



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, DC 20416

OFFICE OF DISASTER ASSISTANCE

July 19, 2023

Jack Newsham
Katherine Long
Insider Inc.
One Liberty Plaza, 8th Floor
New York, NY 10006

jnewsham@insider.com
klong@insider.com

Re: FOIA Request – SBA-2023-003111

Dear Mr. Newsham and Ms. Long,

This letter is in response to your Freedom of Information Act (“FOIA”) request No. SBA-2023-003111.

Your request states the following:

“For each of these entities:

1. EPICFAIL INC.
2. AIC ENTERTAINMENT
3. GODSMACK TOURING INC.
4. SREMM TOURING, INC
5. LA MONARCA ENTERTAINMENT, INC
6. The Smashing Pumpkins Machine Inc
7. YOUNG MONEY TOURING INC
8. Knot Touring LLC
9. DJ Kid Millionaire Touring, Inc.
10. 365 TOURING INTERNATIONAL, INC
11. CBE TOURING, LLC

we would like the following records for the period from April 1, 2021 to June 1, 2023:

1. Any application(s) filed by the entity for a grant through the SVOG program
2. Documents filed in support of the application, such as those mentioned in the July 2021 SBA publication “Shuttered Venue Operators Grant Application Checklist.” These include tax returns, financial statements, floor plans, event documentation, marketing materials, box office/ticketing information and artist performance agreements.
3. Any notices of award (SBA Form 1222)
4. Any expense reports submitted as part of the close-out process.
5. Any third-party audits.

Exhibit A

We ask that you expedite this request and waive fees to the extent permitted by statute. We are reporters for Insider, an online news outlet read by millions of people per month, and we plan to write about the receipt and use of federal grant money by prominent musicians and performers. In other words, we seek information on SVOG grants to these entities in order to inform the public concerning actual or alleged federal government activity.”

All publicly available information regarding the Shuttered Venue Operators Grantees can be found at the following link: [Shuttered Venue Operators Grantees - Dataset - U.S. Small Business Administration \(SBA\) | Open Data](#)

Pursuant to FOIA Exemption 4, the Small Business Administration does not release applications, attachments to the application, additional documents submitted in support of an application, or audit information to anyone other than the business itself. Exemption 4 (5 U.S.C. 552(b)(4)) protects "trade secrets and commercial or financial information obtained from a person and privileged or confidential." This exemption is intended to protect the interests of both the government and submitters of information. Information included in a business' application is proprietary and confidential. Therefore, SBA can only release the information listed in the above Shuttered Venue Operators Grant link.

If you are dissatisfied with the Agency's decision, you may file an administrative appeal within 90 days of the date of this letter to:

Office of Hearings and Appeals
Attention: Oreoluwa Fashola, FOIA Officer
409 3rd Avenue, SW – 8th Floor
Washington, DC 20416

If you are unable to resolve your FOIA dispute through our FOIA Public Liaison in the Office of Hearings and Appeals, the Office of Government Information Services (“OGIS”), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies.

The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road--OGIS
College Park, MD 20740-6001
ogis@nara.gov
ogis.archives.gov
202-741-5770
877-684-6448

Sincerely,

**ALAN
ESCOBAR**

Digitally signed by ALAN
ESCOBAR
Date: 2023.07.19
14:12:34 -04'00'

Alan E. Escobar
FOIA Public Liaison
Office of Disaster Recovery & Resilience
U.S. Small Business Administration



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, DC 20416

OFFICE OF DISASTER ASSISTANCE

August 17, 2023

Jack Newsham
Insider Inc.
One Liberty Plaza, 8th Floor
New York, NY 10006.

jnewsham@insider.com

Re: FOIA Request – SBA-2023-003577

Dear Mr. Newsham,

This letter is in response to your Freedom of Information Act (“FOIA”) request No. SBA-2023-003577.

Your request states the following:

“For each of the following recipients of SVOG grants:

Posty Touring Inc	Nickelback Touring 2, Inc.	Slarie Music US Inc.
Knotfest LLC	PAY DJ MUSTARD MUSIC INC	Ella Mai Music, Inc.
GHETTO YOUTHS TOURS INC	GUILE GRIEVER TOURING, INC.	EPICFAIL INC
DUBFIRE TOURING, INC.	Velvet Hammer Music, Inc.	RACON TOURING, LLC
Don't Mean Nothing Tours, Inc	Phunky Feel LLC	HIGH END TOURING LLC
MEDICINE TRIBE TOURING, INC.	Want Some More Touring LLC	AIC ENTERTAINMENT
APPLE ORCHARD TOURING INC	BEAST MODE TOURING INC.	GODSMACK TOURING INC.
HABITRAIL TOURING, INC	SYSTEM SUMMER CAMP, LLC	SREMM TOURING, INC
Shroud of Tour, Inc	TOURING IS MOST FUNNEST, INC.	LA MONARCA ENTERTAINMENT, INC
LET'S GET NICE LIMITED INC	Destroyers Inc	The Smashing Pumpkins Machine Inc
CRIME DON'T PAY, INC.	STOOPID TOURING, INC.	YOUNG MONEY TOURING INC
JAUZ TOURING, INC	THINK COMMON TOURING INC	Knot Touring LLC
Migo Management, LLC	Genevieve Productions, Inc	THE SHALIZI GROUP, INC.
MJP LIVE, INC	Monotone Inc	DJ Kid Millionaire Touring, Inc.
ORRO TOURING, INC	NAVFIVE LIVE, INC	365 TOURING INTERNATIONAL, INC
SAMMY LOVES HOT CHEETOS TOURING LLC	LOUIS THE CHILD LLC	CBE TOURING, LLC
Maydew Golenberg LLC	Beggars Bush Inc.	Apex Event Management, LLC
PRODIGY TOURING CORP	Ridge Road, Inc.	

Please provide the following records submitted as part of their SVOG applications:

- Signed Certification of Need
- Signed Drug-Free Workplace Certification

Exhibit B

We understand and believe that these records are certifications of compliance with the law, based largely or wholly on templates created by SBA, and could not possibly contain proprietary or confidential information.”

All publicly available information regarding the Shuttered Venue Operators Grantees can be found at the following link: [Shuttered Venue Operators Grantees - Dataset - U.S. Small Business Administration \(SBA\) | Open Data](#). The Small Business Administration does not release applications, attachments to the application, or additional documents submitted in support of an application to anyone other than the business itself as that information is protected from disclosure by FOIA Exemption 4.

Exemption 4 (5 U.S.C. 552(b)(4)) protects "trade secrets and commercial or financial information obtained from a person and privileged or confidential." This exemption is intended to protect the interests of both the government and submitters of information. Information included in a business' application is proprietary and confidential. Pursuant to FOIA Exemption 4, the Small Business Administration is withholding in full the Signed Certification of Need.

Also pursuant to Exemption 4 and pursuant to Exemption 6, the Small Business Administration is withholding in full the Signed Drug-Free Workplace Certification. Exemption 6 (5 U.S.C. 552(b)(6)) protects information for which the disclosure would constitute "a clearly unwarranted invasion" of individual privacy and might adversely affect the individual or his/her family.”

