



Office of Administrative Services
FOIA Requester Service Center

September 4, 2019

Mr. Ronald C. Martin
RCM Solutions
4801 Tesla Drive, Suite C
Bowie, MD 20715

Dear Mr. Martin:

This letter is in response to your U.S. General Services Administration (GSA) Freedom of Information Act (FOIA) appeal (No. GSA-2019-001460) received on August 6, 2019. Previously, on July 3, 2019, you submitted a FOIA request (No. GSA-2019-001311) for the following: 1) The Internet Protocol (IP) Address used to access beta.sam.gov and submit feedback purporting to be from RCM Solutions owner and employee(s) and; 2) All information gathered by or created by GSA pertaining to the comments submitted on beta.sam.gov, addressed in No. 1.

On July 17, 2019, GSA responded to your FOIA request with the following:

"In processing your request we withheld the Internet Protocol (IP) Address in its entirety pursuant to the FOIA, 5 U.S.C. § 552(b)(6); as this information would constitute a clearly unwarranted invasion of personal privacy.

Additionally, the comments to the beta.sam.gov were part of the agency's deliberative process with respect to forming a solicitation and are exempt from release, per the FOIA, 5 U.S.C. § 552(b)(5)."

On August 6, 2019, you appealed the full denial response and stated the following:

- 1) GSA is incorrect in stating that the release of the Internet Protocol Address would constitute a "clearly unwarranted invasion of personal privacy," under 5 U.S.C. § 552(b)(6). An IP address belonging to someone who has perpetrated a fraud using beta.sam.gov (and who has probably acted criminally) does not have any privacy expectation and;
- 2) GSA is incorrect in relying on 5 U.S.C. § 552(b)(5), the deliberative process privilege, in not releasing "all information gathered by or created by GSA pertaining to the comments submitted on beta.sam.gov." The deliberative process privilege only applies to intra-agency communications, not communications with outside persons. The fraudulent comments and GSA's follow-up regarding these comments were not made by GSA employees in the normal give and take of PRE-policy matters.

U.S. General Services Administration
1800 F. Street, NW, Room: 7300
Washington, DC 20405
Toll Free: 1-855-675-FOIA
Fax: (202) 501-2727

After careful review of the arguments raised in your appeal, GSA is affirming its decision in part, and reversing its decision in part for the following reasons:

1. GSA is affirming its original decision to withhold the Internet Protocol Address used to access beta.sam.gov and submit feedback purporting to be from RCM Solutions owner and employee(s). Exemption 6 allows an agency to withhold information if it is contained in "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, per the FOIA, 5 U.S.C. § 552(b)(6). In *U.S. Department of State v. Washington Post Co.*, 456 U.S. 595 (1982), the Supreme Court clarified that all information that "applies to a particular individual" is protected under Exemption 6. Additionally, in *Carter, Fullerton & Hayes LLC v. Federal Trade Commission*, 520 F. Supp. 2d 134, 144-45 (D.D.C. 2007), the court found that the privacy interests of an individual's name, address and telephone number clearly outweigh the public interest. In our case, we are withholding an Internet Protocol Address, which "applies to a particular individual" and their physical location. Also, the disclosure of this information would shed little or no light on the performance of the agency's statutory duties. However, per your written request, GSA has deleted the feedback purporting to be from RCM Solutions owner and employee(s) on the beta.sam.gov website.
2. GSA is reversing its original decision to withhold in full the information gathered or created by GSA pertaining to the comments submitted on beta.sam.gov under FOIA request number GSA-2019-001311.

Enclosed please find documents responsive to part 2.

In processing your request, GSA withheld information that is pre-decisional, deliberative and protected under the attorney-client privilege, pursuant to the FOIA, 5 U.S.C. § 552(b)(5). Exemption 5 allows an agency to withhold "inter-agency or intra-agency memorandums or letters, which would not be available by law to a party...in litigation with agency."

