

JOSHUA M. AMBUSH, LLC

HILTON PLAZA

1726 REISTERSTOWN ROAD, SUITE 206, BALTIMORE, MARYLAND 21208

TEL: 410-484-2070 FAX: 410-484-9330

August 5, 2013

Chairman, Appeals Review Panel
c/p Appeals Officer
A/ISS/IPS/PP/LC
U.S. Department of State
SA-2, Room 8100
Washington, D.C. 20522-8100

VIA FEDERAL EXPRESS

Re: Freedom of Information Act Appeal for FOIA Request 201108328 Wrongful Death Claims

Dear Sir or Madam:

Pursuant to Freedom of Information Act § 552(a)(6), I am writing to appeal your decision to withhold in full under FOIA exemption (b)(6) seven documents responsive to my request as well as to contest the adequacy of your initial search.

A. The Response to FOIA Request 201108328 Is Inadequate.

My FOIA request was made almost two years ago, on September 28, 2011. A copy of that request is attached for your reference as Exhibit A. The request was for:

[A]ll records in your custody or control that were received, issued, or created from 2008 to present day. Specifically, I am requesting records relating to the following claims:

- The wrongful death claim of the Estate of Angel Berganzo Colon initially submitted to the State Department 's Office of the Legal Adviser, International Claims & Investment Disputes division;
- The wrongful death claim of the Estate of Antonio Rodriguez Morales initially submitted to the State Department 's Office of the Legal Adviser, International Claims & Investment Disputes division; and
- **The wrongful death claim of the Estate of Carmen Enid Guzman Rosado** initially submitted to the State Department's Office of the Legal Adviser, International Claims & Investment Disputes division.

As used in this request, the term “records” expressly includes any and all paper, digital, electronic or other interagency and intra-agency correspondence as well as any paper, digital, electronic or other correspondence with any Estate representatives or third parties in your custody or control relating to these claims. As used in this request, the term “with” includes but is not limited to correspondence from, to, cc’d, bcc’d to any of these Estates, Estate representatives, or third parties.

(See Ex. A at 1-2) (emphasis added). Despite several follow up letters and e-mails, I did not receive a response until July 12, 2013. The response contained approximately 43 documents, none of which related to the Estate of Carmen Enid Guzman Rosado. Three documents were released with excisions, and seven documents were withheld in full “under FOIA exemption (b)(6).” Additionally, there was no correspondence of any kind included.

Although the State Department has “asked the Department’s Office of the Legal Adviser to do a follow-up search of its records [,]” as a former attorney for these Estates, I know that correspondence exists, because I sent letters and e-mails relating to these claims. I also know that the State Department was in communication with individuals such as Neal Sher, Javier Lopez Perez, Michael Engelberg, Eli Perr, and David Efron concerning these claims. For instance, I received letters from the State Department indicating it had sent correspondence concerning the claim of Carmen Enid Guzman Rosado to Neal Sher. (See Ex. B Letter, Lisa Grosh, Esquire, Office of the Legal Advisor, U.S. Department of State to Joshua M. Ambush, Esquire (Oct. 6, 2010)). That the referenced correspondence was not included calls into serious question the adequacy of the State Department’s initial search. Additionally, upon information and belief, Lourdes Domenech Guzman and her representatives may have met with members of the State Department, including but not limited to Lisa J. Grosh and/or other staff in the Office of the Legal Advisor, and/or the Office of International Claims and Investment Disputes. My FOIA request covers any records of any such meetings.

The State Department’s delays in responding to the request not only flouts its statutory obligations, it also violates the President’s clear direction that when it comes to public information, “openness prevails.” MEMORANDUM FOR THE HEADS OF EXECUTIVE DEP'TS AND AGENCIES, 74 Fed. Reg. 15, 4683 (Jan. 26, 2009). This instruction is unambiguous: “All 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.” *Id.*

B. Claims Records That Contain No Medical Records Should Not Be Withheld Under FOIA Exemption (b)(6).

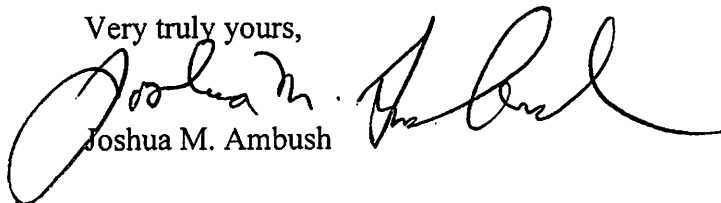
FOIA exempts from the presumption of disclosure “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. 552(b)(6). Determination of whether disclosure of information would constitute a “clearly unwarranted invasion of personal privacy” under Exemption 6 requires “a balancing of the individual’s right of privacy against the preservation of the basic purpose of the Freedom of Information act to open agency action to the light of public scrutiny.” *Rose v. Dep’t of the Air Force*, 495 F.2d 261 (2d Cir. 1964) *aff’d on other grounds* 425 U.S. 352, 372. Cases have consistently held that the “clearly unwarranted” language of Exemption 6 is intended to “tilt the balance in favor of disclosure.” *Getman v. NLRB*, 450 F.2d 670, 674 (D.C. Cir. 1971); *see*

also *Dep't of the Air Force v. FLRA*, 838 F.2d 231 (7th Cir. 1988) (recognizing because FOIA is a disclosure statute, the Supreme Court has read Exemption 6 with a strong emphasis on "clearly unwarranted"). As the U.S. Court of Appeals for the District of Columbia has recognized, "Under Exemption 6, the presumption in favor of disclosure is as strong as can be found anywhere under the Act." *FERA v. Dep't of Veterans' Affairs*, 958 F.2f 503, 510 (D.C. Cir. 1982).

