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FOIA APPEAL

May 1, 2018

Via U.S. and Electronic Mail

Deputy Agency Chief FOIA Officer
Office of the Assistant Secretary for Public Affairs (ASPA)
Department of Health and Human Services (HHS)
Hubert H. Humphrey Building
200 Independence Avenue, Suite 729H
Washington, D.C. 20201
Phone: (202) 260-0793
michael.bell@hhs.gov

RE: FOIA Appeals: 2018-00179-FOIA, 2018-00180-FOIA, 2018-00267-FOIA

Dear Sir or Ma'am:

On November 20, 2017, Graves Garrett LLC ("Graves Garrett" or "the Firm") requested that HHS produce certain correspondence to and from Henry Falk, Gregory Wagner, Richard Niemeier, James Melius, and Henry Anderson. HHS received these requests the same day and assigned them the tracking numbers 2018-00179-FOIA-OS (Falk), 2018-00180-FOIA-OS (Wagner and Niemeier), and 2018-00267-FOIA-OS (Melius and Anderson).

On February 2, 2018, HHS produced 69 pages of documents in response to FOIA 179, redacting some information on 13 pages. On February 20, 2018, HHS produced 656 pages of documents in response to FOIA 180, redacting some information on 9 pages. On February 20, 2018, HHS produced 359 pages of documents in response to FOIA 267, redacting some information on 9 pages. HHS justified all its redactions with reference to 5 U.S.C. § 552(b)(6).



Graves Garrett appeals HHS's decision to redact this information. Exemption 6 permits an agency to withhold information about individuals in "personnel and medical files and similar files" when the disclosure of the information "would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). From our review of the partially redacted documents, it appears the agency has redacted some, but not all, email addresses and signature blocks from the correspondence. Graves Garrett asserts that the agency's pattern of redaction is arbitrary, that any threat of harm to a privacy interest is speculative and de minimis, and that the redacted information should be produced.

Graves Garrett also asserts that the search was inadequate. In its February 20, 2018 letter responding to FOIA 180, the agency stated that a search revealed no responsive correspondence to or from Richard Niemeier. The agency produced documents in response to FOIA 179 that establish that it does retain responsive correspondence to or from Richard Niemeier. For example, pages 41 and 47 of the FOIA 179 production include emails that the agency did not locate in its FOIA 180 search. This inconsistency establishes that the agency's search for responsive correspondence to and from Richard Niemeier was inadequate, and Graves Garrett appeals the search on those grounds.

Lastly, Graves Garrett requested text and instant message correspondence. The agency produced no text or instant correspondence, yet did not assert that no responsive correspondence exists. Graves Garrett appeals the agency's failure to search for and produce responsive text and instant messages.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'B. Hurst', is written over a light blue horizontal line.

Ben Hurst
Graves Garrett LLC