

EXHIBIT 5



Main Office - Palm Desert
36-915 Cook Street, Ste. 101
Palm Desert, CA 92211
Telephone: (760)341-8837
Fax: (760)341-3022

Yucca Valley Office
7355 Church Street, Ste. A
Yucca Valley, CA 92284
Telephone: (760)369-9565
Fax: (760)369-7343
www.dshapc.com

February 17, 2017

SENT VIA EMAIL ONLY

Amanda M. Jones
Acting Chief, FOIA/PA Unit
Suite 1127
Keeney Building, NW
Washington, DC 20530-0001
crm.foia@usdoj.gov

Re: Freedom of Information Act Request No's CRM-300575342 and CRM-300575344

Dear Ms. Jones:

As you are aware, I submitted my two FOIA requests ("Requests"), assigned Request No.'s CRM-300575342 and CRM-300575344, on December 22, 2016. On January 5, 2017, you advised me by letter and email that you were "extending the time limit to respond to (my) request(s) an additional ten days as provided by the statute" due to "unusual circumstances." No explanation has been given as to the "unusual circumstances" to date. The thirty (30) business days prescribed by the Freedom of Information Act ("The Act") has come and gone and I have still received no response to my telephone inquiries, discussed in my email to you dated February 9, 2017 (attached hereto as Exhibit 1) or to my email.

I respectfully request that you confirm that you have received my email of February 9, 2017. Further, I would like to know when we will receive a response both to my email and to The Requests.

Though we would like to resolve this matter without the need to bring litigation, it looks as though litigation regarding The Requests may be imminent with absolutely no response or effort on your office's behalf to resolve or even discuss the delay in meeting the statutory deadlines of The Act and the reasons for same.

Therefore, we also send this letter as a formal request to preserve all evidence, including, but not limited to communications, internal memos, electronic discovery, and all documents related to The Requests, whether your office believes that they may be excluded or not, in response to The Requests under The Act as we plan to seek the opinion of a Federal Judge if The Requests are not complied with properly.

Again, I would like to avoid the need for court intervention and I look forward to hearing from you at your earliest convenience.

Sincerely,
DOLING SHAW & HANOVER
A PROFESSIONAL CORPORATION

/s/ Summer M Shaw

Summer M. Shaw, Esq.

SMS/x

Summer Shaw

From: Summer Shaw
Sent: February 09 17 4:39 PM
To: 'CRM FOIA'
Cc: Jenny Doling
Subject: RE: FOIA/PA Request Acknowledgement - CRM-300575342 & CRM-300575344 Shaw, Summer M.

Dear FOIA/PA Unit, Criminal Division, U.S. Department of Justice:

This email shall confirm that to date, I have not received a response to the above referenced FOIA requests (2) (CRM numbers 300575342 & 300575344). It has been well over the 30 business days allowed under FOIA. On or about February 5th, 2017, I called and left a message following up on the status of our FOIA requests and my call was returned by Allison, who informed me that it would likely be three weeks before I heard anything further. She gave me no explanation why I had not received a response from your office or why it would take an additional three weeks other than to say that the requests were still being processed. I then asked if I could speak with whomever was in charge of the requests and she informed me that I should speak with Natasha and gave me her number (202-616-5013). I called Natasha and left a message.

Natasha returned my call on February 6th, 2017 and informed me that it would not likely take three weeks but she could not say for certain; later in the conversation however, she stated that we may not receive a response for up to "200 business days." Nowhere in the FOIA does it allow for an agency to take longer than the 20 plus 10 business days to respond without any notice to the requester. I explained that if we were going to be waiting any additional time, I wanted to know why and be sure that your office would actually be searching the information I requested this time, which included Lanny Breuer's personal email accounts that he used/maintained during the time period referenced in my FOIA requests/when he was an employee of the DOJ. Natasha could not confirm that that search would be done/was being done and went so far as to assure me that Mr. Breuer was "good" at keeping his emails on his work issued account. When I asked her how she knew this she could not give me an explanation and when asked if she had searched his personal email account in the past she did not/could not confirm that she had ever done such a search. How would your office know that no responsive emails were NOT on Mr. Breuer's personal email account(s) if they are/were not searched? Why would searching this information be a problem or create any delay in providing us a response in the statutory amount of time allowed? Natasha then advised me that if I could give her a non-DOJ-issued-email-account that that would help your office in their search. I explained to Natasha that I did not believe that it was our job to determine what non-DOJ email accounts Mr. Breuer operated during the time in question/while working for the DOJ, nor was it necessary for me to name one in order for your office to comply with my request. Mr. Breuer was an employee of the DOJ/US Government (one of the highest officials in the agency during the time in question) and it is incumbent upon your office to search all of his personal email accounts during the time period in question to comply with our requests.

Again, we do not believe it is our job to name and determine what personal accounts of Mr. Breuer's, your office should search, as our request is clear- "any and all of Lanny Breuer's email accounts." With that said, it is possible that he may have used a cov.com email account during the time period in question and presently that email account appears to be: lbreuer@cov.com. However, providing this information should NOT limit your search to anything other than what we have requested, "any and **ALL** of Lanny Breuer's email accounts..." including "**any** personal email accounts used/maintained by Mr. Breuer during the time period referenced."

Additionally, I would like to remind your office that there is now clear case law from the US Court of Appeals for the DC Circuit that holds that "an agency always acts through its employees and officials. If one of them possesses what would otherwise be agency records, the records do not lose their agency character just because the official who possesses them takes them out the door or because he is the head of the agency" and therefore, "an agency cannot shield its

records from search or disclosure under FOIA by the expedient of storing them in a private email account controlled by the agency head." (See *Competitive Enterprises Institute v OSTP*, US Court of Appeals for the DC Cir, No 15-5128).

Therefore, to avoid having to initiate litigation regarding this matter, we respectfully request that you comply fully with the FOIA requests you acknowledge having received on December 22, 2016 from our office, and also formerly advise us of the status of those FOIA requests as of today's date. Thank you for your immediate attention to this matter.

Best regards,

Summer Shaw



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Yucca Valley Office

7355 Church Street, Suite A
Yucca Valley, California 92284
(760)369-9565 - Phone
(760)369-7343 - Fax

www.dshapc.com

From: CRM FOIA [mailto:CRM.FOIA@usdoj.gov]

Sent: January 05 17 1:47 PM

To: Summer Shaw <ss@dshapc.com>

Subject: FOIA/PA Request Acknowledgement - CRM-300575342 & CRM-300575344 Shaw, Summer M.

Dear Ms. Shaw:

Please see the attached, which acknowledges receipt of your Freedom of Information Act and/or Privacy Act request. If you have any questions, please contact the FOIA/PA Unit at 202-616-0307 for further assistance.

**Please Note: There are two requests attached.

Thank you,

FOIA/PA Unit
Criminal Division
U.S. Department of Justice