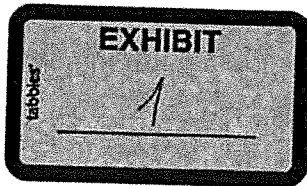


EXHIBIT 1



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April 18, 2022

U.S. Attorney's Office
151 Meeting St # 200
Charleston, SC 29401

**Re: FOIA Request For Information on Closed Matter Involving ORBIS
Sibro, Inc.**

Dear FOIA Officer:

This Freedom of Information Act request involving a closed civil investigation pertaining to ORBIS Sibro, Inc. ("ORBIS"). Among the wrongdoing alleged to have been committed by ORBIS was the company being wrongfully awarded contracts by federal agencies as a woman-owned business when ORBIS was not qualified to receive such awards under Federal Acquisition Regulation Subpart 19.15. Among the Assistant U.S. Attorneys who worked on these matters were Frances C. Trapp and James Leventis.

Under the Freedom of Information Act, I am respectfully requesting the following documents:

1. Any and all reports prepared for the U.S. Attorney's Office for South Carolina by the accounting firm of Dixon Hughes Goodman concerning ORBIS.
2. Any and all reports prepared by a federal investigative agency (such as the Federal

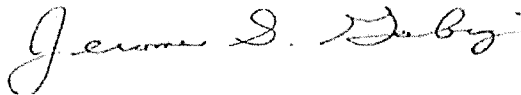
Bureau of Investigation or the Navy Investigative Service) in the possession of the U.S. Attorney Office for South Carolina pertaining to ORBIS.

3. All correspondence, including emails, between Federal employees assigned to the Office of the U.S. Attorney Office for South Carolina (to include Frances Trapp and James Leventis) and the Federal employees assigned to the Defense Contract Audit Agency concerning ORBIS.
4. All correspondence, including emails, between Federal employees assigned to the Office of the U.S. Attorney Office for South Carolina (to include Frances Trapp and James Leventis) and the Federal employees assigned to the Defense Contract Management Audit Agency.

I am willing to pay a reasonable fee to cover the administrative costs of this FOIA. Please let me know if the fee is going to exceed \$250.

I suspect that your office routinely denies FOIA requests based on FOIA Exemption 7. It is my understanding that since the documents requested involved a civil matter that has since been closed. Under these circumstances, if any redactions are made, would you please provide an explanation of how the redacted material "could reasonably be expected to interfere with enforcement proceedings." Attached is a legal commentary that discusses the limited scope of FOIA Exemption 7 to closed civil matters.

Respectfully,



Jerome S. Gabig

Atch: 3 *Fed. Info. Discl.* § 17:25

3 Fed. Info. Discl. § 17:25

Federal Information Disclosure

December 2021 Update

James T. O'Reillya0

Chapter 17. Law Enforcement Records

§ 17:25. Withholding to avoid interference with enforcement under section (b)(7)(A)—Closed files

References

A recurring question, for several years, has been the availability of withholding where files are closed or where no action is expected.¹ If a file was investigatory, under the old *per se* rule in the D.C. Circuit, its contents could be withheld even after the conclusion of the investigation.² Congress specifically rejected this perpetual protection in 1974, and (b)(7)(A) is *not* available after there is no longer a prospect of enforcement proceedings.³ This result is logical, and seems consistent with both the prehearing orientation of Robbins⁴ and the analogous case connecting exempt status to time considerations which the same Court addressed in the 1979 Federal Open Market Committee of Federal Reserve System v. Merrill⁵ opinion. The text of the 1974 amendment suggests a finite time;⁶ the finite time ends when the governmental purpose can no longer be frustrated by disclosures.⁷ The recessing of an unfair labor practice hearing proceeding, pending settlement negotiations, continues an ongoing proceeding for purposes of the exemption from disclosure.⁸ Since the 1974 amendment, some courts have pushed the exemption as far as to protect closed proceedings because of disclosure's effect on "subsequent enforcement proceedings of the same type."⁹ When requested under FOIA, the closed investigatory file should be available unless an exemption other than (b)(7)(A) applies, or unless interference in fact is shown.¹⁰ One case's documents may be useful in another case; a showing of such an overlap results in a (7)(A) exemption finding even after the first case is concluded.¹¹ When considering coverage of exemption (b)(7)(A), the court may consider the statute of limitations and permit requests to be made after the prosecution is no longer possible.¹²

Petitioners were entitled to access judicial records containing electronic communications in closed criminal investigations.¹³

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Footnotes

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1

The original case law rule was that no disclosure could occur after there was no longer a "concrete prospect" of enforcement. *See, e.g., Bristol-Myers Co. v. F.T.C.*, 424 F.2d 935, 1970 Trade Cas. (CCH) ¶ 73120 (D.C. Cir. 1970).

