



September 4, 2020

Mr. Austin Evers
Mr. Dan McGrath
American Oversight

(Via electronic mail to: foia@americanoversight.org)

RE: MCC FOIA 20-14A; American Oversight FOIA Request/Appeal

Dear Messrs. Evers & McGrath:

By electronic mail dated Thursday, 6 August 2020 you appealed a determination under the Freedom of Information Act (FOIA), 5 U.S.C. §552 *et seq.*, issued by electronic mail dated 23 July, 2020, by the FOIA Office at Millennium Challenge Corporation (MCC). This letter responds to that appeal.

This appeal arises in the context of a request for documents dated July 20, 2020, whereby American Oversight submitted a FOIA request to MCC seeking:

1. Copies of any SF-50 forms for political appointees at the GS-13 level or higher at your agency reflecting a change to a permanent competitive, non-political excepted service, or career SES position.
2. Records sufficient to identify any requests to OPM (including any approvals, rejections, or other responses from OPM) to appoint any current or former (within five years) Executive Branch political appointees at the GS-13 level or higher to permanent competitive, non-political excepted service, or career SES position (including but not limited to any pre-appointment request checklist forms OPM 5000 or 5001, or other forms used for the requests, documentation submitted with the requests, and decisions conveyed in response to the request).
3. Records sufficient to identify any requests to OPM (including any approvals, rejections, or other responses from OPM) under 5 CFR § 3318(a), (c)(1), for approval to pass over a preference eligible or object to an eligible (including but not limited to any forms SF-62 or other forms used for the request, documentation submitted with the requests, and decisions conveyed in response to the request).



American Oversight asked for “all responsive records from January 1, 2020, through the date of the search.” *Id.* Additionally, American Oversight specified what positions it considers to qualify as political appointees, *id.*, and noted it had “no objection to the redaction of home addresses, telephone numbers, or social security numbers from SF-50s, SF-62s, or any other responsive forms.” *Id.* MCC assigned this request reference number FOIA FY 20-14. (citations omitted.)

In your appeal, it was also contended: “MCC’s lack of information, in addition to its failure to “estimate the volume” of records found as required under 5 U.S.C. § 552(a)(6)(F) and its generic references to exemptions, suggests that the agency likely did not conduct an actual search for the requested records. Accordingly, MCC must conduct an adequate search for the records that American Oversight seeks as is required by FOIA.”

In my review of the facts in this request, it came to my attention that, in fact, a reasonable search had not been conducted in response to the request. As such, the initial determination responses’ invocation of various FOIA exemptions was premature. Upon learning the facts, I remanded the original request to the custodial agency office to conduct a fulsome search for any responsive records.

In response to my remand, the responsible records custodial agency office, the Human Resources division of the Administration & Finance Office at MCC, reported that a detailed search of agency electronic personnel records for current employees was conducted. The search was conducted by a senior level HR official and the duration of the electronic search was several hours. The search revealed no employees classified as “political appointees at the GS-13 level or higher at [MCC] reflecting a change to permanent competitive, non-political excepted service, or career SES position.” As a result, the search did not produce any records responsive to the American Oversight request.

Since the gravamen of the original American Oversight request is mooted, given the absence of documents responsive to the request, the original stated FOIA exemption bases for withholding documents are also moot. Ergo, there is no need to address herein the original bases for withholding the requested information nor the original determination responses. However, in the interest of economy and efficiency, additional actions and communications are not warranted. No further action in this matter is necessary given the factual reality that no records responsive to the American Oversight original request exist at the MCC.



DETERMINATION ON APPEAL

Your appeal has been reviewed and processed pursuant to applicable statutes and regulations, specifically 14 CFR § 1206. This process involved consideration of your original request, and your appeal. The initial determination is **affirmed on other grounds**. This is a final determination and is subject to judicial review under the provisions of 5 U.S.C. § 552(a)(4).

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

Sincerely,

RICHARD J.
McCARTHY
(affiliate)

Richard J. McCarthy
FOIA Appeals Officer

Digitally signed by RICHARD
J. McCARTHY (affiliate)
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