If you are dissatisfied with the Agency's decision, you may file an administrative appeal within 90 days of the date of this letter to:

Office of Hearings and Appeals
Attention: Oreoluwa Fashola, FOIA Officer
409 3rd Avenue, SW – 8th Floor
Washington, DC 20416

If you are unable to resolve your FOIA dispute through our FOIA Public Liaison in the Office of Hearings and Appeals, the Office of Government Information Services (“OGIS”), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies.

The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road--OGIS
College Park, MD 20740-6001
ogis@nara.gov
ogis.archives.gov
202-741-5770
877-684-6448

Sincerely,

ALAN ESCOBAR

Digitally signed by ALAN
ESCOBAR
Date: 2023.08.17 15:16:56
-04'00'

Alan E. Escobar
FOIA Public Liaison
Office of Disaster Recovery & Resilience
U.S. Small Business Administration

Appeal of Decision / FOIA Request SBA-2023-003111

Bix Bettwy <bbettwy@insider.com>

Tue, Jul 25, 2023 at 5:48 PM

To: oreoluwa.fashola@sba.gov

Cc: Glen Smith <gsmith@insider.com>, Maryanne Stanganelli <mstanganelli@insider.com>, Jack Newsham <jnewsham@insider.com>, Katherine Long <klong@insider.com>, alan.escobar@sba.gov

Please find an updated version of the appeal including the date on which Mr. Newsham submitted his original request. My apologies for the error.

--bix

Bix Bettwy

Senior Corporate Counsel

INSIDER

Business - Life - News

W: 646-768-4709

One Liberty Plaza, 8th FL, New York, NY 10006

On Tue, Jul 25, 2023 at 5:44 PM Bix Bettwy <bbettwy@insider.com> wrote:

Dear Mr. Fashola:

Attached, please find Insider, Inc.'s appeal of the SBA decision regarding FOIA Request SBA-2023-003111. We look forward to your determination within twenty business days.

Regards,

Bix

Bix Bettwy

Senior Corporate Counsel

INSIDER

Business - Life - News

W: 646-768-4709

One Liberty Plaza, 8th FL, New York, NY 10006


 2023.07.25 FOIA appeal SBA.pdf
693K

Exhibit C

Insider Inc.

One Liberty Plaza, 8th Floor • New York, NY 10006

July 25, 2023

Office of Hearings and Appeals
ATTN: Oreoluwa Fashola, FOIA Officer
409 3rd Avenue, SW – 8th Floor
Washington, DC 20416

VIA EMAIL

Re: FOIA Request SBA-2023-003111

Dear Mr. Fashola:

I represent Insider, Inc. (“Insider”), and I write to appeal an adverse decision by your office regarding Insider’s Request No. SBA-2023-003111 under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, filed by reporters Jack Newsham and Katherine Long. As explained more fully below, SBA’s production is inadequate, as are its grounds proffered for withholding responsive documents. We respectfully ask that you direct SBA to produce documents responsive to the request, as required by law.

I. Procedural History

Mr. Newsham submitted the following FOIA request to FOIA@sba.gov on June 22, 2023:

“For each of these entities:

- 1. EPICFAIL INC.*
- 2. AIC ENTERTAINMENT*
- 3. GODSMACK TOURING INC.*
- 4. SREMM TOURING, INC*
- 5. LA MONARCA ENTERTAINMENT, INC*
- 6. The Smashing Pumpkins Machine Inc*
- 7. YOUNG MONEY TOURING INC*
- 8. Knot Touring LLC*
- 9. DJ Kid Millionaire Touring, Inc.*
- 10. 365 TOURING INTERNATIONAL, INC*
- 11. CBE TOURING, LLC*

we would like the following records for the period from April 1, 2021 to June 1, 2023:

- 1. Any application(s) filed by the entity for a grant through the SVOG program*
- 2. Documents filed in support of the application, such as those mentioned in the July 2021 SBA publication “Shuttered Venue Operators Grant Application Checklist.” These include tax returns, financial statements, floor plans, event documentation, marketing materials, box office/ticketing information and artist performance agreements.*
- 3. Any notices of award (SBA Form 1222)*
- 4. Any expense reports submitted as part of the close-out process.*
- 5. Any third-party audits.*

We ask that you expedite this request and waive fees to the extent permitted by statute. We are reporters for Insider, an online news outlet read by millions of people per month, and we plan to write about the receipt and use of federal grant money by prominent musicians and performers. In other words, we seek information on SVOG grants to these entities in order to inform the public concerning actual or alleged federal government activity.”

On July 19, 2023, SBA responded (its “Letter” is attached hereto as Exhibit A), producing a single Excel file, apparently containing a list of all SVOG grantees and, for each grantee, the award received, its address, the date of the award, and a boilerplate description of the grantee’s business per 15 U.S.C. § 9909(a) (e.g. “Live venue operator or promoter”). The Letter explained that SBA was withholding all other responsive documents—including, specifically, applications, additional documents in support of applications, and audit information—pursuant to FOIA Exemption 4, 5 U.S.C. 552(b)(4). For the reasons outlined below, this blanket withholding of documents is improper.

II. Argument

Much of the information sought by Insider is neither a trade secret nor confidential or privileged. And, even if some responsive documents can be properly withheld, SBA’s perfunctory response is wholly inadequate.

Exemption 4 exempts from disclosure “trade secrets and commercial or financial information obtained from a person and privileged or confidential.” 5 U.S.C. 552(b)(4). Thus, the exemption covers two distinct categories of information: “(1) trade secrets; and (2) information that is (a) commercial or financial, (b) obtained from a person, and (c) privileged or confidential.” USDOJ, “Exemption 4,” Department of Justice Guide to the Freedom of Information Act (“DOJ Guide”) 1 (Dec. 16, 2021), <https://perma.cc/CM96-DKUC> (emphasis added).

The D.C. Circuit has defined a trade secret as “a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort.” *Pub. Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983). “This definition also incorporates a requirement that there be a ‘direct relationship’ between the trade secret and the productive process.” DOJ Guide at 2 (quoting *Pub. Citizen*, 704 F.2d at 1288).

And, while courts have interpreted the terms “commercial,” “financial,” and “person” broadly, the Supreme Court recently articulated a narrow definition of “confidential,” holding that information is only confidential where it is kept private or is closely held by the submitter, regardless of whether the government offers implicit or explicit assurances of confidentiality. *See Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2363 (2019). Privileged information is generally considered to be “information that falls within recognized constitutional, statutory, or common law privileges.” *Jordan v. U.S. Dep’t of Labor*, 273 F. Supp. 3d 214, 231 (D.D.C. 2017) (quoting *Gen Elec. Co. v. Air Force*, 648 F. Supp. 2d 95, 101 n.4 (D.D.C. 2009)) (internal quotation marks omitted). On top of this, an agency must demonstrate that the release of the information sought would cause a “foreseeable harm.” *See* 5 U.S.C. § 552(a)(8)(A)(i)(I).

