

Exhibit 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

NATIONAL ASSOCIATION OF)	
CRIMINAL DEFENSE LAWYERS,)	
)	
)	
Plaintiff,)	
)	
v.)	
)	
EXECUTIVE OFFICE FOR UNITED)	
STATES ATTORNEYS and UNITED)	
STATES DEPARTMENT OF JUSTICE)	
)	
)	
Defendants.)	
)	

Civil Action No. 14-cv-269 (CKK)

DECLARATION OF SUSAN B. GERSON

I, Susan B. Gerson, declare as follows:

1. I am the Assistant Director in the Freedom of Information Act (“FOIA”)/Privacy Act (“PA”) Staff of the Executive Office for United States Attorneys (“EOUSA”). I have held this position since 2011. Prior to that time, I served as an Assistant General Counsel in the EOUSA General Counsel’s Office. I have been employed by the United States Department of Justice (“DOJ”) since 2001.

2. The FOIA/PA Staff is responsible for processing FOIA/PA requests seeking information from the EOUSA. When a request is received, FOIA/PA Staff determines whether the EOUSA maintains the records responsive to request and, if so, whether they can be released in accordance with the FOIA/PA. In processing such requests, the FOIA/PA Staff consults with personnel in other Sections of EOUSA and other components of DOJ if appropriate.

3. In my capacity as Assistant Director of EOUSA's FOIA/PA Staff, I supervise the handling of FOIA/PA requests directed at the EOUSA and the 94 United States Attorneys' Offices. I also supervise attorneys in my office who provide assistance to Assistant United States Attorneys and Civil Division Trial Attorneys who represent EOUSA in lawsuits brought under FOIA, 5 U.S.C. § 552, and the PA, 5 U.S.C. § 552a, stemming from requests for EOUSA records.

4. Due to the nature of my official duties, I am familiar with, and was personally involved in, the processing of the FOIA request submitted by Plaintiff National Association of Criminal Defense Lawyers ("NACDL") in this case. I am submitting this Declaration in support of Defendants' Motion for Summary Judgment. All information contained in this declaration is based on my personal knowledge as well as information that I have acquired during the course of my official duties.

Plaintiff's FOIA Request and EOUSA's Response

5. By letter dated December 20, 2012, Kyle O'Dowd, on behalf of the NACDL, submitted a FOIA request addressed to me for the disclosure of "the Office of Legal Education publication entitled 'Federal Criminal Discovery.'" EOUSA received this FOIA request on December 27, 2012. A true and correct copy of this FOIA request is attached as Exhibit A.

6. Within the EOUSA organization is the Office of Legal Education ("OLE"). As a part of EOUSA, OLE's principal mission is to provide training on advocacy skills and the management of legal operations to the attorneys and support staff of USAOs, as well as lawyers and support staff throughout the various other divisions of DOJ. OLE has a Publication Unit that coordinates, edits, produces and disseminates the

OLE Litigation Series (often called “Blue Books” because of the color of their covers). DOJ attorneys who prepare the Blue Books are usually, but not always, OLE instructors in the subject matter, and the text is usually (but not always), adapted from course materials they have used at OLE.

7. The paperback hard copy versions of the Blue Books generally are not distributed outside the federal law enforcement community and otherwise are posted in electronic format on an internal DOJ intranet (*i.e.*, non-public) site called DOJNet. The title page of these Blue Books, including the title page of the ‘Federal Criminal Discovery’ Blue Book, routinely include a notice that OLE intends these Blue Books to be “used by federal prosecutors for training and law enforcement purposes” as an internal resource, treated confidentially.

8. After receiving Plaintiff’s FOIA request, attorneys under my supervision began processing the request. Specifically, FOIA/PA staff attorneys, including myself, located the Blue Book Federal Criminal Discovery and conducted a comprehensive review of its contents to determine whether any FOIA exemptions were applicable to the information contained therein and, if so, whether any nonexempt information could be segregated and released to Plaintiff.

9. To assist and inform the FOIA/PA Staff’s review process, my office consulted with other DOJ attorneys who were familiar with and were involved in the drafting of the book Federal Criminal Discovery. Specifically, my office consulted with the DOJ National Criminal Discovery Coordinator Andrew Goldsmith of the Office of the Deputy Attorney General. I incorporate by reference the declaration filed by Mr. Goldsmith.

10. Based on the FOIA/PA Staff's review of the Blue Book Federal Criminal Discovery, as well as the input received from Mr. Goldsmith, I determined both that the Blue Book as a whole was prepared by DOJ attorneys for the use of federal prosecutors in conducting law enforcement prosecutions. As such, I determined that it constituted attorney work-product exempt from disclosure under 5 U.S.C. § 552(b)(5). I also determined that the Blue Book as a whole was compiled for law enforcement purposes and contained techniques and procedures, as well as guidelines, to be used in the course of conducting criminal prosecutions and thus was also exempt from disclosure under 5 U.S.C. § 552(b)(7)(E). Because the Blue Book was protected in its entirety under the attorney work-product privilege there was no reasonably segregable, non-exempt information that could be released. Likewise, the entirety of the document constituted law enforcement techniques, procedures, and guidelines to be used in the course of criminal investigations and prosecutions. As a result, I withheld the document in full under both Exemption 5 and Exemption 7(E) of the FOIA.

11. By letter dated February 28, 2013, I responded to Plaintiff's FOIA request, indicating that the request was denied in full because the records requested were exempt from disclosure under FOIA Exemptions 5 and 7(E). A true and correct copy of this letter is attached as Exhibit B.

12. By letter dated April 26, 2013, Plaintiff appealed EOUSA's denial of its FOIA request to the Office of Information Policy ("OIP"). A true and correct copy of this letter is attached as Exhibit C.

13. By letter dated June 25, 2013, OIP affirmed, on partially modified grounds, EOUSA's denial of Plaintiff's FOIA request. A true and correct copy of this letter is attached as Exhibit D.

Application of FOIA Exemption 5

14. FOIA Exemption 5 protects from disclosure "inter-agency or intra-agency memorandums or letter which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5). Exemption 5 encompasses inter-or-intra-agency materials protected under the attorney work product doctrine, in addition to other privileges.

15. EOUSA invoked Exemption 5 in denying Plaintiff's FOIA request because the Federal Criminal Discovery Blue Book as a whole constituted attorney work-product. The attorney work-product doctrine shields materials prepared by an attorney in reasonable anticipation of litigation. The anticipated litigation can include criminal matters as well as civil and administrative proceedings. In addition, litigation need not come to fruition in order for this privilege to apply. The privilege extends to documents prepared in anticipation of both pending litigation and foreseeable litigation even when no specific claim has arisen at the time the attorney prepared the material. The privilege protects any part of a document prepared in anticipation of litigation, not just the portions concerning opinions and legal theories, and it is intended to protect an attorney's opinions, thoughts, impressions, interpretations, analyses, and strategies.

