



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

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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.

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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

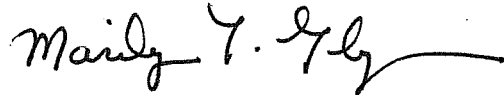
² As noted, subsequent to receipt of your administrative appeal, OGE again conducted a search and did not locate any responsive records.

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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