



# governmentattic.org

*"Rummaging in the government's attic"*

Description of document: Freedom of Information Act (FOIA) Appeals Log for the Federal Highway Administration (FHWA), 2009-2016

Requested date: 2016

Released date: 08-November-2016

Posted date: 28-November-2016

Source of document: HQ: Federal Highway Administration  
Attn: FOIA Officer (HCC-40)  
1200 New Jersey Ave., SE  
Washington, DC 20590  
Fax: (202) 366-7499  
E-mail: [foia.officer@fhwa.dot.gov](mailto:foia.officer@fhwa.dot.gov)

The governmentattic.org web site ("the site") is noncommercial and free to the public. The site and materials made available on the site, such as this file, are for reference only. The governmentattic.org web site and its principals have made every effort to make this information as complete and as accurate as possible, however, there may be mistakes and omissions, both typographical and in content. The governmentattic.org web site and its principals shall have neither liability nor responsibility to any person or entity with respect to any loss or damage caused, or alleged to have been caused, directly or indirectly, by the information provided on the governmentattic.org web site or in this file. The public records published on the site were obtained from government agencies using proper legal channels. Each document is identified as to the source. Any concerns about the contents of the site should be directed to the agency originating the document in question. GovernmentAttic.org is not responsible for the contents of documents published on the website.



U.S. Department  
of Transportation  
**Federal Highway  
Administration**

1200 New Jersey Avenue, SE  
Washington, D.C. 20590

November 8, 2016

FOIA Control Number: **2017-0029**

In Reply Refer To: **HCC-40**

This letter is in reference to your Freedom of Information Act (FOIA) request, in which you requested copies of the Freedom of Information Act Appeals Log for the Federal Highway Administration (FHWA) for the time period since 2009.

Attached is a copy of the FHWA FOIA Appeal Log you requested. This record is being released to you in full, except that we are withholding certain personal information, as release of this information would constitute a clearly unwarranted invasion of personal privacy under 5 U.S.C. 552(b)(6) and 49 CFR 7.13 (c)(6). Be advised that no fees have been assessed in connection with this request; however, fees may be aggregated for future requests.

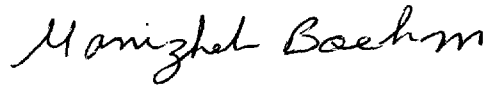
Pursuant to U.S. Department of Transportation regulations (49 C.F.R. § 7.32), you have the right to appeal this decision in writing to Ms. Sarah Shores, Associate Administrator for Administration, Federal Highway Administration. Your appeal may be mailed to 1200 New Jersey Avenue, S.E., E66-322, Washington, D.C. 20590-9898, or sent via e-mail at [FHWA.foia.appeals@dot.gov](mailto:FHWA.foia.appeals@dot.gov) or via fax at 202-366-7499. Should you wish to exercise this right, the agency decision on the appeal will be the final administrative action. Your appeal must be postmarked or, in the case of electronic or facsimile transmission submitted, within ninety (90) calendar days from the date the initial determination is signed and should include the FHWA file or reference number assigned to the request and all information and arguments relied upon in making the appeal.

Page Two  
November 8, 2016

You also have the right to seek dispute resolution services from the FHWA FOIA Liaison, Alla Shaw, Christopher, [FOIAPublicLiaison@dot.gov](mailto:FOIAPublicLiaison@dot.gov), via phone (202) 366-0740; or the Office of Government Information Services (<https://oris.archives.gov>) via phone (202) 741-5770/toll free 1(877) 684-6448; fax (202) 741-5769; or e-mail [ogis@nara.gov](mailto:ogis@nara.gov).

If you have any questions with regard to this letter, please feel free to contact me at (202) 366-0948.

Sincerely,

A handwritten signature in black ink that reads "Manizheh Boehm". The script is cursive and fluid.

