



October 17, 2001

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Barbara Schwarz  
335 East Broadway, Apt. 401  
Salt Lake City, Utah 84111

**RE: Appeal, FOIA Request 2001-23**

Dear Ms. Schwarz:

This responds to your letter dated June 25, 2001, but not received by the Legal Services Corporation ("LSC") until September 18, 2001, appealing LSC's response to your FOIA request of May 9, 2001. Upon review of the record, I must deny your appeal.

**Background**

In your FOIA request letter dated May 9, 2001, you asked LSC to produce the following documents: 1) all records pertaining to concerns raised about your mental health, including such records generated by LSC employees; 2) a log of FOIA/PA requests for 1999, 2000, and 2001; 3) a log of administrative appeals for 1999, 2000 and 2001; 4) a log of subpoenas for 1999, 2000 and 2001; 5) a log of litigation matters for 1999, 2000 and 2001; 6) a log of general correspondence for 1999, 2000 and 2001; and 7) internal records request forms related to the aforementioned requests.

On May 22, 2001, Lisa Zurmühlen acknowledged your request, which was assigned reference number 2001-23, and she indicated that she forwarded a copy to the LSC Office of Inspector General. On June 13, 2001, Ms. Zurmühlen responded substantively to your request, enclosing two documents consisting of three pages that were responsive to your request and appropriate for release, and a copy of LSC's FOIA/PA log totaling three pages appropriate for release (with some items redacted to protect personal privacy pursuant to FOIA Exemption 6). Ms. Zurmühlen indicated that LSC possessed no records responsive to requests 1 and 4. She also requested clarification from you about the nature of documents you were seeking in request 6, in which you asked for a log of 'general correspondence.' She indicated that LSC would be unable to process this aspect of your request without some clarification from you.

LSC received no response from you until September 18, 2001, when it received the above-referenced appeal letter, dated June 25, 2001. Although this letter contained a hand-written notation<sup>1</sup> at the top of page 1 suggesting that you had previously mailed the request, we have no record of having received it on a prior date. Your appeal claims that LSC is unlawfully withholding records responsive to your request. Your appeal refers both to the records sought in your FOIA requests and to the "search declaration" you requested.

### *Analysis*

You cite multiple bases for your appeal. First, you claim that you were unlawfully denied a complete copy of LSC's "litigation logs," noting that you received only "two pages [of] litigation records listing no more than 22 court cases since 1995." Because LSC's primary purpose is to distribute federal funding to organizations that provide free legal help to the poor, it is involved in a limited amount of litigation. Accordingly, it does not maintain an ongoing log of litigation. Such a log was, in fact, recently created on one occasion, for a specific project, and in response to your request you were given a copy of that log.

You note, in particular, that your FOIA cases were not listed on the litigation log you received. In cases that you have filed naming LSC as a defendant (e.g. *Barbara Schwarz v. United States Department of Energy, et. al.*, U.S. District Court for the District of Columbia, Civil Action No. 99-3234, *Barbara Schwarz v. United States Department of Health and Human Services, et. al.*, U.S. District Court for the District of Columbia, Civil Action No. 00-1610, etc.), the U.S. District Court for the District of Columbia has repeatedly ordered that, for the purpose of administrative economy, summonses should only be directed to the United States Attorney for the District of Columbia and the United States Attorney General. Accordingly, LSC is not directly litigating your cases and would not have included them on the one-time compilation of litigation matters.

Your second basis for appeal is that you were unlawfully denied a "log of general correspondence." LSC is an organization with multiple divisions and approximately 100 employees. Correspondence received by LSC is generally routed to the individual to whom it is addressed or to the division of LSC to which it is relevant. The Corporation does not maintain a central list of every piece of correspondence received.