2

See, e.g., Aspin v. Department of Defense, 491 F.2d 24 (D.C. Cir. 1973). The exemption is available where associates of the inmate requester have yet to be convicted. *Gaffney v. Bureau of Alcohol Tobacco & Firearms*, Civ. No. 84-1403 (D.D.C. 1985), appeal dismissed, Civ. No. 85-5770 (D.C. Cir. May 6, 1986).

3

See, e.g., H.R. Conf. Rep. No. 93-1380; *H.R. Conf. Rep. No. 93-1380* (1974) and 120 Cong. Rec. S9329 (daily ed. May 30, 1974) (the Hart Amendment to (b)(7)). *Accord*, this coverage ends when the investigation is inactivated. *Fedders Corp. v. F. T. C.*, 494 F. Supp. 325, 1980-2 Trade Cas. (CCH) ¶ 63476 (S.D. N.Y. 1980), *aff'd*, 646 F.2d 560 (2d Cir. 1980).

4

The intention of avoiding interference is to prevent such chilling of witnesses; *see, e.g., N.L.R.B. v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 98 S. Ct. 2311, 57 L. Ed. 2d 159, 98 L.R.R.M. (BNA) 2617, 3 Media L. Rep. (BNA) 2473, 84 Lab. Cas. (CCH) P 10643 (1978).

5

Federal Open Market Committee of Federal Reserve System v. Merrill, 443 U.S. 340, 99 S. Ct. 2800, 61 L. Ed. 2d 587, 5 Media L. Rep. (BNA) 1221 (1979); *see* §§ 15:1 et seq.

6

5 U.S.C.A. § 552(b)(7)(A) and *cf N.L.R.B. v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 98 S. Ct. 2311, 57 L. Ed. 2d 159, 98 L.R.R.M. (BNA) 2617, 3 Media L. Rep. (BNA) 2473, 84 Lab. Cas. (CCH) P 10643 (1978) which used terms limiting its withholding authority in time to "while a case is pending."

7

Compare *Federal Open Market Committee of Federal Reserve System v. Merrill*, 443 U.S. 340, 99 S. Ct. 2800, 61 L. Ed. 2d 587, 5 Media L. Rep. (BNA) 1221 (1979) *with* the labor situation.

8

Nissen Foods (USA) Co., Inc. v. N. L. R. B., 540 F. Supp. 584, 110 L.R.R.M. (BNA) 2815, 97 Lab. Cas. (CCH) P 10087, 67 A.L.R. Fed. 588 (E.D. Pa. 1982), also published at, 112 L.R.R.M. (BNA) 2092, 1982 WL 31291 (E.D. Pa. 1982).

9

The "retarding effect on open and frank Board investigations of alleged unfair labor practices" is discussed in *Harvey's Wagon Wheel, Inc. v. N.L.R.B.*, 550 F.2d 1139, 93 L.R.R.M. (BNA) 3068, 79 Lab. Cas. (CCH) P 11792 (9th Cir. 1976). *But* note the different attitudes, with the DC Circuit chastening the agency for withholding "yellowing documents contained in long closed files," *Coastal States Gas Corp. v. Department of Energy*, 617 F.2d 854, 54 A.L.R. Fed. 256 (D.C. Cir. 1980).

10

New England Medical Center Hospital v. N. L. R. B., 548 F.2d 377, 386, 94 L.R.R.M. (BNA) 2322, 94 L.R.R.M. (BNA) 2974, 80 Lab. Cas. (CCH) P 11946 (1st Cir. 1976); *but see* *Associated Dry Goods Corp. v. N. L. R. B.*, 455 F. Supp. 802, 99 L.R.R.M. (BNA) 2731, 85 Lab. Cas. (CCH) P 11064 (S.D. N.Y. 1978); *Nemacolin Mines Corp. v. N. L. R. B.*, 467 F. Supp. 521, 100 L.R.R.M. (BNA) 3069, 4 Media L. Rep. (BNA) 2486, 86 Lab. Cas. (CCH) P 11283 (W.D. Pa. 1979);

and Evans v. Department of Transp. of U. S., 446 F.2d 821 (5th Cir. 1971).

11

American Commercial Barge Lines Co. v. N.L.R.B., 758 F.2d 1109, 118 L.R.R.M. (BNA) 3386, 102 Lab. Cas. (CCH) P 11410 (6th Cir. 1985).

12

Africa Fund v. Mosbacher, 1993 WL 183736 (S.D. N.Y. 1993).

13

In re Leopold to Unseal Certain Electronic Surveillance Applications and Orders, 964 F.3d 1121 (D.C. Cir. 2020).

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