Manizheh Boehm  
FHWA FOIA Specialist

U.S. Department of Transportation Federal Highway Administration Freedom Of Information Act (FOIA) Log					
Searched for: Appeal Requests Only, Date Logged In Since 1/1/2009, Date Logged In Until 11/1/2016					
CONTROL NUMBER	STATUS	DATE RECEIVED	REQUESTER LAST NAME	REQUESTING FIRM	SUBJECT
2010-0038	CLOSE	10/13/2009	DeScherer	Southern Environmental Law Center	The requestor is appealing the initial determination by the FHWA South Carolina Division to withhold a number of records as deliberative and predecisional under FOIA Exemption 5.
2010-0080	CLOSE	11/17/2009	Wilson		Release of all professional references for Mr. Sorensen.
2010-0130	CLOSE	1/12/2010	LoScalzo	LoScalzo Media Design LLC	Requestor asking for full disclosure of records relating to modification of on-ramp and off-ramp to the Van Wyck Expressway.
2010-0195	CLOSE	4/5/2010	van Hoek		Decision to withhold information and wait time for response.
2010-0228	CLOSE	3/12/2010	Wilson		Redactions and 6 month response time.
2010-0248	CLOSE	6/8/2010	Kendall	Southern Environmental Law Center	withholding (per b5) of documents re: I-85 HOV to HOT Conversion project
2010-0283	CLOSE	7/21/2010	DeScherer	Southern Environmental Law Center	withholding of records under Ex. 5 pertaining to Mark Clark Expressway
2010-0346	CLOSE	9/21/2010	DiPerna	Duane Morris	Division's response to items 4 and 7 of their request.
2011-0004	CLOSE	10/6/2010	Ghilain	Arnold & Porter	challenges NY Division's b5 withholding of draft AMR
2011-0025	CLOSE	10/28/2010	Jones		adequacy of search by HARR
2011-0173	CLOSE	3/28/2011	Wilson		over-redacted response, i.e., Basis(es) and Claim(s). Mr. Masuda improperly invoked exemption 6. Asks only that the basis(es) and claim(s) be un-redacted.
2011-0178	CLOSE	3/29/2011	Lider	Lider Engineering	denial of fee waiver by WFL
2011-0229	CLOSE	5/25/2011	Knich	The Post and Courier	An appeal on the administration's decision to withhold financial information from a report on the James E. Clyburn University Transportation Center at South Carolina State University.
2011-0278	CLOSE	7/7/2011	Buchele	Pacific Environmental Advocacy Center	Mr. Buchele is appealing the use of exemption (b)5 as overbroad in its decision to withhold 443 e-mails and 172 other documents.
2011-0292	CLOSE	7/12/2011	Tritico	RESTORE	Information withheld and no records response by FHWA regarding the I-10 Calcasieu River Bridge in Louisiana.
2011-0303	CLOSE	7/20/2011	Bissinger	Save Our Springs Alliance, Inc.	Denial of fee waiver.
2012-0046	CLOSE	11/22/2011	Powell	Oles Morrison Rinker & Baker LLP	Appealing scope of search and use of attorney - client privilege.
2012-0049	CLOSE	11/16/2011	Jaffe	SELC	Fee waiver denial.