In light of the presumption favoring disclosure, a privacy interest is only cognizable if disclosure would work an invasion of personal privacy that is significant or substantial. *Nat'l Assoc. of Retired Fed. Empees v. Horner*, 879 F.2d 873, 874 (D.C. Cir. 1989). In other words, "Exemption 6 [is] directed at threats to privacy interests more palpable than mere possibilities." *Rose*, 495 F.2d at 261. Here, the requested information relates to an Estate. The decedent has *no* interest in the information requested. Any correspondence subject to the request are business letters sent by an attorney to an agency. There is no remote privacy interest in such correspondence to exempt such documents from disclosure.

Pursuant to the requirements of FOIA, I request a response to this appeal within twenty (20) working days. In light of the already significant delay in receiving the requested materials, I urge you to contact me by telephone if you have any questions or if I can facilitate your review, or the expedition release of the requested records, in any way.

Very truly yours,


Joshua M. Ambush

Enclosures
JMA/mh

THE LAW OFFICES OF
JOSHUA M. AMBUSH, LLC

HILTON PLAZA

1726 REISTERSTOWN ROAD, SUITE 206, BALTIMORE, MARYLAND 21208

TEL: 410-484-2070 FAX: 410-484-9330

September 28, 2011

Office of Information Programs and Services
A/GIS/IPS/RL
Department of State, SA-2
Washington, DC 20522-8100

Re: Freedom of Information Act Request

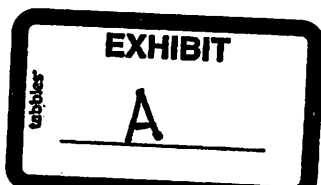
To Whom It May Concern:

This letter constitutes a records request under the Freedom of Information Act (FOIA) and the Department of State's corresponding regulations, (5 U.S.C. § 552 and 19 C.F.R. § 171 *et seq.*). I am writing to request all records in your custody or control that relate to certain wrongful death claims arising under the case *Franqui v. Syrian Arab Republic, et al.* (Case No. 1:06-cv-00734-RBW) that were submitted to the State Department pursuant to the August 14, 2008 Settlement Agreement between the United States and Libya, the Libyan Claims Resolution Act (Pub L. 110-301), and Executive Order 13477.

The term "records" should be construed within the broadest meaning allowed under 19 C.F.R. § 171.11(e) and should include all paper, digital, electronic or other forms of records. I would like all records in your custody or control that were received, issued, or created from 2008 to present day. Specifically, I am requesting records relating to the following claims:

- The wrongful death claim of the Estate of Angel Berganzo Colon initially submitted to the State Department 's Office of the Legal Adviser, International Claims & Investment Disputes division;
- The wrongful death claim of the Estate of Antonio Rodriguez Morales initially submitted to the State Department 's Office of the Legal Adviser, International Claims & Investment Disputes division; and
- The wrongful death claim of the Estate of Carmen Enid Guzman Rosado initially submitted to the State Department 's Office of the Legal Adviser, International Claims & Investment Disputes division.

As used in this request, the term "records" expressly includes any and all paper, digital, electronic or other interagency and intra-agency correspondence as well as any paper, digital, electronic or other correspondence with any Estate representatives or third parties in your custody or control relating to these claims. As used in this request, the term "with" includes but



is not limited to correspondence from, to, cc'd, bcc'd to any of these Estates, Estate representatives, or third parties.

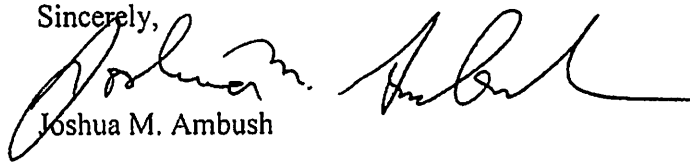
Please contact me if the copies exceed \$250.00. If you deny all or any part of this request, please cite each specific exemption under the FOIA that you think justifies your refusal to release the records and notify me of appeal procedures available under the law.

Please mail the records to:

Joshua M. Ambush
Hilton Plaza
The Law Offices of Joshua M. Ambush, LLC
1726 Reisterstown Road, Suite 206
Baltimore, Maryland 21208.

If email is preferable, you can contact me at joshua@ambushlaw.com to expedite your responses. I am also available via telephone at (410) 484-2070. Thank you in advance for your attention to this matter. I look forward to hearing from you.

Sincerely,



Joshua M. Ambush

JMA/mh



*Office of the Legal Adviser
Suite 203, South Building
2430 E Street, NW
Washington, DC 20037-2800*

October 6, 2010

Mr. Joshua M. Ambush
Law Offices of Joshua M. Ambush, LLC
Hilton Plaza
1726 Reisterstown Road, Suite 206
Baltimore, Maryland 21208

Dear Mr. Ambush:

We are writing about the wrongful death claim that you filed with our office on behalf of the estate of Carmen Eneida Guzman Rosado. We appreciated meeting with you in April to inform us of the dispute concerning the legal representation of the named estate representative, Ms. Lourdes Domenech Guzman Rosado, as well as other beneficiaries of the estate. We are also aware that the litigation in federal court in the District of Columbia between you and the American Center for Civil Justice, which concerns the legal representation of the estate, is still ongoing.

In light of these developments, we are requesting that the estate representative(s) of the Estate of Carmen Eneida Guzman Rosado submit a court document establishing the legal authority to act on behalf of the entire estate (for instance, letters of administration issued by the appropriate judge or court as described P.R. Laws, tit. 32, § 2571). We have also sent a similar letter to Mr. Neal Sher about the claim.

Please do not hesitate to contact me should you have questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lisa Grosh".

Lisa J. Grosh
Deputy Assistant Legal Adviser
Office of International Claims
and Investment Disputes