The deliberative process privilege protects the decision-making process of government agencies and encourages the frank exchange of ideas on legal or policy matters by ensuring agencies are not forced to operate in a fish bowl. The materials that have been withheld under the deliberative process privilege of Exemption 5 are both pre-decisional and deliberative. They do not contain or represent formal or informal agency policies or decisions. They are the result of frank and open discussions among employees of GSA.

The attorney-client privilege protects confidential communications between an attorney and their client relating to a legal matter for which the client has sought professional advice and is not limited to the context of litigation. Moreover, this privilege also encompasses any opinions given by an attorney to their client based upon those facts. The information that has been withheld under the attorney-client privilege of Exemption 5 constitutes confidential communications between GSA attorneys and agency clients related to legal matters for which the client sought professional legal assistance and services.

Additionally, GSA has withheld the names of individuals pursuant to the FOIA 5 U.S.C. § 552(b)(6). This was done because public disclosure of this information would constitute a clearly unwarranted invasion of personal privacy. Furthermore, we have determined that the disclosure of this information would shed little or no light on the performance of the agency's statutory duties.

This letter constitutes GSA's final determination regarding this matter. You have the right to seek judicial review of this determination in the United States District Court in the District in which you reside, have your principal place of business, or in the District of Columbia, or where the records are located.

As an alternative to litigation, the Office of Government Information Services (OGIS) has been created under the 2007 FOIA amendments. OGIS was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a nonexclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS by mail at the Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road, Room 2501, College Park, MD 20740, via email at ogis@nara.gov or by phone at (877) 684-6448.

Sincerely,



Bob Stafford
Chief FOIA Officer



Naisha Johnson - LG <naisha.johnson@gsa.gov>

Re: FOIA Assignment for GSA-2019-001311

8 messages

DeLee Ann Yaukey - H3A <delee.yaukey@gsa.gov>
To: Naisha Johnson - LG <naisha.johnson@gsa.gov>
Cc: Priscilla Owens - QD0C <priscilla.owens@gsa.gov>

Wed, Jul 10, 2019 at 7:23 AM

Naisha,

[Redacted]

[Redacted]

Respectfully,



U.S. General Services Administration

DeLee Ann Yaukey
Government Information Specialist
FOIA Requester Service Center
Office of Accountability and Transparency
Office of Administrative Services
571-481-8586

On Tue, Jul 9, 2019 at 3:31 PM Priscilla Owens - QD2CA <priscilla.owens@gsa.gov> wrote:

Hi DeLee,

Based on the email reply Matt received from Kimberly [Redacted] However [Redacted]

Thank you,

--

Priscilla Owens
Management and Program Analyst
Outreach & Stakeholder Engagement
GSA, Federal Acquisition Service
1800 F Street, NW, Washington, DC 20405
Phone: 703-605-3408
Email: priscilla.owens@gsa.gov

On Tue, Jul 9, 2019 at 3:19 PM DeLee Ann Yaukey - H3A <delee.yaukey@gsa.gov> wrote:

Priscilla,

[Redacted]

Please advise and thank you for everything you do.

Respectfully,



U.S. General Services Administration

DeLee Ann Yaukey
Government Information Specialist
FOIA Requester Service Center
Office of Accountability and Transparency
Office of Administrative Services
571-481-8586

On Tue, Jul 9, 2019 at 2:52 PM Priscilla Owens - QD2CA <priscilla.owens@gsa.gov> wrote:

Good afternoon, DeLee.

The subject FOIA was assigned to QD on Friday, July 5, 2019. On Monday, July 8, 2019, I forwarded the incoming request and supporting documents to Matthew McGuire, the SME for this request. Matthew replied the same day and also shared an email response that he received from Kimberly Veach - H3A stating,

[Redacted] *I will update Travis Lewis [Redacted] Your prompt attention to this matter is greatly appreciated.*

Please advise [Redacted]

Thank you,

--

Priscilla Owens
Management and Program Analyst
Outreach & Stakeholder Engagement
GSA, Federal Acquisition Service
1800 F Street, NW, Washington, DC 20405
Phone: 703-605-3408