U.S. Department of Transportation Federal Highway Administration Freedom Of Information Act (FOIA) Log					
Searched for: Appeal Requests Only, Date Logged In Since 1/1/2009, Date Logged In Until 11/1/2016					
CONTROL NUMBER	STATUS	DATE RECEIVED	REQUESTER LAST NAME	REQUESTING FIRM	SUBJECT
2012-0082	CLOSE	12/14/2011	Kendall	Southern Environmental Law Center	Fee waiver denial for FOIA request 2012-0026.
2012-0188	CLOSE	3/1/2012	Feemster	SOURCE	See below
2012-0208	CLOSE	3/16/2012	Brinton		Adequacy of Search for term Customary Use
2012-0253	CLOSE	4/17/2012	Powell	Oles Morrison	Use of attorney-client privilege.
2012-0295	CLOSE	4/30/2012	Soldner	Coffman Specialities, Inc	Adequacy of the search; timeliness of response.
2012-0336	CLOSE	6/12/2012	Ravnitzky		Validity of B5 totally withheld document - Draft report CEVMS.
2013-0014	CLOSE	10/10/2012	Wizner	American Civil Liberties Union Foundation	Adequacy of the search.
2013-0077	CLOSE	11/19/2012	Greene		Appealing agency no records response.
2013-0106	CLOSE	12/19/2012	Avrigian Jr	Wisler Pearlstine LLP	Failure to provide timely response to FOIA request per 49 CFR 7.31.
2013-0110	CLOSE	1/2/2013	Evans	Southern Environmental Law Center	Adequacy of the search regarding Corridor K.
2013-0111	CLOSE	1/2/2013	Evans	Southern Environmental Law Center	Adequacy of search regarding Corridor K.
2013-0139	CLOSE	1/31/2013	Gist	Southern Environmental Law Center	Fee Waiver Appeal.
2013-0166	CLOSE	2/21/2013	Rosenberg	Burke Anderson & Melloni PLC	Contesting the use of exemption b5 and Vaughn index lacks specificity.
2013-0172	CLOSE	2/14/2013	Brian	Southern Environmental Law Center	Fee waiver denial.
2013-0188	CLOSE	3/12/2013	Greene		Use of exemption b(5).
2013-0220	CLOSE	4/8/2013	Zambito	Newsday-Westchester	Exemption (b)4: Records regarding submitter notification responses. Records withheld under exemption (b)4 of the FOIA.
2013-0224	CLOSE	4/12/2013	Gold	WilmerHale	Use of exemption (b)5, failure to adequately describe withheld records, and adequacy of the search.
2013-0270	CLOSE	5/28/2013	Gerken	Southern Environmental Law Center	Fee Waiver Denial.
2013-0320	CLOSE	7/10/2013	Pellecchia	Tri-State Transportation Campaign	Use of exemption b(4) to withhold Tappan Zee Hudson River Crossing Project financial plan.
2014-0002	CLOSE	10/3/2013	Grzezinski	Midwest Environmental Advocates	Appeal of records withheld under 1) attorney-client privilege, and 2) deliberative process privilege -



U.S. Department of Transportation Federal Highway Administration Freedom Of Information Act (FOIA) Log					11/1/2016
Searched for: Appeal Requests Only, Date Logged In Since 1/1/2009, Date Logged In Until 11/1/2016					
CONTROL NUMBER	STATUS	DATE RECEIVED	REQUESTER LAST NAME	REQUESTING FIRM	SUBJECT
					relating to recertification of SEWRPC
2014-0003	CLOSE	10/3/2013	Chorzempa	Marvin, Chorzempa & Larson, PC	Appealing withholding of documents under Attorney-Client privilege, did not indicate employee responsible for initial determinations, did not reply to initial decision within 20 working days.
2014-0070	CLOSE	12/2/2013	Rotker	Poverty, Race & Civil Liberties Project	Appeals Exemption (b)(5) withholding of records under attorney-client and deliberative process privileges.
2014-0071	CLOSE	12/2/2013	Appel	Farmington City	Appealed (b)(5) withholding of records under the deliberative process privilege.
2014-0194	CLOSE	2/21/2014	Kane	Safety Research & Strategies, Inc.	Appeal of the Adequacy of the Search for several items requested.
2014-0227	CLOSE	3/18/2014	Kane	Safety Research & Strategies, Inc.	Challenging adequacy of search and withholding of material under FOIA exemption 5.
2014-0235	CLOSE	3/24/2014	Carrington	JH&C, PLLC	Adequacy of search.
2014-0240	CLOSE	4/2/2014	(b) (6)		Appealing the withholding of records under FOIA Exemption 5.
2014-0262	CLOSE	4/23/2014	(b) (6)		(b) (6) is appealing the decision the agency made to withhold 36 pages from (b) initial request. (b) is also requesting a refund in the amount of \$319.
2014-0289	CLOSE	5/5/2014	Waldron		Very disappointed about the information that was sent to him from Nikisha Pickett in the matter of his original request. All documents that may have had the information he requested was redacted.
2014-0298	CLOSE	5/14/2014	(b) (6)		Appealing the excessive redactions of the documents received regarding FOIA request 2014-0186.
2014-0331	CLOSE	6/10/2014	Juva-Brown	The Journal News	Appealing DOT's decision in a letter on May 15, 2014 to deny access to the request filed on March 19, 2014, FOIA number 2014-0199.
2014-0333	CLOSE	6/10/2014	Kornblatt	Gibbs, Giden, Locher, Turner, Senet & Wittbrodt LLP	The appeal is based on the second sentence of FAR Subpart 24.202(a), which qualifies the sentence quoted in CFLHD letter.
2014-0334	CLOSE	6/11/2014	Mann		Appealing the decision not to provide requested records in LandXML format.
2014-0413	CLOSE	8/8/2014	Pellecchia	Tri-State Transportatio	TSTC appeals Duane Callender's decision for denial of the records

