

The U.S. Office Of Government Ethics' Seeming Effort to Lose Former USDOT Secretary Mineta's Calendar Year 2000 Public Financial Disclosure Report

Jerry Werner
March 19, 2008

At the suggestion of the Chairman of a non-profit government watchdog organization, with whom I have consulted regarding a big ongoing scandal within the U.S. Dept. of Transportation, in late October 2006 I requested copies of all of Mr. Mineta's Form SF 278, "Public Financial Disclosure Reports," from Ms. Denise Shelton, Ethics Assistant at the U.S. Office of Government Ethics (OGE). (In reviewing those reports and discussing their contents with my advisor, we noticed that major "red flag" in which Mr. Mineta failed to disclose the details of his capital gains profit in Trimble Navigation stock options on Schedule B of his calendar year 2000 disclosure.)

However, in reviewing both the cover sheet and page 6 of his cy2000 disclosure, it became clear that the Schedule B in which he erroneously marked "none" as to any transactions was dated over a year after the rest of the report. I came to believe, after discussing this anomaly with Tom Zorn, the Deputy Associate Director for Financial Disclosures at the OGE, that Mr. Mineta had likely amended this page 6 after he originally filed that disclosure, since the date of the page 6 in the report that OGE sent to me, April 18, was almost a year after his cy2000 was due in to the OGE (May 15, 2001). Mr. Zorn seemed to agree with this observation during my conversation with him.

I mentioned to the non-profit Project on Government Oversight (POGO) that I thought it was likely that the cy2000 disclosure the OGE had sent me was an amended version, and that Mr. Mineta's initial and possibly other earlier cy2000 disclosures might have provided more details of his Trimble Navigation stock options transaction on Schedule B. In other words, I thought that he might have disclosed information about those transactions that would have shown he received an excessive amount of stock options, and then tried to hide those details later with his April 18th Schedule B amendment.

On January 17, 2007, POGO issued a Freedom of Information Act Request to the OGE (attached), asking to receive Mr. Mineta's initial cy2000 financial disclosure and any other ones earlier than the April 19, 2002 report that they had sent me last October. The OGE's response (also attached), dated February 12, tried to imply that Mr. Mineta's cy2000 disclosure had been destroyed because the agency was only required to keep such disclosures for six years. Quoting directly from the first paragraph of that response: "Our file review has not located any such other copies or versions of that schedule **or the CY 2000 report itself**" (emphasis added).

That letter also says that "copies of SF 278 reports are available to the public for six years **after receipt**" (emphasis added). Since Mr. Mineta's cy2000 disclosure was received by OGE from him on April 18, 2002 (and dated April 19, 2002), it should not have been destroyed until April, 2008, more than one year after the date on the OGE's FOIA response letter.

When POGO FAXed me that response I was amazed that the OGE had seemingly lost the one report that could potentially incriminate Mr. Mineta for what I believe was his fraudulent omission of the details of his Trimble Navigation stock options transaction(s). On February 23, 2007, I called up Ms. Shelton at the OGE to find out from her what had happened to the report that she had sent me four months earlier. She told me that she had no record at all of Mr. Mineta's cy2000 report. When I asked her who within the OGE was responsible for destroying disclosures that were more than 6 years old, she said that she was, and confirmed that she kept a record of which disclosures she destroyed. I asked her to look at that record to see if she had, in fact, destroyed Mr. Mineta's cy2000 disclosure, and she did and said she had no record of destroying it. So the bottom line is that on February 23, the OGE had absolutely no record that Mr. Mineta's cy2000 disclosure had ever existed. Not only was it not in the system, but it had not been destroyed, either.

I believed (and still believe) that someone at the OGE, in an effort to help Mr. Mineta by "losing" this potentially incriminating disclosure, deliberately tried to remove all traces of it from their system. On March 12, 2007, POGO's General Counsel Scott Amey, with whom I've been working, issued an appeal of OGE's FOIA response (attached). That letter recounted what Ms. Shelton had told me in our recent phone conversation and asked to receive copies of her logs over the previous 6 months that would presumably show that Mr. Mineta's cy2000 disclosure had not been destroyed.

The OGE's April 12 response to POGO's FOIA appeal letter (attached) is truly amazing, and indicated that Mr. Mineta's CY2000 had magically reappeared, just as it had magically disappeared earlier.

The OGE's April 12 response also tried to blame the agency's incompetence for the anomalies related to their initial acquisition of that disclosure. The OGE said that the "source of confusion" regarding the April 19, 2002 date on Mr. Mineta's CY2000 disclosure stemmed from the fact that until April 2002, almost a year after that report was due in to OGE, nobody realized that he hadn't filed that cy2000 report. Thus our assumption that the April 2002 version was an amended version was apparently not the case because the report, in fact, wasn't even filed until someone noticed almost a year after it was due that it hadn't been filed. Of course, if this explanation is the truth it points out monumental incompetence on the part of the very agency that is supposed to be a watchdog over our federal officials' ethics.