Email: priscilla.owens@gsa.gov

----- Forwarded message -----

From: <admin@foiaonline.gov>
Date: Fri, Jul 5, 2019 at 12:00 PM
Subject: FOIA Assignment for GSA-2019-001311
To: <priscilla.owens@gsa.gov>

You have been assigned to the FOIA task - GSA-2019-001311. Additional details for this item are as follows:

- Tracking Number: GSA-2019-001311
- Task Type: Initial Review
- Requester: Mr. Ronald C. Martin
- Submitted Date: 07/05/2019
- Due Date: 08/02/2019
- Description: I am submitting a request for the following information: 1) The Internet Protocol (IP) Address used to access beta.sam.gov and submit feedback purporting to be from RCM Solutions owner and employee(s). The The feedback/comments were brought to the undersigned's attention on May 23, 2019 by Sonya Pearrell, a GSA employee. To assist with the location of the requested information, I have enclosed correspondence I sent to GSA on June 21, 2019, which identifies persons who will have the requested information. At a minimum, the people with the information include, Matthew R. McGuire, Director, Office of the Assistant CIO Acquisition IT; Vicky Niblett, Deputy Assistant Commissioner, Integrated Award Environment and Sonya Pearrell. 2) All information gathered by or created by GSA pertaining to the comments submitted on beta.sam.gov, addressed in No. 1, above.
- Task Description: Please review this incoming FOIA and advise if QD has responsive records.



U.S. General Services Administration

DeLee Ann Yaukey
Government Information Specialist
FOIA Requester Service Center
Office of Accountability and Transparency
Office of Administrative Services
571-481-8586



U.S. General Services Administration

DeLee Ann Yaukey
Government Information Specialist
FOIA Requester Service Center
Office of Accountability and Transparency
Office of Administrative Services
571-481-8586

Naisha Johnson - LG <naisha.johnson@gsa.gov>
To: DeLee Ann Yaukey - H3A <delee.yaukey@gsa.gov>
Cc: Priscilla Owens - QDOC <priscilla.owens@gsa.gov>

Wed, Jul 10, 2019 at 7:32 AM

Good morning, DeLee:

Thank you,

Naisha
[Quoted text hidden]

Naisha J. Johnson
Assistant General Counsel
U.S. General Services Administration
Office of General Counsel
(202) 969-7187

DeLee Ann Yaukey - H3A <delee.yaukey@gsa.gov>
To: Naisha Johnson - LG <naisha.johnson@gsa.gov>
Cc: Priscilla Owens - QDOC <priscilla.owens@gsa.gov>

Naisha,

Please see Duane Smith's guidance dated July 5, 2019:

07/05/2019 11:14 AM

07/05/2019 11:14 AM

Kimberly Veach

Comment

Duane Smith: [Redacted]

[Quoted text hidden]

Naisha Johnson - LG <naisha.johnson@gsa.gov>
To: Duane Smith <duane.smith@gsa.gov>

Wed, Jul 10, 2019 at 7:55 AM

Morning, Duane!

Thank you,

Naisha
[Quoted text hidden]

DeLee Ann Yaukey - H3A <delee.yaukey@gsa.gov>
To: Naisha Johnson - LG <naisha.johnson@gsa.gov>
Cc: Duane Smith <duane.smith@gsa.gov>

Wed, Jul 10, 2019 at 10:28 AM

Naisha:

In the previous message Duane Smith stated that [Redacted]

Respectfully,



U.S. General Services Administration

DeLee Ann Yaukey
Government Information Specialist
FOIA Requester Service Center
Office of Accountability and Transparency
Office of Administrative Services
571-481-8586

[Quoted text hidden]

Naisha Johnson - LG <naisha.johnson@gsa.gov>
To: DeLee Ann Yaukey - H3A <delee.yaukey@gsa.gov>
Cc: Duane Smith <duane.smith@gsa.gov>

Wed, Jul 10, 2019 at 10:50 AM

Hi DeLee,

Naisha
[Quoted text hidden]

