

From: [Lenhoff, Donna R - OFCCP](#)
To: [Shiu, Patricia A - OFCCP](#); [Mehta, Parag V - OFCCP](#)
Subject: FW: Media FOIA Request Pertaining to Macy v. Holder (Tracking No. 745706)
Date: Friday, April 11, 2014 2:32:35 PM
Attachments: [745706 Hernandez Request.pdf](#)
Importance: High

FYI – another request on this topic.

From: Horak, Forrest - OFCCP
Sent: Friday, April 11, 2014 2:25 PM
To: Lenhoff, Donna R - OFCCP
Cc: Spishak, Cynthia - OFCCP; Narcho, Herman J - OFCCP
Subject: Media FOIA Request Pertaining to Macy v. Holder (Tracking No. 745706)
Importance: High

Good afternoon, Donna,

Today, OFCCP received a second FOIA request for records related to the *Macy v. Holder* decision. The FOIA request in question is from Sergio Hernandez, Senior Editor of *The Week*. A copy of the request is attached. The request consists of two items. Only the second item pertains to OFCCP. The second item consists of a request for the following records:

2. Any type- or handwritten notes from OFCCP's 2012 "Headquarters Committee" meetings* regarding the decision in *Macy v. Holder. Id.*

*According to the *Memorandum of Understanding between the U.S. Department of Labor and the Equal Employment Opportunity Commission*, 76 Fed. Reg. 71029 (Nov. 16, 2011), representatives from OFCCP and the EEOC's headquarters are required to "meet not less than biannually to discuss topics of mutual interest to both agencies."

Since you were the point person on the first *Macy v. Holder* FOIA request, I thought it appropriate to seek your assistance with this request. At this early stage, I have only two questions:

1. Did we hold a Headquarters Committee Meeting with EEOC in 2012?
2. If so, was the *Macy v. Holder* decision discussed?

Please feel free to contact me if you have any questions or would like to discuss this request in greater detail.

Thank you,

Forrest

Forrest J. Horak

Special Assistant

U.S. Department of Labor

Office of Federal Contract Compliance Programs

Division of Management and Administrative Programs
Phone: (202) 693-1145
Fax: (202) 693-1303

Oliver, Ramona - SOL

From: Smith, M. Patricia - SOL
Sent: Wednesday, March 19, 2014 5:37 PM
To: Oliver, Ramona - SOL
Subject: Fw: FOIA Request

From: Sergio Hernandez <Hernandez@theweek.com>
Sent: Wednesday, March 19, 2014 5:06:01 PM
To: Smith, M. Patricia - SOL
Subject: Re: FOIA Request

Ms. Smith,

I'm writing to follow up on my FOIA request, dated Feb. 11, 2014 and reproduced below. As you know, federal law permits an agency 20 days to respond to a FOIA request. As of this date, I have not received a response from your agency, whose reply is seven days overdue.

Please advise,

—
Sergio Hernandez
Senior Editor, THE WEEK
55 West 39th Street, 5th Fl
New York, NY 10018

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On Feb 11, 2014, at 12:47 PM, Sergio Hernandez <Hernandez@theweek.com> wrote:

Dear FOIA Officer:

Pursuant to the U.S. Freedom of Information Act ("FOIA") (5 U.S.C. § 552), please provide copies of:

1. All emails, memoranda, and (type- or handwritten) notes produced by the Office of Public Affairs between April 20, 2012 and present regarding media inquiries from Chris Geidner (a journalist for Metro Weekly and BuzzFeed) regarding OFCCP's enforcement of Executive Order 11246, specifically as it pertains to transgender workers and the Equal Employment Opportunity Commission's decision in *Macy v. Holder*, Appeal No. 0120120821 (EEOC April 20, 2012); and
2. Any type- or handwritten notes from the OFCCP's 2012 "Headquarters Committee" meetings* regarding the decision in *Macy v. Holder. Id.*

* According to the *Memorandum of Understanding Between U.S. Department of Labor and Equal Employment Opportunity Commission*, 76 Fed. Reg. 71029 (Nov. 16, 2011), representatives from OFCCP and the EEOC's

headquarters are required to "meet not less than biannually to discuss topics of mutual interest to both agencies."

Should you determine that any records, or portions thereof, are responsive or potentially responsive to this request, but exempt from disclosure, I expect the release of all segregable portions of otherwise exempt material.

While not explicitly required by statute and as a matter of good faith, I ask that you provide an itemized, indexed inventory of every agency record or portion thereof responsive to this request which you asserts to be exempt from disclosure, accompanied by a detailed justification statement covering each refusal to release records or portions thereof in accordance with the indexing requirements of *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974), as well as the name and address to whom an administrative appeal may be directed. Failure to do so may result in commencement of a FOIA action and a formal motion requesting production of a Vaughn index.

Because I am a member of the news media and this information is sought as part of a news-gathering effort and not for commercial use, I ask that you please waive any fees associated with this request.

As you know, there has been considerable attention recently toward the Labor Department's interpretation of EO 11246 and the *Macy* ruling (See: <http://www.buzzfeed.com/chrisgeidner/labor-department-officials-prevent-off-topic-questions-at-pu>, <http://www.buzzfeed.com/chrisgeidner/obama-labor-department-may-be-ignoring-protections>, <http://www.buzzfeed.com/chrisgeidner/obamas-labor-department-refuses-to-say-if-its-protecting-tra>, and <http://www.buzzfeed.com/chrisgeidner/labor-department-refuses-to-answer-questions-on-transgender>). Therefore, pursuant to 29 CFR 70.25(d), I ask that you please grant expedited processing for this request, since this request concerns "an urgency to inform the public about an actual or alleged federal government activity;" because I am "a person primarily engaged in disseminating information;" and involves "a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." See 29 CFR 70.25(d)(1)(ii) and 29 CFR 70.25(d)(1)(iv).

To the extent that you are unable to produce copies of or otherwise make available all records requested immediately, please furnish whatever records are immediately available and the remainder of the records on a "rolling" basis as they become available for production. If your office has received other FOIA requests seeking any of these records, I ask that you please make those commonly requested records available concurrently.

Since I am a journalist and this information is of timely value, **please provide records responsive to this letter in digital format and by e-mail, rather than in hard copy or by postal mail.** Likewise, **any questions or correspondence regarding this request should be directed to me by e-mail or telephone**, rather than by routine mail or fax.

I look forward to your response within twenty (20) working days as required by statute.

Sergio Hernandez
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