In its response, SBA states simply that “[i]nformation included in a business’ application is proprietary and confidential.”

Even if this were true (it is not), this conclusory statement to justify the blanket withholding of information is inadequate. SBA does not explain, with any particularity, *why* the information sought is confidential, nor does it explain why—or even assert that—the release of the information would cause a foreseeable harm. Further, it is unclear what, if anything, SBA views as “proprietary” information, separate and apart from “confidential” information. To the extent it may be asserting that certain information constitutes trade secrets or privileged information, it, similarly, has not justified this opinion.

Nor could it. To wit, at the very least, floor plans, event documentation, marketing materials, notices of award (SBA Form 1222), and at least certain application forms or portions thereof are plainly not exempt from disclosure. And while some of the other documents requested may contain confidential information, they should not be withheld across the board. To take one example, Mr. Newsham independently obtained an SVOG audit report for the Denver Center for the Performing Arts (attached hereto as Exhibit B). As is readily apparent, this report contains little if any information that could reasonably be considered confidential; likely the same is true of any audit reports for the companies listed above.

III. Conclusion

In sum, SBA’s justification for withholding responsive documents is inadequate, and it is in violation of its obligations under FOIA. Insider submits this administrative appeal and requests a reply within twenty (20) business days to this appeal and the underlying request.

If you have questions regarding this appeal, please contact me at (646) 768-4709 or email me at bbettwy@insider-inc.com. I look forward to your determination with respect to this appeal within twenty business days. *See id.* § 552(a)(6)(A)(ii).

Regards,

Bix Bettwy
Senior Corporate Counsel
Insider, Inc.

CC: Maryanne Stanganelli, Associate General Counsel, mstanganelli@insider.com
Jack Newsham, Senior Reporter, jnewsham@insider.com
Katherine Long, Correspondent, klong@insider.com

Alan E. Escobar, FOIA Public Liaison, SBA, Alan.Escobar@sba.gov

EXHIBIT A



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, DC 20416

OFFICE OF DISASTER ASSISTANCE

July 19, 2023

Jack Newsham
Katherine Long
Insider Inc.
One Liberty Plaza, 8th Floor
New York, NY 10006

jnewsham@insider.com
klong@insider.com

Re: FOIA Request – SBA-2023-003111

Dear Mr. Newsham and Ms. Long,

This letter is in response to your Freedom of Information Act (“FOIA”) request No. SBA-2023-003111.

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We ask that you expedite this request and waive fees to the extent permitted by statute. We are reporters for Insider, an online news outlet read by millions of people per month, and we plan to write about the receipt and use of federal grant money by prominent musicians and performers. In other words, we seek information on SVOG grants to these entities in order to inform the public concerning actual or alleged federal government activity.”

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Pursuant to FOIA Exemption 4, the Small Business Administration does not release applications, attachments to the application, additional documents submitted in support of an application, or audit information to anyone other than the business itself. Exemption 4 (5 U.S.C. 552(b)(4)) protects "trade secrets and commercial or financial information obtained from a person and privileged or confidential." This exemption is intended to protect the interests of both the government and submitters of information. Information included in a business' application is proprietary and confidential. Therefore, SBA can only release the information listed in the above Shuttered Venue Operators Grant link.

If you are dissatisfied with the Agency's decision, you may file an administrative appeal within 90 days of the date of this letter to:

Office of Hearings and Appeals
Attention: Oreoluwa Fashola, FOIA Officer
409 3rd Avenue, SW – 8th Floor
Washington, DC 20416

If you are unable to resolve your FOIA dispute through our FOIA Public Liaison in the Office of Hearings and Appeals, the Office of Government Information Services (“OGIS”), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies.

The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road--OGIS
College Park, MD 20740-6001
ogis@nara.gov
ogis.archives.gov
202-741-5770
877-684-6448

Sincerely,

Alan E. Escobar
FOIA Public Liaison
Office of Disaster Recovery & Resilience
U.S. Small Business Administration

EXHIBIT B

Denver Center for the Performing Arts

Federal Awards Supplemental Information

June 30, 2021

Denver Center for the Performing Arts

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Independent Auditor's Reports

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Report on Schedule of Expenditures of Federal Awards Required by the Uniform Guidance

Independent Auditor's Report

To the Board of Trustees
Denver Center for the Performing Arts

We have audited the financial statements of Denver Center for the Performing Arts as of and for the year ended June 30, 2021 and have issued our report thereon dated December 6, 2021, which contained an unmodified opinion on those financial statements. Our audit was conducted for the purpose of forming an opinion on the financial statements as a whole. We have not performed any procedures with respect to the audited financial statements subsequent to December 6, 2021.

The accompanying schedule of expenditures of federal awards is presented for the purpose of additional analysis, as required by the Uniform Guidance, and is not a required part of the financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the financial statements. The information has been subjected to the auditing procedures applied in the audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated in all material respects in relation to the financial statements as a whole.

Plante & Moran, PLLC

February 18, 2022

Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of
Financial Statements Performed in Accordance with *Government Auditing Standards*

Independent Auditor's Report

To Management and the Board of Trustees
Denver Center for the Performing Arts

We have audited, in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of Denver Center for the Performing Arts (DCPA), which comprise the statement of financial position as of June 30, 2021 and the related statements of activities, functional expenses, and cash flows for the year then ended, and the related notes to the financial statements and have issued our report thereon dated December 6, 2021.

Internal Control Over Financial Reporting

In planning and performing our audit of the financial statements, we considered DCPA's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of DCPA's internal control. Accordingly, we do not express an opinion on the effectiveness of DCPA's internal control.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A material weakness is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of DCPA's financial statements will not be prevented, or detected and corrected, on a timely basis. A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether DCPA's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the financial statements. However, providing an opinion on compliance with those provisions was not an objective of our audit, and, accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

To Management and the Board of Trustees
Denver Center for the Performing Arts

Purpose of This Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of DCPA's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering DCPA's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

Plante & Moran, PLLC

December 6, 2021

Report on Compliance for Each Major Federal Program and Report on Internal Control Over Compliance
Required by the Uniform Guidance

Independent Auditor's Report

To the Board of Trustees
Denver Center for the Performing Arts

Report on Compliance for Each Major Federal Program

We have audited Denver Center for the Performing Arts' (DCPA) compliance with the types of compliance requirements described in the U.S. Office of Management and Budget (OMB) Compliance Supplement that could have a direct and material effect on DCPA's major federal program for the year ended June 30, 2021. DCPA's major federal program is identified in the summary of auditor's results section of the accompanying schedule of findings and questioned costs.

Management's Responsibility

Management is responsible for compliance with federal statutes, regulations, and the terms and conditions of its federal awards applicable to its federal program.

Auditor's Responsibility

Our responsibility is to express an opinion on compliance for DCPA's major federal program based on our audit of the types of compliance requirements referred to above.

We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and the audit requirements of Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (the "Uniform Guidance"). Those standards and the Uniform Guidance require that we plan and perform the audit to obtain reasonable assurance about whether noncompliance with the types of compliance requirements referred to above that could have a direct and material effect on a major federal program occurred. An audit includes examining, on a test basis, evidence about DCPA's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances.