16. The Federal Criminal Discovery Blue Book was created by DOJ attorneys and distributed within DOJ in 2011 for use by federal prosecutors. It has not been distributed outside of DOJ, except to some federal law enforcement officials with whom

federal prosecutors work in criminal investigations and prosecutions. See Declaration of Andrew D. Goldsmith, at ¶7 (hereinafter, “Goldsmith Decl. at ¶__.”). Inasmuch as the Federal Criminal Discovery Blue Book was created and exchanged within DOJ, it is an “intra-agency” document and thus falls within the threshold of Exemption 5.

17. The Blue Book also was created in anticipation of reasonably foreseeable litigation. In April 2009, following the dismissal of the case against the late Senator Theodore Stevens, DOJ created a Criminal Discovery and Case Management Working Group to review DOJ’s policies, practices, and training concerning criminal case management and discovery, and to evaluate ways to improve it. In addition, in January 2010, the Deputy Attorney General appointed a long-serving career prosecutor as DOJ’s first full-time National Criminal Discovery Coordinator to lead and oversee all DOJ efforts to improve disclosure policies and practices. See id. at ¶5. Although the discovery failures that occurred in the prosecution against the late Senator Theodore Stevens were an aberration, after the Attorney General moved to dismiss the case in April 2009 he immediately directed DOJ to take steps to address those failures and to ensure that similar problems did not arise in future investigations and prosecutions. See id. at ¶8.

18. One of the key initiatives of the Criminal Discovery and Case Management Working group was the creation of the Federal Criminal Discovery Blue Book. This step was taken to advise prosecutors nationwide about the legal bases of their discovery obligations, as well as the types of discovery-related claims and issues that they would inevitably confront in the investigations and prosecutions that they handle in the course of fulfilling their law enforcement duties. See id. at ¶¶5-7.

19. Under the direction of DOJ's National Criminal Discovery Coordinator and other senior DOJ officials, several DOJ attorneys with expertise in particular subjects related to discovery were selected to write the different chapters of the book. See id. at ¶5. The author(s) of each chapter are identified at the end of each chapter.

20. The Federal Criminal Discovery Blue Book was prepared in anticipation of litigation and its contents constitute attorney work product protected from disclosure under Exemption 5. The Blue Book is specifically directed to federal prosecutors, describing the nature and scope of their discovery obligations under applicable constitutional provisions, caselaw, and the Federal Rules of Criminal Procedure, as well as offering advice on how to handle different scenarios and problems so that investigations and prosecutions are not compromised by discovery problems and litigation. See id. at ¶¶5-7, 9-11, 14.

21. In providing advice to federal prosecutors, the Blue Book discusses the circumstances under which broad and early disclosure is advised and when it is not advised. It also explicitly discourages certain practices and encourages others, and identifies factors prosecutors should consider before making particular discovery and litigation decisions, such as seeking protective orders. In addition, it describes the types of claims defense counsel have raised and could raise regarding different discovery issues, or the tactics they could employ in litigation against the Government, and the arguments prosecutors can make to respond to these claims and the steps they should take to counter defense counsel tactics and protect Government investigations and prosecutions. In doing so, the Blue Book explains the limitations of certain arguments that prosecutors could make. The Blue Book also offers compilations of cases that

prosecutors can use to support different arguments. Cases illustrating potential pitfalls that prosecutors should avoid are also described, and arguments prosecutors could make if they fall into these pitfalls are identified. And since each chapter was written by one or more DOJ attorneys, the Blue Book necessarily contains the opinions, mental impressions, and recommendations of individual DOJ attorneys that were selected to advise federal prosecutors regarding discovery issues. Therefore, while the Blue Book endeavors to accurately describe the prosecutor's discovery obligations, it does not simply provide a neutral analysis of the law. Rather, the Blue Book is a litigation manual for prosecutors containing confidential legal analysis and strategies to support the Government's investigations and prosecutions. Disclosure of the Blue Book would reveal the analyses, recommendations, and strategies that a group of DOJ attorneys have prepared for, and have provided to, federal prosecutors. This would allow criminal defense counsel to use this privileged information in litigation against the Government as well as undermine law enforcement efforts. See id. at ¶¶5-7, 9-14.

22. DOJ intended the Blue Book to be confidential. Indeed, the title page of the Blue Book states that DOJ makes no public release of it and that recipients it should "treat it confidentially." The Blue Book was created for internal DOJ use only and it is only accessible electronically to DOJ personnel on their official work computers, and only other law enforcement officials with whom federal prosecutors work on criminal investigations and prosecutions have been given access to it. See id. at ¶7.

23. Given that the Blue Book as a whole constitutes attorney work-product, there is no reasonably segregable, non-exempt information that could be released. Moreover, attempting to segregate factual material would risk disclosing protected

information, as privileged material is intertwined with factual material throughout the book.

Application of FOIA Exemption 7(E)

24. Exemption 7 of the FOIA pertains to records or information compiled for law enforcement purposes, to the extent that the production of such information could result in one of six enumerated harms. In this instance, the Blue Book is protected in full by Exemption 7(E) of the FOIA, which protects from disclosure records that "would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law." See 5 U.S.C. § 552(b)(7)(E).

Threshold

25. FOIA Exemption 7(E) protects from disclosure records or information compiled for law enforcement purposes to the extent that the production of such records or information would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. 5 U.S.C. § 552(b)(7)(E).

26. As a threshold matter, Exemption 7(E) protects "records or information compiled for law enforcement purposes." See 5 U.S.C. § 552(b)(7). DOJ has as its principal function the enforcement of criminal law. The Criminal Discovery Blue Book was compiled by DOJ to assist and advise federal prosecutors in the course of prosecuting parties for violation of criminal law. See Goldsmith Decl. at ¶¶5-7, 9-11, 14.

27. The Federal Criminal Discovery Blue Book was compiled for law enforcement purposes. Indeed, the title page of the Blue Book Federal Criminal Discovery includes a notice that OLE intends it to be “used by federal prosecutors for training and law enforcement purposes” as an internal, confidential resource.

28. Moreover, the Federal Criminal Discovery Blue Book was a key initiative of DOJ’s Criminal Discovery Working Group, and DOJ trial attorneys and federal prosecutors across the country wrote the different chapters of the book. DOJ is an agency whose primary function involves law enforcement. In addition, the purpose of the Blue Book was to assist and advise federal prosecutors in carrying out their law enforcement duties. See id. at ¶5.

29. Accordingly, the Federal Criminal Discovery Blue Book provides advice and strategy to criminal prosecutors to aid them in the course of their work investigating and prosecuting crimes. Criminal prosecutions are inherently conducted for a law enforcement purpose. The document at issue is an essential tool used by prosecutors in the course of their work and so satisfies the threshold requirement of Exemption 7. Federal prosecutors, in conducting criminal investigations and prosecutions, will inevitably deal with the discovery issues addressed in the Blue Book, as discovery is an integral part of every investigation and prosecution. Therefore, I determined that the Blue Book was compiled for law enforcement purposes and meets the threshold requirement for FOIA Exemption 7.

