

EXHIBIT 4

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June 12, 2015

Chief, Freedom of Information/Privacy Acts Office
Small Business Administration
409 3rd Street, S.W.,
8th Floor
Washington, DC 20416

Dear Chief:

On May 15, 2015, I received a letter from Christopher Clarke, Attorney Advisor, Small Business Administration, Washington D.C. in response to my October 17, 2014 Freedom of Information Act ("FOIA") request on behalf of my client, MicroTech LLC. The request was assigned the number SBA-2015-000140 on December 2, 2014. I write to appeal, under the FOIA, §552(a)(6), the SBA response to MicroTech's request as inadequate and incomplete.

Our December 2, 2014 request, asked for the following:

1. All SBA "intra-agency e-mails and other records of communication between January 1, 2013 to December 31, 2013, regarding MicroTech, LLC (including MicroTech), MicroTechnologies, LLC, or Anthony Jimenez (including Tony Jimenez, MicroTech's founder and CEO) between Christopher R. Clarke, Esq. of the SBA's Office of General Counsel and any SBA employee or appointee, including but not limited to Darryl K. Hairston and Jonathan L. Swain."
2. "All SBA intra-agency e-mails and other records of communication between January 1, 2013 to December 31, 2013, regarding MicroTech, LLC, MicroTechnologies, LLC or Anthony Jimenez between John W. Klein, SBA's Associate General Counsel for Procurement Law, and any SBA employee or appointee, including but not limited to Darryl K. Hairston and Jonathan L. Swain."
3. "All e-mails and other records of communication between January 1, 2013 to December 31, 2013, regarding MicroTech, LLC, MicroTechnologies, LLC or Anthony Jimenez by and between Christopher R. Clarke and Matthew T. McGuire, U.S."

Department of Commerce Director of the Office of Business Liaison or any other U.S. Department of Commerce employee or appointee.”

4. “All e-mails and other records of communications between January 1, 2013 to December 31, 2013, regarding MicroTech, LLC, MicroTechnologies, LLC or Anthony Jimenez by and between John W. Klein and Matthew T. McGuire, U.S. Department of Commerce Director of the Office of Business Liaison or any other U.S. Department of Commerce employee or appointee.”

I would first like to note for the record that under SBA’s FOIA regulations found within 13 C.F.R. part 102, the SBA should have responded to our October 17, 2014 request within 20 working days. See 13 C.F.R. § 102.5. This deadline was very clearly breached by approximately 7 months.

In his response letter, Mr. Clarke stated that SBA determined that it has no records responsive to requests three and four. Further, Mr. Clarke stated that there were 692 records responsive to requests one and two, but that 440 documents were withheld pursuant to Exemption 5 to protect the deliberative process by encouraging a frank exchange of views and because these documents “contain drafts, attorney work product and attorney client material.” Moreover, Mr. Clarke stated that a list of the documents SBA deemed responsive and that are not being withheld will be attached as Exhibit A to SBA’s final disclosure and a list of the documents withheld to Exemption 5 will be attached as Exhibit B. Neither of these exhibits was attached to SBA’s final disclosure, which was received electronically on June 4, 2015. Mr. Clarke also stated that one document was withheld pursuant to Exemption 7, and provided no further explanation.

Based on the information provided in SBA’s response document, there is insufficient information to determine the adequacy of SBA’s response with regard to the withheld documents. Several pages of e-mail inbox screenshots with fragmented names and subject lines provide no useful indication of what material was withheld.

Through this appeal, I request the following:

1. Copies of Exhibits A and B that should have been attached to SBA’s response document.
2. A complete list of documents covered by the request and a specific indication of what material is being withheld (i.e. number of pages withheld) and an explanation, beyond citing a specific exemption, of why SBA has withheld each requested record. See 13 C.F.R. § 102.5(b); *Mayock v. INS*, 714 F.Supp. 1558, 1567 (N.D. Cal. 1989) (suggesting that agency regulations then in effect required “more information than just the number of pages withheld and an unexplained citation to the exemptions”)(emphasis added), rev’d & remanded on other grounds sub nom; see also *Astley v. Lawson*, No. 89-2806, 1991 WL 7162, at *2 (D.D.C. Jan. 11, 1991) (suggesting that agency “might have been more helpful” to requester by “explaining why the information he sought would not be provided”).

3. The release of "any reasonably segregable portion" of the withheld records, as required by law. See 5 U.S.C. § 552(b); Attorney General Holder's FOIA Guidelines, at 1, available at <http://www.usdoj.gov/ag/foia-memo-march2009.pdf>.

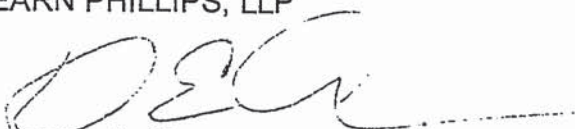
Pursuant to 13 C.F.R. § 102.5, a reply is expected within the 20 working-day time limit. I hope to resolve the abovementioned concerns at the agency level, but should this appeal be denied in whole or in part, I request information on seeking judicial review.

Should you have any further questions or desire to discuss the appeal, I can be reached at (540) 371-9890.

Very truly yours,

AHEARN PHILLIPS, LLP

By


Dennis Ahearn