DeLee Ann Yaukey - H3A <delee.yaukey@gsa.gov>
To: Naisha Johnson - LG <naisha.johnson@gsa.gov>
Cc: Priscilla Owens - QD0C <priscilla.owens@gsa.gov>

Wed, Jul 10, 2019 at 10:58 AM

Naisha,

Priscilla please confirm that [Redacted]

Respectfully,



U.S. General Services Administration

DeLee Ann Yaukey
Government Information Specialist
FOIA Requester Service Center
Office of Accountability and Transparency
Office of Administrative Services
571-481-8586

[Quoted text hidden]

Priscilla Owens - QD2CA <priscilla.owens@gsa.gov>
To: DeLee Ann Yaukey - H3A <delee.yaukey@gsa.gov>
Cc: Naisha Johnson - LG <naisha.johnson@gsa.gov>

Wed, Jul 10, 2019 at 12:26 PM

Good afternoon, DeLee.

In response to your question [Redacted]

Please let me know if you have further questions or concerns.

Thank you,

Priscilla Owens
Management and Program Analyst
Outreach & Stakeholder Engagement
GSA, Federal Acquisition Service
1800 F Street, NW, Washington, DC 20405
Phone: 703-605-3408
Email: priscilla.owens@gsa.gov

[Quoted text hidden]

 Email - Fwd - [REDACTED] Regarding FOIA GSA-2019-001311.pdf
114K



Fwd: [REDACTED] **Regarding FOIA GSA-2019-001311**

1 message

Matthew R. McGuire <matthew.mcguire@gsa.gov>

Mon, Jul 8, 2019 at 10:22 PM

To: Priscilla Owens - QD2CA <priscilla.owens@gsa.gov>

Cc: Nancy Goode - QSAA <nancy.goode@gsa.gov>, Vicky Niblett - QD1 <vicky.niblett@gsa.gov>

Hi Priscilla,

Please see the email string below from Kimberly Veach and the guidance from OGC pertaining to this FOIA request [REDACTED]
[REDACTED] would you mind confirming?

Thank you,

Matt

Matthew R. McGuire

Director, Office of the Assistant CIO, Acquisition IT

Cell: [REDACTED]

e-mail: matthew.mcguire@gsa.gov

----- Forwarded message -----

From: **Kimberly Veach - H3A** <kimberly.veach@gsa.gov>

Date: Fri, Jul 5, 2019 at 10:55 AM

Subject: [REDACTED] Regarding FOIA GSA-2019-001311

To: Shawnette Harrington-Tillman - IDRGS <shawnette.harrington-tillman@gsa.gov>, Mary Brokenborough - IDRGS <mary.brokenborough@gsa.gov>, Mick Harris - IDRP <michael.harris@gsa.gov>, Stuart Dvorkin - IQSC <stuart.dvorkin@gsa.gov>

Cc: Matthew R. McGuire <matthew.mcguire@gsa.gov>, Jeffrey Allnutt - IQSC <jeffrey.allnutt@gsa.gov>

Good morning,

OGC [REDACTED] I will update Travis Lewis [REDACTED]. Your prompt attention to this matter is greatly appreciated.

Respectfully,



U.S. General Services Administration

Kimberly G. Veach

Government Information Specialist

Freedom of Information Act (FOIA) Requester Service Center

Office of Accountability and Transparency

Office of Administrative Services

(202) 219-1603

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On Fri, Jul 5, 2019 at 10:07 AM Kimberly Veach - H3A <kimberly.veach@gsa.gov> wrote:

Good morning,

I have sent the below request to OGC for review.

RCM is requested the IP address [REDACTED]

It is my understanding that [REDACTED]

I am pending guidance from our OGC. I will keep you posted.

Respectfully,



U.S. General Services Administration

Kimberly G. Veach
Government Information Specialist
Freedom of Information Act (FOIA) Requester Service Center
Office of Accountability and Transparency
Office of Administrative Services
(202) 219-1603

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