Investigative Techniques and Procedures

30. The first prong of Exemption (7)(E) provides for the withholding of records where the release of such records “would disclose techniques and procedures for

law enforcement investigations or prosecutions." This exemption affords categorical protection to non-public techniques and procedures used in law enforcement investigations or prosecutions.

31. The Federal Criminal Discovery Blue Book was created for the internal use of criminal prosecutors and consists of a comprehensive set of strategies and procedures for conducting criminal prosecutions. The Blue Book analyzes applicable law and contains strategic concerns and logistical considerations in light of the applicable legal principles. Some of these are specifically set out as "Practice Notes," "Caveats," or "Strategic and Logistical Concerns," but many are interspersed within the legal analysis. The totality of the strategies and procedures set forth in this litigation manual are not generally known to the public. See id. at ¶¶5-7, 9-11, 14.

32. If this information were to be released to the public, it would give defense counsel an unfair advantage over the prosecution as it would reveal internal details of the prosecution's strategy for the handling and development of criminal prosecution cases. For example, disclosing procedures for protecting witnesses and obtaining evidence, or how prosecutors manage the timing and scope of disclosures, may allow criminal defendants to obtain premature or broader discovery than they are entitled to, which could allow them to modify their behavior in order to circumvent the law and escape punishment. There could be an increased risk of compromise of ongoing investigations, including witness intimidation and retaliation, breaches of national security, and other possible harms. See id. at ¶¶9-14.

33. For all of these reasons, the Criminal Discovery Blue Book therefore is protected in full pursuant to the first prong of Exemption 7(E) of the FOIA.

Guidelines

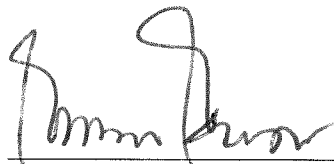
34. The second prong of Exemption 7(E) of the FOIA provides for the withholding of “guidelines for law enforcement investigations or prosecutions if disclosure could reasonably be expected to risk circumvention of the law.” This second prong of Exemption 7(E) of the FOIA also protects the Blue Book, which constitutes “guidelines for law enforcement investigations or prosecutions” and the release of these guidelines “could reasonably be expected to risk circumvention of the law.” Specifically, the Blue Book consists entirely of guidelines for federal prosecutors to follow in conducting the discovery phase of law enforcement prosecutions. As noted above, these guidelines consist not only of an exposition of the many legal principles applicable to criminal discovery, but also the interpretation and analysis of those principles by DOJ attorneys, legal strategy, practice tips, and logistical considerations. In other words, the Blue Book is a litigation guide intended to offer strategy and advice to prosecutors. It is also intended to assist prosecutors in defending against discovery-related challenges by criminal defendants. The Blue Book offers comprehensive guidelines for this phase of criminal federal prosecutions, and is relied upon heavily by federal prosecutors across the entire country to conduct criminal discovery. Disclosure of the Blue Book would give criminal defendants unprecedented insight into the thought process of federal prosecutors in conducting criminal discovery, investigations, and prosecutions, which presents a reasonably expected risk that future prosecutions could be undermined and weakened by criminal defendants and their attorneys. Some of these harms were articulated above in the discussion of the “techniques and procedures” prong

of Exemption 7(E). For all of these reasons, the Blue Book is protected in full pursuant to the second prong of Exemption 7(E) of the FOIA. See id. at ¶¶5-7, 9-14.

Segregation of Non-Exempt Information

35. I have carefully reviewed the document withheld from plaintiff pursuant to Exemptions 5 and 7(E) to determine whether there was any reasonably segregable, non-exempt information that could be released. Because the document is protected by the attorney work-product privilege in its entirety, and given that the facts selected for and contained within it are part of protected attorney work-product material, no segregation was possible. Disclosure of any portion of the Federal Criminal Discovery Blue Book would undermine the core legal advice and analysis that the privilege is meant to protect by revealing attorneys' assessments of what is deemed significant in the course of federal criminal prosecutions and what strategies and options are considered. In addition, because the Blue Book as a whole consists of law enforcement guidelines, and many of the law enforcement techniques, procedures, and guidelines described are interspersed within the legal analysis throughout the book, no part of the book can be segregated for disclosure under Exemption 7(E). See id. at ¶9. Thus, the Blue Book is protected in full and contains no reasonably segregable information.

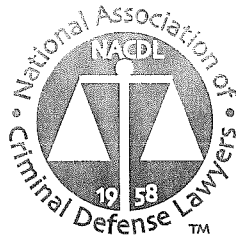
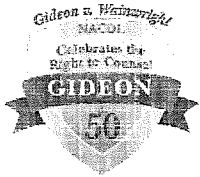
I declare under penalty of perjury that to the best of my personal knowledge the foregoing is true and correct.



Susan B. Gerson

Executed this 11th day of June 2014.

Exhibit A



2012-08-11 11:00 AM

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Executive Director
Norman L. Reimer Washington, DC

December 20, 2012

Susan B. Gerson, Acting Assistant Director
FOIA/Privacy Unit
Executive Office for United States Attorneys
Department of Justice
Room 7300, 600 E Street, N.W.
Washington, DC 20530-0001

Re: **REQUEST UNDER FREEDOM OF INFORMATION ACT/Expedited Processing Requested**

Dear Ms. Gerson:

This letter constitutes a request ("Request") pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.*, and the Department of Justice Implementing Regulations, 28 C.F.R. § 16.1 *et seq.* The Request is submitted by the National Association of Criminal Defense Lawyers ("NACDL").¹ This request seeks the Office of Legal Education publication entitled "Federal Criminal Discovery." On information and belief, this publication was published and/or distributed in March 2011 and may also be referred to as *The Federal Criminal Discovery Blue Book*.

I. Background

Following the exposure of discovery abuse in the prosecution of the late Senator Ted Stevens, the Department of Justice (DOJ) convened a working group to review the policies, practices, and training relating to discovery practices. One of the steps that the DOJ has taken to improve discovery practices is the availability of a Federal Criminal Discovery reference book, "which comprehensively covers the law, policy, and practice of prosecutors' disclosure obligations."² NACDL believes that every

¹ The National Association of Criminal Defense Lawyers (NACDL) is a 501(c)(6) non-profit organization that is "primarily engaged in disseminating information" within the meaning of 5 U.S.C. § 552(a)(6)(E)(v)(II) and 28 C.F.R. 16.5(d)(1)(ii).

² Cole, James M. Statement to the Senate Judiciary Committee. Hearing, June 6, 2012. Available at: <http://www.justice.gov/iso/opa/dag/speeches/2012/dag-speech-120606.html>; Accessed: 12/06/12.

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American citizen is entitled to know the steps that DOJ has taken to ensure that federal prosecutors abide by the federal discovery rules. As the Federal Criminal Discovery reference book is part of DOJ's efforts to improve prosecutors' legal education pertaining to discovery rules, NACDL requests the book.