I believe that someone with access to these disclosures at the OGE indeed tried to "lose" Mr. Mineta's potentially incriminating cy2000 disclosure, but that POGO's FOIA appeal letter caused that same person to "re-find" Mr. Mineta's disclosure. This attempted cover up not only shows how important that disclosure is, but how hard Mr. Mineta is apparently willing to go to try to hide the details contained in it.

January 17, 2007

OGE FOIA Officer

Office of Government Ethics, Suite 500

1201 New York Avenue, NW

Washington, DC 20005

Re: Freedom of Information Act Request

To Whom It May Concern:

I am making this request under the Freedom Of Information Act (FOIA), 5 U.S.C. § 552. Please provide the original Year End Public Financial Disclosure Report (OGE SF 278 Form) from Calendar Year 2000 for former Secretary of Commerce Norman Y. Mineta, filed sometime in early 2001. Specifically, please provide all copies—including but not limited to the original copy—of Mr. Mineta's Schedule B filings, which can be found on page 7 of the Report. If the Schedule B filing was amended multiple times prior to the existence of the latest version that OGE provides upon request (which is dated April 18, 2002), please provide copies of each of these versions.

I request a waiver of all costs associated with fulfilling this submission pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). Disclosure of the requested records will further the "public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest" of the requester, the Project On Government Oversight (POGO). Specifically, POGO intends to use the requested records to investigate Secretary Mineta's financial dealings. POGO is researching Secretary Mineta's behavior during his tenure as Secretary of Transportation, and we need his complete financial disclosure forms in order to fully understand his connections to the transportation industry. POGO's research will help the public become more informed about the relationship between a prominent public official and the private sector.

Founded in 1981, POGO is an independent nonprofit that investigates and exposes corruption in order to achieve a more accountable federal government. POGO disseminates information about its activities to thousands of concerned citizens, policymakers, and the media via email, direct mail, and its web site <http://www.pogo.org>, which receives 75,000 visitors monthly. The information provided by the agency will be used for the following activities: publication by email and on our website; publication in reports and newsletters issued by POGO; publication in the newsletters of affiliated nonprofit organizations; efforts to educate Congress, the Executive Branch, and other policymakers in Washington, DC; or investigational projects conducted in conjunction with the news media.

If this request is denied in full or in part, please cite the exemptions pursuant to 5 U.S.C. § 552(b) that justify the denial. If an exemption applies, however, please consider exercising the agency's

discretionary release powers to disclose the records. Additionally, please release all reasonably segregable portions of the records that do not meet an exemption.

I look forward to your response within 20 days of the receipt of this request, unless, in the case of “unusual circumstances,” the time limitation is “extended by written notice.” I may appeal this request if it is wholly or partially denied or if the agency fails to respond within 20 days. I am aware that, if successful, a federal district court may assess “reasonable attorney fees and other litigation costs” per 5 U.S.C. § 552(a)(4)(E).

Please contact me if this request requires further clarification. Thank you for your prompt attention to this matter.

Sincerely,

Michael Smallberg

Research Associate

msmallberg@pogo.org

(202) 347-1122



United States
Office of Government Ethics

1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

February 12, 2007

Michael Smallberg
Research & Web Outreach Associate
Project On Government Oversight
666 11th Street, NW., Suite 900
Washington, DC 20010

Dear Mr. Smallberg:

This is the response of the Office of Government Ethics (OGE) to your January 17, 2007 Freedom of Information Act (FOIA) request, in which you sought a copy of the original calendar year (CY) 2000 annual report of former Commerce Department and Transportation Department Secretary Norman Y. Mineta. You also specifically asked for any other (amended) copies of Schedule B of that report. Our file review has not located any such other copies or versions of that schedule or the CY 2000 report itself.

Please note that copies of SF 278 reports are available to the public for six years after receipt pursuant to the special access procedures of section 105 of the Ethics in Government Act, 5 U.S.C. app., § 105, and 5 C.F.R. § 2634.603 of OGE's regulations, not the FOIA. A copy of a blank OGE Form 201 Ethics Act access form is enclosed so that you can request a copy of the CY 2000 annual report of the former Secretary on file here at OGE. The OGE Form 201 is also available in the forms section of OGE's Website (www.usoge.gov).