U.S. Department of Transportation Federal Highway Administration Freedom Of Information Act (FOIA) Log					
Searched for: Appeal Requests Only, Date Logged In Since 1/1/2009, Date Logged In Until 11/1/2016					
CONTROL NUMBER	STATUS	DATE RECEIVED	REQUESTER LAST NAME	REQUESTING FIRM	SUBJECT
				n Campaign	request pursuant to the privileged or confidential commercial or financial information FOIA exemption 5.
2014-0425	CLOSE	8/28/2014	Mann	CP Construction, LLC	Not providing the records requested in the LandXML format on the basis that the records existed at the time of the request and they were readily reproducible in the requested format.
2014-0426	CLOSE	9/2/2014	LoScalzo		Requester is appealing search and review fee in the amount of \$60.00. He asserts that his request is eligible for without any charges or at a reduced charge, pursuant to 5 U.S.C. Section 552(a)(4)(A)(iii). The response letter indicated, search and review fee 1 hour at \$60.00. However, the response letter contains no discussion or determination of his request that the FHWA waive or reduce fees in connection with his request.
2014-0429	CLOSE	9/3/2014	Sewell		Adequacy of search
2014-0437	CLOSE	4/17/2014	(b) (6)		Emails between (b) (6) and (b) (6) from period 11/6/2013 to 2/1/2014.
2015-0014	CLOSE	10/20/2014	Bohner		Appealing non-responsive documents that FHWA-CA Division Office did not release.
2015-0030	CLOSE	10/27/2014	(b) (6)		1) Incomplete documents - Performance appraisals of (b) (6) From 2002 to 2011 I have requested the performance appraisals of (b) (6) from 2002 to 20011, all what I received are (b) (6) performance appraisals for 2009 and 2010. The letter I received from the director of the Office of Human Resources used Transmittal No. 23 General Record Schedule 1, Civilian Personnel Records (September 2014) as a reason not to provide performance appraisals prior to 2008. According to U.S National Archives and Records Administration, the dissemination of Transmittal 23 was published in the Federal Register on September 12, 2014 and it was corrected on September 25, 2014. The Office of Human Recourses,

**U.S. Department of Transportation  
Federal Highway Administration  
Freedom Of Information Act (FOIA) Log**

11/1/2016

Searched for: Appeal Requests Only, Date Logged In Since 1/1/2009, Date Logged In Until 11/1/2016

CONTROL NUMBER	STATUS	DATE RECEIVED	REQUESTER LAST NAME	REQUESTING FIRM	SUBJECT
					<p>according to the director's letter, has received my FOIA request on March 21, 2014 and the fee waiver was granted prior to the issuance of Transmittal 23.</p> <p>2) Incomplete documents Awards or QSIs that (b) (6) has received from 2002 to 2011 I have requested any Awards or QSIs that (b) (6) has received from 2002 to 201, all what I received are (b) cash award amounts from 2007 to 2011 without the reasons for these cash awards.</p> <p>3) Excessive redaction of the performance appraisals of (b) (6)</p> <p>The two performance appraisals I received were completely redacted in violation of FOIA rules and Supreme Court precedent on the matter. The redactions are in violation due to the following reasons</p> <p>The existence of allegations of wrongdoing and discrimination by management.</p> <p>The public interest in knowing what standards of performance are expected of public employees particularly when receiving merit pay is involved and that the release of such information will shed light on an agency's performance of its statutory duties.</p> <p>The Supreme Court has articulated the general rule that the identity of a FOIA requester cannot be taken into consideration in determining what should be released under the Act. A rule the DCR has violated in considering what to release in response to this request.</p> <p>4) Incomplete documents The EEO activity of (b) (6) from 2003 to 2013</p> <p>The EEO activity of (b) (6) that was provided Case (b) (6) (b) (6) case against the DOT. The ROI has</p>