II. Requested Records

This Request seeks the Federal Criminal Discovery reference book in its entirety distributed in 2011 by the Office of Legal Education within the Executive Office for United States Attorneys to federal prosecutors nationwide.

III. Application for Expedited Processing

NACDL requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(d). There is a "compelling need" for these records because the information requested is urgently required by an organization "primarily engaged in disseminating information" to "inform the public concerning actual or alleged Federal Government activity," 5 U.S.C. 552(a)(6)(E)(v); 28 C.F.R. § 16.5(d)(1)(ii). See *Am. Civil Liberties Union v. Dep't of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit, public interest group that "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience" to be "primarily engaged in disseminating information") (quoting *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003)). In addition, the request is of widespread and exceptional media interest and the information sought involves possible questions about the government's integrity which affect public confidence. 28 C.F.R. § 16.5(d)(1)(iv).

NACDL is a 501(c)(6) non-profit organization that is "primarily engaged in disseminating information" within the meaning of 5 U.S.C. § 552(a)(6)(E)(v)(II) and 28 C.F.R. 16.5(d)(1)(ii). NACDL publishes a monthly magazine called *The Champion* that features timely and informative articles on the latest developments in criminal justice. The magazine directly circulates to approximately 10,000 recipients, including lawyers, law libraries, law professors, federal and state judges, members of the news media, and members of the public interested in the administration of justice. NACDL also publishes a monthly electronic newsletter and daily news brief, both of which are distributed to NACDL members via e-mail. Additionally, NACDL regularly issues news releases to the press and public that are widely disseminated through e-mail, Facebook, and Twitter, and posted on NACDL's website, www.nacdl.org. Finally, NACDL has a long history of publishing reports about governmental activity and criminal justice issues that are broadly circulated and available to the public at little or no cost, including manuals and government reports obtained through FOIA. See, e.g., *Nat'l Ass'n of Crim. Def. Law. v. Dept. of Justice*, 182 F.3d 981 (D.D.C. 1999).

NACDL urgently requires the information sought by this Request in order to inform the public of federal government activity that concerns the general public interest. See 5 U.S.C. 552(a)(6)(E)(v)(II); 28 C.F.R. § 16.5(d)(1)(ii). In addition, the request is of widespread and exceptional media interest and the information sought involves possible questions about the government's integrity which affect public confidence. 28 C.F.R. § 16.5(d)(1)(iv). The records directly relate to a highly public and controversial

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debate over federal prosecutorial discovery practices. Discovery-related misconduct in the high-profile prosecution of the late Senator Ted Stevens led, in 2012, to a court-ordered investigation, a Justice Department Office of Professional Responsibility investigation, and three congressional hearings. In the last year alone, efforts to identify and address misconduct by the Stevens prosecutors have been the subject of dozens of stories in major news outlets (“widespread and exceptional media interest”), including: *Two Prosecutors in Stevens Case Appeal Disciplinary Action*, The Blog of Legal Times, June 27, 2012, available at <http://bit.ly/UMMStK>; Jon May, *Government's Response to Brady Reform Relies on Fear Not Fact*, White Collar Crime Prof Blog, June 15, 2012, available at <http://bit.ly/RAS1gH>; Ginny Sloan, *Congress Must Act to End Prosecutorial Misconduct*, Huffington Post, April 11, 2012, available at <http://huff.to/SH3YNo>; Elizabeth Murphy, *Schuelke: Congress Should Consider Discovery Legislation*, Main Justice, March 28, 2012, available at <http://bit.ly/VMd0DT>; Jordy Yager, *Prosecutors compromised Stevens case*, The Hill, March 28, 2012, available at <http://bit.ly/UMMBai>; *Senate Judiciary Committee To Hold Hearings On Ted Stevens Report*, The Blog of Legal Times, March 21, 2012, available at <http://bit.ly/TsiDJ8>; *Editorial: Justice After Senator Stevens*, The New York Times, March 18, 2012, available at <http://nyti.ms/XAOMht>; Carrie Johnson, *Making Prosecutors Share: Stevens' Case Prompts Bill*, NPR, March 18, 2012, available at <http://n.pr/ZFlp2W>; *Federal prosecutors need to play fair with evidence*, Washington Post, March 18, 2012, available at <http://wapo.st/ZFlhk0>; Charlie Savage and Michael S. Schmidt, *A Call to Fire Prosecutors in Botched Stevens Trial*, The New York Times, March 17, 2012, available at <http://nyti.ms/UMM7B2>; John Bresnahan and Josh Gerstein, *Report blasts prosecutors in Ted Stevens case*, Politico, March 15, 2012, available at <http://politi.co/ZFkYWp>; Charlie Savage and Michael S. Schmidt, *Inner Workings of Senator's Trouble Trial Detailed*, The New York Times, March 15, 2012, available at <http://nyti.ms/12wfADU>; *How to Rein In Rogue Prosecutors*, The Wall Street Journal, March 15, 2012, available at <http://on.wsj.com/U83Llk>; *Ted Stevens Report: The Concealed Evidence and the Prosecutors*, The Blog of Legal Times, March 15, 2012, available at <http://bit.ly/XANUcx>; Carrie Johnson, *Report: Prosecutors Hid Evidence In Ted Stevens Case*, NPR, March 15, 2012, available at <http://n.pr/Tsi9CA>; Amanda Coyne, *Reactions to the report on Ted Stevens corruption trial*, Alaska Dispatch, March 15, 2012, available at <http://bit.ly/UEyq69>; *Ted Stevens Report: Stevens' Defense Attorneys Rip Prosecutors*, The Blog of Legal Times, March 15, 2012, available at <http://bit.ly/UMLSWH>; GW Rastopsoff, *Schuelke Report Released on Stevens Trial, Senator Murkowski Introduces Legislation*, Alaska Native News, March 15, 2012, available at <http://bit.ly/WjMpEo>; Meredith Shiner, *Lisa Murkowski Challenges DOJ on Ted Stevens Case*, Roll Call, March 13, 2012, available at <http://bit.ly/TWzCBS>; Sen. Lisa Murkowski, *Justice, not convictions, more important*, Anchorage Daily News, March 10, 2012, available at <http://bit.ly/UMN6kB>. More news stories related to the Stevens case are available at www.nacdl.org/discoveryreformnews/.

Partly in response to the Stevens case, discovery legislation has been introduced in the Senate, and the Justice Department's internal efforts to ensure discovery compliance have been at issue throughout this legislative debate. There is no doubt that public and media interest in the seriousness and efficacy of any Justice Department efforts to ensure that prosecutors meet their discovery obligations is extremely high (“questions about the government's integrity which affect public

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confidence”), and that the public and media have an urgent and compelling need for the information requested herein.

IV. Application for Waiver or Limitations of All Fees

NACDL requests a waiver of all search, review, and duplication fees associated with this Request. The requester is eligible for a waiver of search and review fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.11(c)(3), (d), and for a waiver of all fees, including duplication fees, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.11(k)(1).