We believe that our audit provides a reasonable basis for our opinion on compliance for each major federal program. However, our audit does not provide a legal determination of DCPA's compliance.

Opinion on Each Major Federal Program

In our opinion, DCPA complied, in all material respects, with the types of compliance requirements referred to above that could have a direct and material effect on the major federal program for the year ended June 30, 2021.

Report on Internal Control Over Compliance

Management of DCPA is responsible for establishing and maintaining effective internal control over compliance with the types of compliance requirements referred to above. In planning and performing our audit of compliance, we considered DCPA's internal control over compliance with the types of requirements that could have a direct and material effect on each major federal program to determine the auditing procedures that are appropriate in the circumstances for the purpose of expressing an opinion on compliance for each major federal program and to test and report on internal control over compliance in accordance with the Uniform Guidance, but not for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, we do not express an opinion on the effectiveness of DCPA's internal control over compliance.

To the Board of Trustees
Denver Center for the Performing Arts

A deficiency in internal control over compliance exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, noncompliance with a type of compliance requirement of a federal program on a timely basis. A material weakness in internal control over compliance is a deficiency, or a combination of deficiencies, in internal control over compliance such that there is a reasonable possibility that material noncompliance with a type of compliance requirement of a federal program will not be prevented, or detected and corrected, on a timely basis. A significant deficiency in internal control over compliance is a deficiency, or a combination of deficiencies, in internal control over compliance with a type of compliance requirement of a federal program that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Our consideration of internal control over compliance was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over compliance that might be material weaknesses or significant deficiencies. We did not identify any deficiencies in internal control over compliance that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

The purpose of this report on internal control over compliance is solely to describe the scope of our testing of internal control over compliance and the results of that testing based on the requirements of the Uniform Guidance. Accordingly, this report is not suitable for any other purpose.

Plante & Moran, PLLC

February 18, 2022

Denver Center for the Performing Arts**Schedule of Expenditures of Federal Awards****Year Ended June 30, 2021**

Federal Agency/Pass-through Agency/Program Title	Assistance Listing Number	Pass-through Entity Identifying Number	Grant Number	Provided to Subrecipients	Federal Expenditures
Small Business Administration - COVID-19 - Shuttered Venue Operators Grant Program	59.075		SBAHQ21SV 000595.2	\$ -	\$ 10,000,000
National Endowment for the Arts - Passed through Arts Midwest - Promotion of the Arts - Grants to Organizations and Individuals: Theater & Musical Theater	45.024	00029595	1864008-32- 20	-	25,000
Total				<u>\$ -</u>	<u>\$ 10,025,000</u>

See notes to schedule of expenditures of federal awards.

Denver Center for the Performing Arts

Notes to Schedule of Expenditures of Federal Awards

Year Ended June 30, 2021

Note 1 - Basis of Presentation

The accompanying schedule of expenditures of federal awards (the "Schedule") includes the federal grant activity of Denver Center for the Performing Arts (DCPA) under programs of the federal government for the year ended June 30, 2021. The information in the Schedule is presented in accordance with the requirements of Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (the "Uniform Guidance"). Because the Schedule presents only a selected portion of the operations of DCPA, it is not intended to and does not present the financial position, changes in net position, or cash flows of DCPA.

Note 2 - Summary of Significant Accounting Policies

Expenditures reported in the Schedule are reported on the accrual basis of accounting. Such expenditures are recognized following the cost principles contained in Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, wherein certain types of expenditures are not allowable or are limited as to reimbursement. The pass-through entity identifying numbers are presented where available.

The DCPA has elected not to use the 10 percent *de minimis* indirect cost rate to recover indirect costs, as allowed under the Uniform Guidance.

Denver Center for the Performing Arts

Schedule of Findings and Questioned Costs

Year Ended June 30, 2021

Section I - Summary of Auditor's Results

Financial Statements

Type of auditor's report issued: Unmodified

Internal control over financial reporting:

- Material weakness(es) identified? _____ Yes X No
- Significant deficiency(ies) identified that are not considered to be material weaknesses? _____ Yes X None reported
- Noncompliance material to financial statements noted? _____ Yes X None reported

Federal Awards

Internal control over major programs:

- Material weakness(es) identified? _____ Yes X No
- Significant deficiency(ies) identified that are not considered to be material weaknesses? _____ Yes X None reported

Any audit findings disclosed that are required to be reported in accordance with Section 2 CFR 200.516(a)? _____ Yes X No

Identification of major programs:

CFDA Number	Name of Federal Program or Cluster	Opinion
59.075	Shuttered Venue Operators Grant Program	Unmodified

Dollar threshold used to distinguish between type A and type B programs: \$750,000

Auditee qualified as low-risk auditee? _____ Yes X No

Section II - Financial Statement Audit Findings

None

Section III - Federal Program Audit Findings

None

Appeal of Decision / FOIA Request SBA-2023-003111

Bi Bettwy bbettwy@insider.com

Mon, Aug 28, 2023 at 5:35 PM

To: oreoluwa.fashola@sba.gov

Cc: Glen Smith <gsmith@insider.com>, Maryanne Stanganelli <mstanganelli@insider.com>, Jack Newsham <jnewsham@insider.com>, Katherine Long <klong@insider.com>, alan.escobar@sba.gov

Mr. Fa hola

I am following up on my appeal, submitted on July 25, 2023, and related to FOIA Request SBA-2023-003111. Pursuant to 5 U.S.C. § 552(a)(6)(A)(ii), we were due a response by August 23, 2023. Please confirm your intent to respond to our appeal by the end of this week. We would prefer to resolve this matter without resorting to litigation. Nonetheless, Insider reserves all right, remedies, claims, and defenses. Thank you for your prompt attention to this matter.

--bix

Bix Bettwy

Senior Corporate Counsel

INSIDER

Business Life News

W 646 768 4709

One Liberty Plaza, 8th FL, New York, NY 10006

[Quoted text hidden]

Exhibit D

Automatic reply: Appeal of Decision / FOIA Request SBA-2023-003111

Fa hola, Oreoluwa O Oreoluwa Fa hola@ ba gov
To: Bix Bettwy <bbettwy@insider.com>

Mon, Aug 28, 2023 at 5 35 PM

I am out sick today. For immediate assistance please email foia@sba.gov.

Thank you,

Exhibit E

Appeal of Decision / FOIA Request SBA-2023-003111

Bi Bettwy bbettwy@insider.com

Mon, Aug 28, 2023 at 5:38 PM

To: foia@sba.gov

Cc: Glen Smith <gsmith@insider.com>, Maryanne Stanganelli <mstanganelli@insider.com>, Jack Newsham <jnewsham@insider.com>, Katherine Long <klong@insider.com>, alan.escobar@sba.gov, oreoluwa.fashola@sba.gov

In light of Mr. Fashola's away message (I wish you a speedy recovery!) I am adding foia@sba.gov. Please see below and confirm that we can expect a response to our appeal by the end of this week.