The OGE official responsible for these FOIA determinations is the undersigned. In accordance with the FOIA, as codified at 5 U.S.C. § 552(a)(6)(A), and OGE's FOIA regulations, at 5 C.F.R. § 2604.304, you may administratively appeal this determination that OGE has no other versions of former Secretary Mineta's CY 2000 SF 278 annual report or Schedule B thereof. The name and address of the OGE official to whom such an appeal would have to be submitted are: Marilyn L. Glynn, General Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917. Any such appeal must be in writing and must be sent within 30 days of the date you receive this response letter. If you do appeal, you should include copies of your request and this response as well as a statement

Mr. Michael Smallberg

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of why you believe this initial determination is in error. Moreover, if you do appeal, you should clearly indicate on the envelope and in the letter that it is a "Freedom of Information Act Appeal."

Sincerely,

William E. Gressman

William E. Gressman
OGE FOIA Officer

Enclosure

March 12, 2007

Ms. Marilyn L. Glynn
General Counsel
Office of Government Ethics, Suite 500
1201 New York Avenue, N.W.
Washington, D.C. 20005-3917

RE: FOIA Appeal

Dear Ms. Glynn:

Thank you for your letter, dated February 12 (see Attachment A), that responded to POGO's January 17, 2007 Freedom of Information Act (FOIA) request (see Attachment B). This letter appeals OGE's non-responsive finding and provides the following information so that another search can be conducted.

I was perplexed that you can no longer find any copies of Mr. Mineta's calendar year 2000 disclosures. Mr. Jerry Werner, with whom POGO has been working since the fall of 2006, contacted Ms. Denise Shelton on February 23, 2007. I understand that Ms. Shelton told Mr. Werner that she keeps a log of which old (more than six years from receipt) reports she destroys, and said that she had no record of ever destroying Mr. Mineta's calendar year 2000 report. Further, she told Mr. Werner that the calendar year 2000 report was not anywhere "in the system." It appears to have disappeared.

This is all the more perplexing because last October 24, Mr. Werner received a copy of Mr. Mineta's calendar year 2000 request. I believe that the version Ms. Shelton sent him was an amended version, because the date on it was April 19, 2002. Hence, we assumed that the report that she sent Mr. Werner (see Attachment C) was an amended version, and we therefore wanted to get copies of Mr. Mineta's initial and/or earlier calendar year 2000 filings.

Since the most recent version of that cy2000 report was sent to OGE in April 2002, it should not have been destroyed (by your own stated special access procedures) until April 2008, more than a year from now.

To help us sort out this situation, I request the following information from the OGE:

1. Copies of Ms. Shelton's log book from the past six months, showing which financial disclosures had been destroyed during that period. (That log will presumably show, as she indicated, that she destroyed Mr. Mineta's New Entrant disclosure that was more than six years old but that she did not destroy his calendar year 2000 report.)
2. An explanation as to how Ms. Shelton could find no record at all of Mr. Mineta's calendar year 2000 disclosure, especially since Mr. Werner

received a copy of the latest version of it last fall (see Attachment C).

Please contact me if this request requires further clarification. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Scott H. Amey". The signature is written in a cursive style with a long, sweeping underline.

Scott H. Amey
General Counsel
scott@pogo.org

enclosures



United States
Office of Government Ethics

1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

April 12, 2007

Scott H. Amey, General Counsel
Project on Government Oversight
666 11th Street, NW., Suite 900
Washington, DC 20010

Dear Mr. Amey:

This is the response of the Office of Government Ethics (OGE) to your March 12, 2007 Freedom of Information Act (FOIA) appeal letter. Your letter expressed various concerns regarding OGE's response to the January 17, 2007 FOIA request by Mr. Michael Smallberg of your organization. Mr. Smallberg's letter sought access to all copies, including the original copy, of the calendar year (CY) 2000 annual SF 278 Public Financial Disclosure Report of former Commerce Department and Transportation Department Secretary Norman Y. Mineta. As we stated in OGE's initial response letter of February 12, 2007, that report (copy enclosed) remains on file here and copies can be obtained in accordance with the public access procedures of the Ethics in Government Act.

As noted, your organization's FOIA request specifically asked for any other copies of the former Secretary's CY 2000 SF 278 report, including Schedule B in particular. In your appeal letter, you indicate that since the date on the report was April 19, 2002, your organization assumed that it was an amended version and therefore was asking for access to any "initial and/or earlier calendar year 2000 filings." Our additional file review has still not located any such other earlier copies or versions either of that report or schedule. In fact, the SF 278 CY 2000 report for Secretary Mineta stamped signed by OGE on April 19, 2002 is the original and only version of that report.