* * *

Pursuant to applicable statute and regulations, we will expect a determination regarding expedited processing within 10 calendar days. *See* 5 U.S.C. § 552(a)(6)(E)(ii)(I); 28 C.F.R. § 16.5(d)(4).

If the Request is denied in whole or in part, please justify all withholdings or redactions by reference to specific exemptions under the FOIA and provide all segregable portions of otherwise exempt material. NACDL reserves the right to appeal a decision to withhold any information or to deny a waiver of fees.

NACDL also requests that you provide an estimated date on which you will complete processing of this request. *See* 5 U.S.C. § 552(a)(7)(B).

Thank you for your prompt attention to this matter. Please furnish the applicable records to:

Kyle O’Dowd
Associate Executive Director for Policy
National Association of Criminal Defense Lawyers
1660 L St. N.W., 12th Floor
Washington, D.C. 20036

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. *See* 5 U.S.C. 552(a)(6)(E)(vi).

Sincerely yours,



Kyle O’Dowd
Associate Executive Director for Policy

Exhibit B



U.S. Department of Justice

Executive Office for United States Attorneys
Freedom of Information & Privacy Staff
600 E Street, N.W., Suite 7300, Bicentennial Building
Washington, DC 20530-0001
(202) 252-6020 FAX: 252-6047 (www.usdoj.gov/usao)

Requester: Kyle O'Dowd Request Number: 13-377

Subject of Request: Federal Criminal Discovery Bluebook

Dear Requester:

Your request for records under the Freedom of Information Act/Privacy Act has been processed. This letter constitutes a reply from the Executive Office for United States Attorneys, the official record-keeper for all records located in this office and the various United States Attorneys' Offices.

To provide you the greatest degree of access authorized by the Freedom of Information Act and the Privacy Act, we have considered your request in light of the provisions of both statutes.

The records you seek are located in a Privacy Act system of records that, in accordance with regulations promulgated by the Attorney General, is exempt from the access provisions of the Privacy Act. 28 CFR § 16.81. We have also processed your request under the Freedom of Information Act and are making all records required to be released, or considered appropriate for release as a matter of discretion, available to you. This letter is a [] partial [X] full denial.

Enclosed please find:

_____ page(s) are being released in full (RIF);
_____ page(s) are being released in part (RIP);
_____ page(s) are withheld in full (WIF). The redacted/withheld documents were reviewed to determine if any information could be segregated for release.

FEB 28 2013

The exemption(s) cited for withholding records or portions of records are marked below. An enclosure to this letter explains the exemptions in more detail.

Section 552

Section 552a

- [] (b)(1) [] (b)(4) [] (b)(7)(B) [] (j)(2)
[] (b)(2) [X] (b)(5) [] (b)(7)(C) [] (k)(2)
[] (b)(3) [] (b)(6) [] (b)(7)(D) [] (k)(5)
_____ [] (b)(7)(A) [X] (b)(7)(E) [] _____
_____ [] (b)(7)(F)

[] In addition, this office is withholding grand jury material which is retained in the District.

A review of the material revealed:

Our office located records that originated with another government component. **These records were found in the U.S. Attorney's Office files and may or may not be responsive to your request.** These records will be referred to the following component(s) listed for review and direct response to you: _____

There are public records which may be obtained from the clerk of the court or this office, upon specific request. If you wish to obtain a copy of these records, you must submit a new request. These records will be provided to you subject to copying fees.

Please note that your original letter was split into separate files ("requests"), for processing purposes, based on the nature of what you sought. Each file was given a separate Request Number (listed below), for which you will receive a separate response:

See additional information attached.

This is the final action on this above-numbered request. You may appeal this decision on this request by writing to the **Office of Information Policy, United States Department of Justice, 1425 New York Avenue, Suite 11050, Washington, D.C. 20530-0001.** Both the letter and envelope should be marked "FOIA Appeal." Your appeal must be received by OIP within 60 days from the date of this letter. If you are dissatisfied with the results of any such administrative appeal, judicial review may thereafter be available in U.S. District Court, 28 C.F.R. § 16.9.

Sincerely,



Susan B. Gerson
Assistant Director

5
Enclosure(s)

Exhibit C

FOIA
Ⓡ
East

MWH

FAX

For:

Carmen L. Mallon
Chief of Staff
Office of Information Policy
Department of Justice

Fax Number:

202-514-1009

From:

Kyle O'Dowd
Associated Executive Director for Policy
National Association of Criminal Defense Lawyers

Fax Number:

202-872-8690

Date:

April 26, 2013

Regarding:

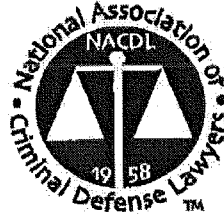
Appeal of Request for Federal Criminal Discovery Bluebook, FOIA Request #13-377

Number of Pages:

11

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APR 26 2013
Office of Information Policy

National Association of Criminal Defense Lawyers



FOIA
East

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 Steven M. Wells Anchorage, AK
 Christie M. Williams Dallas, TX
 William P. Wolf Chicago, IL

Executive Director
Norman L. Reimer Washington, DC

FREEDOM OF INFORMATION ACT APPEAL

April 26, 2013

Office of Information Policy
 United States Department of Justice
 1425 New York Avenue NW
 Suite 11050

Re: Appeal of Request for Federal Criminal Discovery Bluebook, FOIA Request # 13-377

Dear Sir or Madam:

This is an appeal from the February 28, 2013, decision to withhold records responsive to Freedom of Information Act Request No. 13-377. That request was dated December 20, 2012, and filed by Kyle O'Dowd, Associate Executive Director for Policy, National Association of Criminal Defense Lawyers (NACDL). NACDL requested the Office of Legal Education publication entitled "Federal Criminal Discovery," believed to be published and/or distributed in March 2011 and possibly referred to as *The Federal Criminal Discovery Blue Book*. A copy of NACDL's request is attached as Exhibit A.

By letter dated February 28, 2013, Susan B. Gerson denied NACDL's request in its entirety. A copy of the denial letter is attached as Exhibit B. The denial letter purports that information responsive to NACDL's request is exempt from disclosure under 5 U.S.C. 552(b)(5) and 5 U.S.C. 552(b)(7)(E).

NACDL asserts that the requested document is required to be made public under FOIA and does not fall under either of the claimed exceptions:

- (1) 5 U.S.C. 552(b)(5). The requested document is not exempted under (b)(5) as "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." The denial letter did not explain how this exemption was relevant to its decision to withhold the requested document, and NACDL asserts that none of the grounds for this exemption apply here. The document does not constitute attorney's work product, attorney-client

1660 L Street, NW, 12th Floor, Washington, DC 20036 | Phone 202-872-8600 | Fax 202-872-8690 | E-mail assist@nacdl.org

"Liberty's Last Champion"™

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communications, or "documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated."