Bix Bettwy

Senior Corporate Counsel

INSIDER

Business - Life - News

W: 646-768-4709

One Liberty Plaza, 8th FL, New York, NY 10006

[Quoted text hidden]

Exhibit F

Appeal of Decision / FOIA Request SBA-2023-003577

Bi Bettwy bbettwy@insider.com

Thu, Aug 24, 2023 at 12 10 PM

To: oreoluwa.fashola@sba.gov

Cc: alan.escobar@sba.gov, Jack Newsham <jnewsham@insider.com>, Katherine Long <klong@insider.com>, Maryanne Stanganelli <mstanganelli@insider.com>

Mr Fa hola

Apologies, it seems I forgot to attach the exhibits. Please find them attached here with the appeal so you have all the documents in one email. Thanks!

--bix

Bix Bettwy

Senior Corporate Counsel

INSIDER

Business - Life - News

W: 646-768-4709

One Liberty Plaza, 8th FL, New York, NY 10006

On Wed, Aug 23, 2023 at 4:11 PM Bix Bettwy <bbettwy@insider.com> wrote:

Dear Mr Fa hola

Attached, please find Insider, Inc.'s appeal of the SBA decision regarding FOIA Request SBA-2023-003577. We look forward to your determination within twenty business days.

Regards,

Bi

Bix Bettwy

Senior Corporate Counsel


INSIDER

Business - Life - News

W 646 768 4709

One Liberty Plaza, 8th FL, New York, NY 10006

3 attachments

 **EXHIBIT B Drugfree workplace certification pdf**
9K

 **EXHIBIT A FOIA Response Signed copy pdf**
220K

 **2023 08 23 FOIA appeal SBA pdf**
218K

Exhibit G

Insider Inc.

One Liberty Plaza, 8th Floor • New York, NY 10006

August 23, 2023

Office of Hearings and Appeals
ATTN: Oreoluwa Fashola, FOIA Officer
409 3rd Avenue, SW – 8th Floor
Washington, DC 20416

VIA EMAIL

Re: FOIA Request SBA-2023-003577

Dear Mr. Fashola:

I represent Insider, Inc. (“Insider”), and I write to appeal an adverse decision by your office regarding Insider’s Request No. SBA-2023-003577 under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, filed by reporter Jack Newsham. As explained more fully below, SBA’s production is inadequate, as are its grounds proffered for withholding responsive documents. We respectfully ask that you direct SBA to produce documents responsive to the request, as required by law.

PROCEDURAL HISTORY

Mr. Newsham submitted the following FOIA request to FOIA@sba.gov on August 7, 2023:

For each of the following recipients of SVOG grants:

*Posty Touring Inc
Knotfest LLC
GHETTO YOUTHS TOURS INC
DUBFIRE TOURING, INC.
Don't Mean Nothing Tours, Inc
MEDICINE TRIBE TOURING, INC.
APPLE ORCHARD TOURING INC
HABITRAIL TOURING, INC
Shroud of Tour, Inc
LET'S GET NICE LIMITED INC
CRIME DON'T PAY, INC.
JAUZ TOURING, INC
Migo Management, LLC*

MJP LIVE, INC
ORRO TOURING, INC
SAMMY LOVES HOT CHEETOS TOURING LLC
Maydew Golenberg LLC
PRODIGY TOURING CORP
Nickelback Touring 2, Inc.
PAY DJ MUSTARD MUSIC INC
GUILE GRIEVER TOURING, INC.
Velvet Hammer Music, Inc.
Phunky Feel LLC
Want Some More Touring LLC
BEAST MODE TOURING INC.
SYSTEM SUMMER CAMP, LLC
TOURING IS MOST FUNNEST, INC.
Destroyers Inc
STOOPID TOURING, INC.
THINK COMMON TOURING INC
Genevieve Productions, Inc
Monotone Inc
NAVFIVE LIVE, INC
LOUIS THE CHILD LLC
Beggars Bush Inc.
Ridge Road, Inc.
Slarie Music US Inc.
Ella Mai Music, Inc.
EPICFAIL INC
RACON TOURING, LLC
HIGH END TOURING LLC
AIC ENTERTAINMENT
GODSMACK TOURING INC.
SREMM TOURING, INC
LA MONARCA ENTERTAINMENT, INC
The Smashing Pumpkins Machine Inc
YOUNG MONEY TOURING INC
Knot Touring LLC
THE SHALIZI GROUP, INC.
DJ Kid Millionaire Touring, Inc.
365 TOURING INTERNATIONAL, INC
CBE TOURING, LLC
Apex Event Management, LLC

Please provide the following records submitted as part of their SVOG applications:

- Signed Certification of Need*
- Signed Drug-Free Workplace Certification*

On August 17, 2023, SBA responded (its “Letter” is attached hereto as Exhibit A), denying the request in its entirety.¹ It explained that it was withholding the Signed Certifications of Need pursuant to FOIA Exemption 4, and the Signed Drug-Free Workplace Certifications pursuant to Exemptions 4 and 6. *See* 5 U.S.C. §§ 552(b)(4) & (6). For the reasons outlined below, this blanket withholding of documents is improper.

ARGUMENT

As noted, Mr. Newsham requested two documents for each entity listed above—the Signed Drug-Free Workplace Certification (the “DFWC”) and the Signed Certification of Need (the “CoN”)—both of which were required as part of the application for SVOG grants. *See* “Frequently Asked Questions” (“FAQ”), SBA at 17 (Oct. 20, 2021), <https://perma.cc/GVN9-E8H8>. The DFWC (attached hereto as Exhibit B) asked the potential grantee to make certain representations regarding its maintenance of a drug-free workplace, something that is required for any entity receiving federal funding; the potential grantee needed simply to sign and date the document and provide the signatory’s name and title. The SBA did not provide a set format for the CoN, but provided the following statement as an example:

“Due to the uncertainty of current economic conditions, a grant is necessary to support the ongoing operations of [name of entity]. [name of entity] started in business on [date], but was forced to close its doors on [date] due to the pandemic. If it receives a grant, [name of entity] intends to reopen on [date] or sooner, as conditions and restrictions permit.”

Id. As is readily apparent, an entity’s signed DFWC does not contain any information that could properly be withheld pursuant to Exemptions 4 or 6. Further, the CoN, as contemplated by the SBA’s sample statement, does not require any information that is exempt pursuant to Exemption 4.

I. Exemption 4 Does Not Apply

Exemption 4 exempts from disclosure “trade secrets and commercial or financial information obtained from a person and privileged or confidential.” 5 U.S.C. 552(b)(4). Thus, the exemption covers two distinct categories of information: “(1) trade secrets; and (2) information that is (a) commercial or financial, (b) obtained from a person, and (c) privileged or confidential.” USDOJ, “Exemption 4,” Department of Justice Guide to the Freedom of Information Act (“DOJ Guide”) 1 (Dec. 16, 2021), <https://perma.cc/CM96-DKUC> (emphasis added).

