

# MEMORANDUM

September 7, 1995

PRIVILEGED & CONFIDENTIAL  
ATTORNEY-CLIENT COMMUNICATION

To: David Marwell

From: Laura Denk

Subject: Disclosing Information Concerning Persons Who Request Information Under the Freedom of Information Act

Yesterday, you shared with me a letter that Bill Adams wrote to you, in which he alleges, *inter alia*, that the Review Board revealed “confidential information” when a staff member told John Newman that Adams filed Freedom of Information Act (FOIA) requests with the Review Board. You asked me to look into whether Adams’ FOIA requests to the Review board are confidential information.

*Adams FOIA requests to the Review Board are not “confidential information.” Adams never requested confidentiality and, even if he had, the names of FOIA requesters are generally not protected as confidential information.*

Adams filed two FOIA requests -- the first in June, 1995, on the Experts Conference and the second in July, 1995, on the Cynthia Wegmann documents. The letters were straightforward FOIA requests and Adams did not divulge personal information about himself or his opinions.

Adams now claims that his “contacts with the ARRB are private, confidential, and privileged regardless of the context in which they are presented” and that the Review Board wrongfully disclosed the information that he filed FOIA requests with this agency. He states, “[t]his violation of confidential information is a very troubling event....” However, Adams did not ask the Review Board to keep any of this information confidential and the names of FOIA requesters are generally not protected as confidential information.<sup>1</sup>

Most courts that address the issue of whether agencies can disclose the names of FOIA requesters address it because one FOIA requester has requested a list of names of other FOIA requesters. The Office of Information and Privacy at the Department of Justice advises Federal agencies that, as a general rule, agencies should disclose the names of FOIA requesters.

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<sup>1</sup>United States Department of Justice, Office of Information and Privacy, FOIA Update, 6 (Winter 1985) (attached).

If John Newman filed a FOIA request asking for the names of people who filed FOIA requests with the Review Board, we could only refuse to disclose Bill Adams' name if we could show, under Exemption 6 of the FOIA, that Newman had requested information that constituted "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." 5 U.S.C. § 552(b)(6).

Clearly, the name of a FOIA requester and the subject about which he or she requested information does not constitute information from personnel and/or medical files. Nor does it constitute information from "similar files" Similar files are those files in which the privacy interest involved:

is of the same magnitude -- as highly personal or as intimate in nature -- as that at stake in personnel and medical records. If the personal quality of the information rises to this level, then it is 'similar' to personnel and medical files within the meaning of Exemption 6.

Stauss v. IRS, 516 F. Supp. 1218, 1223 (D.D.C. 1981) (Court addressed the issue of whether an agency should release the names of FOIA requesters to other FOIA requesters) (attached). The Stauss court stated further that individuals requesting information from the IRS through formal FOIA requests:

*freely and voluntarily addressed their inquiries to the IRS, without a hint of expectation that the nature and origin of this correspondence would be kept confidential.* There is nothing within these documents that would warrant their treatment on a par with materials as essentially private as personnel or medical records.

Id. (emphasis added). Likewise, Adams "freely and voluntarily" wrote to the Review Board without indicating his desire that his requests remain confidential.

FOIA requesters have no general expectation that their names will be kept private, because the release of the name of a FOIA requester does not cause even a minimal invasion of privacy under the FOIA.<sup>2</sup>

There are some circumstances in which an agency should not reveal information about FOIA requesters<sup>3</sup>, but none of those circumstances are present in the instant situation.

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<sup>2</sup> United States Department of Justice, Office of Information and Privacy, Freedom of Information Act Guide and Privacy Act Overview, 192 (September 1994).

<sup>3</sup> Circumstances in which agencies should not disclose names and information about FOI/PA requesters include the following:

If you have any additional questions about this issue, please let me know.

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- Agencies should not disclose personal information, other than the requester's name, such as home address and phone number. In this case, the Review Board did not disclose any private information about Adams.
  - Agencies should not disclose the names of individuals who write letters to government officials expressing their personal opinions -- *except when the letter is itself a request for information under the FOIA*. I have reviewed Adams' letters and he did not express his personal opinions in these two letters, except to state his reasons for believing that the Review Board would have certain documents.
  - Agencies should not disclose the names of individuals who make *first-party requests* for information about themselves under the Privacy Act because an agency can infer an expectation of privacy from the personal nature of the records involved in those requests.