The source of the confusion is that, before being nominated in early 2001 to the position of Secretary of Transportation, Mr. Mineta had served more than 60 days during the year 2000 as Secretary of Commerce. Thus, an annual SF 278 report should have been filed by May 15, 2001, covering CY 2000. In January 2001, Mr. Mineta filed a nominee SF 278 report covering CY 2000

Mr. Scott H. Amey

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for the Transportation Secretary position. Until April 2002, neither the Transportation Department, the Commerce Department, nor OGE realized that no CY 2000 annual form had been filed.

In April 2002, to help facilitate the preparation of the required CY 2000 annual SF 278 report in coordination with the Department of Transportation, OGE's Deputy Associate Director for Financial Disclosure had a photocopy made of Mr. Mineta's January 2001 nominee SF 278 report for the Transportation Secretary position. This photocopy served as the basis for his annual report for CY 2000. This was possible because the nominee report covered, except for Schedule B, the entire year 2000 reporting period. The Ethics Act does not require nominees to complete Schedule B of the SF 278. On April 18, 2002, OGE also obtained via FAX from the Transportation Department (which in turn had conferred with Secretary Mineta) a new, completed Schedule B for the Secretary. Next, OGE marked over the photocopy of the nominee report cover sheet with pen, correction and regular tape, and new date stamps in order to: (i) change the reporting status box from nominee to incumbent (for CY 2000); (ii) stamp a new OGE receipt date (April 18, 2002); and (iii) stamp a new OGE signature date (April 19, 2002, accompanied with the legend "by TFZ", the Deputy's initials).¹ With those changes and the substitution of the FAXed completed Schedule B covering 2000, the marked-over photocopy has served here at OGE as former Secretary Mineta's CY 2000 incumbent SF 278 report.

As noted in OGE's February 12, 2007 initial FOIA response to your organization's FOIA request, copies of SF 278 reports are available to the public for six years after receipt pursuant to the special access procedures of section 105 of the Ethics in Government Act, 5 U.S.C. app., § 105, and 5 C.F.R. § 2634.603 of OGE's regulations, not the FOIA. According to your appeal letter, there apparently was some misunderstanding about the continued availability of Mr. Mineta's CY 2000 report when Mr. Jerry Werner, with whom you indicate your organization has been working since last fall, contacted an OGE staff member this past February. The impression was left that OGE could not find any record of Mr. Mineta's CY 2000 SF 278 Public Financial

¹ OGE staff have been instructed that they are no longer to employ such procedures and must obtain a full submission from each filer.

Mr. Scott H. Amey

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Disclosure Report on file here. This is not correct, and we apologize for the confusion.

In fact, Mr. Mineta's CY 2000 SF 278 report has not been destroyed, nor has it "disappeared." Rather, as indicated in OGE's initial FOIA response letter, that report remains on file here, and any member of the public can request a copy by completing an OGE Form 201 Ethics Act access form. You also indicated that last fall your colleague Mr. Werner obtained a copy of that report from OGE. As explained above, he received a copy not of an amended version, but of the marked-up photocopy serving here at OGE as the CY 2000 report itself. We are enclosing another copy of that report for your reference. As to another point you made in your letter, this is to assure you that OGE will continue to make copies of the CY 2000 SF 278 report for Mr. Mineta available to the public upon request until April 2008, six years after OGE's constructive receipt of it in April 2002.

In light of this explanation, it would appear that your additional request for a copy of any log or listing of SF 278 reports destroyed by OGE during the past six months, after their general six-year retention period under the Ethics Act, OGE's regulations and the pertinent records schedule, is moot.

Finally, with respect to your FOIA administrative appeal, OGE has determined that this Agency's initial determination that we have no records responsive to the portion of your organization's FOIA request that sought any other copies or earlier versions of former Secretary Mineta's CY 2000 SF 278 report was correct.² Thus, the February 12, 2007 initial determination of the OGE FOIA Officer in that regard is hereby upheld.

The OGE official responsible for this FOIA determination is the undersigned. This constitutes the final OGE action on your organization's January 17, 2007 FOIA request. Under the terms of the FOIA, at 5 U.S.C. § 552(a)(4)(B), and OGE's FOIA regulations, at 5 C.F.R. § 2604.304(d), you have the right to seek judicial review of this determination that OGE has no

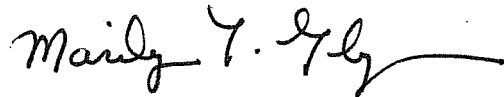
² As noted, subsequent to receipt of your administrative appeal, OGE again conducted a search and did not locate any responsive records.

Mr. Scott H. Amey

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responsive records in the United States District Court for the district in which you reside or have your principal place of business, or in the District of Columbia.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marilyn L. Glynn", with a long horizontal flourish extending to the right.

Marilyn L. Glynn
General Counsel

Enclosure

cc: Rosalind A. Knapp (w/encl.)
Designated Agency Ethics Official
Department of Transportation