The D.C. Circuit has defined a trade secret as “a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort.” *Pub. Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983). “This

¹ SBA provided a link to a non-responsive Excel file, apparently containing a list of all SVOG grantees and, for each grantee, the award received, its address, the date of the award, and a boilerplate description of the grantee’s business per 15 U.S.C. § 9909(a).

definition also incorporates a requirement that there be a ‘direct relationship’ between the trade secret and the productive process.” DOJ Guide at 2 (quoting *Pub. Citizen*, 704 F.2d at 1288).

And, while courts have interpreted the terms “commercial,” “financial,” and “person” broadly, the Supreme Court recently articulated a narrow definition of “confidential,” holding that information is only confidential where it is both kept private or is closely held by the submitter and “provided to the government under an assurance of privacy.” *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2363, 2366 (2019). Privileged information is generally considered to be “information that falls within recognized constitutional, statutory, or common law privileges.” *Jordan v. U.S. Dep’t of Labor*, 273 F. Supp. 3d 214, 231 (D.D.C. 2017) (quoting *Gen Elec. Co. v. Air Force*, 648 F. Supp. 2d 95, 101 n.4 (D.D.C. 2009)) (internal quotation marks omitted). On top of this, an agency must demonstrate that the release of the information sought would cause a “foreseeable harm.” See 5 U.S.C. § 552(a)(8)(A)(i)(I).

In its response, SBA states simply that “[i]nformation included in a business’ application is proprietary and confidential.”

In the first place, it is clearly false that all the information included in a business’ application for a federal grant is *per se* proprietary and confidential. Even SBA itself does not appear to believe its broad assertion: In its FAQ for SVOG applications, the SBA explains that, “[i]f an entity is awarded an SVOG, the SBA **must** report the amount and the name and address of the entity,” and cautions applicants to “mark[] any documents submitted that contain [confidential business] information with the phrase ‘Confidential Business Information.’” FAQ, *supra*, at 16. If the entirety of a business’ application were proprietary and confidential, as SBA asserts, it would obviate the need for such a recommendation.

And even if all or a portion of the documents requested contained confidential information (they don’t), this conclusory statement to justify the blanket withholding of information is inadequate. SBA does not explain, with any particularity, *why* the information sought is confidential,² nor does it assert that successful applicants were given assurances that the information sought would remain confidential, nor does it explain why—or even assert that—the release of the information would cause a foreseeable harm.

Nor could it. SBA’s argument that the information requested should be withheld under Exemption 4 fails on every count.

First, the information provided in the DFCWs and CoNs is not kept private or is closely held by the submitter. As noted, the DFCW reveals only two pieces of information about the signatory entity: (1) that it agreed to take certain steps—required of **all** recipients of federal grants—to ensure the maintenance of a drug-free workplace and (2) the name and title of the individual who signed the document on behalf of the company. Neither of these constitute confidential or proprietary business information by any stretch of the imagination.

² It is unclear what, if anything, SBA views as “proprietary” information, separate and apart from “confidential” information. To the extent it may be asserting that certain information constitutes trade secrets or privileged information, it, similarly, has not justified this opinion.

And the CoN, as contemplated by the SBA’s sample statement, reveals the date on which the applicant “closed its doors,” and the date by which the applicant intends to reopen—again, not information that is “kept private or is closely held by the submitter.” We acknowledge that, given the flexibility of an applicant to craft its individual CoN, it is *possible* that certain CoNs contain confidential information, such as financial information that demonstrates hardship. Even if this were the case, however, SBA would be required to consider whether a CoN contains confidential information on a case by case basis, something it plainly has not done.

Second, applicants were not given assurances that the information Insider is seeking would be kept confidential, as is required under *Argus Leader* for Exemption 4 to apply. The SBA assured applicants that it would “exclude any personally identifiable information (such as a Social Security Number) or confidential business information about the entity (such as financial data) from disclosure under the Freedom of Information Act, though such information may be shared with SBA’s Office of Inspector General, the Government Accountability Office, the Pandemic Response Accountability Committee, and/or members of Congress in response to a proper and official request.” This statement implies that (1) it might produce information that does *not* constitute confidential business information³ and (2) even business information is not completely protected, as it may be disclosed to various government entities. Further, the SBA’s own general FOIA guidelines provide no assurances: the SBA advises that it “generally” excludes from FOIA disclosure “[n]on-statistical information on pending, declined, withdrawn, or canceled applications,” conspicuously excluding “accepted” applications from that list. *See* “SBA information generally exempt from disclosure,” SBA.gov, <https://pal.sba.gov/app/RequestsandFees.aspx> (last visited August 23, 2023).

Finally, SBA did not contend that release of the information requested would cause a foreseeable harm. While it did note that Exemption 4 “is intended to protect the interests of both the government and submitters of information,” it did not attempt to explain why the release of the DFCWs and CoNs would harm those interests.

II. Exemption 6 Does Not Apply

Exemption 6 protects information about individuals in “personnel and medical and similar files” where disclosure of such information “would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). Courts follow a multi-step process when considering withholdings or redactions under Exemption 6. *Am. Immigration Lawyers Ass’n v. Exec. Office for Immigration Review*, 830 F.3d 667, 673 (D.C. Cir. 2016). First, the government must show that the information at issue is in a qualifying Exemption 6 file, *id.*; and it must demonstrate a significant, as opposed to a *de minimis*, privacy interest in the responsive records, *see Multi Ag Media LLC v. Dep’t of Agriculture*, 515 F.3d 1224, 1229 (D.C. Cir. 2008). Second, if the government meets this burden, then the requester must assert a public interest in disclosure, *see Nat’l Archives & Records Admin. v. Favish*, 541 U.S. 157, 171 (2004). And third, the court must weigh whether “the public interest in disclosure outweighs the individual privacy concerns.” *Multi Ag Media*, 515 F.3d at 1230 (quoting *Nat’l Ass’n of Home Builders v. Norton*, 309 F.3d 26, 35 (D.C. Cir. 2002)). “In

³ The question of whether the requested documents contain personally identifiable information that should be excluded (they do not) relates to Exemption 6 and is discussed *supra*.

undertaking this analysis, the [C]ourt is guided by the instruction that, under Exemption 6, the presumption in favor of disclosure is as strong as can be found anywhere in [FOIA].” *Norton*, 309 F.3d at 32 (quotation marks omitted); *see also Jurewicz v. U.S. Dep’t of Agric.*, 741 F.3d 1326, 1332 (D.C. Cir. 2014) (“FOIA’s strong presumption in favor of disclosure is at its zenith in this Exemption 6 analysis.”). Thus, “unless the invasion of privacy is ‘clearly unwarranted,’ the public interest in disclosure must prevail.” *U.S. Dep’t of State v. Ray*, 502 U.S. 164, 177 (1991) (quoting 5 U.S.C. § 552(b)(6)).

In its response, SBA states simply that it is withholding the DFWCs pursuant to and recites a general description of what types of information Exemption 6 covers. SBA does not even attempt to explain why it believes releasing the requested information would implicate a more-than-*de-minimis* privacy concern, let alone consider whether the public interest in releasing the information outweighs those privacy interests. “Without a more particularized assertion of the affected individuals’ expectations of privacy,” SBA must release this information. *See Landmark Legal Found. v. IRS*, 87 F.Supp.2d 21, 28 (D.D.C. 2000).

