long advocated for accessible websites and intends to share the disclosed records as well as the similar disclosed records of other federal agencies with academics, journalists, Congress and leaders within the executive branch.

(4) **The contribution to public understanding of government operations or activities will be "significant."** The requested records will be combined with the records of other federal agencies. By comparing the records of several agencies, the public will gain a better understanding about website accessibility and how social entities can approach the task of operating an accessible website. Each federal agency can learn from the records that the disclosing agency produces. In essence, this process of parallel disclosure between multiple agencies will open a dialogue so that any federal agency can review what other federal agencies are doing to comply with the Section 508 standards. Furthermore, Congress, as the representative of the public, will be able to understand the number of federal agencies that are failing to fulfill their obligations to disabled persons under Section 508.

(5) **The requester has no commercial interest that would be furthered by the requested disclosure.** This request is being submitted on behalf of the national Federation of the Blind ("NFB") by its legal representative. As previously noted, The NFB is a nonprofit organization that is regularly recognized as the leading advocate for blind persons. It has no ability or opportunity to profit from the requested records. The only benefit from the disclosure of the records, financial or otherwise, will be to disabled persons who experience improved access to federal websites and to society as a whole.

(6) **The magnitude of any identified commercial interest to the requestor is not sufficiently large in comparison with the public interest in disclosure.** As noted above, NFB does not have a commercial interest in the requested records. However, to the extent the agency perceives such an interest; the interest to the public in disclosure would greatly outweigh any perceived commercial interest. Disabled persons will enjoy a higher quality of life, greater independence, and improved access to vital government services if federal agencies remain accountable to their legal

obligations under Section 508. This public interest was the very intent of Congress when it enacted this statute. It is a public interest that overshadows any possible commercial interest of a nonprofit organization or its legal agent.

In the event no such fee waiver can be obtained, I consent to pay any reasonable fees associated with the production of these records. If the cost is likely to exceed \$100, the public liaison should first contact me before delivering the records.

Pursuant to FOIA, I expect you to make your determination within twenty (20) working days after the receipt of this letter. Further, I request that this letter be considered for expedited review. There is a compelling need to obtain these records on an expedited basis. There is an urgency to inform the public about federal agencies that are increasingly using inaccessible websites in violation of Section 508. Further, there is an absence of reliable data on this issue because the Attorney General has not produced any of the biannual reports on federal agency compliance as required by 29 U.S.C. § 794d(d)(2).

I would not expect that there should be any unusual circumstances associated with this request that would require an extension. However, if the Agency contends that there are unusual circumstances, I request an opportunity to narrow the request or to receive partial disclosure within the statutory response time. Should it be necessary to refine the scope of our single request and/or invoke a maximum ten (10) day extension, please e-mail me at telder@trelegal.com in order to avoid unnecessary delay.

President Obama has instructed in his January 21, 2009 FOIA Memorandum, "[t]he Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails." See Federal Register Presidential Documents Vol. 74, No. 15. In that light, I request that a presumption of disclosure be applied to this request and the above agency make all disclosures within its discretion. Thank you very much for your prompt attention to this matter.

Sincerely,



Scott C. LaBarre

SL/te

FOIA Resource

From: Lisa Bonderson [lbonderson@labarrelaw.com]
Sent: Friday, February 17, 2012 6:31 PM
To: FOIA Resource
Subject: please see attached letter
Attachments: Nuclear Regulatory Commission 2-17-12.pdf

Good Afternoon,

Please see the attached letter regarding a Freedom of Information Act ("FOIA") request.

Thank you,

Lisa Bonderson
LaBarre Law Offices, P.C.