U.S. Department of Transportation Federal Highway Administration Freedom Of Information Act (FOIA) Log					
Searched for: Appeal Requests Only, Date Logged In Since 1/1/2009, Date Logged In Until 11/1/2016					
CONTROL NUMBER	STATUS	DATE RECEIVED	REQUESTER LAST NAME	REQUESTING FIRM	SUBJECT
					confirmed prior EEO activity for (b) (6) I request the following Performance appraisals of (b) (6) from 2002 to 2011 in response to the FOIA 2014-0228 request without any redaction. The complete awards that (b) (6) has received from 2002 to 2011 including the justification or reasons for the awards. The complete EEO activity of (b) (6) from 2003 to 2013.
2015-0063	CLOSE	11/17/2014	Bohner		Appealing the decision for no records provided by the CA division office.
2015-0088	CLOSE	12/16/2014	Sunderland	Din 14A0008	Appealing the adequacy of search along with spelling errors that may have resulted in no records.
2015-0091	CLOSE	1/7/2015	Tran	Mathis & Donheiser	After reviewing the decision, the requester cannot tell whether his request was denied because the FHWA does not have any records in response or because there was something wrong with the request.
2015-0102	CLOSE	1/21/2015	Kildare	Advocates for Highway And Auto Safety	Appealing a FOIA fee waiver application decision.
2015-0172	CLOSE	3/16/2015	Tangel	The Wall Stret Journal	I write to appeal the redactions and withholding of any and all exhibits and attachments related to the TIFIA loan application sought in this FOIA request
2015-0262	CLOSE	6/3/2015	Anderson	Anderson Paint Store, LLC	Adequacy of the search for TX DOT.
2015-0277	CLOSE	6/22/2015	LoScalzo		Appeal for withholding of records.
2015-0288	CLOSE	6/30/2015	Steiner		Missing information on pages that were released and withheld documents.
2015-0330	CLOSE	8/18/2015	Gavin	Law Office of Kevin P. Gavin	Fee Waiver Determination.
2015-0332	CLOSE	8/24/2015	Gavin	Law Office of Kevin P. Gavin as Portsmouth Town Solicitor	Adequacy of search
2015-0344	CLOSE	8/27/2015	DeBruicker	Duane Morris	Adequacy of search for records regarding the railroad-highway grade crossing at Sixth and Main Streets in Darby Borough,

U.S. Department of Transportation Federal Highway Administration Freedom Of Information Act (FOIA) Log					
Searched for: Appeal Requests Only, Date Logged In Since 1/1/2009, Date Logged In Until 11/1/2016					
CONTROL NUMBER	STATUS	DATE RECEIVED	REQUESTER LAST NAME	REQUESTING FIRM	SUBJECT
					Pennsylvania, USDOT Crossing Inventory No. 1406415.
2015-0352	CLOSE	9/9/2015	(b) (6)		Requestor is appealing both the fee estimate and requesting a fee waiver.
2015-0365	CLOSE	9/23/2015	Sullivan		Adequacy of search - Requestor was able to locate FHWA or DOT records/state DOT records responsive to his request via internet search engine(s) following a no-records response by the Office of Civil Rights.
2016-0008	CLOSE	10/8/2015	Kane	Safety Research & Strategies, Inc.	Appealing the adequacy of the search and improper withholding or documents under 7(a)
2016-0039	CLOSE	11/6/2015	Zagrean		<p>I am writing to appeal the Federal Highway Administration (FHWA) decision to deny my FOIA request dated August 17, 2015, in which I requested the FHWA analysis of 2005 crash tests validating that the ET Plus with 4-inch guide channel was crash tested in May 2005. The decision relies on 1) Exemption 7(a) authorizing the withholding of records or information compiled for law enforcement purposes and on 2) Exemption 5 protecting the deliberative process that covers agency personnel. I argue that both grounds of denial are unfounded as follows</p> <p>1)Exemption 7(a) First, the FHWA does not have law enforcement powers, and therefore cannot invoke Exemption 7. Second, the documents I have requested were created in the course of FHWA's ordinary business and not for the purpose of any investigation. Third, the FHWA has not specifically identified the subject or target of an investigation - on the contrary, I understand that the official position is that the product has enjoyed an unbroken chain of eligibility. For each of these reasons, Exemption 7(a) does not apply. 2)Exemption 5: For Exemption 5 to apply, the FHWA has the burden of proving that the requested documents are both predecisional and deliberative. The FHWA has done neither. Further, even if privilege might arguably apply, the government has waived its right to invoke Exemption 5. Lastly, the</p>

