

VIA EMAIL

December 24, 2020

Emerique Magyar
CDC/ATSDR FOIA Office
Office of the Chief Operating Officer

Dear Emerique Magyar:

I am in receipt of your letter dated December 24, 2020. You may limit your search to agency email records within the timeframe noted in the original request.

This is not an admission that the request was too broad, on the contrary the request submitted is a narrowly constructed and, as even you pointed out in your response, will result in a limited number of records related to the stated subjects. You also did not provide any relevant information to support your claim that the request was too broad, specifically: the amount of time the search would require; the expense of such a search; and the number of files that would have to be searched in order to comply with the FOIA request. *Pinson v. United States Department of Justice*, 80 F. Supp. 3d 211 (D.D.C. 2015).

Also, the Department of Justice has noted that the size of a request does not allow a federal agency, in and of itself, to deny a request. DOJ FOIA Update Vol. IV, No. 3, at 5:

"The sheer size or burdensomeness of a FOIA request, in and of itself, does not entitle an agency to deny that request on the ground that it does not 'reasonably describe' records within the meaning of 5 U.S.C. § 552(a)(3)(A). That provision in the FOIA was intended to ensure that a FOIA request description "be sufficient [to enable] a professional **employee of the agency who was familiar with the subject area of the request** to locate the record with a reasonable amount of effort." H.R. Rep. No. 93-876, 93d Cong., 2d Sess. 6 (1974). See also S. Rep. No. 93-854, 93d Cong., 2d Sess. 10 (1974) ("[T]he identification standard should not be used to obstruct public access to agency records."); *Bristol-Meyers Co. v. FTC*, 424 F.2d 935, 938 (D.C. Cir.), cert. denied, 400 U.S. 824 (1970)."

Please see also *Kenney v. U.S. Dep't of Justice*, 603 F. Supp. 2d 184, 188 (D.D.C. 2009); see also *MacLeod v. U.S. Dep't of Homeland Sec.*, No. 15cv1792, 2017 WL 4220398, at *12 (D.D.C. Sept. 21, 2017).

Based on your response, you seem relatively familiar with the subject area and seemed to be able to easily ascertain exactly what records would be responsive to the records. You simply objected because it was a lot of records, not that you were unable to understand which records would be responsive to the request.

Further, the size of your agency is wholly irrelevant, and I would note, it is one of the smaller in the federal government. The FOIA's limited exemptions are not triggered by agency size.

Also, I have already narrowed the request by a) providing you with a narrow timeframe within to search and b) the specific subjects to search for. I cannot, for example, reasonably get more specific than the caption of a federal lawsuit. Further, it is not my obligation to construct search queries for you and it unreasonable to expect me to. I do not and cannot be expected to possess the relevant knowledge of agency records systems to construct search queries in the manner you are requiring.

I also cannot and am not required to limit my request to certain employees, because I do not know which employees may have responsive records. Note that a district court in DC recently ruled against the Central

Intelligence Agency for requiring that a request name the specific employees who received emails before a search would be conducted:

The CIA **spends much of its energy denying the existence of any such policy, presumably because it cannot credibly dispute that such a policy violates the FOIA.** By its express terms, section 552(a)(3) sets forth only one standard for the categorical rejection of a request for records based on its substance: that the documents sought are not “reasonably described.”

...

This means that the FOIA does not authorize the CIA to deny a FOIA email request categorically, simply and solely because the request does not reference the sender... Cf. S. Rep. No. 93-854, at. 10 (1974) (noting that Congress intended the “reasonably described” language to be interpreted liberally, and that this standard “should not be used to obstruct public access to agency records”).

All things considered, then, this Court easily finds that there is no genuine dispute that **the CIA has employed a policy of categorically refusing to process ... FOIA requests for email records that do not specify “to” and “from” recipients ... and it concludes that this policy violates the FOIA.**

Muckrock, LLC v. Cent. Intelligence Agency (D.D.C. 2018) 300 F. Supp. 3d 108 (emphasis added)

The submitted request was narrowly constructed, and the records sought are reasonably described. As noted above, you seemed to have no difficulty describing the categories of responsive records, you simply and impermissibly objected based on the size of the request. However, as noted above, you may limit your searches to agency email records at this time. I reserve the right to request any additional records that may be responsive to my initial request at a later date.

Any continued refusal to search agency records on the grounds you have noted will result in immediate litigation to compel compliance.

Sincerely,

Justin Sparks