- a. **Work Product:** The requested document was not prepared for litigation. *PHE, Inc. v. DOJ*, 983 F.2d 248, 251 (D.C. Cir. 1993). The attorney work product privilege protects documents prepared by an attorney revealing the theory of the case or litigation strategy. *NLRB v. Sears, Roebuck & Co.*, 421 U.S. at 154. Because the purpose of the privilege is to protect the adversarial trial process by shielding the attorneys' preparation from scrutiny, *Jordan v. Dep't of Justice*, 591 F.2d 73, 775 (D.C. Cir. 1978) (*en banc*), this exemption is clearly inapplicable.
 - b. **Attorney Client Privilege:** NACDL believes that the requested document was disseminated widely within the agency and/or without restrictions, and that no confidentiality exists and the privilege cannot apply. In addition, the document is not the type of confidential legal counsel protected by the privilege. The requested document does not constitute "confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice." *Mead Data Central, Inc. v. Dep't of the Air Force*, 566 F.2d 242 (D.C. Cir. 1977).
 - c. **Deliberative Process:** The requested document is neither predecisional nor deliberative. This privilege protects "documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated." *Nat'l Labor Relations Bd.*, 421 U.S. at 150 (quoting *Stiftung v. V.E.B.*, 40 F.R.D. 318, 324 (D.D.C. 1966)). The requested document likely reflects interpretations of current law and not discussions of proposed policies.
- (2) 5 U.S.C. 552(b)(7)(E). The requested document is not "records or information compiled for law enforcement purposes," that "would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law." There is no logical way in which the requested document could "create a risk of circumvention of the law." This exemption does not apply to "garden-variety legal analysis," which includes discussion and digests of caselaw. *Mayer Brown LLP v. IRS*, 562 F.3d 1190 (D.C. Cir. 2009). Nor does this exemption apply to materials within the scope of 5 U.S.C. § 552(a)(2), such as administrative staff manuals.

For the forgoing reasons, NACDL requests that this office reconsider the unjustified denial and require that the requested documents be provided.

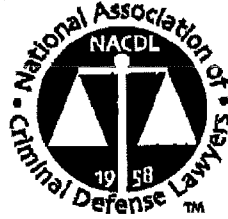
Sincerely,



Kyle O'Dowd *KOD*
Associate Executive Director for Policy

Exhibit A

National Association of Criminal Defense Lawyers



President
Steven D. Benjamin Richmond, VA

President-Elect
Jerry J. Cox Mount Vernon, KY

First Vice President
Theodore Simon Philadelphia, PA

Second Vice President
E. G. Morris Austin, TX

Treasurer
John Wesley Hall Little Rock, AR

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William H. Buckman Moorestown, NJ
Ramon De La Cabada Miami, FL
Jean-Jacques Cahou Phoenix, AZ
Jay Clark Cincinnati, OH
Josh A. Cohen San Francisco, CA
Anthony Cotton Waukesha, WI
Alic M. Cramer St. George, UT
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Drew Findling Atlanta, GA
Richard K. Gilbert Washington, DC
Nina J. Ginsberg Alexandria, VA
Eliasa Heinrichs Newtown, PA
Michael Heiskell Fort Worth, TX
Bonnie Hoffman Leesburg, VA
Richard S. Jaffe Birmingham, AL
Ashish S. Joshi Ann Arbor, MI
Neville L. King West Palm Beach, FL
Benjamin R. Labranche Baton Rouge, LA
Tracy Miner Boston, MA
Tyrone Moncrieffe Houston, TX
Norman R. Mueller Denver, CO
George H. Newman Philadelphia, PA
Timothy P. O'Toole Washington, DC
Marfa H. Sandoval San Juan, PR
Melinda Sarafa New York, NY
David Smith Alexandria, VA
Jeffrey E. Thoma Fairfield, CA
Geneva Vanderhorst Washington, DC
Christopher A. Wellborn Rock Hill, SC
Steven M. Wells Anchorage, AK
Christie N. Williams Dallas, TX
William P. Wolf Chicago, IL

Executive Director
Norman L. Belmer Washington, DC

December 20, 2012

Susan B. Gerson, Acting Assistant Director
FOIA/Privacy Unit
Executive Office for United States Attorneys
Department of Justice
Room 7300, 600 E Street, N.W.
Washington, DC 20530-0001

Re: REQUEST UNDER FREEDOM OF INFORMATION ACT/Expedited Processing Requested

Dear Ms. Gerson:

This letter constitutes a request ("Request") pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.*, and the Department of Justice Implementing Regulations, 28 C.F.R. § 16.1 *et seq.* The Request is submitted by the National Association of Criminal Defense Lawyers ("NACDL").¹ This request seeks the Office of Legal Education publication entitled "Federal Criminal Discovery." On information and belief, this publication was published and/or distributed in March 2011 and may also be referred to as *The Federal Criminal Discovery Blue Book*.

i. Background

Following the exposure of discovery abuse in the prosecution of the late Senator Ted Stevens, the Department of Justice (DOJ) convened a working group to review the policies, practices, and training relating to discovery practices. One of the steps that the DOJ has taken to improve discovery practices is the availability of a Federal Criminal Discovery reference book, "which comprehensively covers the law, policy, and practice of prosecutors' disclosure obligations."² NACDL believes that every

¹ The National Association of Criminal Defense Lawyers (NACDL) is a 501(c)(6) non-profit organization that is "primarily engaged in disseminating information" within the meaning of 5 U.S.C. § 552(a)(6)(E)(v)(ii) and 28 C.F.R. 16.5(d)(1)(ii).

² Cole, James M. Statement to the Senate Judiciary Committee. Hearing, June 6, 2012. Available at: <http://www.justice.gov/iso/opa/dag/speeches/2012/dag-speech-120606.html>; Accessed: 12/06/12.

Ms. Susan B. Gerson
December 20, 2012
Page 2

American citizen is entitled to know the steps that DOJ has taken to ensure that federal prosecutors abide by the federal discovery rules. As the Federal Criminal Discovery reference book is part of DOJ's efforts to improve prosecutors' legal education pertaining to discovery rules, NACDL requests the book.

II. Requested Records

This Request seeks the Federal Criminal Discovery reference book in its entirety distributed in 2011 by the Office of Legal Education within the Executive Office for United States Attorneys to federal prosecutors nationwide.

III. Application for Expedited Processing

NACDL requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(d). There is a "compelling need" for these records because the information requested is urgently required by an organization "primarily engaged in disseminating information" to "inform the public concerning actual or alleged Federal Government activity," 5 U.S.C. 552(a)(6)(E)(v); 28 C.F.R. § 16.5(d)(1)(ii). See *Am. Civil Liberties Union v. Dep't of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit, public interest group that "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience" to be "primarily engaged in disseminating information") (quoting *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003)). In addition, the request is of widespread and exceptional media interest and the information sought involves possible questions about the government's integrity which affect public confidence. 28 C.F.R. § 16.5(d)(1)(iv).