U.S. Department of Transportation Federal Highway Administration Freedom Of Information Act (FOIA) Log					
Searched for: Appeal Requests Only, Date Logged In Since 1/1/2009, Date Logged In Until 11/1/2016					
CONTROL NUMBER	STATUS	DATE RECEIVED	REQUESTER LAST NAME	REQUESTING FIRM	SUBJECT
					FHWA cannot assume the authority of deciding what may or may not confuse the public, as this exemption describes as part of its general purpose. Rather, the FHWA must face public scrutiny of its exercise of public service - including its deliberation and decision making processes which it seeks to protect here through this Exemption. For each of these reasons, Exemption 5 cannot be invoked. Based on the above I request that the decision to deny my request be reversed and that the documents requested be provided immediately under the rights guaranteed by FOIA.
2016-0074	CLOSE	12/11/2015	Goering	Ratwik, Roszak & Maloney, P.A.	Appealing the denial of access to two emails.
2016-0086	CLOSE	12/18/2015	Retton	Stantec	Appealing the use of exemption 4.
2016-0161	CLOSE	3/21/2016	LoScalzo		appealing the adequacy of the search and withholding of documents.
2016-0229	CLOSE	5/9/2016	Blunt	San Antonio Express-News	Challenging the use of exemption 4.
2016-0291	CLOSE	7/7/2016	Klein	Outdoor Advertising Association of America	appealing the determination that no additional records available regarding FOIA request # 2016-0249.
2017-0024	OPEN	10/20/2016	Brune	Cook Inlet Region, Inc.	We would like to appeal FHWA's redaction of names and organizations from the FOIA request we submitted on September 29 to which FHWA responded on October 11 (ADMS 39-1 FOIA 2016-0367). I respectfully urge you to reconsider these redactions. I would further urge you to make all comments on this issue available for public review immediately, rather than at publication of the final EIS.
2017-0028	OPEN	10/27/2016	Cabrera	R. E. Cabrera & Associates	In reviewing the Department's response to my FOIA request, I don't believe that the Department was fully responsive to that request. My original request was as follows:  I'm interested in materials submitted by TTI / Trinity Highway Products in support of their Split Rail Terminal (SRT). The SRT



U.S. Department of Transportation  
Federal Highway Administration  
Freedom Of Information Act (FOIA) Log

11/1/2016

Searched for: Appeal Requests Only, Date Logged In Since 1/1/2009, Date Logged In Until 11/1/2016

CONTROL NUMBER	STATUS	DATE RECEIVED	REQUESTER LAST NAME	REQUESTING FIRM	SUBJECT
					evaluations begin with approval letters CC-31, CC-31A, CC-51, CC-51A, and most recently CC-101. In addition to digital copies of all materials for the noted approvals, I am also requesting copies of the testing videos. Clearly, approval letters HSSD/CC-101, which was not provided to us, mentions materials submitted by the applicant which were not provided to us. How many of the other approvals CC-72, CC-100, CC-100a and their supporting documentation were left out of the Department's response. I would appreciate a more thorough response to my request.