The privacy interest in the name and title information on DFWCs is, at most, *de minimis*. *Tokar v. U.S. Dep’t of Justice* is instructive here. 304 F. Supp. 3d 81 (D.C. Cir. 2018). In *Tokar*, the court found that attorneys who responded on behalf of their clients, who were being considered for corporate compliance monitor roles, did not have a more-than-*de-minimis* privacy interest, because they were “advised that the information provided by the submitter under 28 C.F.R. § 16.8(f) may itself be subject to disclosure under the FOIA.” *Id.* at 102. Here, and as noted *supra*, SBA advised applicants

[t]he SBA will exclude any personally identifiable information (such as a Social Security Number) or confidential business information about the entity (such as financial data) from disclosure under the Freedom of Information Act, though such information may be shared with SBA’s Office of Inspector General, the Government Accountability Office, the Pandemic Response Accountability Committee, and/or members of Congress in response to a proper and official request.

FAQ, *supra*, at 16. As the DOJ advised the lawyers in *Tokar* that information submitted might be subject to disclosure under FOIA, so did SBA advise the SVOG applicants here. To wit, the assertion that SBA would exclude information like Social Security Numbers and confidential business information from FOIA disclosures implies that other information *is* subject to disclosure. This is confirmed on the SBA website, where, as noted *supra*, the SBA makes no representations about withholding information on “accepted” applications. “SBA information,” *supra*. Indeed, the SBA explicitly represents that it general releases the “[n]ames of officers, directors, stockholders, or partners of recipient firms.” *Id.*

Even if the signatories to the DFWCs do have more than a *de minimis* privacy interest, the public interest in disclosure outweighs this interest. Drug use is rampant in the music industry, and it is public knowledge that at least one officer, director, or owner of many of the companies above is well-known for smoking marijuana or participating in other drug use. If companies and their

officers, directors, and/or owners are making false representations to the federal government in order to obtain taxpayer money, the public deserves to know this information.

III. Conclusion

In sum, SBA's justification for withholding responsive documents is inadequate, and it is in violation of its obligations under FOIA. Insider submits this administrative appeal and requests a reply within twenty (20) business days to this appeal and the underlying request.

If you have questions regarding this appeal, please contact me at _____ or email me at bbettwy@insider-inc.com. I look forward to your determination with respect to this appeal within twenty business days. *See* 5 U.S.C. § 552(a)(6)(A)(ii).

Regards,

Bix Bettwy
Senior Corporate Counsel
Insider, Inc.

CC: Maryanne Stanganelli, Associate General Counsel, mstanganelli@insider.com
Jack Newsham, Senior Reporter, jnewsham@insider.com
Katherine Long, Correspondent, klong@insider.com

Alan E. Escobar, FOIA Public Liaison, SBA, Alan.Escobar@sba.gov

EXHIBIT A



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, DC 20416

OFFICE OF DISASTER ASSISTANCE

August 17, 2023

Jack Newsham
Insider Inc.
One Liberty Plaza, 8th Floor
New York, NY 10006.

jnewsham@insider.com

Re: FOIA Request – SBA-2023-003577

Dear Mr. Newsham,

This letter is in response to your Freedom of Information Act (“FOIA”) request No. SBA-2023-003577.

Your request states the following:

“For each of the following recipients of SVOG grants:

Posty Touring Inc	Nickelback Touring 2, Inc.	Slarie Music US Inc.
Knotfest LLC	PAY DJ MUSTARD MUSIC INC	Ella Mai Music, Inc.
GHETTO YOUTHS TOURS INC	GUILE GRIEVER TOURING, INC.	EPICFAIL INC
DUBFIRE TOURING, INC.	Velvet Hammer Music, Inc.	RACON TOURING, LLC
Don't Mean Nothing Tours, Inc	Phunky Feel LLC	HIGH END TOURING LLC
MEDICINE TRIBE TOURING, INC.	Want Some More Touring LLC	AIC ENTERTAINMENT
APPLE ORCHARD TOURING INC	BEAST MODE TOURING INC.	GODSMACK TOURING INC.
HABITRAIL TOURING, INC	SYSTEM SUMMER CAMP, LLC	SREMM TOURING, INC
Shroud of Tour, Inc	TOURING IS MOST FUNNEST, INC.	LA MONARCA ENTERTAINMENT, INC
LET'S GET NICE LIMITED INC	Destroyers Inc	The Smashing Pumpkins Machine Inc
CRIME DON'T PAY, INC.	STOOPID TOURING, INC.	YOUNG MONEY TOURING INC
JAUZ TOURING, INC	THINK COMMON TOURING INC	Knot Touring LLC
Migo Management, LLC	Genevieve Productions, Inc	THE SHALIZI GROUP, INC.
MJP LIVE, INC	Monotone Inc	DJ Kid Millionaire Touring, Inc.
ORRO TOURING, INC	NAVFIVE LIVE, INC	365 TOURING INTERNATIONAL, INC
SAMMY LOVES HOT CHEETOS TOURING LLC	LOUIS THE CHILD LLC	CBE TOURING, LLC
Maydew Golenberg LLC	Beggars Bush Inc.	Apex Event Management, LLC
PRODIGY TOURING CORP	Ridge Road, Inc.	

Please provide the following records submitted as part of their SVOG applications:

- Signed Certification of Need
- Signed Drug-Free Workplace Certification

We understand and believe that these records are certifications of compliance with the law, based largely or wholly on templates created by SBA, and could not possibly contain proprietary or confidential information.”

All publicly available information regarding the Shuttered Venue Operators Grantees can be found at the following link: [Shuttered Venue Operators Grantees - Dataset - U.S. Small Business Administration \(SBA\) | Open Data](#). The Small Business Administration does not release applications, attachments to the application, or additional documents submitted in support of an application to anyone other than the business itself as that information is protected from disclosure by FOIA Exemption 4.

Exemption 4 (5 U.S.C. 552(b)(4)) protects "trade secrets and commercial or financial information obtained from a person and privileged or confidential. " This exemption is intended to protect the interests of both the government and submitters of information. Information included in a business' application is proprietary and confidential. Pursuant to FOIA Exemption 4, the Small Business Administration is withholding in full the Signed Certification of Need.

Also pursuant to Exemption 4 and pursuant to Exemption 6, the Small Business Administration is withholding in full the Signed Drug-Free Workplace Certification. Exemption 6 (5 U.S.C. 552(b)(6)) protects information for which the disclosure would constitute "a clearly unwarranted invasion" of individual privacy and might adversely affect the individual or his/her family.”

If you are dissatisfied with the Agency's decision, you may file an administrative appeal within 90 days of the date of this letter to:

Office of Hearings and Appeals
Attention: Oreoluwa Fashola, FOIA Officer
409 3rd Avenue, SW – 8th Floor
Washington, DC 20416

If you are unable to resolve your FOIA dispute through our FOIA Public Liaison in the Office of Hearings and Appeals, the Office of Government Information Services (“OGIS”), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies.