NACDL is a 501(c)(6) non-profit organization that is "primarily engaged in disseminating information" within the meaning of 5 U.S.C. § 552(a)(6)(E)(v)(ii) and 28 C.F.R. 16.5(d)(1)(ii). NACDL publishes a monthly magazine called *The Champion* that features timely and informative articles on the latest developments in criminal justice. The magazine directly circulates to approximately 10,000 recipients, including lawyers, law libraries, law professors, federal and state judges, members of the news media, and members of the public interested in the administration of justice. NACDL also publishes a monthly electronic newsletter and daily news brief, both of which are distributed to NACDL members via e-mail. Additionally, NACDL regularly issues news releases to the press and public that are widely disseminated through e-mail, Facebook, and Twitter, and posted on NACDL's website, www.nacdl.org. Finally, NACDL has a long history of publishing reports about governmental activity and criminal justice issues that are broadly circulated and available to the public at little or no cost, including manuals and government reports obtained through FOIA. See, e.g., *Nat'l Ass'n of Crim. Def. Law. v. Dept. of Justice*, 182 F.3d 981 (D.D.C. 1999).

NACDL urgently requires the information sought by this Request in order to inform the public of federal government activity that concerns the general public interest. See 5 U.S.C. 552(a)(6)(E)(v)(ii); 28 C.F.R. § 16.5(d)(1)(ii). In addition, the request is of widespread and exceptional media interest and the information sought involves possible questions about the government's integrity which affect public confidence. 28 C.F.R. § 16.5(d)(1)(iv). The records directly relate to a highly public and controversial

Ms. Susan B. Gerson
 December 20, 2012
 Page 3

debate over federal prosecutorial discovery practices. Discovery-related misconduct in the high-profile prosecution of the late Senator Ted Stevens led, in 2012, to a court-ordered investigation, a Justice Department Office of Professional Responsibility investigation, and three congressional hearings. In the last year alone, efforts to identify and address misconduct by the Stevens prosecutors have been the subject of dozens of stories in major news outlets (“widespread and exceptional media interest”), including: *Two Prosecutors in Stevens Case Appeal Disciplinary Action*, The Blog of Legal Times, June 27, 2012, available at <http://bit.ly/UMMStK>; Jon May, *Government's Response to Brady Reform Relies on Fear Not Fact*, White Collar Crime Prof Blog, June 15, 2012, available at <http://bit.ly/RAs1gH>; Ginny Sloan, *Congress Must Act to End Prosecutorial Misconduct*, Huffington Post, April 11, 2012, available at <http://huff.to/SH3YNo>; Elizabeth Murphy, *Schuelke: Congress Should Consider Discovery Legislation*, Main Justice, March 28, 2012, available at <http://bit.ly/VMdODT>; Jordy Yager, *Prosecutors compromised Stevens case*, The Hill, March 28, 2012, available at <http://bit.ly/UMMBai>; *Senate Judiciary Committee To Hold Hearings On Ted Stevens Report*, The Blog of Legal Times, March 21, 2012, available at <http://bit.ly/TsiDJ8>; *Editorial: Justice After Senator Stevens*, The New York Times, March 18, 2012, available at <http://nyti.ms/XAOMht>; Carrie Johnson, *Making Prosecutors Share: Stevens' Case Prompts Bill*, NPR, March 18, 2012, available at <http://n.pr/ZFfp2W>; *Federal prosecutors need to play fair with evidence*, Washington Post, March 18, 2012, available at <http://wapo.st/ZFhk0>; Charlie Savage and Michael S. Schmidt, *A Call to Fire Prosecutors in Botched Stevens Trial*, The New York Times, March 17, 2012, available at <http://nyti.ms/UMM7B2>; John Bresnahan and Josh Gerstein, *Report blasts prosecutors in Ted Stevens case*, Politico, March 15, 2012, available at <http://politi.co/ZFKYWp>; Charlie Savage and Michael S. Schmidt, *Inner Workings of Senator's Trouble Trial Detailed*, The New York Times, March 15, 2012, available at <http://nyti.ms/12wfADU>; *How to Rein In Rogue Prosecutors*, The Wall Street Journal, March 15, 2012, available at <http://on.wsj.com/U83Llk>; *Ted Stevens Report: The Concealed Evidence and the Prosecutors*, The Blog of Legal Times, March 15, 2012, available at <http://bit.ly/XANUcx>; Carrie Johnson, *Report: Prosecutors Hid Evidence in Ted Stevens Case*, NPR, March 15, 2012, available at <http://n.pr/Tsi9CA>; Amanda Coyne, *Reactions to the report on Ted Stevens corruption trial*, Alaska Dispatch, March 15, 2012, available at <http://bit.ly/UEyq69>; *Ted Stevens Report: Stevens' Defense Attorneys Rip Prosecutors*, The Blog of Legal Times, March 15, 2012, available at <http://bit.ly/UMLSWH>; GW Rastopsoff, *Schuelke Report Released on Stevens Trial, Senator Murkowski Introduces Legislation*, Alaska Native News, March 15, 2012, available at <http://bit.ly/WjMpEo>; Meredith Shiner, *Lisa Murkowski Challenges DOJ on Ted Stevens Case*, Roll Call, March 13, 2012, available at <http://bit.ly/TWzCBS>; Sen. Lisa Murkowski, *Justice, not convictions, more important*, Anchorage Daily News, March 10, 2012, available at <http://bit.ly/UMN6kB>. More news stories related to the Stevens case are available at www.nacdl.org/discoveryreformnews/.

Partly in response to the Stevens case, discovery legislation has been introduced in the Senate, and the Justice Department's internal efforts to ensure discovery compliance have been at issue throughout this legislative debate. There is no doubt that public and media interest in the seriousness and efficacy of any Justice Department efforts to ensure that prosecutors meet their discovery obligations is extremely high (“questions about the government's integrity which affect public

Ms. Susan B. Gerson
December 20, 2012
Page 4

confidence"), and that the public and media have an urgent and compelling need for the information requested herein.

IV. Application for Waiver or Limitations of All Fees

NACDL requests a waiver of all search, review, and duplication fees associated with this Request. The requester is eligible for a waiver of search and review fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.11(c)(3), (d), and for a waiver of all fees, including duplication fees, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.11(k)(1).

* * *

Pursuant to applicable statute and regulations, we will expect a determination regarding expedited processing within 10 calendar days. See 5 U.S.C. § 552(a)(6)(E)(ii)(I); 28 C.F.R. § 16.5(d)(4).

If the Request is denied in whole or in part, please justify all withholdings or redactions by reference to specific exemptions under the FOIA and provide all segregable portions of otherwise exempt material. NACDL reserves the right to appeal a decision to withhold any information or to deny a waiver of fees.

NACDL also requests that you provide an estimated date on which you will complete processing of this request. See 5 U.S.C. § 552(a)(7)(B).