Your third reason for appeal is that, in responding to your initial request, Lisa Zurmühlen deleted the personal identification numbers of two persons listed on the FOIA/PA logs with which she provided you. Exemption 6 of the Freedom of Information Act permits the withholding of "all information about individuals in 'personnel and medical files and similar files' when the disclosure of such

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<sup>1</sup> This notation reads, "Remailed on September 10, 2001 to President McKay. What is status of this appeal?"

information "would constitute a clearly unwarranted invasion of personal privacy." The numbers redacted by Ms. Zurmühlen were personal identification numbers that fall within the scope of Exemption 6 and, accordingly, I uphold her determination to exclude them.

Your fourth basis of appeal is that you believe you were unlawfully denied a subpoena log. As I mentioned above, LSC is involved in a very limited amount of litigation and does not maintain comprehensive logs of all pleadings, subpoenas, or other general litigation matters. Our litigation load is sufficiently small that it is unnecessary to maintain such central logs for purposes of managing our court cases.

Your fifth basis of appeal is your belief that you were unlawfully denied records pertaining to communication between LSC's Senior Assistant General Counsel and the Mental Health Division of the State of Utah. The decision of the Senior Assistant General Counsel to contact the State of Utah was a personal decision undertaken in a personal capacity. The action was never contemplated by LSC as an organization. Any record which would have existed on this subject would not fall within the definition of an 'agency record,' as interpreted by FOIA caselaw. Accordingly, you would have no statutory right to such a record. Even if you were entitled to such records, the only documentation of this communication was the electronic mail message sent by the Senior Assistant General Counsel to the State of Utah, which you acknowledge having received from the State of Utah in your letter dated June 25, 2001, and received by LSC on September 18, 2001.

Your sixth basis of appeal is your belief that LSC did not conduct an adequate search because Ms. Zurmühlen did not provide you with search records generated to retrieve documents responsive to your request. Under FOIA, LSC is required to undertake searches that are "reasonably calculated to uncover all relevant documents." *Weisberg v. Department of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Such a search was conducted, as evidenced by the records you requested and acknowledge having received. Accordingly, we have no basis to believe that a further search of agency records would be reasonably calculated to uncover any relevant documents or that the search conducted was inadequate.

Your final basis of appeal is that you were provided with no "search declaration." As we have mentioned to you on multiple occasions in the past<sup>2</sup>, what you consider to be a "search declaration" would require LSC to create new records documenting and describing its search efforts. There is no requirement under FOIA that an agency create for a requester any agency records that do not already exist. As the U.S. District Court for the District of Columbia noted in one of your own cases, "Plaintiff is advised that there is no requirement that an agency provide a 'search certificate' or a 'Vaughn' index on an initial request for documents. The requirement for detailed declarations and Vaughn indices is imposed in connection with a motion

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<sup>2</sup> See LSC FOIA response letters to you dated March 7, 2000, July 25, 2000, February 2, 2001, and June 7, 2001.

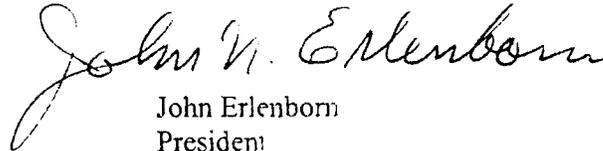
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for summary judgment filed by a defendant in a civil action pending in court.”  
*Schwarz v. U.S. Department of Treasury, et. al.*, 2000 WL 1922277, \*2 (D.D.C.).

With respect to your claim that you did not receive a formal response to your letter of May 10, 2001, I have explained the communication between the Senior Assistant General Counsel and the State of Utah Division of Mental Health above. This was a personal action, undertaken in a personal capacity. The communication was not initiated pursuant to any formal institutional decision.

In light of the foregoing information, I have no basis upon which to determine that you were unlawfully denied any records responsive to your requests or any document which you characterize as a “search declaration.” If you believe that this determination is in error, you may seek judicial review of this decision in the district court of the United States as provided in 5 U.S.C. § 552(a)(4).

Sincerely,

A handwritten signature in black ink that reads "John V. Erlenborn". The signature is written in a cursive style with a large, looping initial "J".

John Erlenborn  
President