The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road--OGIS
College Park, MD 20740-6001
ogis@nara.gov
ogis.archives.gov
202-741-5770
877-684-6448

Sincerely,

ALAN ESCOBAR  Digitally signed by ALAN ESCOBAR
Date: 2023.08.17 15:16:56 -04'00'

Alan E. Escobar
FOIA Public Liaison
Office of Disaster Recovery & Resilience
U.S. Small Business Administration

EXHIBIT B

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

The grantee certifies that it will provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing a drug-free awareness program to inform employees about—
 - (1) The dangers of drug abuse in the workplace;
 - (2) The grantee's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation and employee assistance programs, and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after each conviction;
- (e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;
- (f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—
 - (1) Taking appropriate personnel action against such an employee, up to and including termination; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

Typed Name and Title of Certification Official

Signature

Date

Appeal of Decision / FOIA Request SBA-2023-003577

Bi Bettwy bbettwy@insider.com

Fri, Sep 22, 2023 at 5:00 PM

To: oreoluwa.fashola@sba.gov

Cc: alan.escobar@sba.gov, Jack Newsham <jnewsham@insider.com>, Katherine Long <klong@insider.com>, Maryanne Stanganelli <mstanganelli@insider.com>, foia@sba.gov

Mr. Fashola,

I am following up on Insider's appeal, submitted on August 24, 2023, and related to FOIA Request SBA-2023-003577 (reattached hereto, with exhibits, for convenience). Pursuant to 5 U.S.C. § 552(a)(6)(A)(ii), we were due a response by today. Additionally, the response to our appeal of FOIA Request SBA-2023-003111, submitted July 25, 2023 (reattached hereto for convenience), was due by August 23, 2023 and is now 21 business days overdue. **Pleas e confirm your intent to respond to our appeals by Wednesday, September 27 at 5pm EDT.** We would prefer to resolve these matters without resorting to litigation. Nonetheless, Insider reserves all rights, remedies, claims, and defenses. Thank you for your prompt attention to this matter.

bi

Bix Bettwy

Senior Corporate Counsel

INSIDER

Business - Life - News

W: 646-768-4709

One Liberty Plaza, 8th FL, New York, NY 10006

[Quoted text hidden]

4 attachments

 **EXHIBIT B - Drugfree_workplace_certification.pdf**
9K

 **EXHIBIT A - FOIA Response - Signed copy.pdf**
220K

 **2023.08.23 FOIA appeal SBA.pdf**
218K

 **2023.07.25 FOIA appeal SBA.pdf**
693K

Exhibit H

Automatic reply: Appeal of Decision / FOIA Request SBA-2023-003577

Fa hola, Oreoluwa O Oreoluwa Fa hola@ ba gov
To: Bix Bettwy <bbettwy@insider.com>

Fri, Sep 22, 2023 at 5 03 PM

I am out of the office this week. For immediate assistance please email foia@sba.gov.

Thank you,

Exhibit I

Insider Inc.

One Liberty Plaza, 8th Floor • New York, NY 10006

September 25, 2023

Office of Hearings and Appeals
ATTN: Oreoluwa Fashola, FOIA Officer
409 3rd Avenue, SW – 8th Floor
Washington, DC 20416

VIA FEDEX

Re: Administrative Appeals of FOIA Requests SBA-2023-003111 & SBA-2023-003577

Dear Mr. Fashola:

I represent Insider, Inc. (“Insider”) and am writing to follow up on two administrative appeals: the first originally submitted on July 25, 2023 and related to FOIA request SBA-2023-003111, and the second originally submitted on August 23, 2023 and related to FOIA request SBA-2023-003577. Both were submitted by email to Oreoluwa.Fashola@sba.gov.

Having not received a response to either appeal, I am concerned that you may not have received them. I am, therefore, resubmitting the appeals by mail. Please find both attached, with exhibits.

I would appreciate if you could confirm receipt of this letter and render your determinations via email to bbettwy@insider.com. If you have questions or require additional information, please let me know, and I look forward to your determination with respect to these appeals as soon as possible.

Regards,

Bix Bettwy
Senior Corporate Counsel
Insider, Inc.

Exhibit J

Appeal of Decision / FOIA Request SBA-2023-003577

Bi Bettwy bbettwy@insider.com

Tue, Sep 26, 2023 at 12:48 PM

To: oreoluwa.fashola@sba.gov

Cc: alan.escobar@sba.gov, Jack Newsham <jnewsham@insider.com>, Katherine Long <klong@insider.com>, Maryanne Stanganelli <mstanganelli@insider.com>, foia@sba.gov

Mr. Fa hola,

Please note that yesterday I mailed paper copies of these two appeals to you at the following address:

Office of Hearings and Appeals
Attention: Oreoluwa Fa hola, FOIA Officer
409 3rd Avenue, SW – 8th Floor
Washington, DC 20416

While the SBA's response letter did not specify that appeal must be submitted by mail, I am doing so as a courtesy in the event that this email correspondence has not reached you. The paper copies should be delivered by EOD Thursday, September 28; I would appreciate a confirmation when you have received them and an estimated date, not later than Friday, October 27, to expect responses to both appeals. Thanks for your attention to this matter.

Regards,
Bix

Bix Bettwy

Senior Corporate Counsel

INSIDER

Business - Life - News

W: 646-768-4709

One Liberty Plaza, 8th FL, New York, NY 10006

[Quoted text hidden]

Exhibit K

Appeal of Decision / FOIA Request SBA-2023-003577

Bi Bettwy bbettwy@insider.com

Fri, Oct 27, 2023 at 6:06 PM

To: oreoluwa.fashola@sba.gov

Cc: alan.escobar@sba.gov, Jack Newsham <jnewsham@insider.com>, Katherine Long <klong@insider.com>, Maryanne Stanganelli <mstanganelli@insider.com>, foia@sba.gov

Mr. Fa hola

I understand that the paper copy of Insider's appeals and their respective exhibits was delivered to your office on September 28, 2023.

It has now been 66 days since I first emailed you Insider's appeal of Request No. SBA-2023-003111 on July 25 and 45 days since I first emailed you Insider's appeal of Request No. SBA-2023-003577 on August 23, not counting Saturdays, Sundays, or public holidays. We are well past the 20 days required by statute, *see* 5 U.S.C. § 552(a)(6)(A)(ii). In that time, I have followed up numerous times, including by sending paper copies of the appeal to your office. Although I know this email address is correct, as I have received away messages from you on two occasions, I have included Mr. Alan Escobar's email as well as the SBA's general FOIA email alias. Yet, in that time, I have received no response from you or anybody at SBA to even confirm that these appeals have been received, aside from the aforementioned away messages. If you expect to be able to render a decision with respect to the appeal in the next week, please advise. Otherwise, we are prepared to file suit.

Regards,

Bix Bettwy

Senior Corporate Counsel

INSIDER

Business - Life - News

W: 646-768-4709

One Liberty Plaza, 8th FL, New York, NY 10006

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Exhibit L