

Douglas R. Hibbard
US Department of Justice
Office of Information Policy
Sixth Floor
441 G. Street, NW
Washington, DC 20530-001
Tel: (202) 514-3642

RE: Freedom of Information Act Appeal (FOIA-2021-01960)

Dear Douglas R. Hibbard,

On behalf of the Revolving Door Project, I write to appeal the response of the Office of Information Policy within the Department of Justice to Freedom Of Information Act (FOIA) Request FOIA-2021-01960, on the grounds that the Department has failed to locate and disclose all non-exempt records that are responsive to those requests.

Background FOIA-2021-01960

On August 13, 2021, the Revolving Door Project submitted a FOIA request 2021-01960 seeking all Notifications of Personnel Action (Standard Form - 50) to the Office of Information Policy for Department of Justice employee Susan Davies since January 1, 2021. See Ex. 1 (Aug. 13, 2021, FOIA Request).

On August 31, 2021, the Office of Information Policy acknowledged receipt of our request. See Ex. 2 (Aug. 31, 2021, Acknowledgement).

On October 26, 2022, the Office of Information Policy responded to our FOIA request and provided the right to submit an administrative appeal. See Ex. 3 (Oct. 26, 2022, Response Letter). The Office of Information Policy stated that “[a] search has been conducted in the Office of Legal Policy, and no records responsive to [the] request have been located.”

Failure to Search for and Produce Responsive Documents

The records search by the Office of Information Policy did not sufficiently fulfill FOIA request 2021-01960. The response states only that “a search has been conducted in the Office of Legal Policy, and no records responsive to [the] request have been located.” See Ex. 3. The response gives no indication whether any search was conducted in the other DOJ offices under the Office of Information Policy’s jurisdiction where responsive documents may be located.

Furthermore, per DOJ regulation 28 C.F.R. § 16.4(a-d), if the forms requested are located within another office or agency all together, the Office of Information Policy is obligated to “route the request to the FOIA office of the proper component(s) [...] consult with that other component or agency prior to making a release determination [...] refer the responsibility for responding to the request regarding that record as long as the referral is to a component or agency that is subject to the FOIA [...] and/or] coordinate with the originating component or agency to seek its views on the disclosability of the record.”¹ Furthermore, DOJ regulation states “[t]he release determination for the record that is the subject of the coordination should then be conveyed to the requester by the component that originally received the request.”²

In an effort to ease your burden, the Revolving Door Project believes that the records requested may reside within Susan Davies’ physical and/or electronic Official Personnel Folder (OPF) with the Office of Personnel Management (OPM).³ However, if this is incorrect, the Office of Information Policy is still obligated to ensure the request reaches the appropriate office or department under DOJ FOIA regulation.

Secondly, DOJ employee Susan Davies should have one or more Notifications of Personnel Action. All current and former federal employees have an SF-50.⁴ Susan Davies was appointed Deputy Assistant Attorney General in the Office of Legal Policy on May 5, 2021,⁵ a date within the scope of the Revolving Door Project’s request. According to the Office of Personnel Management’s Guide to Processing Personnel Actions Chapter 1, Subchapter 1§3(b), a “Notification of Personnel Action must be prepared and filed on the right side of the Official Personnel Folder” unless the action is exempt from notification. Appointment, transfers, resignations, and terminations are not exempt.⁶ Therefore, Susan Davies should have a

¹ 28 C.F.R. § 16.4(a-d) (Department of Justice FOIA regulations)

² 28 C.F.R. § 16.4(a-d) (Department of Justice FOIA regulations)

³ USA Jobs Help Page; <https://www.usajobs.gov/help/working-in-government/service/sf-50/>

⁴ General Services Administration Form Library;
<https://www.gsa.gov/forms-library/notification-personnel-action>

⁵ Davies, Susan M. Executive Branch Personnel Public Financial Disclosure Report (OGE Form 278e)

⁶ Office of Personnel Management’s Guide to Processing Personnel Actions Chapter 1, Subchapter 1§3(b)

Notification of Personnel Action for her appointment on May 5, 2021, and for any other non-exempt action.

Lastly, per 5 U.S.C. § 552(b)(6). Standard Form - 50 (SF-50) are not exempt from FOIA, as long as exempt material is redacted.⁷ The Revolving Door Project has no objection to the redaction of home addresses, telephone numbers, or social security numbers from the SF-50s.

Conclusion

For these reasons, the Revolving Door Project appeals the Department of Justice's failure to promptly locate and disclose the records responsive to the request.

We expect a response to this appeal within 20 working days as provided by law. Please feel free to contact me at beaty@therevolvingdoorproject.org if you have any questions. Thank you for your attention to this matter.

Sincerely,

Andrea Beaty
Senior Researcher
Revolving Door Project

Jeffrey Hauser
Executive Director
Revolving Door Project

⁷ 5 U.S.C. § 552(b)(6).