Thank you for your prompt attention to this matter. Please furnish the applicable records to:

Kyle O'Dowd
Associate Executive Director for Policy
National Association of Criminal Defense Lawyers
1660 L St. N.W., 12th Floor
Washington, D.C. 20036

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. See 5 U.S.C. 552(a)(6)(E)(vi).

Sincerely yours,



Kyle O'Dowd
Associate Executive Director for Policy

Exhibit B



U.S. Department of Justice

*Executive Office for United States Attorneys
Freedom of Information & Privacy Staff
600 E Street, N.W., Suite 7300, Bicentennial Building
Washington, DC 20530-0001
(202) 252-6020 FAX: 252-6047 (www.usdoj.gov/isaq)*

Requester: Kyle O'Dowd Request Number: 13-377

Subject of Request: Federal Criminal Discovery Bluebook

Dear Requester:

FEB 28 2013

Your request for records under the Freedom of Information Act/Privacy Act has been processed. This letter constitutes a reply from the Executive Office for United States Attorneys, the official record-keeper for all records located in this office and the various United States Attorneys' Offices.

To provide you the greatest degree of access authorized by the Freedom of Information Act and the Privacy Act, we have considered your request in light of the provisions of both statutes.

The records you seek are located in a Privacy Act system of records that, in accordance with regulations promulgated by the Attorney General, is exempt from the access provisions of the Privacy Act. 28 CFR § 16.81. We have also processed your request under the Freedom of Information Act and are making all records required to be released, or considered appropriate for release as a matter of discretion, available to you. This letter is a [] partial [X] full denial.

Enclosed please find:

- page(s) are being released in full (RIF);
- page(s) are being released in part (RIP);
- page(s) are withheld in full (WIF). **The redacted/withheld documents were reviewed to determine if any information could be segregated for release.**

The exemption(s) cited for withholding records or portions of records are marked below. An enclosure to this letter explains the exemptions in more detail.

Section 552

Section 552a

- | | | | |
|---------------------------------|--------------------------------------------|-----------------------------------------------|---------------------------------|
| <input type="checkbox"/> (b)(1) | <input type="checkbox"/> (b)(4) | <input type="checkbox"/> (b)(7)(B) | <input type="checkbox"/> (j)(2) |
| <input type="checkbox"/> (b)(2) | <input checked="" type="checkbox"/> (b)(5) | <input type="checkbox"/> (b)(7)(C) | <input type="checkbox"/> (k)(2) |
| <input type="checkbox"/> (b)(3) | <input type="checkbox"/> (b)(6) | <input type="checkbox"/> (b)(7)(D) | <input type="checkbox"/> (k)(5) |
| <u> </u> | <input type="checkbox"/> (b)(7)(A) | <input checked="" type="checkbox"/> (b)(7)(E) | <input type="checkbox"/> _____ |
| <u> </u> | | <input type="checkbox"/> (b)(7)(F) | |

In addition, this office is withholding grand jury material which is retained in the District.

A review of the material revealed:

Our office located records that originated with another government component. **These records were found in the U.S. Attorney's Office files and may or may not be responsive to your request.** These records will be referred to the following component(s) listed for review and direct response to you: _____


There are public records which may be obtained from the clerk of the court or this office, upon specific request. If you wish to obtain a copy of these records, you must submit a new request. These records will be provided to you subject to copying fees.

Please note that your original letter was split into separate files ("requests"), for processing purposes, based on the nature of what you sought. Each file was given a separate Request Number (listed below), for which you will receive a separate response:

See additional information attached.

This is the final action on this above-numbered request. You may appeal this decision on this request by writing to the **Office of Information Policy, United States Department of Justice, 1425 New York Avenue, Suite 11050, Washington, D.C. 20530-0001.** Both the letter and envelope should be marked "FOIA Appeal." Your appeal must be received by OIP within 60 days from the date of this letter. If you are dissatisfied with the results of any such administrative appeal, judicial review may thereafter be available in U.S. District Court, 28 C.F.R. § 16.9.

Sincerely,


Susan B. Gerson
Assistant Director

Enclosure(s)

Exhibit D



U.S. Department of Justice
Office of Information Policy
Suite 11050
1425 New York Avenue, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

June 25, 2013

Kyle O'Dowd, Esq.
National Association of Criminal
Defense Lawyers
12th Floor
1660 L Street, NW
Washington, DC 20036

Re: Appeal No. AP-2013-03081
Request No. 13-377
AMJ:MWH

VIA: U.S. Mail

Dear Mr. O'Dowd:

You appealed from the action of the Executive Office for United States Attorneys (EOUSA) on your request for access to the "Federal Criminal Discovery Blue Book."

After carefully considering your appeal, I am affirming, on partly modified grounds, EOUSA's action on your request. The Freedom of Information Act provides for disclosure of many agency records. At the same time, Congress included in the FOIA nine exemptions from disclosure that provide protection for important interests such as personal privacy, privileged communications, and certain law enforcement activities. EOUSA properly withheld this information in full because it is protected from disclosure under the FOIA pursuant to 5 U.S.C. § 552(b)(5). This provision concerns certain inter- and intra-agency communications protected by the attorney work-product privilege.

Please be advised that this Office's decision was made only after a full review of this matter. Your appeal was assigned to an attorney with this Office who thoroughly reviewed and analyzed your appeal, your underlying request, and the action of EOUSA in response to your request.

If you are dissatisfied with my action on your appeal, the FOIA permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).

For your information, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road,

- 2 -

College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 301-837-1996; toll free at 1-877-684-6448; or facsimile at 301-837-0348.

Sincerely,

Sean R. O'Neill
Chief
Administrative Appeals Staff

By: *Anne D. Work*

Anne D. Work
Senior Counsel
Administrative Appeals Staff



U.S. Department of Justice

Office of Information Policy

Telephone: (202) 514-3642

Washington, D.C. 20530

May 17, 2013

Kyle O'Dowd, Esq.
National Association of Criminal Defense Lawyers
12th Floor
1660 L Street, NW
Washington, DC 20036

Re: Request No. 13-377 *Remedy*

Dear Mr. O'Dowd:

This is to advise you that your administrative appeal from the action of the Executive Office for United States Attorneys was received by this Office on April 26, 2013.

The Office of Information Policy has the responsibility of adjudicating such appeals. In an attempt to afford each appellant equal and impartial treatment, we have adopted a general practice of assigning appeals in the approximate order of receipt. Your appeal has been assigned number **AP-2013-03081**. Please mention this number in any future correspondence to this Office regarding this matter. Please note that if you provide an e-mail address or another electronic means of communication with your appeal, this Office may respond to your appeal electronically even if you submitted your appeal to this Office via regular U.S. mail.

We will notify you of the decision on your appeal as soon as we can. If you have any questions about the status of your appeal, you may contact me at the number above. If you have submitted your appeal through this Office's online electronic appeal portal, you may also obtain an update on the status of your appeal by logging into your portal account.

Sincerely,

A handwritten signature in black ink, appearing to read "Priscilla Jones".

Priscilla Jones
Supervisory Administrative Specialist